

**MINUTES OF THE MEETING OF THE MADISON COUNTY
PLANNING AND ZONING COMMISSION HELD AND CONDUCTED ON
THURSDAY, THE 11th DAY OF JANUARY, 2024 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 11th day of January, 2024, at 9:00 a.m. in the Madison County Complex Building.

Present: Dr. Keith Rouser
 Rev. Henry Brown
 Jean McCarty
 Mandy Sumerall

Scott Weeks, Planning and Zoning Administrator

Absent: Bill Billingsley

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

There first came on for consideration the minutes of the December 14, 2023, meeting of the Commission. Upon motion by Commissioner McCarty, seconded by Commissioner Brown, with all voting "aye," motion to approve the December 14, 2023, minutes passed.

There next came on for consideration, the Application of Fairview Missionary Baptist Church for a Conditional Use for a Cemetery. The property subject to the application is on North Old Canton Road off Davenport Lane, is zoned as R-1 Residential Estate District, and is in Supervisor District 5. Pastor Steven Brooks of the Fairview Missionary Baptist Church appeared on behalf of the Applicant, and advised that the church was seeking to establish a cemetery for the church which would be across from their current building at 1278 North Old Canton Road. Pastor Brooks advised the cemetery would be on the very back corner of the subject property and out of view. Pastor Brooks advised that the church and community are in need of a cemetery in the area. In response to question from Commissioner Brown, Pastor Brooks advised that the cemetery would be gated, and out of general view of the public. In response to question from Commissioner McCarty, Pastor Brooks stated that the church has approximately 100 members, and in the past had used cemeteries at other churches, and in a private family cemetery for internment, but that those cemeteries are nearing capacity. Upon motion by Commissioner Brown to approve the Application of Fairview Missionary Baptist Church for a Conditional Use for a Cemetery, seconded by Commissioner Sumerall, the motion to approve the Application of Fairview Missionary Baptist Church for a Conditional Use for a Cemetery passed, with the vote on the matter as follows:

Commissioner Brown “Aye.”
Commissioner Sumerall “Aye”
Chairman Rouser “Aye.”
Commissioner McCarty “Abstain¹.”

There next came on for consideration the Site Plan of Stokes Road Shell for a Convenience Store. The property subject to the Application is on the corner of Stokes Road and Livingston Vernon Road and Highway 51, is Madison County Tax Parcel No.: 051A-12-005/03.00, is zoned C-2 Highway Commercial District, and is in Supervisor District 4. Daniel Wooldridge appeared on behalf of the Applicant as architect for the project, and advised that he was here today as a follow up to the previous submission that was tabled by the Commission. Mr. Wooldridge stated that the initial, prior concern was whether the property was zoned as zoned C-2, and stated that he believed Administrator Weeks and Attorney Clark had confirmed that the zoning is, in fact, C-2. Mr. Wooldridge next advised that the owner had added additional landscaping to the site plan as previously requested. Next, Mr. Wooldridge advised that the owner understood that there were plans in place for an overlay district, but since there was none in place currently, the owner had not changed the exterior of the building, and felt that the current plan is a good mixture of the development at Livingston, and development in Flora, and is a good fit for the subject property. Mr. Wooldridge next advised that the lighting plan would be one that would not allow light pollution to leave the property, and affect adjacent properties. Mr. Wooldridge next addressed the Commission regarding previous concerns about traffic, and provided email correspondence and a traffic count from Kiser Traffic and Engineering. Such email and traffic count are attached hereto as **Exhibit “A.”**

Commissioner Sumerall questioned the portion of the Kiser report regarding recommendations for realignment of Highway 22. Mr. Wooldridge stated that Mr. Kiser had made such recommendations, but that such changes would be up to MDOT, and not under the control of the owner.

John Arthur Eaves appeared in opposition and on behalf of Andover Subdivision. Mr. Eaves advised that his father had developed Andover, and promised the residents that it would be a place of serenity and a respite from urban life. Mr. Eaves advised that the residents of Andover are opposed to the convenience store, and feel that there are already other locations in Flora, Livingston, and Kearney Park that would serve their needs, and would prefer to protect their community.

