

PLANNING COMMISSION

Libby Bacon
Demery Bishop
Charlie Brewer
Barry Brown, Chairperson
Sandy Chandler
Bill Garbett
Susan Hill
John Major
Chuck Powell, Vice Chairperson



CITY MANAGER

Diane Schleicher

ECONOMIC DEVELOPMENT DIRECTOR

Sharon Marshall

CITY ATTORNEY

Edward M. Hughes

MINUTES
Planning Commission Meeting
April 17, 2007 – 7:00 p.m.

Chair Barry Brown called the April 17, 2007 Planning Commission meeting to order. Other Commissioners present were: Libby Bacon, Demery Bishop, Charlie Brewer, Sandy Chandler, Bill Garbett, John Major, and Chuck Powell. Susan Hill was absent.

Chair Barry Brown called for a motion on the Minutes of the March 12, 2007 agenda meeting. John Major motioned to approve. Chuck Powell seconded. Libby Bacon abstained from the vote which was otherwise unanimous. Brown asked for a motion on the March 19, 2007 meeting Minutes. Charlie Brewer made a motion to approve. Powell seconded. The vote was unanimous.

The first item of business was a Minor Revision to a Recorded Plat, Section 5-130 (J)(2) of the Land Development Code for **Rex Templeton**, 18 Eleventh Place, PIN 4-0007-02-009, Zone R-2. This was not a Public Hearing. City Attorney Bubba Hughes said the applicant was seeking to amend the Tybee Straits subdivision plat to reduce the setback on one lot. Hughes said it did not affect a street or any utilities and did not require a Public Hearing. He said the Planning Commission needed to determine if it met the regulations, and if it did then it would be sent to the Mayor and Council, and if it met with their approval the plat would be signed. He said the issue was not a variance to a setback; it was a minor revision to a subdivision plat. He said the owners within the subdivision had consented to it which was one of the requirements of the ordinance. Hughes said the subdivision's setback was bigger than the City's, and they were requesting that it be the same. Rex Templeton asked the Commissioners to consider changing the setback from 20 feet to 10 feet to enlarge the screened porch. He said it would not affect anything other than changing the plat. He referred to a letter from the president of the homeowner's association, Steve Crum. Chair Barry Brown asked Templeton if he foresaw any damage to the oak tree. Templeton said they would not do anything to the tree except maybe trim a limb. John Major asked if they were talking about a side setback. Brown said that was correct. Charlie Brewer asked if lot 20 had a 10-foot setback. Brown said it had a 10-foot utility easement with a 20-foot setback. Brown called for a motion. Sandy Chandler **motioned to approve**. Demery Bishop seconded. The motion **passed** with a unanimous vote. Brown told Templeton he could go on to City Council.

Chair Barry Brown opened a Public Hearing for a proposed Text Amendment to the Land Development Code [LDC]. It was a **Coastal Protection Ordinance** that City Council had sent to the Planning Commission with recommendations of a jurisdiction line 25 feet from the landward toe of the dune and with amendments to the plant list. If approved, Section 5-010 (J) of the LDC would be repealed. City Attorney Bubba Hughes said the version of the proposed Text Amendment that the Commissioners were considering was the one that Council voted to send to them on February 8th. He said the City was in some litigation and he asked that they not comment on any of the pending suits that they may be aware of. He said that in the 70s Tybee had a Shore Protection Ordinance that required the line be redrawn by a geologist every five years and it cost a lot of money. He said that after the state adopted its Shore Protection Ordinance, Tybee eliminated what it had and went along with the Department of Natural Resources [DNR] determinations for a number of years, and then several years ago Tybee imposed an ordinance that created a line that was different than the state's jurisdictional line and a standard for allowing a building to encroach in that area that was also different than the state's. He said it was a

