

A meeting of the **Beaufort-Port Royal Metropolitan Planning Commission** was held on January 13, 2014 at 5:30 p.m. in council chambers of the Beaufort Municipal Complex, 1911 Boundary Street. In attendance were Chairman Joe DeVito and Commissioners James Crower, Robert Semmler, Alice Howard, Bill Harris, and City Planner Libby Anderson.

Jennifer Bihl was absent.

In accordance with the South Carolina Code of Laws, 1976, Section 30-4-80(d) as amended, all local media were duly notified of the time, date, place, and agenda of this meeting.

### **CALL TO ORDER**

Chairman DeVito called the meeting to order at 5:30 p.m. and led the Pledge of Allegiance.

### **MINUTES**

**Commissioner Crower made a motion, second by Commissioner Harris, to defer the approval of the minutes of December 16, 2013 meeting, owing to a clerical omission. The motion passed unanimously.**

### **REVIEW OF PROJECTS FOR THE CITY OF BEAUFORT**

#### **CITY OF BEAUFORT – REZONING**

Rezoning 10 parcels of property in or near the Waterfront Park Marina Parking Lot to Neighborhood Commercial District and Core Commercial District. The existing zoning is Conservation Preservation District and Office Commercial District.

*Applicant: City of Beaufort*

Ms. Anderson showed a graphic of the lots proposed for rezoning, which are all near the waterfront. Chairman DeVito asked for clarification of which parcels were city-owned. Secession and Freedom Parks, the parking lot, and the marina are the city's, Ms. Anderson said.

These parcels are in the Bluff Neighborhood of the Historic District, Ms. Anderson said. The waterfront lots are currently Conservation Preservation (CP) District: part of the promenade, Freedom Park, and the Marina parking lot. Secession Park on Craven, Bay, and Church Streets is also CP.

Ms. Anderson reviewed the uses that are permitted in CP zoning. Larger parks in the city are zoned CP. About a third of the parks and open spaces in the city are zoned CP, and, Ms. Anderson said, "There seems to be no rhyme or reason to it." Six lots are zoned Office Commercial (OC) district, where all types of offices are permitted as well as all types of residential uses. Two lots in that zoning are non-conforming uses for OC: the Best Western Inn and Wells Fargo Bank.

The 5 lots that are proposed to be zoned Neighborhood Commercial (NC) permit B&Bs and inns; no motels or drive-thru are permitted, except for banks. The NC designation is “like OC plus,” Ms. Anderson said. There are size restrictions in NC, unless there is a residence above it.

Half the lots would be rezoned NC, and the other 5 would be Core Commercial (CC), which would be an expansion of what Bay Street is already zoned as. No drive thru are allowed except for banks. Most types of retail and commercial uses are not required to have on-site parking except for hotels. CC doesn't permit new single-family dwellings or town houses, though residences above businesses are okay.

The parking lot and Freedom Park would be CC; Secession Park would be NC. The parks are very small, Ms. Anderson said, and the development of the area should mean that they will not experience a large impact. Parks under 5 acres will not be Park zoning or T-1 but will be the same designation as the surrounding neighborhood in the new code, Ms. Anderson said.

Ms. Anderson showed the 2008 Preservation Plan, which recommended CC for this area. This has been carried through to the Civic Master Plan and is further carried into the redevelopment of the Marina parking lot. The blocks between Charles and Newcastle Streets are not proposed to be completely CC. The Elliott House is already CC. 308 Charles is already NC, and the property owners in the area would prefer to stay NC for the residential options it offers. Early maps show the intersection being in a more NC zoning than a CC, so those two lots she referred to would be recommended for NC, not CC as originally proposed.

Ms. Anderson said the 2008 Preservation Plan recommended NC around the Elliott House area, and NC “might be more user-friendly and less intense.” Surrounding land uses include the Waterfront Park parking lot, Bay Street, which is restaurants and retail, and other uses, including inns and single-family dwellings; the more intense commercial zoning is to the east.

Ms. Anderson said the rezoning of the Waterfront Park parking lot is recommended in the Civic Master Plan, and council has a memorandum of understanding with the Historic Marina Partners for that property to be developed with a restriction on the Freedom Park lot. The area north of Bay Street's rezoning is driven to make two non-conforming uses – Wells Fargo and the Best Western Inn - conforming.

