

RICHLAND COUNTY PLANNING COMMISSION
February 4, 2013

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[Members Present: Heather Cairns (in @ 1:13pm), Olin Westbrook, Kathleen McDaniel, David Tuttle, Patrick Palmer, Stephen Gilchrist, Bill Theus, Wallace Brown, Sr. (in at 1:08pm); Absent: Howard Van Dine]

Called to order: 1:01 pm

CHAIRMAN PALMER: Alright, we'll call the February meeting of the Richland County Planning Commission to order. Allow me to read this into the Record. In accordance with the Freedom of Information Act, a copy of the Agenda was sent to radio and TV stations, newspapers, persons requesting notification and posted on the bulletin board located in the lobby of the County Administration building. Has everybody received the January Minutes? Any motions?

MR. TUTTLE: Mr. Chairman, if I could I'd like to make a motion that we approve the January Minutes as received.

MR. GILCHRIST: Second, Mr. Chairman.

CHAIRMAN PALMER: We have a motion and a second. All those in favor say aye?

[Approved: Westbrook, McDaniel, Tuttle, Palmer, Gilchrist; Absent for vote: Cairns, Brown; Absent: Van Dine]

CHAIRMAN PALMER: None opposed. And did everybody just receive the, the new Agenda? Yes? Do we have any amendments to the Agenda? Do we have a motion to approve the Agenda?

MR. TUTTLE: So moved.

MR. GILCHRIST: Second, Mr. Chairman.

1 CHAIRMAN PALMER: All those in favor say aye?

2 *[Approved: Westbrook, McDaniel, Tuttle, Palmer, Gilchrist; Absent for vote: Cairns,*
3 *Brown; Absent: Van Dine]*

4 CHAIRMAN PALMER: And we have no road names. So Map Amendments,
5 Case No. 13-03 MA.

6 **CASE NO. 13-03 MA:**

7 MR. LEGER: Thank you, Mr. Chairman. We do have one map amendment this
8 month. The Applicant is Mr. Wayne Huggins. The property's located at the intersection
9 of Garners Ferry Road and Congaree Road. It's almost two acres in size, currently
10 zoned RU. And Mr. Huggins is requesting a GC, General Commercial District. The RU
11 District zoning classification was the original zoning adopted from 1977. In the vicinity,
12 to the north we have property zoned RU, which is currently undeveloped and there is
13 some residential in that vicinity. To the south we have an undeveloped wooded parcel,
14 wooded, and there is a school as well to the south and some residential. To the east we
15 have residents as well and to the west we have an EMS station across from Congaree
16 Road. In the vicinity further to the west there is some commercial use and that is shown,
17 commercial zoning, that is shown in your summary. The subject property is occupied by
18 what appears to be a single-family residence at one time. I'm told that it was used as a
19 doctor's office. There's a, again there's a mixture of uses along Garners Ferry Road
20 from small scale cafes to hardware stores and the like. Further to the east there is a
21 concrete, kind of a manufacturing plant, it's hard to tell whether that facility is actually
22 being used at the current time. Other than that our Comprehensive Plan recommends
23 Rural out in this vicinity along Garners Ferry Road, where again commercial should be

1 located at major intersections or in areas where there is plenty of commercial use.
2 Additionally, that should not penetrate residential use as well. Our Staff in looking at this
3 request has found, and in our opinion, the property does not meet the Comprehensive
4 Plan. We do not consider Congaree Road a major intersection, and would not in our
5 opinion classify this area as a, as having significant commercial use to warrant the
6 rezoning at this time. So with that mind our Staff recommends disapproval of the zoning
7 map this afternoon, so if you have any questions I'll be glad to try and answer them.

8 CHAIRMAN PALMER: I have a question. Do we not still have the two acre
9 minimum limit?

10 MR. LEGER: We do, that is still in place.

11 CHAIRMAN PALMER: Is this tract not surrounded by RU?

12 MR. LEGER: We've got GC across Congaree Road.

13 CHAIRMAN PALMER: Wait, wait. But there's a tract between this tract and
14 Congaree Road.

15 MR. LEGER: Are you talking about the, kind of the triangular?

16 CHAIRMAN PALMER: Um-hum (affirmative).

17 MR. LEGER: It's my understanding that the map is incorrect in that fact and
18 there's a survey in the file and we've had some discussion about altering the map, but
19 essentially to the east, the little triangular piece, my understanding is that is not a part of
20 it, and to the west the triangular piece and to the south the little sliver, is, is all part of
21 the request.

22 CHAIRMAN PALMER: Can we see where we're talking about?

23 MS. MCDANIEL: So is it contiguous to GC or not?

1 MR. LEGER: It – the GC across the, across Congaree should be, yes, ma'am.

2 MS. MCDANIEL: It is contiguous?

3 MR. LEGER: With the commercial across Congaree Road.

4 MR. TUTTLE: And it touches Congaree Road.

5 MR. LEGER: Yes, sir.

6 MR. TUTTLE: The parcel does, cause the diagram doesn't show that, so it's –

7 MR. LEGER: That's correct.

8 MR. TUTTLE: Okay.

9 [Inaudible discussion]

10 CHAIRMAN PALMER: What's the coloring we got going on here?

11 MR. DELAGE: Oh, I was just highlighting the –

12 CHAIRMAN PALMER: But that piece where you currently have your cursor at
13 now is included in the parcel, in the 1.79 acres?

14 [Inaudible discussion]

15 MR. TUTTLE: Would it be possible to pull up that parcel on GIS or something?

16 *[Mr. Brown in at 1:08pm]*

17 CHAIRMAN PALMER: So we just put the wrong box in there? The box shouldn't
18 be there?

19 [Inaudible discussion]

20 MS. HEGLER: It's just not corrected on our GIS base map, it's the same owner
21 for that triangular piece as well.

22 MR. TUTTLE: So what is the actual acreage of the application, 1.79?

23 MS. HEGLER: Correct. But if it's, if it's contiguous to a GC.

1 MR. TUTTLE: Right, then it's acceptable.

2 CHAIRMAN PALMER: Okay. Alright, any other questions for Staff? Wayne
3 Huggins? Mr. Huggins, if you'd like to come down and take the podium and, for
4 members of the audience when we call your name if you would come down and take
5 the podium and give us your name and address for the Record. And if you could limit
6 your comments to two minutes we'd certainly appreciate it.