variance standard from the line and that the line at Tybee was later determined to be dwelling to dwelling. He said the state act takes into account trees and structures within 250 feet. He said an effort was made to consult with the DNR and environmental lawyers, and eventually a version of what was before them tonight was developed. Hughes talked about emails related to the text amendment and he said they did not violate open meetings law as long as the Commissioners were not on the computer at the same time or voting. He said the exchange of information was healthy and the emails were subject to the Open Records Act. Hughes said the operative part of this was the area where it applies and what kind and how to get relief if it falls in that area. He said the way it is now, building inside Tybee's line requires a Variance which entails showing a hardship. He said the proposed Text Amendment would provide Special Review to build within the protected area which incorporates what the state takes into account as well as the overall zoning ordinance and the particular location and the peculiar characteristics that might be located there as to whether to permit encroachment and, if so, how much. He said there were two areas that were critical: areas where there was a dune field, and areas where there were no dunes. Hughes continued to speak about dunes, the absence of dunes, impacts, the state's ordinance, Tybee's current ordinance, and the proposed Text Amendment. He said there was a provision in the City's Charter about construction near the seawall and they could not do anything with that. Hughes emphasized that this was a completely different issue from the Soil Erosion and Sedimentation Control ordinance. Brown said the current Tybee line was implemented in 2001. Sandy Chandler asked Hughes if the state's regulations were comprehensive enough to be viable for Tybee. Hughes said that was not his call. Chandler said it would clarify the situation to go exactly along the state's line if the regulations were comprehensive enough. Hughes said it would make things easier but may not accomplish the policy's determination. He said Council determined in 2001 that as a matter of policy the DNR line was not adequate for Tybee's needs. Chandler asked if adopting the state's line would remove the City from liability. Hughes said anything the City does not regulate, the less liability it would have; it was a benefit and a risk. Chandler asked in what respect the City would be risking anything. Hughes said that most of the arguments that come up in this context are "taking" arguments. He said the City has not lost one of those cases. Chandler said he was looking for a method to streamline and reduce court actions. He said they could debate distances but they are arbitrary numbers. Brown talked about the seawall. Bill Garbett asked how 25 feet off the toe of the dune came up. Brown said it was the recommendation of a Council member. John Major asked how many people would lose something if Tybee's line was changed to 25 feet. Marshal referred to a survey of the Levy property and the group discussed the various jurisdictional lines and related issues. Brown asked if there was anyone in the audience that wished to speak. Lou Off said he was speaking as chair of the Beach Task Force, as a property owner and as a taxpayer. He said the ordinance was a product of a no-science, emotional desire from some people to control land. He said he did a study for the Mayor two months ago and there were about 150 lots on Tybee on the beach. He said there were 20 lots left [vacant]. He said they are spending time dealing with a very, very small problem. He described various areas of the island. Off said the ordinance was nothing more than a theft to property owners, and talked further about the proposed Text Amendment, the various jurisdictional lines, and the permitting process for building. Off said he was putting on his Beach Task Force hat and then talked about beach renourishment and building near dunes. He then spoke as a property owner and said owners should be able to think they can do something that everybody else has been doing for the last 100 years on Tybee. Off and the group discussed several of the items in the proposed Text Amendment. Referring to the vacant lots, Off suggested to the Planning Commission that they get the DNR and someone from the City and meet with each homeowner and give them at least a year's worth of assurance so they can either sell their property or build on it. Christian Arden-Joly of Shirley Road said property values on Tybee have risen so high that emotions run high and it is a game of high stakes. He discussed issues related to a Variance that a developer had asked for on a Shirley Road property. Arden-Joly said the developer is waiting for nothing but a less restrictive line. He said that adhering strictly to the DNR line is an adjudication of the City's responsibility. He said the City needs to regulate and if it has a compelling interest to do so it will hold up in court. He said there are legitimate questions and the answers are less than clear, and it has a very high financial impact. Perb Fortner, an owner of property on Palmwood Court, distributed a letter. He said following the DNR line of Shore Protection was what the City should be using. He explained the effect of the DNR line on his lot. He gave background of how the City Council passed the proposed Text Amendment to the Planning Commission. Fortner talked about Tybee Island and property protection. He suggested contacting all the property owners that the Coastal Protection Ordinance would affect. He said the City should look to the Georgia DNR. He said the ordinance had to be reasonable, honest and fair. Keith Gay spoke about Howard Reeve and the Shirley Road property. Gay talked about the procedures for getting DNR and Tybee permissions to build. Marshall read the Notice of Determination from the February 8, 2007 City Council meeting. Commissioner Chandler said that all zoning was taking to one degree or another; it limits people's ability to do what they want on property. Referring