Public notification was made to property owners within 400'. Ms. Anderson said the letters received in response have been forwarded to the Metropolitan Planning Commission. She had received calls about the rezoning of private lots, which she indicated on the map. The owners of at least 2 of those 3 lots would like to be rezoned CC as proposed in the Preservation Plan, rather than NC, which is what originally was to be proposed by the City of Beaufort. She hasn't heard from the owner of the third lot. Ms. Anderson said staff feels either plan would be workable.

In regard to the concerns about the parks, Ms. Anderson said they could consider an alternative zoning plan. The 2 parks with restrictions would stay CP; they could change the Anchorage, the vacant lot, and the office lot back to CC as recommended in the Preservation Plan and the Civic Master Plan. Wells Fargo and the Best Western Inn would be rezoned CC.

Commissioner Semmler asked if there was “a third choice to leave it the way it is.” Ms. Anderson replied “possibly.” The development for the parking lot as proposed in the Civic Master Plan, however, would not be possible with the current zoning. Ms. Anderson showed the marina parking lot proposal, which can’t be developed without a rezoning. The lots north of Bay, she reiterated, had been added to this rezoning request because doing so has been discussed since 2008.

Commissioner Harris said there was a memorandum of understanding with the Historic Marina Partners and asked if it was “a legal understanding.” Ms. Anderson said Freedom Park is called out for its restrictions; the city has a memo of agreement with the Open Land Trust. Commissioner Howard asked if that agreement with the Open Land Trust is recorded. **Patty Kennedy** said she doesn’t know.

Commissioner Crower said he had a problem with rezoning private parcels along with the public parcels, and he asked if the owners of those parcels are aware that they are part of the request. Ms. Anderson said they have been notified about this. Chairman DeVito said he would open this matter up to the parcel owners for their statements – as if *they* were applicants – and then invite comments from the general public. Commissioner Howard asked for the current zoning map to be shown again in regard to current uses.

Chairman DeVito asked for property owners or representatives for the property owners to speak. **Marvin Dukes** said he was one of four partners in the law firm that owns 1105 Bay Street, the NC vacant lot that was a law office that burned down. Other partners in the firm were also present, he said. He asked the commission to recommend the original request for rezoning their property CC. The NC zoning that was proposed would have a 2500 square foot footprint. Their property “doesn’t lend itself to a single-family residence” and “is a CC-shaped property,” he said.

**David Taub**, a former Beaufort mayor, asked the MPC not to approve the portion of this proposal that deals with the parking lot and the downtown marina. Procedurally, the “horse is before the cart,” (*sic*) he said, because there is no plan for what goes in that area. Decisions about “the two most important issues that should have been vetted with the public have already been made,” he said, “without citizen input”: whether the parking lot should be developed and who should do the development. He said citizen input was not provided in either case. Mr. Taub said that “once the zoning is changed, it permits by-right anything on the list” of possible uses, which he said no reasonable person would want in the Waterfront Park

parking lot. He said, "If they say it's ok, it *will* happen ... It will be permitted and nothing can stop it." If the development doesn't happen, but the zoning is changed, anything in that zoning is permissible, and it can happen. Mr. Taub said he was only speaking to the parking lot specifically, and he asked the commission not to recommend it to council.

Ms. Kennedy, Executive Director of the Beaufort Open Land Trust, said she agrees with Mr. Taub, and she's speaking against the Marina Redevelopment and the rezoning of Freedom Park. She said many generations have passed since the original zoning for many of these lots. In regard to pocket parks, she said there should be a very clear zoning for *all* parks. Ms. Kennedy said, "There are a lot of moving parts and no reason to rezone now." She asked the commission for denial until all the details can be worked through, or at a minimum to do the alternate zoning and pull out Freedom Park.

**Maxine Lutz**, ED for the Historic Beaufort Foundation, said the organization concurs that they should delay the zoning change. Council has not approved the Civic Master Plan and consideration of the zoning change should be delayed until then; and until specific uses of the parcels are approved; and until conceptual plans for the parking lot are seen; and "the vetting by the public is put in place." The public hasn't had sufficient opportunity to respond to the proposed zoning change, Ms. Lutz said. The city's parking problems need to have a plan to solve them prior to any approval. Until there's a parking solution, she suggested they "hesitate to rezone." The marina parking lot rezoning including Freedom Park needs to be resolved before they go ahead, Ms. Lutz reiterated. There are legal attachments to Freedom Park and Secession Park that may affect the city's ownership of the parks. There was a stipulation that the parking lot not be developed when the city was given the rights to develop the Waterfront Park. She also said there has been no public process. Ms. Lutz said Keyserling Enterprises owns one of the parcels, and **Billy Keyserling's** interests should be examined.

