

**MINUTES OF THE MEETING OF THE MADISON COUNTY
PLANNING AND ZONING COMMISSION HELD AND CONDUCTED ON
THURSDAY, THE 8th DAY OF SEPTEMBER, 2022 AT 9:00 A.M. AT THE
MADISON COUNTY COMPLEX BUILDING**

BE IT REMEMBERED that a meeting of the Madison County Planning and Zoning Commission was duly called, held and conducted on Thursday, the 8th day of September, 2022, at 9:00 a.m. in the Madison County Complex Building.

Present: Larry Miller
 Walter McKay
 Dr. Keith Rouser (by telephone)
 Bill Billingsley (by telephone)
 Rev. Henry Brown
 Scott Weeks, Planning and Zoning Administrator

The meeting was opened with prayer by Commissioner McKay, and all present participated in pledging allegiance to our flag, led by Commissioner McKay.

There first came on for consideration the minutes of the August 11, 2022, meeting of the Commission. Upon motion by Commissioner Miller, seconded by Commissioner Brown with all voting "aye," motion to approve the August 11, 2022 minutes passed.

There next came on for consideration, the need to open the meeting for public hearing of certain matters. Upon motion by Commissioner Miller to open the meeting for public hearing of certain matters, seconded by Commissioner Brown, with all voting "aye," the public hearing was so opened.

There next came on for consideration the Application of Jeff Cox and The Shire of Livingston, for Re-Zoning of +/-7.53 acres currently zoned as C-1 General Commercial District with a Planned Unit Development (PUD) overlay, to R-1B Moderate Density Residential District with a Planned Unit Development (PUD) overlay. The property subject to the application is within the parameters of the Mannsdale Livingston Historic Preservation District (MLHPD), is at the approximate intersection of Highway 463 and Highway 22, and is in Supervisor District 4.

Steve H. Smith, Esq. appeared on behalf of the Applicant, and provided the Commission with a pictorial illustration of the subject property in order that the Commission may orient themselves as to the location of the subject property. Such illustration is attached to these minutes as **Exhibit "1."** Mr. Smith advised that Applicant is seeking to rezone +/-7.53 acres in the Livingston Township PUD from its current C-1 zoning to a R-1B zoning. Mr. Smith explained that this is a downzoning. Mr. Smith advised that they did mail out notice of the public hearing as required by the Ordinance, and that he had provided return receipts to Administrator Weeks. Next, Mr. Smith directed the Commission to Exhibit "A" of his Application, which is a metes and bounds

description of the property Applicant is seeking to rezone. Exhibit "B" to his Application is a metes and bounds description of a +/-30 acres parcel which would result from the approval of the Application. Mr. Smith explained that there are currently +/-22.47 acres zoned R-1B, and if you add the subject +/-7.53 acres, that would total +/-30 acres of R-1B, and would leave +/-17.33 acres zoned as C-1. Mr. Smith explained that Exhibit "C" to the Application is a site plan, which is a conceptual drawing and is not intended to be submitted as a Preliminary Plat. Mr. Smith admitted that there are many items depicted on Exhibit "C" that do not adhere to the requirements of the Ordinance, and that would have to be addressed upon any Preliminary Plat approval. Mr. Smith stated that he wanted it made clear that Applicant did not attach Exhibit "C" as any attempt at Preliminary Plat approval. Mr. Smith next directed the Commission to Exhibit "D" of his application, and explained that it was the same separate exhibit that he handed the Commission (Exhibit 1 to these minutes).

Mr. Smith directed the Commission to Applicant's Exhibit "C," and noted that there are at total of 87 lots depicted, which is the amount allowed as per Section 2706.02 of the Ordinance. Mr. Smith noted that this calculation is the example given in that section of the Ordinance, and is derived by multiplying the total number of acres (30) by the maximum amount of dwelling units per acre (2.9), then you arrive at a total of 87 lots. Mr. Smith advised that each lot would represent a single-family dwelling unit with no condominiums, no townhouses, and no patio homes. Mr. Smith advised that the conceptual drawing is consistent with the intent and purpose of the PUD, and Article 27 of the Ordinance. Mr. Smith addressed the four (4) criteria of a PUD which are 1) to make land areas as cohesive and coordinated units, 2) to allow for more flexible and advantageous use of sites, 3) to reduce the cost of residential development allowing more dwelling unites per gross acre, and 4) provide open space and common area for use by all residents of a PUD. Mr. Smith explained that the Livingston Township PUD was originally approved based on these same criteria, and other contained in Article 27 of the Ordinance, and, again noted that this was a downzoning.