Sheriff Toby Trowbridge (Retired) appeared in opposition, and reargued that based on his research and records, he does not believe that the property is actually zoned as C-2. Sheriff Trowbridge advised that from 1961, there is no evidence that the Planning & Zoning Commission, Madison County Board of Supervisors, or Chancery Clerk ever adopted or recorded a rezoning of

¹ Commissioner McCarty wished to clarify the reason for her abstention, and stated that the subject property was very pretty land, in the path of growth and development of current and future residential subdivisions. Commissioner McCarty stated that she believed there was a better use for the property in accordance with the planning for Madison County, and the proposed location may prevent the church from using the remainder of the property in the future.

the property, and asked for clarification from the Commission, and/or its Administrator, and/or Attorney.

Administrator Weeks advised that based on his research, the county maps demonstrate that from roughly the 1960's until current, the zoning maps depict the property as being zoned C-2. Administrator Weeks had present, a zoning map from the 1970's which showed the property as being zoned as C-2.

Sheriff Trowbridge cited to an Attorney General Opinion No. 2014-00493 as stating that

“[a] county cannot amend a zoning ordinance or rezone a piece of property by merely updating the official zoning map. The county must comply with the notice and hearing requirements of Section 17-1-17 and also present clear and convincing evidence that either a mistake has been made in the original zoning ordinance or that the character of the neighborhood has changed so much since the original zoning to justify rezoning and that public need exists for the zoning.”

Such Attorney General Opinion No. 2014-00493 is attached hereto as **Exhibit “B.”** Sheriff Trowbridge argued that there is no evidence that any such criteria has been met, but instead just appeared on a zoning map. Sheriff Trowbridge further warned the Commission that as former Sheriff of Madison County, he is familiar with the area and the danger that traffic on Highway 22 poses in the area due to the angle of the turn that would be necessary for vehicular traffic.

Attorney Clark advised that based on his research, and opinion, there was a time when there were no zoning designations in Madison County. Attorney Clark further stated that in the early 1960's, the Board of Supervisors took it upon themselves to create such districts, and corresponding maps. Attorney Clark advised that as far back as can be found, and on every map coming forward to current, this particular property was designated as C-2. As an example, Attorney Clark stated that if someone had come to the County in 1975 to verify the zoning of the property, the maps would have indicated that the zoning was C-2, and there would be no need for that person to submit any petition to rezone to C-2, as that was its existing designation. Sheriff Trowbridge argued that the only map that could be produced merely said that the owner could designate the property as C-2, and asked that the Commission follow what the Board of Supervisors set forth in 1961, or change it legally.

Sheriff Trowbridge next questioned as to what the parcel shows as far as land taxes. Attorney Clark advised that taxation was a completely separate matter based on use, such that a property zoned as C-2 could still be taxed as A-1 based on the use. Sheriff Trowbridge requested that there be a full traffic study conducted by MDOT prior to approval. Attorney Clark advised that the Commission has no authority to demand that MDOT conduct a study or do anything.

Sheriff Trowbridge asked what the appeal process would be for anyone dissatisfied with the decision, and Attorney Clark explained same.

Former Flora Chief of Police Dwayne Moak appeared in opposition. Chief Moak advised that he has lived in the area since 1995, and has been in law enforcement for over 30 years. Chief

Moak advised that in his opinion, there are already commercial districts in Flora, Kearney Park, and Livingston that service the area, and that the particular area at issue is a residential area. Chief Moak advised that this would be a dramatic change in traffic and overall aesthetics of the area. Mr. Moak reiterated the dangerous intersection at Highway 22. Chief Moak further argued that this convenience store would exacerbate such danger, and take away from the commercial businesses already servicing this area.

Mike Prestage appeared in opposition, and stated that if the Commission approves this convenience store, there will be others that will move to the area and also develop commercial properties, and continue to exacerbate the traffic issue. Mr. Prestage urged the Commission to not only seek input from MDOT, but also the Madison County engineers as to traffic concerns because the convenience store would impact not only Highway 22, but also Livingston-Vernon and Stokes Roads. Mr. Prestage also asked that the website be clarified as to the drawings for the site plan, as there may have been another project inadvertently linked to the meeting agenda. Mr. Prestage also advised that he had formally requested zoning verification of the subject property as well as the adjacent property, and supporting documentation.