7 **TESTMONY OF WAYNE HUGGINS:**

8 MR. HUGGINS: Good afternoon. Wayne Huggins, 229 Old Congaree Run,
9 Eastover. The property that's being discussed, 9711 Garners Ferry Road, it was my
10 understanding when I bought the property from the realtor, and I spoke with them again
11 this morning, that a sign was underneath the realty sign which showed the property
12 zoned for a church, retail and office space, and I have a picture of that sign. In talking
13 with him, even zoned RU, it was their understanding that this could be done. Now I find
14 out later that there's a problem. What I'm proposing to do is a clinical psychologist, very
15 quiet business, it's one lady, deals with the military, McEntire, Shaw Field, Ft. Jackson,
16 she's currently in the northeast and wants to relocate closer to the base. So it's not like
17 a gas station, restaurant, anything of that nature. The property's probably 100', 150'
18 from the intersection of Harmon Road and 378. The new EMS station is directly on the
19 other side of Congaree Road from 9711. I have talked to Ace Hardware, Richard
20 Breeland, Mr. Breeland, Bunky Carter, numerous people out in that area, and they all
21 are behind having a psychologist there. Just since last week I've got 162 signatures
22 from people that approve it; from teachers at the school, the psychologist currently at

1 Horrell Hill School signed and she's behind it 100%, so I really, it's a quiet business,
2 don't understand where the problem would be there.

3 *[Ms. Cairns in at 1:13pm]*

4 CHAIRMAN PALMER: Okay. Thank you. Any questions for Mr. Huggins? Thank
5 you. I have a question. Geo, I know that typically you don't ask the Applicants, you
6 know, sometimes what they want to do or this or that, but Mr. Huggins, when we look at
7 a zoning on a piece of property –

8 MR. HUGGINS: Um-hum (affirmative).

9 CHAIRMAN PALMER: - we look at rezoning the property not based on the
10 individual particular use, but any of the uses that can go in that category -

11 MR. HUGGINS: I understand.

12 CHAIRMAN PALMER: - would then be allowed for this piece of property, from
13 gas station to –

14 MR. HUGGINS: I understand.

15 CHAIRMAN PALMER: - to anything, so while your use may suit this, we, we cant'
16 rezone it for just a specific use.

17 MR. HUGGINS: I understand that.

18 CHAIRMAN PALMER: And that's why, this is my question for Mr. Price, Mr.
19 Price, would he need the GC District to do what he wants to do with the clinical
20 psychologist, or would a, a lesser zoning classification perhaps fit in this area for a step
21 down from the GC that's across the street?

1 MR. PRICE: According to our pre-app meeting the zoning districts that would
2 allow this use I believe were the GC, NC and the RC. These are based on some of the
3 other uses that were mentioned during the meeting.

4 CHAIRMAN PALMER: Okay.

5 MR. PRICE: But one of the issues of – cause he does not have the two acres,
6 correct, so now you're looking at abutting.

7 CHAIRMAN PALMER: So GC's the only classification he could ask for in this
8 area because there's nothing adjacent and he doesn't have two acres.

9 MR. PRICE: Right, and he can actually ask for a, he could ask for OI, NC,
10 because they're abutting commercial, what considers to be abutting, or GC also.

11 CHAIRMAN PALMER: Okay. Alright, I appreciate it. Thank you. Ronald
12 Johnson?

13 MR. JOHNSON: Perhaps I signed on the wrong sheet.

14 CHAIRMAN PALMER: Okay. Scott Hogan?

15 **TESTIMONY OF SCOTT HOGAN:**

16 MR. HOGAN: Good afternoon. Scott Hogan, 10 Pheasant Circle, Hopkins, South
17 Carolina. While I am not opposed to Mr. Huggins putting a psychologist's office there,
18 what I'm opposed to is the GC rezoning. My daughter and grandchild live right next
19 door, they are the residents at 9721 Garners Ferry Road and I would not like to see this
20 piece of property in the future while they're living there to become industrialized,
21 commercialized. GC gives the proprietor a great latitude left and right to put all types of
22 businesses there. My father was a general practitioner who actually had a doctor's
23 office in the bottom of the, of the home. It was his residence though, so under the

1 stipulations if you will of Richland County, he could have his office there because it
2 occupied less than 20% of the total square footage of the piece of property. But as far
3 as a psychologist is concerned, office, I would have no problem with that. The only
4 problem I have is with the rezoning of it as GC. Thank you.

5 CHAIRMAN PALMER: Thank you. Leslie Fields?

6 **TESTIMONY OF LESLIE FIELDS:**

7 MS. FIELDS: Good afternoon, I'm Leslie Fields, 9721 Garners Ferry Road,
8 Hopkins. I am the owner of the adjacent property that they are speaking about. I am
9 also not opposed as to what the use of this particular psychologist office that Mr.
10 Huggins wants to do, however, as my father stated I am opposed to it being rezoned
11 GC, simply for the future use. Also I'd just like to point out that this piece of property at
12 9711 plus mine at 9721 and the other piece of property to the west of me, 9731, all
13 three of those parcels are actually zoned in a minor subdivision called Hogan Estates
14 and therefore, it being part of a minor subdivision I don't see how, you know, you can
15 rezone something to GC.

16 CHAIRMAN PALMER: Okay.

17 MS. FIELDS: Okay?

18 CHAIRMAN PALMER: Thank you.

19 MS. FIELDS: Thanks.

20 CHAIRMAN PALMER: Roger Tisinger?

21 **TESTIMONY OF ROGER TISINGER:**

22 MR. TISINGER: I'm Roger Tisinger, my address is 531 Arnold Road, Eastover,
23 South Carolina. The main thing is I was responsible for getting the red light there, it's

1 been a busy intersection as far as the speed of the traffic on 378, and there's been
2 multiple deaths and injuries there in that intersection. Now there's two red lights there,
3 so I would think if it's a real heavily commercial type piece of property then it would be a
4 problem, if it's a psychologist, it wouldn't. Thank you.

5 CHAIRMAN PALMER: Okay, thank you. That's all we have signed up to speak.
6 Thoughts, comments, motions?

7 MS. MCDANIEL: Well, I'd just, I would just say I do have some concerns about
8 that being zoned, rezoned to GC that would negatively impact the neighbor and it
9 doesn't appear to be in, to be consistent with the character of the area, nor consistent
10 with the Comprehensive Plan.

