

South Carolina



Planning Education Advisory Committee

Committee Members:

Stephen G. Riley, Chairman
Representing MASC
Term Expires: 2017

Phillip L. Lindler
Representing SCAC
Term expires: 2019

Cliff Ellis
Representing Clemson
University
Term expires: 2016

Dennis Lambries
Representing USC
Term expires: 2016

Wayne Shuler
Representing SCAPA
Term expires: 2018

January 7, 2016

City of North Charleston
Kriston D. Neely, Staff Attorney
2900 City Hall Lane
North Charleston, SC 29406

Re: Understanding the Basics: Planning Commission and BOZA
Dear Ms. Neely:

On December 21, 2015, I received the Program Materials you submitted for accreditation of the Continuing Education Course detailed above. Upon receipt of your application, I sent an email to confirm receipt by all Committee members and set a deadline for comments.

Under the "no objection policy" adopted on July 8, 2009, your request is considered approved. Your signed "Notice of Decision" is attached. Formal, after-the-fact approval will be handled as part of a Consent Agenda at the regular quarterly meeting of the Committee, which is scheduled for January 20, 2016 at 1:30 p.m.

Thank you for your efforts to help make this program a success.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen G. Riley".

Stephen G. Riley, ICMA~CM
Chairman

cc: Phil Lindler, Cliff Ellis, Dennis Lambries, and Wayne Shuler

South Carolina Planning Education Advisory Committee (SCPEAC)

NOTICE OF DECISION

CITY OF NORTH CHARLESTON

Understanding the Basics: *Planning Commission and BOZA*

12. The following action has been taken by the SCPEAC on this application:

a) X ACCREDITED for 3.0 CE credits

b) DENIED ACCREDITATION

i. Reason: _____

c) RETURNED for more information

13. If accredited:

a) Approved Course No.: 2016-01

b) Date of accreditation: 01-07-2015

c) Comments: None

Signature of SCPEAC Representative: _____



**For further information, contact Mr. Stephen Riley, Chairman,
843-341-4701 or steve@hiltonheadislandsc.gov**

**APPLICATION FOR ACCREDITATION
OF A CONTINUING EDUCATION PROGRAM**

Note: This certification form, together with the required information referenced therein, shall be submitted to the Committee. If no objections are raised by a member of the SCPEAC within 10 working days of receipt, the continuing education program shall be considered accepted. If an objection is raised, a teleconference meeting shall be scheduled, with appropriate public notice, as soon as reasonably possible, to review the application.

Applications are due no later than 30 days prior to the first scheduled presentation of a program or class. The Committee will consider extenuating circumstances where the 30 day deadline cannot be met.

1. Name and address of organization providing or sponsoring the orientation program:

a. Organization Name: The City of North Charleston

b. Address: 2500 City Hall Lane

c. City: North Charleston

d. State: SC

Zip Code: 29419

e. Telephone: 843-740-2553

f. Email: kneely@northcharleston.org

2. Contact Information:

a. Name of Contact Person: Kriston D. Neely

b. Title: Deputy City Attorney

c. Telephone: 843-740-2553

d. Email: kneely@northcharleston.org

3. Information on orientation program:

a. Title of Program:

Understanding the Basics: Planning Commission and BOZA

b. Date(s) and Location(s) of Program:

January 18, 2016 City Hall

c. Brief description of the program and its content:

This course will discuss the basic roles of commissioners and board members. It will review current state court caases, disuss the parlimentary proceeding, and issues relevant to our City and ordinances.

4. Method of presentation (check all that apply. All sessions must have a Coordinator present):

•

- a. Presenter(s) in room with participants
- b. Live presentation via close circuit TV, video conferencing, or similar; Coordinator present
- c. Videotape or CD/DVD presentation; Facilitator present
- d. Webinar or similar; Coordinator present
- e. Other (describe) _____

5. Description of materials to be distributed (check/fill in all that apply):

a. Powerpoint handout:	<input checked="" type="checkbox"/>	number of slides: 144
b. Other handouts:	<input checked="" type="checkbox"/>	total pages:
c. CD/DVD:	<input type="checkbox"/>	
d. Other (describe)	_____	
e. None:	<input type="checkbox"/>	

6. When are materials distributed?

- a. Sent before the program:
- b. Handed out at the program:
- c. Other (describe) _____

7. Required attachments (5 copies distributed as described below):

- a. Course description and outline including estimated time per section
- b. Brochure, if available
- c. Course Presenter(s) and credentials (include brief resumes and qualifications)
- d. Copies of all handouts and course materials
- e. Evaluation Form and method of evaluation (each program must be evaluated)

8. Instruction Time:

- a. Indicate the total minutes of instruction time: Three and one-half hours.