Mr. Smith noted that the conceptual plan submitted shows 33.87% of the site as open/common area, which is more than double that of the required 15% as per the Ordinance. Mr. Smith again reiterated that the conceptual site plan does not contain all of the data, or information needed for approval of a Preliminary Plat, and that Applicant is only seeking a rezoning. Mr. Smith also pointed out that no plat had ever been filed on any property in the Livingston Township PUD, and the property has been developed based on a conceptual drawing just like the one attached to Applicant's application.

Mr. Smith next addressed the criteria of Section 806.03(b), and advised that the character of the neighborhood had changed to such an extent as to justify the rezoning, and that there is a public need for additional housing. Mr. Smith directed the Commission to pages 4-9 of his Application to demonstrate the change in character of the neighborhood. There, Mr. Smith noted that the Applicant had set out eight (8) of the most impactful and job-creating commercial developments which have occurred in Madison County since 2021. Mr. Smith noted that \$70M in permits were issued, and over 60 commercial permits were issued in 2021 and 2022. Mr. Smith noted that Madison County Economic Development Authority records indicate that between October 2017 and February 2022, eighteen (18) new developments were startedⁱ, and over 2,100 new jobs were created, and an investment of \$1.2B in Madison County, as a result of these

developments. Mr. Smith noted that this explosive development over the last 4-5 years has contributed to the per capita income of residents of Madison County which is in excess of \$68,000.00. Mr. Smith noted that the 2010 census showed 95,000 people in Madison County, and the 2020 census showed that number to have grown to over 109,000-which is more than a 14.5% increase. Mr. Smith noted that the Central Mississippi Multiple Listing Service data showed the number of home sales in the last two (2) years were the highest ever over the last fifteen (15) years, sales prices reached new highs, homes sold in record time, but inventory of new homes hit “rock bottom.” Mr. Smith noted that new listings rose by more than 11.5%, and inventory decreased by 47.5%. Days on market were down more than 50%, and months supply of inventory was down over 35%, down to 1.2 months. Mr. Smith argued that the economic development of Madison County had created a huge demand for housing, and has outpaced the supply of residential housing. Mr. Smith argued that over the last ten (10) years, the character of the neighborhood surrounding the Livingston Township PUD had changed drastically, and one need only drive out Highway 463 and Highway 22 to see the number of residential neighborhoods that have been developed, including Reunion, Devlin Springs, Hartfield, Johnston, Noah’s Mill, Eden, and Chestnut Hill. Mr. Smith argued that the rezoning of the subject property would be nothing but a positive impact on the Livingston Township PUD and surrounding development, and that the proposed development would be high-quality, and along the same lines as the development at the Township at Colony Park.

Mr. Smith also argued that if the Livingston Township PUD was found to be proper, and in compliance with Madison County’s Comprehensive Plan, Transportation Plan, Land Use Plan, and goals and objectives in 2010, then certainly the rezoning of a mere +/-7.53 acres now is likewise consistent with all four (4) elements of that plan now. Mr. Smith also argued that this rezoning would be the highest and best use of the property. Mr. Smith noted that, to date, only 7 commercial buildings have been built in Livingston, covering approximately +/-6.5 acres. Mr. Smith argued that the lots and homes proposed would be affordable, but compliment the Livingston Township PUD, and all other residential developments in the area. Mr. Smith argued that the Applicant had met, and exceeded the requirements for rezoning under the Ordinance, and that this approval would be the catalyst for the development of the Livingston Township PUD, and requested approval of the rezoning of the +/-7.53 acres from C-1 to R-1B.