11 CHAIRMAN PALMER: Yeah, I think this is one of those prime areas where we
12 can use some of the lesser intense commercial applications and gradually step down
13 from the interchange, moving away from the interchange into some lesser intense and it
14 seems like we may have a good fit here in that the Applicant may be able to use a
15 lesser intense commercial application if they were to apply for it for what their, for what
16 their needs or desires are rather than opening it up to the, to the gamut of uses that are
17 in General Commercial and that go with the property not with the owner, so that's my,
18 my thoughts on it as well.

19 MR. TUTTLE: I've got a question for Staff if I could.

20 CHAIRMAN PALMER: Yeah.

21 MR. TUTTLE: Can you just walk me through the rationale of, of how this is non-
22 compliant and why this, if it's a signalized intersection, would not be considered a major
23 intersection?

1 MR. LEGER: I think it has something to do with the traffic counts and the number
2 of vehicles going through there. The signalized intersection is at, at Horrell Hill if I'm not
3 mistaken, which is somewhat removed from the site.

4 CHAIRMAN PALMER: Congaree and Garners Ferry is not signalized?

5 MR. TUTTLE: Oh, I misunderstood, I thought – can I ask the gentleman who was
6 just up – I thought you said you were responsible for getting a traffic light here, I
7 misunderstood.

8 MR. TISINGER: Right there on [inaudible].

9 MR. TUTTLE: Oh, okay.

10 MR. TISINGER: [Inaudible]

11 MR. TUTTLE: Okay, okay thank you for the clarity. Sorry, I misunderstood.

12 MR. LEGER: Yes, sir, I mean, I, I think Congaree Road is more of a residential
13 type collector so to speak, and again with the signal is at Horrell Hill, so it's –

14 MR. TUTTLE: I, I, thank you, I misunderstood.

15 MR. BROWN: Mr. Chairman, did I understand that the property was used by a
16 physician prior to that?

17 CHAIRMAN PALMER: No, sir, I think he was just telling us – oh, your father was
18 in the bottom of the house?

19 MR. HUGGINS: [Inaudible] clarification?

20 CHAIRMAN PALMER: Yes, sir. If you could come down and take the podium for
21 us too so we can get the transcript.

22 MR. HUGGINS: The piece of property, 9711 Garners Road, was my mother and
23 father's residence. My father was a general practitioner. Now under the ordinances of,

1 of Richland County, he could have his practice in the basement, which he did because it
2 occupied less than 25% of the square footage of the house, but it was his residence.

3 CHAIRMAN PALMER: Right.

4 MR. BROWN: And did he have a – may I, Mr. Chairman?

5 CHAIRMAN PALMER: Sure.

6 MR. BROWN: Did he have a sizeable practice?

7 MR. HUGGINS: Yes, he had a, he had a licensed practice there. The sign was
8 located on Congaree Road, it was a very small sign that said, Gilbert S. Hogan, MD,
9 Physician.

10 MR. BROWN: And, Mr. Chairman if I understand this correctly, this is a
11 psychiatric practice?

12 CHAIRMAN PALMER: Well, that's what he, he desires to put on there but has to
13 get it rezoned from the RU.

14 MR. BROWN: I understand, but the reason I'm raising it, raising the question, it
15 seems that both of those are MDs, one specializes in psychiatry, so the question is,
16 since this property historically was used for medical purposes, is there some
17 grandfather clause in there of, or method, of allowing that practice to go in?

18 CHAIRMAN PALMER: No, sir, I wouldn't think so, that'd be a question for Mr.
19 Price. But, but because it was his residence primarily, that was the primary zoning that it
20 fell under, the other was an ancillary use to the residence.

21 MR. BROWN: And I appreciate that, but if he had a medical practice and it was a
22 viable practice, you would've had, normally those practices see 20 to 30 people a day,
23 and sometimes more if they're the only ones in that area. And that's why I'm asking.

1 CHAIRMAN PALMER: Mr. Price?

2 MR. PRICE: First, without doing any, some additional research I'm not exactly
3 sure when it was approved or what it was approved for. But it sounds as if it was a
4 home occupation use for that particular location, and typically with the home occupation
5 we've, usually it involves some type of retail or mostly office use where you're gonna do
6 work outside but we have had a couple of cases where someone has operated some
7 type of doctor's office where you've had patients come there periodically. And one of the
8 things that we look for is that they don't increase the volume of traffic in that area and
9 make it out of character with the surrounding area. So as far as those numbers that I
10 think you were speaking about, maybe 30, if that were the case it would seem like that
11 would've been a violation. Maybe he was just seeing people periodically. But, and also
12 that could not be grandfathered in. Once again, it was a home occupation and there
13 were certain limitations and one of the first ones was it can't be more 25% of the home,
14 so to go further than that would've been in violation.

15 CHAIRMAN PALMER: Okay. I gotcha.

16 MR. TUTTLE: One more question. Did, did you obtain any traffic counts for
17 Congaree Road?

18 MR. LEGER: None unless they're in the Report. No, sir.

19 MR. TUTTLE: I didn't see anything else, just curious. Thank you.

20 MS. MCDANIEL: Okay, well Mr. Chairman I'll make a motion that we send Case
21 No. 13-03 MA forward to County Council with a recommendation of denial of the
22 rezoning request.

1 CHAIRMAN PALMER: We have a motion. Do we have a second? Okay, the
2 motion dies for lack of a second. Do we have another motion?

3 MR. GILCHRIST: Mr. Chairman, what is – question.

4 CHAIRMAN PALMER: Yes.

5 MR. GILCHRIST: What is the option. You were suggesting just momentarily that
6 we may be able to look at a lesser option on this. I mean –

7 CHAIRMAN PALMER: Yeah, I think –

8 MR. TUTTLE: Mr. Chairman, I'm sorry to interrupt. I would urge this Body to look
9 at what's in front of us.

10 CHAIRMAN PALMER: Right.

11 MR. TUTTLE: And, and not make recommendations, however empathetic we
12 may be. We've received advice that that's not prudent –

13 CHAIRMAN PALMER: Right.

14 MR. TUTTLE: - for us to do, so I'm just trying to make sure we don't get –

15 CHAIRMAN PALMER: Yeah, I think Mr. –

16 MR. GILCHRIST: I understand.

17 CHAIRMAN PALMER: - Mr. Price can get up with the Applicant if, and explain
18 the process moving forward perhaps. Also, you know, we're public servants as well and
19 are open to, you know, talk with people whenever about it, but I think what we've got in
20 front of us is the GC that we've got to take a look at here today. So we've had a motion.
21 Do we have another motion?