**George Trask** lives in the next block from those properties that are being proposed for rezoning. The Anchorage was a piece of property like where he lives, he said. He told a story about his childhood in Beaufort and how a piece of property was sold and transformed. He said his family has been responsible for a lot of historic destruction. He wants to see the city prospering, but the city has one of the most beautiful parks in the country. One of the places that were like Beaufort was Mt. Pleasant in the 1930s-1950s. He had given a copy of his statement to the Metropolitan Planning Commission, he said, and had attached an editorial about how "Mt. Pleasant was destroyed by the changes of a similar process to what's happening to Beaufort." He said the citizens need to decide if they want to be a small town or a city.

Mr. Trask said he hasn't come forward until now for family reasons, and he's now part of the process because he's very concerned about where the city is going. He will ask a lot of citizens to be a part of "a committee that will be a part of the redevelopment ... and create a plan for

the twenty-first century” that they will bring to the city. They need time to do that, and the Metropolitan Planning Commission can do that for them so that “clearer heads can take a look at this for them.” Mr. Trask added, “A lot of this is political.” He said the 5 members of council run the city, and he wants them to know that “their jobs are in jeopardy.”

**Lin Johnson**, 1113 Craven Street, said his house is known as Secession House, and the front yard is “essentially Secession Park.” He read the letter that he had sent to the Metropolitan Planning Commission. The city owned half of Secession Park, and **Mary Barnwell** owned the other part. The lease and deed both have restrictions that limit the park to being a passive park. If the city doesn’t maintain it that way, it reverts to the Rodgerses and their heirs. Since it’s been a passive park for so long, he doesn’t understand why it is proposed to be rezoned from CP.

**Kathy Lindsay** said she wanted to learn more about the issue and feels there hasn’t been enough public input. She feels they “need to have more time to digest it.” She wants to know why they would want to take CP protection off the entire marina, “showing it with no open space whatsoever.” Ten days notice was not enough time to digest this, she said.

**Eddie Rodgers** said that people have already addressed the “procedural violations” of some parts of this proposed plan. She said there are real consequences to what they are doing, and “any succeeding council will be able to change what they are going to do.” She feels “this whole thing is a train out of control,” and they need to slow down and be sure of what they are doing. Ms. Rodgers fears “continued creep by a subsequent council” if people aren’t sticking with the zoning in these areas. She asked if the corner by the water’s edge was the area between the parking lot and the marina. She said, “Parking is #1.” Ms. Rodgers said in regard to the marina area, “there are papers that exist that call for the area to remain of public use.” She knows that there are restrictions on the half of Secession Park that was donated to the city, and that it can’t change, or it reverts to her family.

**Alan Dechovitz**, Redevelopment Commission, explained the projects he’s involved in. He said the Redevelopment Commission is comfortable with and supportive of the rezoning as proposed. Council has approved the part of the Civic Master Plan that enables development at the Marina parking lot site. The memorandum of understanding is a type of contract established between the Redevelopment Commission, council, and the Historic Marina Partners. Everything pertaining to this memorandum of understanding has been procedurally correct, he said, unless the **Bill Harvey**, the city attorney, is believed to have made an error. They have been very circumspect about procedure and had public sessions. Some proprietary issues were done in the normal course of business in closed session, but all other types of action they have taken have all been public. He said according to the record, they have never behaved incorrectly.

Mr. Dechovitz said the MPC is “caught in between two visions for the city.” There has been an extensive amount of economic analysis, and stakeholders have come to believe that they need a change in strategy to get fewer tourists but more high-income visitors in a new strategy – not a high volume of tourists and government and military jobs which don’t generate the kind of economic activity that will support the lifestyle of the small town that they would like to have. Mr. Dechovitz said the analysis has been very thorough. He said he believes the change in strategy is necessary and will spark the kinds of redevelopment that will support the city in the long haul.