Commissioner McKay questioned as to whether the contours of the property were done by lidar, and whether the contours shown depicted the actual slopes and contours of the property. Commissioner McKay expressed concern over the topography, and the ability to develop the property on the contours shown, including drainage and water run-off from adjacent lots. Mr. Smith responded that while he was not an engineer, he had worked with planning and zoning commissions, and developers, and that development could be done, but emphasized that the conceptual drawing submitted was only that—conceptual, and to show a proposed layout of the number of lots on the subject property, and that the Applicant has not invested the time or money in platting, and was only seeking rezoning of the property so that it could move forward with more detailed plans with the County. Commissioner McKay also expressed concern as to the emergency access depicted on the conceptual drawing, and the likelihood of traffic going from Chestnut Hill to the Town of Livingston. Mr. Smith advised that this was merely a proposal, and would be subject to approval of the County.

Attorney Clark reiterated that the only matter before the Commission was the rezoning petition, and the conceptual plan was merely conceptual, and contained many issues that were not in compliance with the Ordinance, including setbacks, encroachment into the MLHPD buffer zone, and other issues that would have to be addressed prior to submission for approval of a Preliminary Plat.

John Lassiter of 307 Moonlight Hollow in Chestnut Hill appeared in opposition. Mr. Lassiter advised that he was speaking on behalf of the Chestnut Hill Homeowners Association, and in the stead of Baxter Burns, President of that HOA. Mr. Lassiter advised that he, Mr. Burns, and the Chestnut Hill HOA were vehemently opposed to the proposed rezoning as that would only allow momentum to be had with regard to the proposed development. Mr. Lassiter advised that he and his family bought in Chestnut Hill to enjoy the rural aspect of the neighborhood, and to escape the density of other developments. Mr. Lassiter advised that he, and others, were promised responsible development with the preservation of the landscape with the local amenities of Livingston, and that such was reflected in the plans previously approved by the MLHPD District, this Commission, and the Board of Supervisors. Mr. Lassiter argued that the character of the neighborhood had not changed, and that is what makes it so desirable to live there. Mr. Lassiter argued that there are 35 available lots in Chestnut Hill right now that the same Developer owns or controls. Mr. Lassiter argued that the proposed development doubles the amount of lots on roughly the same amount of acreage, and would entail clear cutting, extensive grading, zero lot line development, and many things that they did not agree to when purchasing their lot. Mr. Lassiter criticized the Developer as an out of state developer that wants to get the most out of his property and leave the residents with the residual effects. Mr. Lassiter complained about the maintenance of Chestnut Hill Subdivision and the condition of the roads, drainage, and other common area issues. Mr. Lassiter conceded that the local person, Jeff Cox, would benefit from the proposed development, but that many other Madison County residents would be negatively impacted.

John Scanlon, Esq., appeared in opposition on behalf of Chestnut Hill Homeowners Association, and requested that a certain document reflecting the HOA's opposition be attached to the minutes. Said document is attached to these minutes as **Exhibit "2."** Mr. Scanlon advised that upon his review of the Madison County Comprehensive Plan and the Land Use Plan, the subject property is designated as commercial use. Mr. Scanlon advised that Mississippi Code, and Mississippi law are clear that any rezoning must be done in harmony with the Comprehensive Plan, which are intended to be long term plans, and difficult to change. Mr. Scanlon advised that any change in the Ordinance requires a change in the Comprehensive Plan, and that there has been no requested change to the Comprehensive Plan. As such, Mr. Scanlon advised that, in his opinion, a court of law would find any such approval arbitrary and capricious, and unsupported by substantial evidence. Mr. Scanlon also advised that the burden is on the Applicant to prove the "modified Maryland Rule," which is a mistake in the original zoning, or a change in character of the neighborhood, and a public need to justify the rezoning. Mr. Scanlon argued that the Applicant's application does not address the neighborhood, but rather addresses other areas of Madison County. Mr. Scanlon also noted that the subject property lies within the bounds of the MLHPD, and that the MLHPD section of the Ordinance does not allow high density residential development, and that the main thrust of the MLHPD is to keep density low in the area of the subject property. As such, Mr. Scanlon argued that the proposed rezoning violates the purpose of the MLHPD, and the PUD. Mr. Scanlon also argued that the Notice of the Public Hearing was

invalid as it does not specify that the subject +/-7.53 acres is to be redesignated, and recombined with the PUD, and that the ordinance requires notice of a public hearing to change the PUD. As such, Mr. Scanlon requested that the Commission not recommend approval of the rezoning, as any approval would be arbitrary and capricious, not supported by evidence, and would not be upheld by a court of law. Instead, Mr. Scanlon asked that the Commission stay with the zoning that was put in place by the Board of Supervisors, and recommend denial of the Applicant's application.