Gary Massey appeared in opposition. Mr. Massey inquired as to whether he was correct in that if this convenience store is approved, could it be built prior to any road improvements by the County or MDOT. Attorney Clark responded in the affirmative, and Mr. Massey expressed concerns over the potential traffic danger.

Sheriff Trowbridge urged a reading of Miss. Code Ann. §17-1-15 and §17-1-17. Copies of such Code Sections are attached hereto as collective Exhibit "C." Sheriff Trowbridge inquired as to whether the Commission had proof of any such publication from the original zoning. Attorney Clark stated that he did not, but that the Commission did have Board minutes and proof of notice of public hearings for more recent years on adoption of zoning maps showing the property as C-2.

Daniel Wooldridge responded that the Applicant had purchased the subject property in reliance that it was zoned as C-2. He further pointed out that, at some point in time, someone did build a gas station on the site, and used it for commercial purposes (comments from the crowd were that such fuel sales were for agricultural use only). Mr. Wooldridge argued that his client is a family business, and will run their business as a family-oriented group to serve the community. Mr. Wooldridge reminded the Commission that it is to review the site plan and ensure that it meets all criteria for C-2 zoning, and argued that they have.

Upon motion by Commissioner McCarty to approve the Site Plan for Stokes Road Shell for a Convenience Store, seconded by Commissioner Brown, with all voting "aye," the motion to approve the Site Plan for Stokes Road Shell for a Convenience Store was approved.

There next came on for discussion, the setting of the February, 2024 meeting. February 8, 2024, was suggested. Upon motion by Commissioner McCarty, seconded by Commissioner Sumerall, with all voting "aye," the motion to set the February, 2024 meeting for February 8, 2024, was approved.

With there being no further business, the January 11, 2024, meeting of the Madison County Planning and Zoning Commission was adjourned.

2-8-24
Date


Dr. Keith Rouser, Chairman

1/11/24, 8:20 AM

Yahoo Mail - Traffic Generation Table/Figures

Traffic Generation Table/Figures

From: Jonathan Kiser (jak@kisertraffic.com)

To: wooldridgearchitecture@yahoo.com

Date: Wednesday, January 10, 2024 at 06:28 PM CST

The trip generation for the site (ITE Trip Generation, 11th Edition) is forecast to have 155 vehicles enter/exit in the AM Peak and 140 vehicles enter/exit in the PM Peak Hour, based on the size of the building and number of fueling positions. More than 50% of trips at gas stations are typically "Pass by" trips. These are vehicles that are already on the roadway for another purpose, such as traveling to/from work. Pass by trips do not add new traffic to the roadway, as they were already traveling on that route. Taking Pass by trips into account, the site is forecast to add less than 65 vph inbound and 65 vph outbound to the study area in either the AM or PM peak hours – based on the Trip Generation Manual and Trip Generation Handbook.

A traffic count was conducted at the intersection of Livingston Vernon Road/MS Hwy 22 on 9/1/21. The count identified that 1/3 of traffic on Hwy 22 eastbound in the morning came from Livingston Vernon Road (southbound) and similarly, 1/3 of the traffic in the PM peak westbound on Hwy 22, turned right (northbound) onto Livingston Vernon Road from Hwy 22. The total traffic traversing the Hwy 22/Livingston Vernon Rd intersection in 2021 during the AM peak hour was 531 vph and in the PM peak hour was 575 vph.

Recommendations were made in the December 2021 report to improve the alignment of MS Hwy 22 through this area, by reducing the angle of the horizontal curves. (Concept is attached)

If you need additional information, please let me know.