Mr. Dechovitz said the memorandum of understanding between the city and the Open Land Trust, as he recalled, was not found as recorded on the deed, but the Open Land Trust found a copy of the memorandum of understanding, and the Redevelopment Commission, the city, and the developers have no intention of violating the intentions of that agreement. They met with the Open Land Trust and said they know there is a long-standing memorandum of understanding, and they asked if they would work with them on an alternative plan, and OLT said they wanted to see the plan. They might be able to find a *legal* way to do something that is more to the liking of the Open Land Trust and is more useful than a small park is today and enhances the lifestyle of all in the City of Beaufort.

The memorandum of understanding was guided by Mr. Harvey and is thoroughly researched and legal, Mr. Dechovitz reiterated. “There is nothing shady here,” he said. The memorandum of understanding is important in that it does not immediately say the City of Beaufort will convey the property to the developers. It says if Historic Marina Partners’ plan meets the city’s criteria, and the plan is desirable from the city’s standpoint, then the city will lease or sell the property. He said the city is most likely to lease it, not sell it. Changing the zoning to CC would open up the developer’s options, but the city doesn’t have to convey or lease the property. The zoning change “will not result in all kinds of unintended consequences.” Historic Marina Partners want and will bring a plan that comports with the Civic Master Plan; the addendum pertaining to the marina has been approved, Mr. Dechovitz said.

The City of Beaufort will not proceed unless it’s economically feasible. The developers have said, since they don’t own the property, Mr. Dechovitz said, they want assurances that the city will change the zoning before the spend money to create the plan. This effort is being made in good faith to show the developers that the city is serious.

Mr. Dechovitz said all of this has proceeded procedurally correctly, in concert with public documents, but they need, this evening preferably, the change of zoning on the parking lot of the marina.

**Terry Murray** spoke as a board member of the Open Land Trust. She said at a recent Redevelopment Commission meeting, there were suggestions that the Open Land Trust was

open to negotiating on Freedom Park, and she said when they heard that, **Dean Moss** and Ms. Kennedy went to each board member, and they were asked if there were comments made that could be misconstrued. They are not open to negotiating or bargaining in any way, she clarified.

Chairman DeVito said he wished they hadn't combined public and private property. He would like private property owners to petition for rezoning separately. He was also concerned about the letters the MPC received, and that the zoning plan "was so quickly changed." He said he supports the CP zones and knows there are some covenants.

Commissioner Howard said she shared his concerns. Commissioner Semmler said he agrees, too, and added that no one has addressed the issue of parking when the parking lot is taken away. Commissioner Semmler said he was very disappointed in how this was presented, and the Metropolitan Planning Commission hasn't had a chance to read the stacks of paper that had been received this evening. He said he's "not completely clear on this": If the city issued an RFP and then a company came to develop the marina site, he asked if there were a statement in the RFP that said that zoning would be changed. If the city issued a contract and said they would change the zoning, then the Metropolitan Planning Commission doesn't need to meet. He said that "this is so important" and for it to be presented in "such a disjointed manner" is "almost insulting. He said that people saying that the Civic Master Plan has been approved and needs to be stuck to are incorrect. He is very concerned about the fact that council is voting on this tomorrow. He said he'd called the county lawyer. He said he's "insulted and upset" about how this issue been presented to the commission.

Ms. Anderson said the packet was sent out a week in advance per usual. The information that came later was the information that Mr. Johnson sent her. He delivered it, she scanned it, then she emailed it to the Metropolitan Planning Commission, then she did more research in order to give the additional information to the Metropolitan Planning Commission. What was presented to the Metropolitan Planning Commission tonight were the comments that had been received since then. The hearing notice for January 28<sup>th</sup> is what appeared in the paper today. She said the only thing that was rushed was the changing of the date of the regular meeting because of the Martin Luther King, Jr. holiday next Monday.

Chairman DeVito said he agreed that he got the information at the usual times, "but this is an important issue." Ms. Anderson said the proposal started with the parking lot issue, but they don't have to do the private zoning; they included it because the owners were interested, and the change has been asked for since 2008. They can just approve or disapprove certain zonings. They can recommend approval or denial, and it can come back next month. Chairman DeVito said if the rezoning is denied, they couldn't come back next month as individual property owners.