1 MS. CAIRNS: I'm just gonna offer that I'm actually, because I did not hear the
2 entire discussion I will be abstaining from this vote. I don't think it's appropriate for me to
3 vote on half the discussion.

4 CHAIRMAN PALMER: Okay. Do we have another motion?

5 MS. MCDANIEL: So, I mean, I'll remake my same motion. But I, I just wonder,
6 you know, if we go against Staff recommendation we have to have the basis for it. So
7 I'm curious what that might be. If there's some argument for granting the rezoning in an
8 area that, to me, is pretty clearly RU.

9 MR. GILCHRIST: Well, and I guess that's what I'm asking.

10 MR. TUTTLE: Well, I get, you know, and I'm certainly not offering an opinion, but
11 the, the argument would be that it's contiguous to GC and you could deem it at a major
12 intersection. And therefore it would be compliant with the Comprehensive Plan. That
13 would be the counter-argument.

14 MS. MCDANIEL: Okay. Well, it appears to me that that would be encroaching,
15 GC encroaching into what is predominately Rural on the east side of Congaree Road,
16 which appears to be a type of barrier to further GC encroachment.

17 CHAIRMAN PALMER: I, I would view it as, it's always difficult when you have
18 residents along major corridors and along four-lane divided roads to see those continue
19 along as residents, and I think sometimes the area lends itself to more commercial
20 development. But I think historically we've tried to keep those as centered around the
21 lighted interchanges as we can. And that a simple crossroads or, or road coming into
22 that four-lane connector, while it can be perceived as a major interchange, you know,
23 any road that comes into a four-lane highway is gonna look like a major interchange.

1 But, you know, I think we've historically tried to keep those around the, the signals, the
2 signalized intersections, historically for, for General Commercial.

3 MS. CAIRNS: I also would, I mean, I would just sort of caution this idea that, that
4 houses along significant roads are gonna end up commercial cause that would make
5 every major road, Two Notch, Sunset Boulevard, you know, Garners Ferry, the part
6 that's not all that particularly interesting, and I would caution to think that we should just
7 allow that natural creep of commercial to just invade all of our roadways because I
8 don't, and I mean, we have examples like Trenholm Road where we have major roads
9 that are not residential, Forest Drive, that are not, I mean, that are not all commercial.
10 You know, so just the fact that, oh it's a major road so it's just natural that we're gonna
11 creep commercial out away from intersections I think is not – and I guess I have one
12 question cause –

13 CHAIRMAN PALMER: So are you or are you not abstaining from this one.

14 MS. CAIRNS: I don't think I can not talk, but I don't think it's appropriate for me to
15 vote.

16 CHAIRMAN PALMER: But you're gonna, but you're gonna get involved in the
17 conversation and persuade people one way or the other but not participate in it?

18 MS. CAIRNS: I didn't hear the whole discussion, that's, you know, like I didn't
19 hear the whole presentation from the – but I have a, can I, a question, maybe it's just
20 the – is this the whole, whole parcel or is it –

21 MR. TUTTLE: Yes.

22 MS. CAIRNS: - it's not just that middle piece.

23 MR. TUTTLE: Correct.

1 MS. CAIRNS: Okay.

2 CHAIRMAN PALMER: Okay, would someone like to, after further discussion,
3 remake the motion or make one for the first time?

4 MS. MCDANIEL: Well, I'll remake my motion that we send Case No. 13-03 MA
5 forward to County Council with a recommendation of denial.

6 MR. TUTTLE: Second.

7 CHAIRMAN PALMER: We have a motion and a second. Any other discussions?
8 All those in favor of the motion please say aye? Any opposed?

9 *[Approved: Westbrook, McDaniel, Tuttle, Palmer, Gilchrist, Theus, Brown; Abstained:*
10 *Cairns; Absent: Van Dine]*

11 CHAIRMAN PALMER: Okay. And we are a recommending Body to County
12 Council. They meet back here in these same Chambers on February the 26th, and there
13 are options moving forward as well if you'd like to get together with Mr. Price and see
14 what will happen at the County Council meeting. Thank you.

15 MS. MCDANIEL: Ms. Linder? Can I get a recusal form from you?

16 CHAIRMAN PALMER: Okay, please allow me to read this into the Record. Mr.
17 Palmer, I must request to be excused from participating in discussion or voting on
18 Agenda Item No. 1 AR regarding Longcreek Plantation which is scheduled for review
19 and/or discussion at today's Planning Commission meeting. It is my understanding of
20 the Rules of Conduct, Provisions of the Ethics, government accountability and
21 campaign reform laws that since my law firm represents the seller of the subject
22 property, Case No. 13-04AR, I will be able to participate in this matter through
23 discussion or voting. I would therefore respectfully request that you indicate for the

1 Record that I did not participate in any discussion or vote relating to this item,
2 representing a potential conflict of interest. I would further request that you allow and
3 direct this letter to be printed as a part of the official Minutes and excuse me from such
4 votes or deliberations and note such in the Minutes. Thank you for your consideration in
5 this matter. Sincerely, Kathleen McDaniel. Okay.

6 MR. TUTTLE: Mr. Chairman, I'd like to make a motion that we go into Executive
7 Session to seek legal advice from our counsel.

8 CHAIRMAN PALMER: We have a motion, do we have a second?

9 MR. GILCHRIST: Second.

10 CHAIRMAN PALMER: All those in favor say aye? Any opposed?

11 *[Approved: Cairns, Westbrook, McDaniel, Tuttle, Palmer, Gilchrist, Theus, Brown;*

12 *Absent: Van Dine]*

13 MR. BRICK: [Inaudible] Also I would object to the [inaudible] this attorney
14 because this attorney is [inaudible] and you're acting as a judicial body and as a judicial
15 body she's the, she represents the person who would be [inaudible] to the appeal. So I
16 would object to this attorney going into [inaudible]. And first of all I don't know
17 [inaudible]. [Inaudible]

18 MR. TUTTLE: I, I'm confused, Mr. Brick. We're, right now we're not currently in a
19 public discussion mode, so you're out of order.