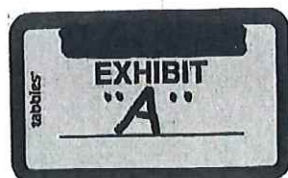
Thank you,

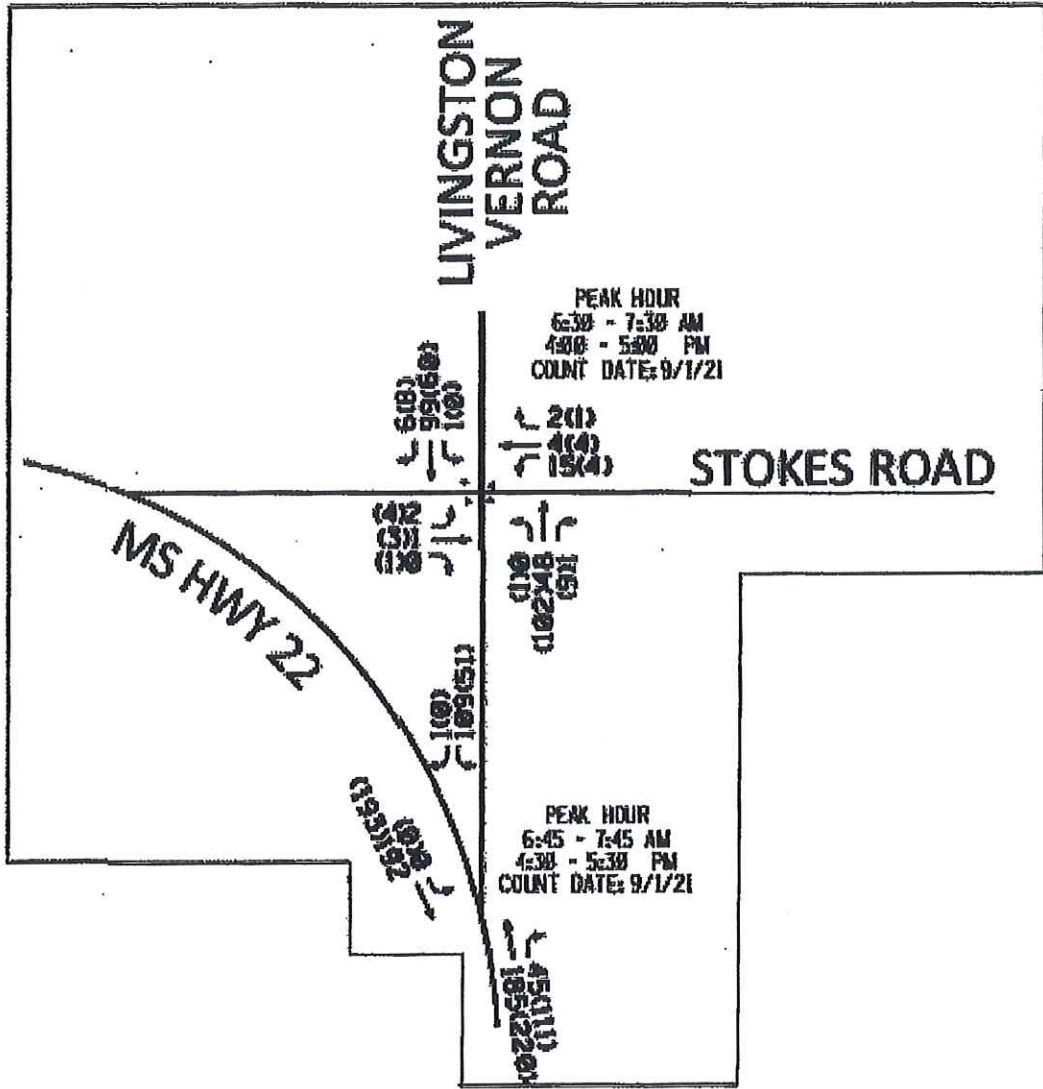
Jak

Jonathan Kiser, PE, PTOE, PTP
Professional Traffic Engineer
& Transportation Planner



KISER
TRAFFIC AND
ENGINEERING
601-720-0262
jak@kisertraffic.com





LEGEND
AM PEAK HOUR - XX
PM PEAK HOUR - (XX)