David Hand of 108 Bidon Place in Livingston appeared in opposition. Mr. Hand argued that the proposed rezoning does not fit the area, and goes against all the reasons that he, and others, moved out to the area. Mr. Hand advised that he had lived in Denver prior to moving back to Mississippi, and had seen high rises built there which created crime, traffic, and everything that the opposition is against.

Kevin Watson as owner of Lot 10 in Chestnut Hill appeared in opposition. Mr. Watson argued that there were originally 50 lots proposed in the proposed development—44 of which were to be cottages, and 6 of which were to be residential lake-side lots. Mr. Watson advised that the reason he bought his lot was based upon less density than the proposed development. Mr. Watson brought to the Commission's attention that these issues were addressed in the MLHPD recommendation of denial. Mr. Watson argued that the character of the neighborhood had not changed. Mr. Watson acknowledged the economic growth, and the real estate market, but argued that that does not mean the neighborhood of Livingston had changed. Mr. Watson argued that the higher density was "all about the money" and all about a California developer leaving the neighborhood with the lots, and traffic associated with the development. Mr. Watson argued that the proposed entrance to the development is 550' from the intersection of Highway 463 and Highway 22, and that he understood that MDOT had not been approached regarding such intersection, and that it would not be approved based upon its proximity to that intersection. Mr. Watson noted that it was not just Chestnut Hill that was opposed to the rezoning, but also Noah's Mill, Stonebridge, and other subdivisions. Mr. Watson argued that there was no need, that the surrounding neighborhoods argue that there is no need for the rezoning, and asked that the Commission recommend denial of the Applicant's application.

Steve Smith responded that there are many reasons that people may not like or want a development, or the number of lots in a development. But, that does not overcome the law, and that a property owner has a right to use its property for its lawfully zoned use. Mr. Smith argued that is all the Applicant has ever intended to do. Mr. Smith directed the Commission to Exhibit "C" of his Application, and showed that Chestnut Hill was only touched by approximately 1/4th of the proposed development, and that the remaining property owners surrounding the proposed development were not in opposition. Mr. Smith argued that the rule of law was more important than what any individual, or group of individuals, thinks. Mr. Smith argued again stated that the Applicant is not seeking approval of any preliminary plat, and that it is obvious, and admitted that there are numerous modifications that would have to be made prior to any submission of a Preliminary Plat for approval. Mr. Smith argued that Mr. Scanlon's point regarding requirement to change the Comprehensive Plan or PUD prior to rezoning were not valid, but if the Board of Supervisors required such, the Applicant would do so. However, Mr. Smith argued that was not requirement for rezoning. Mr. Smith also addressed Mr. Watson's argument regarding the MLHPD's recommendation of denial. Mr. Smith pointed out that every reason listed in the

MLHPD's recommendation addressed matters regarding a preliminary plat, and not one speaks to the requirements of rezoning. Mr. Smith argued that the Applicant's application meets every criteria for approval of rezoning the subject property.

Ken Primos appeared and advised that he is a member of the MLHPD Commission, was not speaking on their behalf, but thought they would agree with his statements. Mr. Primos advised that upon the original rezoning in 2010, part of what was taken into consideration was how many lots were in Chestnut Hill, and how many lots the developer wanted to have at Livingston. Mr. Primos spoke to the difference in lot sizes in surrounding developments being +/-12,000 sf. versus approximately 3-4,000 sf. lots in the proposed development. Mr. Primos advised that the MLHPD Commission opposed the rezoning of the subject property while being fully aware that rezoning was the issue. Mr. Primos advised that the conceptual drawing submitted with the Applicant's application was called a preliminary plat, and could not be ignored at the MLHPD meeting. Mr. Primos noted that the current developer did not do what he said he was going to do in developing Livingston, and that the MLHPD Commission is opposed to both the rezoning, and what is to come from such rezoning.