20 MR. BRICK: I understand [inaudible].

21 MR. TUTTLE: Excuse, you're, Mr. Brick, you're out of order.

22 MR. BRICK: [Inaudible]

23 *[Executive Session]*

1 MR. TUTTLE: Let the Record show this is a Pepsi. [Laughter]

2 CHAIRMAN PALMER: Okay, Ms. Linder, would you like to report us out of
3 Executive Session?

4 MS. LINDER: Mr. Chairman, the Executive, the Planning Commission went into
5 Executive Session to receive legal advice and no action was taken.

6 CHAIRMAN PALMER: Okay, thank you. Alright next up on the Agenda is Case
7 No. 13-04 AR.

8 **CASE NO. 13-04 AR:**

9 CHAIRMAN PALMER: What we're gonna do here is we're going to allow 15
10 minutes per side to present their case, their arguments per the case. So I think in this
11 instance we'll start with Mr. Brick since he's the one challenging the ruling of the DRT.
12 So Mr. Brick, the floor is yours.

13 MS. LINDER: Mr. Chairman, do you have a copy of the signup sheet?

14 CHAIRMAN PALMER: We do, and there's, Mr. Brick is the only one signed up to
15 speak.

16 MS. LINDER: Thank you.

17 **TESTIMONY OF SAMUEL T. BRICK:**

18 MR. BRICK: I do object to the – I have a legal memorandum I'd like to present
19 and –

20 MS. CAIRNS: This is, I believe this, is this the same – is there one, only one?

21 MR. BRICK: It's similar. It's, this is similar to the one that I sent out earlier. That's
22 not the application, that is –

1 MS. CAIRNS: No, I understand. We have the application and then the – but
2 you're saying this is different than the one –

3 MR. BRICK: It's a little bit different, yes. I cleaned it up a little bit. I'd like to make
4 it for the Record too, please.

5 CHAIRMAN PALMER: And just for the Record as well, Ms. Linder, I think we had
6 Ronald Johnson, did you want to speak on this case?

7 MR. JOHNSON: Yes, sir.

8 CHAIRMAN PALMER: Okay, so we do have one person signed up to speak on
9 the case as well.

10 MS. LINDER: Thank you.

11 MR. BRICK: I also for the Record would like to object to Ms. Linder being the
12 attorney. She is not the, part of the legal office for the county, she works specifically for
13 the Planning Department and she is the attorney for the Planning Department as she
14 has noted previously to you, and I would object to her participating. And I also object to
15 her being in the Executive Session that you all just held. So that's, that is an objection.

16 CHAIRMAN PALMER: Okay.

17 MR. TUTTLE: Duly noted.

18 MR. BRICK: Okay, thank you. Alright. There are four things – first of all I think
19 you all are familiar, matter of fact I know most of you are familiar with the project. The
20 project is 100 acres to be developed under the Green Code. And it is to be in an area in
21 Longcreek Plantation which is hilly and has got a lot of wetlands in it and there's a fairly
22 steep slope involved in it. The, the, the project has an application with approximately
23 30% set aside. This set aside includes a number of things, some conservation areas

1 that are wetlands and some very steep slopes like I just mentioned, and some other
2 secondary conservation districts under the Green Code. The, there's some problems
3 with the Comprehensive Plan that I want to note. There are four things that you have to
4 look at that, that I'm addressing, and I'm gonna address them, all four of them, but I'll
5 start with the Comprehensive Plan. First of all with regard to the land use element, one
6 of the things about the Comprehensive Plan is to minimize impervious surfaces and
7 we'll get to this in a little bit later, but there's no, whatsoever no utilization or
8 implementation of any kind of idea of impervious surfaces being limited in this
9 application. It is not a priority investment area. You guys know this because you guys
10 prepared the Comprehensive Plan so you know what priority investment areas are. This
11 is not one, we don't get any monies, there's no special things, and also under the goals
12 and the ideas of the priority investment areas, that's a particular area where you get
13 special things and you're supposed to have a little bit more, little bit more liberal
14 changes would happen in a priority investment area than in the other areas. The
15 facilities element, there's a specific chart in there that talks about the community
16 facilities element and the, it says 2.75 dwelling units per acre is what's recommended,
17 this has a whole lot more than that. It's not in sync with the transportation element,
18 there's no bus service, it's not close to employment centers, there are no walkways
19 throughout the general area. There are walkways throughout the Green Code area but
20 once you get out of the Green Code area there are no other walkways. There's a long
21 commute into town, 16 or 17 miles so it's not really in sync with the transportation
22 element either. The land use element, there's a, the, the Planning Director will direct
23 you to a little bit of a language in there that talks about suburban areas should be

1 developed at four to eight dwelling units per acre, which would cover all the zonings
2 districts within the, the suburban area. The zoning map has not changed in the
3 Comprehensive Plan and in this particular area it's zoned at low density, single-family
4 residential, low density. The, the purpose section, we, you're supposed to look at the
5 purpose, the scope and the provisions. The purpose section, Section 26-2(A)(5), it
6 specifically fails to enforce density and the distribution of populations. No density is
7 enforced in this so that's a specific violation of that provision. Okay, now the meat of the
8 appeal there's the inter workability and the application of Sections 26-89, 26-86, and
9 basically those two, two sections. Now, the density provision under Section 26-89, and I
10 heard Mr. Palmer, Chairman Palmer talk about this before, where he says that it's a,
11 you know, you get a gross, you get the maximum houses, you can put them in, it's all
12 done by the number of acres total. That's not the case. The density is one dwelling unit
13 per lot area, and that's a statutory definition of density, one dwelling unit per lot area.
14 And the lot area is no more than 12,000 square feet per lot area. That's the, that's
15 exactly what the language of the law says on 26-89. There are two exceptions, two
16 exceptions only and they're both in the statute. One exception is if DHEC determines
17 otherwise, and the other exception is 26(l), it's specified as an exception and it, it talks
18 about the, the – my mind is just – wait a minute – it speaks specifically to the
19 development standards of 26(l), and that's the only place where they talk specifically
20 about development standards where they refer to the Green Code. So 26(l) are the
21 development standards of the Green Code according to 26-89. And you have to look at
22 these together, because they're the only two exceptions, it doesn't talk about anything
23 else. So, and here's another thing that's very important, vitally important is both of these