to the state's line, he said that dealing with one set of regulations would be simpler. Garbett said the Notice of Determination does not prohibit the Planning Commission from discussing other options. Marshall agreed. Libby Bacon said that recommending the proposed Text Amendment would turn the majority of ocean front residences into non-conforming structures. She said the dunes change all the time although they seem to be healthy. She asked if they could tighten the language on the existing ordinance. Rather than structure to structure, she suggested an average of the setbacks of the adjacent oceanfront dwellings. The group talked about the current line and the proposed change. Charlie Brewer talked about the emails, saying they caused confusion. He asked that if they are assigned a document that further information related to it be sent to Hughes so he could issue a revised document. Hughes said it was not unusual to have several different versions of an ordinance. He said that by the time the ordinance was signed by the Mayor it would have exactly what the Mayor and Council voted on. Brewer and Hughes discussed the various versions. Hughes said they could not cut off the right of people to make suggestions and input. Major asked about the emails. Marshall said she printed the emails that came through City Hall. Hughes said there were emails related to the state act that he did not receive. He said if they wanted to create a policy of how things are to come to them that would be fine. Brewer said that was a good idea. Brown said they had agreed that things would come through him and Marshall. Bacon said there were some problems with the ordinance and the email from Wolff clarified things. She talked further about the proposed Text Amendment. She suggested a Workshop to work through the language. Chuck Powell asked if the emails had been made public. Marshall said she printed the emails. Powell said they should be published. He said the Planning Commission studies these issues and puts a lot of time into this. He said the Tybee Shore Protection line is very strict compared to the DNR line and the proposed Text Amendment was an attempt by City Council to lessen the stringency and give a mechanism to having a Hearing rather than asking for a Variance; the intent was good and it was meant to aid property owners. He said maybe there were only 20 properties that have not been developed, but there are many properties that could be torn down and redeveloped. Brown suggested that 10 feet from the DNR jurisdiction line at the toe of the dune would allow building without disturbing the dune. He said 10 feet worked as good as 25 feet. Brewer discussed distances and said the line should be in the 5 to 10 foot range and should be associated with the harming of the dune during the construction phase. He said he was concerned about the dunes coming on to the property. He said 25 feet takes a lot of property without a basis for it. Brown closed the Public Hearing and asked for the motion. Brewer motioned to insert a 5 foot setback from the dune. The motion died for lack of a second. Demery Bishop said he had reservations with the dialogue. He said they have to make intelligent decisions based on data that will benefit property owners. He talked further about scientific evidence, empirical knowledge, and reasoning. Garbett spoke of the situation and then **motioned to continue**. He suggested a Workshop and that the ordinance be revised. Major spoke about the language of the ordinance and suggested a subcommittee. The Commissioners and Hughes discussed the proposed Text Amendment language and the seawall. Brewer seconded the motion to continue. It was decided to organize a subcommittee. Marshall said she would coordinate it. The motion to continue **passed** unanimously. The organization of the subcommittee was discussed.

Dick Smith asked how the Text Amendment was advertised. Sharon Marshall said Text Amendments are advertised in the newspaper. Smith asked that the City notify each property owner that the proposed Text Amendment directly affects. Chair Barry Brown clarified with Smith that he was referring to the owners of vacant lots. Chuck Powell said it influences every property owner on the ocean due to teardowns. City Attorney Bubba Hughes and Smith discussed public notification.

Demery Bishop motioned to adjourn. Bill Garbett seconded. The vote was unanimous.