YEAR 2021 EXISTING TRAFFIC

FIGURE
1

C:\Users\CAD\OneDrive\Public\2021\Livingston_Vernon.msxdwg

WESTLAW Mississippi Attorney General Opinions

Robert E. Quimby, Esquire

Office of the Attorney General
January 9, 2015

2015 WL 682409 (Miss.A.G.)

Office of the Attorney General

State of Mississippi

*1

Opinion No. 2014-00493

*1 January 9, 2015

Re: Annually Updating the Zoning Map

*1 Robert E. Quimby, Esquire
*1 Attorney for the DeSoto County Board of Supervisors
*1 Post Office Box 346
*1 Hernando, Mississippi 38632

Dear Mr. Quimby:

*1 Attorney General Jim Hood is in receipt of your opinion request and has assigned it to me for research and reply.

Facts

*1 In your letter you provide the following background information:

*1 In 1995, a conditional use permit for a certain piece of property was granted. That permit reflected that the property was zoned "M-2" heavy industrial. At some point in the intervening years, most likely as part of the annual updating process, the official zoning map was updated to reflect a zoning of "A" agricultural. Article XVIII of the DeSoto County, Mississippi Zoning Regulations permits the map of the zoning ordinance to be amended after 15 days' notice of a public hearing on the matter in an official newspaper. The property owner has not submitted a request for the property to be rezoned.

Question Presented

*1 1. Assuming the facts above, can a piece of property be rezoned by way of the Board of Supervisors updating the official zoning map after providing the requisite notice in accordance with the applicable zoning ordinance?

Response

*1 No. A county cannot amend a zoning ordinance or rezone a piece of property by merely updating the official zoning map after providing the requisite notice in accordance with the applicable zoning ordinance.

Legal Research and Analysis

*1 Miss. Code Ann., Section 17-1-15 provides:

*1 The governing authority of each municipality and county shall provide for the manner in which the comprehensive plan, zoning ordinance (including the official zoning map) subdivision regulations and capital improvements program shall be determined, established and enforced, and from time to time, amended, supplemented or changed. However, no such plan, ordinance (including zoning boundaries), regulations or program shall become effective until after a public hearing, in relation thereto, at which parties in interest, and citizens, shall have an opportunity to be heard. At least fifteen (15) days' notice of the time and place of such hearing shall be published in an official paper, or a paper of general circulation, in such municipality or county.

*1 Miss. Code Ann., Section 17-1-17 provides in pertinent part:

*1 Zoning regulations, restrictions and boundaries may, from time to time, be amended, supplemented, changed, modified or repealed upon at least fifteen (15) days' notice of a hearing on such amendment, supplement, change, modification or repeal.



said notice to be given in an official paper or a paper of general circulation in such municipality or county specifying a time and place for said hearing.

*1 Miss. Code Ann., Sections 7-1-15 and 17-1-17 are the statutory authority for establishing as well as amending, zoning ordinances. While these statutes make no requirement either as to the evidence necessary or which party has the burden of proof on a proposed change in zoning, the Mississippi Supreme Court in decisions over the years has clearly delineated guidelines for the governing boards of municipalities and counties in their decisions to approve or reject proposed amendments to zoning ordinances. *City of Clinton v. Conerly*, 509 So. 2d 877, 883 (Miss. 1987).

*2 The law in Mississippi requires that before a zoning ordinance can be amended or property rezoned evidence be presented, proving by clear and convincing evidence, that either a mistake had been made in the original zoning ordinance or that the character of the neighborhood has changed so much since the original zoning to justify rezoning and that public need exists for the rezoning. *City of Biloxi v. Hillbert*, 597 So. 2d 1276 (Miss. 1992). Additionally, Section 17-1-17 provides that zoning regulations, once adopted, may be amended, supplemented, changed, modified or appealed only upon at least 15 days notice of a hearing.


*2 Thus, a county cannot amend its zoning ordinance by merely updating the official zoning map. The county must comply with the notice and hearing requirements of Section 17-1-17 and also present clear and convincing evidence that either a mistake has been made in the original zoning ordinance or that the character of the neighborhood has changed so much since the original zoning to justify rezoning and that public need exists for the rezoning.