Chairman DeVito said he struggles with rezoning the public property without knowing what will be done with the property. Commissioner Howard said there seemed to be a discrepancy between what the Redevelopment Commission thought was said and what the Open Land Trust thought was said. Commissioner Semmler said he sensed that there was also some confusion about the legal documents to the properties. Ms. Anderson said “the rezoning wouldn’t lock in a plan, when they have a plan.” Chairman DeVito said anything that the zoning says can be built there could be built there if they rezone it. He said they need to know what is being built there.

**Chairman DeVito made a motion that the Metropolitan Planning Commission separate the public and the commercial properties for vote. Commissioner Howard seconded. The motion passed unanimously.**

**Chairman DeVito made a motion that the application be tabled until the property owners have an opportunity to decide if they want to be rezoned. Commissioner Howard seconded. Chairman DeVito withdrew his motion and Commissioner Howard her second.**

**Chairman DeVito made a motion that the rezoning of the properties north of Bay Street, not including the public part of Secession Park, be tabled until the owners of the properties have an opportunity to decide if they want to be rezoned. Commissioner Harris seconded. The motion passed unanimously.**

**Chairman DeVito made a motion to recommend to council that they deny the rezoning application until there is a plan put in place, and the covenants are put in place for the public land, thereby leaving all current zoning on the properties. Commissioner Harris seconded.** Commissioner Crower said he has “a lot of heartburn” with the property going from CP to CC. Anything related to the waterfront is allowed for CP, he said.

Chairman DeVito said if it goes through as a denial from the Metropolitan Planning Commission, it can’t come back before the Metropolitan Planning Commission for a year. Ms. Anderson said that’s correct; it will be a year before they can come back before the Metropolitan Planning Commission with the same zoning. Chairman DeVito said he would like the city to withdraw the request so they could come back. Ms. Anderson said she’s not in a position to do a withdrawal. Chairman DeVito said if they table it, if the process can be moved on in 30 days, it can move on. If they want council to hear what they have to say, they should deny the rezoning of the public-owned land south of Bay Street and Secession Park, per his motion. **The motion passed unanimously.**

#### **CITY OF BEAUFORT – UDO AMENDMENT**

Revising Section 6.5.I.5 and Section 7.3.E.4 of the Unified Development Ordinance pertaining to the critical area buffer, to add provisions for roads, sidewalks, and property with existing bulkheads.

*Applicant: City of Beaufort*

Ms. Anderson said this pertains to the critical line setback and the objective is to permit public streets, paths, and sidewalks within the setback area.

In regard to the Boundary Street Master Plan, some of the streets are located all or nearly within the critical line setback. She said she believes it wasn't the intention of the plans authors or council to have these paths, sidewalks, etc. held to the same setback requirements as a private commercial development would be held. Staff also proposes to exempt commercial lots that have a bulkhead from the 50' setback requirement. The critical area setback isn't warranted. She said exempting commercial properties from the critical line setback doesn't exempt them from stormwater control requirements. Also, staff isn't proposing to exempt bulk-headed residential property from the critical line setback requirement because construction of a single-family dwelling on an existing lot of record is exempt front eh city's stormwater ordinance and staff is concerned about blocking neighbor views of the water, so this would apply only to commercial uses.

Ms. Anderson said the average setback is 50' with a minimum of 35'; it's difficult to determine the average setback, she said, and explained why. In terms of administration, it's easier to say its 50' from the area. These 3 changes appear in 2 sections of the ordinance. Critical line setback appears in 6.5, which is measurement.

Ms. Anderson showed the highlighted parts of the UDO that would be changed. It has to be accessible to the public. In regard to the bulkhead, she reviewed the exemption from the requirement. She showed what would be allowed in the setback area; "streets and sidewalks accessible to the public" would be the new language. Commissioner Howard asked if they could add something about areas under conservation easements – that there couldn't be anything there. She said Beaufort County Open Land Trust has an easement on a part of the area on Bay Street. Ms. Anderson said zoning doesn't supersede a conservation easement or a covenant. On the building permit application, there's a question about whether the use is contradicted by a restrictive covenant on that property.

Ms. Anderson said another issue is that in the master plan, the street layout was codified, and "the streets are sort of set in stone in terms of their location"; she showed "which ones are getting close." They are looking at a project in this area in which this could be a problem. Chairman DeVito said he likes that this is only public streets, and the run-off can be controlled and they know where it's going.