Note: Breaks, meals and introductions should not be counted. A reasonable period of Q and A should be included and counted.

9. Method of Advertisement:

- a. Describe the ways in which you intend to let potential attendees know about this orientation program:
Email. _____

10. Certification. By Submitting this application, the applicant agrees to:

- a. Allow in-person observation, without charge, of the Program by the SCPEAC Committee members. Any food, travel or lodging costs will be the responsibility of the Committee member(s).
- b. The applicant acknowledges that its approval for this Program may be withdrawn for violations of the regulations or failure to comply with the agreements and representations contained herein and as may be required by the SCPEAC.

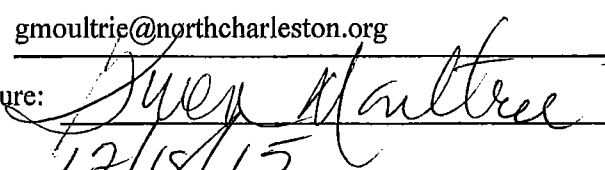
i. Name of Organization: City of North Charleston Planning and Zoning Department

ii. Name of Representative: Gwen Moultrie

iii. Title: Director

iv. Phone: 843-740-2572

v. Email: gmoultrie@northcharleston.org

vi. Signature: 

vii. Date: 12/18/15

Application and all Materials may be submitted in one of the following means:

- 1. Electronic submission to each of the committee members listed below via email; or
- 2. Hardcopy via U. S. Mail, 1 copy each to each committee member; or
- 3. Electronic submission of the application via email to all committee members, and submit hardcopy supporting materials via U.S. Mail to each member, if materials not available electronically.
- 4. Please cc all applications to the Chairman's assistant, Vicki Pfannenschmidt at vickip@hiltonheadislandsc.gov

To access committee members email and postal addresses visit the link below:

<http://www.scstatehouse.gov/scpeac/members.htm>

Course: Understanding the Basics: Planning Commission and Board of Zoning and Appeals

Credits: Three (3). Course is actually 3.5 hours.

Course Description: The workshop is designed to provide a concise explanation of the duties, authority, and methods on which the Planning Commission and Board of Zoning and Appeals function effectively. It will also provide a basic overview of relevant and recent zoning or planning judicial opinions as a method of explaining how their decisions can result in lawsuits against the City. The goal of this course is to equip both the Planning Commission and Board of Zoning and Appeals with a sufficient foundation to properly reach decisions in line with the City's comprehensive plan.

Time Breakdown:

1. Introduction/Overview 10mins
2. What's Law Got to Do with It? A Case Law Update 50 mins
3. Parliamentary Procedure 45 mins
4. In-depth Review of the Planning Commission and BOZA (Including Structure, Authority, Comprehensive Plan, Street Names, Variances, etc.) – 60 mins
5. FOIA Regarding Meetings and Public Records 15 mins
6. Sign Violations 10 mins
7. Ethical Conflicts of Interest 5 mins
8. Questions/Answers 15 mins

Course Presenter and Credentials

Ross A. Appel, Attorney with McCullough Khan, LLC.