1 provisions, the provision with regard to 26(I) and the Green Code were both enacted
2 with the same ordinance. It's the same ordinance, it's not one after the other, one before
3 the other or anything of that nature. So if you're looking at that from a perspective of, of,
4 you know, how they work together, they do. It's 26(I). Now, so that means a lot when we
5 get to the, how many houses and all that sort of thing. But I, I mentioned the two
6 exceptions. What's the difference? Alright, the project calls for 332 dwelling units, that's
7 with no density, there's – and again, like, I mean, I can't enforce this more, you can't,
8 there's just no density. That's the only residential, the only zoning or residential area
9 that we have in Richland County, all the residential districts have zoning densities in
10 them. There's none being applied to this particular project. Okay, now what, you know,
11 it, if you have the, you look at density and you see how it works and it's only the
12 buildable land, it's not the total land in the property, it's the buildable land. It says it shall
13 be no more than, no, in no case shall it be more than . . . that's statutory language. Mr.
14 Tuttle's shaking his head, but I'll tell you Mr. Tuttle also looked at a program in 19 – just
15 let the Record say he was shaking his head, and that's alright cause I understand you
16 probably disagree with me on that – but back in 2009, you sat on a, on a, on a, a
17 commission with the Corps of Engineers and this county Planning Department, under
18 the Roundtable aspects of it –

19 CHAIRMAN PALMER: Mr. Brick?

20 MR. BRICK: Yes.

21 CHAIRMAN PALMER: Can you please just keep it to the, to the complaint that
22 you have and not [inaudible] stories about individuals on the Planning Commission?

1 MR. BRICK: Alright. Alright. The statute says 12,000 square feet is the minimum
2 or the, or the maximum – it's the, you can't have more than, or you can't have less than
3 12,000 square feet unless you get the bonus density under 26-186(I), so that's, in any
4 event the number of houses is considerable. From 332 dwelling units, which you could
5 never get under this particular provision with the 12,000 as the minimum lot size, you
6 could never get that on 100 acres, and the reason you can't get it is cause you have to
7 have infrastructure. So once you have the infrastructure of the roads, you can't build on
8 roads, you can't get density on that, you can't have a lot on a road, so you don't get
9 credit for it unless you have the minimum, it's 12,000 square feet. So if you take 30, you
10 know, 30% is the, the, the set aside, another 15% of infrastructure, you get to be about
11 55 building acres, so that gives you 199 dwelling units. So that's just one general idea,
12 and you can work that and play with that and do a lot of different things on that, but
13 that's what the law says. The law says no more than 12,000 per buildable, or 12,000 per
14 lot area and one dwelling unit is the density requirement. One dwelling unit per lot area,
15 that's what your requirement is under the law. Now, the, the Planning Department takes
16 away this, the density requirements because they say that the zoning districts have
17 development standards found within – well, the 20-186(B) [sic] talks about zoning
18 districts found within this section may be applied in lieu of the applicable zoning district.
19 Now the only ones that are found within this section are in subsection (I), we already
20 saw that earlier and subsection (I) is density and that's the only place where you have
21 zoning standards. The, what's the difference between standards and requirement?
22 Standards are something that are set up or established by authority as a rule for
23 measuring quantity. Requirements are things applicable and a condition precedent to

1 any one who wants to obtain the benefit. Requirements apply to everybody, they apply
2 to everybody. Standards will apply to the people in the area that is concerned. So the
3 requirements provision in 26-186(H) has development requirements. They don't call it
4 standards. You have to look at the plain meaning of the law, it says, development
5 requirements. And these are things that you have to get to get into the bonus sections.
6 To get into the bonus sections you have to meet the minimum requirements. And this
7 applies to every applicant. Now why would they have two, why would they have no
8 minimum lot size in 26-186(H)? Why would they say that? And the reason they say it is
9 because they have two provisions that are eligible for this in Sections 93 and 94, the
10 multi, multi-family housing, they both have no minimum lot size. If you had anything else
11 in there besides that you would disenfranchise both of those two groups and the statute
12 wouldn't make sense for those two. By the way, they also have minimum width
13 requirements in there, they both have a 50' minimum width requirement even though
14 there's no minimum lot size, and there are standards that they have in there. So in any
15 event, the, the, there's just no reason for, not to have a density. The statute itself
16 provides density. It, it talks about it on both sides, 80, 26-89, the beginning of it, it talks
17 about the density standards, it's there. The Planning Department and the Development
18 Review Team did not apply the density standards in this particular thing. This is an error
19 in the application of the Green Code and the administration of residential low density
20 zoning district applicable to the project. The only development standard found in this
21 section is the density provision and, with its bonus feature. In understanding statutory
22 construction and understanding several principles apply, most important is legislative
23 intent. And why do we have this? The bonus is a bonus, it's for, the intent is to give a

1 conservation set aside you get a bonus. And that's the reason why you have it, that's
2 the purpose behind the Green Code, to do that, as well as to meet some other Green
3 requirements. So in any event, I'll move along. Minimum lot widths is not being applied,
4 it's not being enforced. And there's no reason why it shouldn't be enforced. First of all it
5 says the, the standards found within this section. It's not found in this section except for
6 one area in the concept plan where they talk about minimum lot widths have to be
7 reported. So why would they say minimum? Minimum connotes, and, and, something
8 that has to be met. It's, it connotes a standard. But they say minimum lot widths have to
9 be reported. They're not reported. They're, lots widths are reported by they're not
10 enforced under 26-89, which is where your development standards are for the minimum
11 lot widths. So in any event, that's, I think you have to send it back for no other reason
12 than for minimum lot widths not being reported. Pervious material, now pervious
13 material, Mr. Tuttle knows from the, the, and I'll give you all a copy of, of this study, this
14 is pretty important, I'd like to put this in for the Record too. This is a study that was done
15 in 2009 – for the Record, please. And I just have a couple of pages on it. In, in
16 conservation districts in Green Code areas, pervious surfaces are vitally important. It's
17 a, it's a real, it's a major part of, of conservation. You don't want to have pervious,
18 pervious material overwhelming the development because of the water flow. The first
19 sentence in this subsection (H)(11), which is a requirement, is that, it's a permissive
20 sentence, you can use pervious material on driveways and, and sidewalks, permissive,
21 that's all it is. The second one is a requirement, it's a maximum use of it, you can't have
22 more than 50% impervious material in your developed areas. Not the entire area, but it
23 specifically says developed areas, so that's another violation. Am I out, am I done?