Commissioner Miller questioned as to what would be a change in character of the neighborhood, and who would make that determination. Attorney Clark advised that there is no set criteria to determine exactly what a change in the neighborhood would be, and that the Commission was to determine what would constitute a change based upon the presentation of the Applicant, and the opposition voiced in the meeting. Commissioner Miller also questioned as to notice of the change in the PUD. Attorney Clark used Exhibit "C," and opined that he and Administrator Weeks had discussed this matter at length, and that the entirety of Exhibit "C" shows the entirety of the PUD. Attorney Clark opined that the Applicant is not seeking to expand or reduce the "footprint" of the PUD, but is rather seeking a change of zoning designation of property inside the "footprint" of the PUD. Commissioner Miller questioned as to whether this was a sound move to approve the rezoning. Attorney Clark advised that he could not advise the Commissioners on how to vote, but instead, the Commission must balance the rights of the property owner/developer against the rights and concerns of the citizens of the surrounding property. Commissioner Miller questioned as to whether the Applicant had met the criteria for rezoning, and Attorney Clark opined that based upon his reading of the Ordinance, the Applicant had met its criteria, but that the recommendation would be come from the Commission.

Commissioner McKay questioned as to notice to the landowners on the North side of the proposed development. Mr. Smith responded that the Ordinance requires notice to landowners within 160' of the subject property to be rezoned, and that the Applicant followed the Ordinance for required Notice.

Commissioner Miller questioned Mr. Primos regarding commercial property, and the position of the homeowners regarding undesirable commercial developments in Livingston. Mr. Primos responded that the MLHPD ordinance set forth the requirements for what could be built in the MLHPD District, and would have to be similar to what is there now. Mr. Scanlon spoke on this issue as well, and opined that the answer to the question as to whether Chestnut Hill wished for the property to remain commercial, as opposed to residential, would be "yes" within the confines of what has been approved.

There being no further discussion, upon motion by Commissioner Brown to close the Public Hearing, seconded by Commissioner Miller, with all voting "aye," the motion to close the Public Hearing was approved.

Upon question by Chairman Rouser, Attorney Clark clarified that the application for rezoning was properly before the Commission for consideration, and that the Commission must make a determination of whether to approve or deny based on the presentation of the Applicant, taking into consideration, the opposition voiced, and the recommendation of the MLHPD. Attorney Clark further advised that the MLHPD recommendation and the Commission recommendation run concurrently, but need not be the same recommendation to the Board of Supervisors.

Chairman Rouser made a motion to table the matter for further study. That motion died for lack of a second.

Upon motion by Chairman Rouser to approve the Application of Jeff Cox and The Shire of Livingston, for Re-Zoning of +/-7.53 acres currently zoned as C-1 General Commercial District with a Planned Unit Development (PUD) overlay, to R-1B Moderate Density Residential District with a Planned Unit Development (PUD) overlay, seconded by Commissioner Brown, the Application of Jeff Cox and The Shire of Livingston, for Re-Zoning of +/-7.53 acres currently zoned as C-1 General Commercial District with a Planned Unit Development (PUD) overlay, to R-1B Moderate Density Residential District with a Planned Unit Development (PUD) overlay, was approved with the vote on the matter being as follows:

Chairman Rouser	Aye
Commissioner Brown	Aye
Commissioner Miller	Aye
Commissioner McKay	Nay
Commissioner Billingsley	Nay

There next came on for discussion, the setting of the October, 2022, meeting. October 20, 2022, was suggested. Upon motion by Commissioner Billingsley, seconded by Commissioner McKay, with all voting "aye," motion to set the October, 2022, meeting for October 20, 2022, passed.

With there being no further business, the September 8, 2022, meeting of the Madison County Planning and Zoning Commission was adjourned.

12-8-22

Date



Dr. Keith Rouser, Chairman

ⁱ Mr. Smith directed the Commission to footnote 1 of his Application for all eighteen (18) of those developments.