Commissioner Semmler asked if this applies to the Spanish Moss Trail. Ms. Anderson said **Reed Armstrong** had brought up multi-purpose trails. In one section of the ordinance, the path was said to be OK, but then it's not mentioned elsewhere. Commissioner Semmler asked if they need a special section; Ms. Anderson said the trail is "a path, sidewalk, or promenade."

Commissioner Semmler said that, in the Master Plan, they had proposed an idea for a boardwalk from the marina to Beaufort Elementary School. Commissioner Howard said part of that is under restrictive easement. Commissioner Semmler said that was in the plan, though, and he's concerned about the parts that aren't. Commissioner Semmler said the Whitehall Plantation isn't in the city, but there have been many proposals. Chairman DeVito reiterated that this would apply to the full UDO. Commissioner Howard said maybe there should be a word or two added about restrictive covenants as a reminder. Ms. Anderson said that's fine with her, for clarity. They can add that language to 2 sections.

**Commissioner Howard made a motion to recommend approval with the addition of some language added in regard to restrictive covenants. Commissioner Semmler seconded. The motion passed unanimously.**

### **CITY OF BEAUFORT – UPDATE OF COUNCIL ACTIONS**

Ms. Anderson said that a public hearing and first reading of the ordinance adopting the Civic Master Plan is scheduled for the January 14 council meeting. The Sector 1 plan was already adopted. When the citywide plan is adopted, there's specific language that it supersedes Sector 1.

There will be public hearings at the January 14 council meeting about rezoning five lots in and near the 1000 block of Craven Street and three lots on Greenlawn Drive. There will also be a public hearing on the UDO amendment revising Boundary Street Redevelopment District standards.

### **OTHER BUSINESS**

Chairman DeVito said that when the Northern Regional Planning Commission traditionally meets, the chairmanship goes back and forth between 2 chairs. He said a meeting is scheduled to come up, and however the committee goes on, he would suggest that the chair of the Metropolitan Planning Commission not be part of the committee because it's hard for him to attend the meetings. Chairman DeVito said **Jim Hicks** had the time and was able to do it, but he doesn't have that time. Commissioner Semmler said he has the same problem, but if the group goes on, the chair position goes back and forth, and Chairman DeVito would be asked to be there even when he's not the chair. He would like to change the rules, Commissioner Semmler said, that if the chair of the Metropolitan Planning Commission can't be there, someone else could be designated to be there. Chairman DeVito said he has tried to get them to agree to meet at a different time.

Chairman DeVito said he wants to discuss how the Metropolitan Planning Commission interacts with the Northern Regional Planning Committee. Chairman DeVito feels that "the group is right for many things, but someone has to be able to say what is going on out there." The chair isn't always involved with everything. The 3 different government agencies and the military have to

decide what goes to the Northern Regional Planning Committee. Commissioner Semmler said they should give the chair the leeway for someone to appear in his absence.

Commissioner Semmler said a year and half ago, he asked why there wasn't a new zoning category for things like the Spanish Moss Trail. He also asked why all the parks couldn't be under a particular zoning restriction, and then they're all the same. He said maybe they need to invent a different category for consistency, and he thinks this would be a good matter for Northern Regional Planning to take up. He gave some examples of parks that need to be managed and maintained that "would benefit from the same type of zoning across the board," so no one could put up a hot dog stand there. He asked if the Metropolitan Planning Commission could propose that. Ms. Anderson said the form-based code should take care of that. She said she'd ask **Linda Bridges** and **Rob Merchant** about how they are handling the pocket parks. Chairman DeVito asked her to come back with that information next month.

Ms. Anderson said the form-based code is set up to do this, but there's a question of whether they do it for every park. Commissioner Crower said the form-based code transect zones won't help with that. Chairman DeVito said they could have a park in any transect zone. Ms. Anderson said this is apparently a big debate in New Urbanism, as to whether a park is T-2 or T-4. Chairman DeVito said they have to think more about use than zoning. There was a general discussion about the sidewalk matter.

**There being no further business to come before the commission, Chairman DeVito made a motion to adjourn. The motion passed unanimously,** and the meeting was adjourned at 7:26 p.m.