1 CHAIRMAN PALMER: We'll give you one more minute to wrap up.

2 MR. BRICK: Okay, gotcha. Thank you, sir. The, I, two other quick things because
3 you're supposed to look at two other things, the sketch plan, it's the wrong sketch plan.
4 They don't have a sketch plan for Green Code. They should have a sketch plan so you
5 would meet all the Green Code requirements, there's none there. But in any event the
6 sketch plan has a fee, they took away the, the, the fee, that's not marked, it's not
7 applicable, I don't know why. And also, I don't know anything about roads, the roads
8 aspect I don't know whether that's been approved by you or not, it's not in the sketch
9 plan at all. There's no indication that there are roads. If I only have a minute, that's
10 probably done. Thank you.

11 CHAIRMAN PALMER: Thank you. Planning Department?

12 MS. HEGLER: Thank you. I am prepared to answer I think what was originally in
13 his appeal one by one, but instead of doing that I guess I'll just respond to what he
14 directly reported on.

15 CHAIRMAN PALMER: I think if you could respond –

16 MS. HEGLER: Whatever you think is easiest, but.

17 CHAIRMAN PALMER: - whatever you think is, is best.

18 MS. HEGLER: I'll jump around a bit then, I think, so. Yes, the Comprehensive
19 Plan does certainly set the guiding principles for growth in the county. It's a very
20 important document for us, but it's not a regulatory item. It simply is a guiding principle.
21 You know, we certainly look to those things when we make decisions on these
22 development applications and reported those during the last appeal. He's correct, it's
23 not in a priority investment area, it's in what's called a suburban area and the

1 Comprehensive Plan does outline recommendations for what suburban areas should
2 look like, which as he mentioned is four to eight dwelling units per acre. That's reported
3 several times in the land use element of the Comprehensive Plan, so we use that as our
4 guiding principles. The community facilities element which Mr. Brick mentioned, what,
5 states 2.75 units per acre. That, that chart is a modeling document of numbers that went
6 into a program. It's a program that looks at how much of the land would be developed at
7 a future build out scenario. That's what the Comprehensive Plan looks at in the future,
8 so in 2035, if population is X and we have designated this much acreage as suburban,
9 what is, if we, if we filled up every single acre, what would that density be? So 2.75 is
10 the number it came to, but it also states right after that, that that is not the most efficient
11 use of land and it highly recommends that we develop at a higher density. So the 2.75 is
12 merely a modeling number to interpret what kind of developable acreage we would
13 obtain. It's very clear in the Comprehensive Plan that four to eight units is what the
14 county is prescribed as their suburban densities. And I didn't, you know, the Appellant
15 mentioned that it's not in sync with the transportation element, there are suggestions in
16 the housing element that, that development be located near large employment centers
17 and on bus lines, it's a suggestion only. It also suggests in the transportation element
18 that we do urban infill and that we provide a variety of housing types. So you can see
19 we can go through this, there's kind of just different pieces of the Comprehensive Plan,
20 you can't meet every single strategic goal within the Comprehensive Plan, that's, those
21 things would contradict. So, I mean, I think that certainly we, we proved last time and
22 continue to think that this project does certainly fit within the Comprehensive Plan's
23 goals. Moving on to parts of the Code that were questioned, we certainly use the Green

1 Code as, it slightly stands alone, it states very clearly that it is a Code that you can use
2 in lieu of, the standards of which you can use in lieu of the underlying densities, so
3 that's 26-186. Mr. Brick referenced 86 multiple times and that is not the appropriate
4 Code. So the Green Code is 26-186, and the underlying zoning for this site which is
5 RSLD is in fact 26-89. Yes, density is one dwelling unit per lot area, that is still true for
6 Longcreek, the Villages at Longcreek, there's only one unit per lot. There are the
7 exceptions that Mr. Brick mentioned that, for the minimum lot area. Again, I would speak
8 to the beginning intro of the Green Code, which specifies that those are standards that
9 can be used in lieu of the underlying, that sets it apart. It specifically states that there
10 are no minimum lot areas within the Green Code, Chapter 186. I would also find in my
11 notes the state enabling legislation that sets up and establishes for local governments
12 speaks to the ability to create clustering neighborhoods. In fact, it encourages it, and it
13 says that those, in clustered neighborhoods you may vary your lot sizes from your
14 otherwise applicable lot sizes. So this is enforced all throughout this, this idea of
15 clustering and getting away from minimum lot sizes, even in your underlying zoning.
16 Yes, the project calls for 332 units. We could calculate a density from that, I'm not sure
17 what Mr. Brick means when he mentions there's no density. You know, there is certainly
18 density, if you take that, divide it by 100 acres roughly, that's 3.32 units per acre. The
19 underlying zoning allows 3.63, that's a gross density, that's common practice
20 everywhere, in planning practice anyway. Again, he mentioned you can't have less than
21 12,000 square feet. I completely disagree by the, by the intent of the Code, by the intro
22 in the Code and by state enabling legislation that allows us to do clustering
23 development. I think I've spoken to some of this a couple times. And again, the idea

1 that the no minimum lot area is specific to RM-MD and RM-HD, those are two of the
2 underlying zoning districts in which you can apply the Green Code. It lists maybe six or
3 seven, and that those two don't have minimum lot sizes, that is correct. The others do. I
4 think that's a stretch. It's, it very clearly states in the Green Code in 186 there's no
5 minimum lot size, it doesn't say there's no minimum lot size consistent with only those
6 two zoning districts and all others must apply. That would be clearly stated if that were
7 the intent. Again, speaking to legislative intent, Mr. Brick mentioned, absolutely,
8 conservation set aside gets a bonus, that is the intent of this Code as well. The, the
9 property has more than set aside what it's, what it's allowed to enact this density bonus,
10 they did not. They're building what they're allowed to under the underlying, in fact less.
11 So there is no density bonus but they are in fact putting aside 30% of their acreage,
12 which allows them to relax their lot sizes. There's no minimum set aside required to
13 relax a lot size. There's only a minimum to enact a density bonus and we've, we've
14 discussed that before with this Body. The, the requirement for pervious material, I would
15 wholeheartedly agree that that's a, a strange statement and I would also argue that if it
16 were to be a requirement they would be separated, they would not state, you may use
17 pervious material and if you do then, then here's the 50% requirement. But I would
18 argue that we have been working with the developer, particularly the conservation
19 department has, on much of the, the low impact development design techniques that
20 they are proposing for the site. The soils are actually very permeable on the first, if you,
21 if you – remember, if you recall the plan is, is three stages; the bottom three, the north
22 and say the south in the middle are actually Lakeland soils, they're very sandy, they
23 actually have enormous infiltration rates. There's expected to be very little runoff in that