*2 If this office may be of any further assistance to you, please let us know.
Sincerely,

*2 Jim Hood
*2 Attorney General
*2 By: Avery Mounger Lee

2015 WL 682409 (Miss.A.G.)

END OF DOCUMENT



Document:

Miss. Code Ann. § 17-1-15



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Miss. Code Ann. § 17-1-15**Copy Citation**

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Mississippi Code 1972 Annotated Title 17. Local Government; Provisions Common to Counties and Municipalities (Chs. 1 – 29) Chapter 1. Zoning, Planning and Subdivision Regulation (§§ 17-1-1 – 17-1-75) General Provisions (§§ 17-1-1 – 17-1-27)

§ 17-1-15. Procedure for establishing, amending, etc., of regulations, zone boundaries, etc.; notice and hearing.

The governing authority of each municipality and county shall provide for the manner in which the comprehensive plan, zoning ordinance (including the official zoning map) subdivision regulations and capital improvements program shall be determined, established and enforced, and from time to time, amended, supplemented or changed. However, no such plan, ordinance (including zoning boundaries), regulations or program shall become effective until after a public hearing, in relation thereto, at which parties in interest, and citizens, shall have an opportunity to be heard. At least fifteen (15) days' notice of the time and place of such hearing shall be published in an official paper, or a paper of general circulation, in such municipality or county.

History

Codes, 1930, § 2477; 1942, § 3593; Laws, 1926, ch. 308; Laws, 1988, ch. 483, § 3, from and after July 1, 1988.



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Document: Miss. Code Ann. § 17-1-17



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Mississippi Code 1972 Annotated Title 17. Local Government; Provisions Common to Counties and Municipalities (Chs. 1 – 29) Chapter 1. Zoning, Planning and Subdivision Regulation (§§ 17-1-1 – 17-1-75), General Provisions (§§ 17-1-1 – 17-1-27).

§ 17-1-17. Changes.

Zoning regulations, restrictions and boundaries may, from time to time, be amended, supplemented, changed, modified or repealed upon at least fifteen (15) days' notice of a hearing on such amendment, supplement, change, modification or repeal, said notice to be given in an official paper or a paper of general circulation in such municipality or county specifying a time and place for said hearing. The governing authorities or any municipal agency or commission, which by ordinance has been theretofore so empowered, may provide in such notice that the same shall be held before the city engineer or before an advisory committee of citizens as hereinafter provided and if the hearing is held before the said engineer or advisory committee it shall not be necessary for the governing body to hold such hearing but may act upon the recommendation of the city engineer or advisory committee. Provided, however, that any party aggrieved with the recommendation of the city engineer or advisory committee shall be entitled to a public hearing before the governing body of the city, with due notice thereof after publication for the time and as provided in this section. The governing authorities of a municipality which had a population in excess of one hundred forty thousand (140,000) according to the 1960 census, or of a municipality which is the county seat of a county bordering on the Gulf of Mexico and the State of Alabama or of a municipality which had a population in excess of forty thousand (40,000) according to the 1970 census and which is within a county bordering on the Gulf of Mexico may enact an

ordinance restricting such hearing to the record as made before the city engineer or advisory committee of citizens as herein above provided.

In case of a protest against such change signed by the owners of twenty percent (20%) or more, either of the area of the lots included in such proposed change, or of those immediately adjacent to the rear thereof, extending one hundred sixty (160) feet therefrom or of those directly opposite thereto, extending one hundred sixty (160) feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fifths ($\frac{3}{5}$) of the members of the legislative body of such municipality or county who are not required by law or ethical considerations to recuse themselves.

History

Codes, 1930, § 2478; 1942, § 3594; Laws, 1926, ch. 308; Laws, 1962, ch. 553; Laws, 1971, ch. 377, § 1; Laws, 1975, ch. 396; Laws, 1979, ch. 504; Laws, 2004, ch. 551, § 1, eff from and after July 1, 2004.

Mississippi Code 1972 Annotated
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