1 site just naturally. And the northern most piece which is adjacent to the lake, has 100'
2 buffer, it's 50% more than it should be as required by our Code. They are more clay like
3 soils so their infiltration rate is a little less stable, but they are designing specific LID
4 principles, Low Impact Development, drainage principles, so. I mean, I think we're
5 gonna find, even if you were to take the second half of that sentence as a requirement,
6 that this site is well on its way to, to, to proving that correct, but they are working to
7 create some Low Impact Development or design techniques and, and given the soils
8 themselves I think we're gonna find that it's certainly gonna meet the requirements. It
9 has to meet the requirements for storm water runoff, regardless of that statement. They
10 cannot have more runoff post production than they did in pre, those standards still
11 apply. Those standards and those numbers will be calculated during the preliminary
12 planning phase. If you recall this is a concept plan. Those are numbers that would be
13 calculated in the next phase of development, so those will still need to be absolutely
14 made to be true. I can go over other parts of the appeal, I mean, I think that addresses
15 the few things that Mr. Brick brought up. Again, it's, it's the DRT's interpretation of 186,
16 the Green Code, as a Code that has standards in lieu of the underlying zoning. The
17 underlying zoning district does set a starting point for us, it establishes the basis for
18 what we would consider the density to be and if we were to enact a density bonus,
19 where would we go from there. But otherwise, we, we take the Green Code at its, at its
20 word as a, as a set aside, specific stand alone standards.

21 CHAIRMAN PALMER: Okay, thank you. And Ronald Johnson?

22 **TESTIMONY OF RONALD JOHNSON:**

1 MR. JOHNSON: Mr. Chair, Members of the Planning Commission, and Staff, I
2 want to thank you for allowing us to come here today. First of all I want to apologize that
3 everyone is having to once again review something that had been previously approved.
4 I am reminded, however, that we failed to prepare our application properly and thus we
5 find ourselves here again today. You've heard far more about rules and regulations than
6 I think any of us perhaps wanted to, but I will say that as a responsible developer, the
7 plan that we have prepared, worked with Staff, we held seven open forum meetings in
8 the, in and around the Longcreek area and invited participation both from residents as
9 well as people outside of the area to come in and voice their concerns or questions
10 about what it is to operate and develop under the Green Code, to what is involved in low
11 impact development, and those of us in the business would suggest that the type of
12 development that we are proposing is much more responsible, number one, it preserves
13 far more of the developable area by the set asides that have been talked about. We
14 believe very strongly in the conservation aspects of what we're doing. Staff knows full
15 well that we have engaged outside services to have a tree study done, we've had
16 wetlands surveyed and delineated so we have gone above and beyond to try to make
17 sure that the areas that we are proposing, that you have seen in the plan, will be
18 developed in the areas that would have the least damaging impact on the, on the land in
19 question. So again, I want to apologize that we're all here again, but I do hope that the
20 Commission understands what we have tried to do and hope to endeavor to do would
21 be, will be done in the best professional manner. Thank you.

22 CHAIRMAN PALMER: Thank you, and that's all we have signed up to speak. So,
23 what's the finding of the Planning Commission as it applies to the appeal?

1 MR. TUTTLE: Mr. Chairman, I'd like to make a motion that we deny the appeal.

2 CHAIRMAN PALMER: We have a motion. Do we have a second?

3 MS. CAIRNS: I'm just trying to think, if the, if the, the law requires, our or our
4 rules require findings of fact and, in our order, but I'm just, I'm not sure if we need to
5 offer any of that in terms of the ultimate determination.

6 MS. LINDER: In my opinion absent your specific determinations, we would go by
7 what's been spoken on the Record. We'd go with the facts that have been presented.
8 And if you're going to rule that you are, you're accepting the facts as presented by Staff
9 or the facts accepted by Mr., or presented by Mr. Brick, you may do, do that. Or you,
10 you've got some discretion here.

11 MS. CAIRNS: Okay.

12 MS. LINDER: If it's possible for you to elucidate a little bit more as to why you're
13 ruling the way you're ruling, that would also be appreciated.

14 MS. CAIRNS: I, I mean, I would just like to offer that I believe the, the application
15 of the Code by Staff as offered here in terms of, that the role of the Comp Plan as a
16 guiding principle, and the lot density issue, the lot size issue, was an appropriate
17 determination by Staff for the application. So barring any specific, other than that, but I
18 mean, does the Green Code allow the elimination of a specific lot size, I think that that
19 was an accurate interpretation by Staff. And I think basically everything trickled from
20 there, and that the Comp Plan is a guiding principle, not requirements. So I would in
21 essence second that the appeal be denied.

22 CHAIRMAN PALMER: We have a motion and a second. Any other discussion?
23 All those in favor of the motion please signify by raising your hand?

1 *[Approved: Cairns, Westbrook, McDaniel, Tuttle, Palmer, Gilchrist, Theus, Brown;*
2 *Absent: Van Dine]*

3 CHAIRMAN PALMER: And there's none opposed. Okay.

4 MS. LINDER: Could someone ask Ms. McDaniel to come back in?

5 CHAIRMAN PALMER: Other Items for Discussion, the adoption of the Planning
6 Commission's Rules & Procedures?

7 MR. PRICE: Mr. Chair, the [inaudible] review, they were based upon the
8 discussion that we had at the last meeting in January. We just ask that you take a look
9 at those. If you have any further suggestions we would then place this on the March
10 Agenda for your adoption.

11 CHAIRMAN PALMER: Okay. Thanks. Director's Report of Action, Zoning Public
12 Hearing Report, Development Review Team Report, these are just all parts of our
13 package for information?

14 MS. HEGLER: Yes, sir.

15 CHAIRMAN PALMER: Okay. Do we have a motion to adjourn?

16 MR. BROWN: So moved.

17 MR. TUTTLE: Second.

18 CHAIRMAN PALMER: All those in favor say aye?

19 *[Approved: Cairns, Westbrook, McDaniel, Tuttle, Palmer, Gilchrist, Theus, Brown;*
20 *Absent: Van Dine]*

21 CHAIRMAN PALMER: Alright, okay.

22

23 *[Meeting Adjourned at 2:45 pm]*