Kriston D. Neely, Attorney, City of North Charleston

Francie D. Austin, Attorney, City of North Charleston

Understanding the Basics: Planning Commission and Board of Zoning and Appeals

Evaluation Form

1. The presenter communicated ideas and concepts clearly.

1 – Strongly agree; 2 – agree; 3 – neutral; 4 – disagree; 5 – strongly disagree

2. The presenter demonstrated a thorough grasp of the course material.

1 – Strongly agree; 2 – agree; 3 – neutral; 4 – disagree; 5 – strongly disagree

3. The presentation was well organized.

1 – Strongly agree; 2 – agree; 3 – neutral; 4 – disagree; 5 – strongly disagree

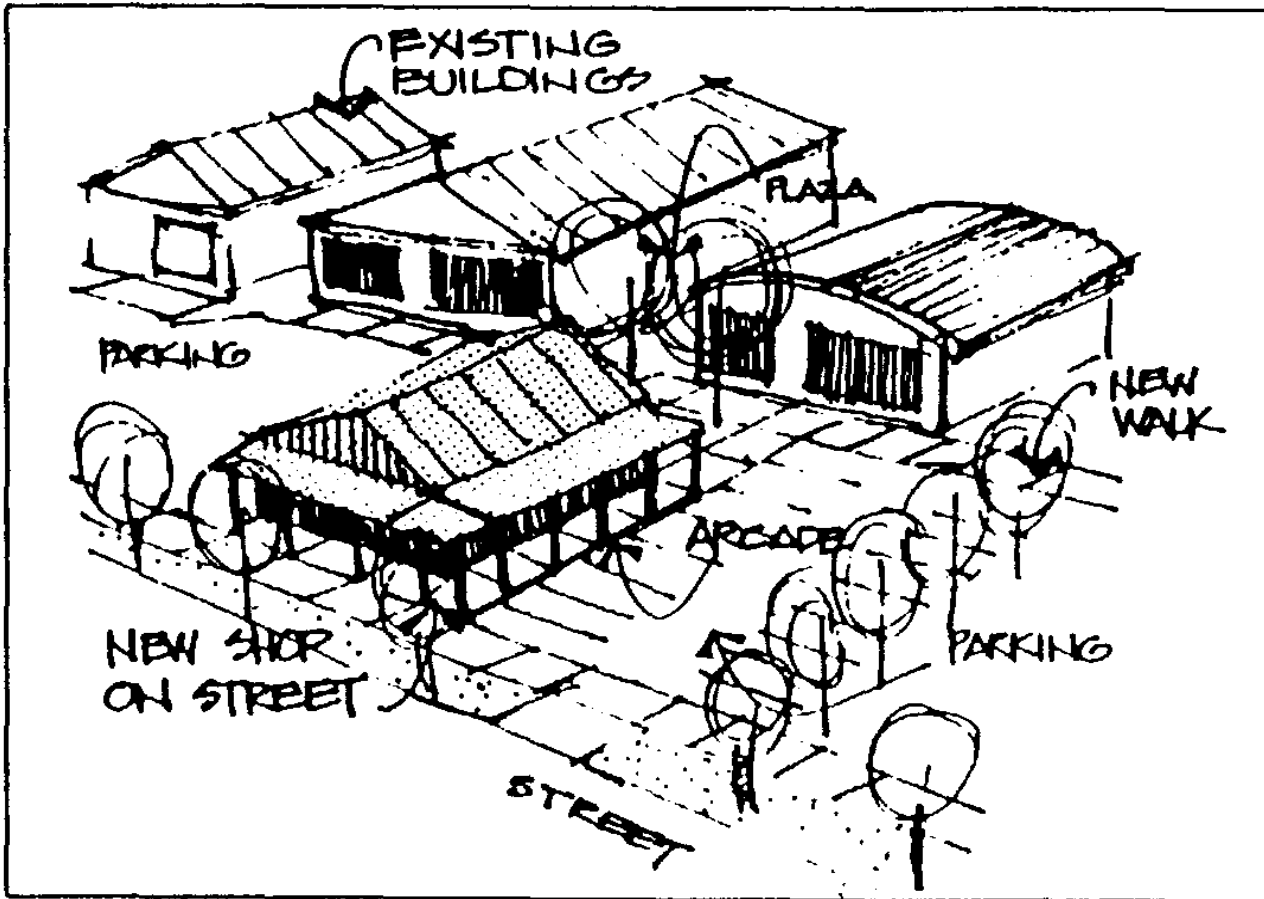
4. The subject matters discussed was appropriate for my duties on the Planning Commission or BOZA.

1 – Strongly agree; 2 – agree; 3 – neutral; 4 – disagree; 5 – strongly disagree

5. Provide three things that were beneficial from this presentation.

6. Provide any suggestions on how the presentation can be improved.

7. I would be interested in learning about the following topics at a later date.



Annual Training for BOZA and Planning Commission

Presented by City of North Charleston's Legal Dept.



Overview

- Appeals
- Variances
- Conditional Variances
- Spot Zoning
- Buffers
- Parliamentary Procedure

Variations and Appeals

Highlights of the Zoning Process

- Applicant commits a violation or asks for permission of the ZA
- ZA makes a determination
- Applicant appeals to BOZA
- BOZA makes a decision
- Decision is appealed to Circuit Court



Zoning Administrator

- ZA is designated and duly charged with the authority to administer and enforce the provisions of the City's zoning ordinance.
- If a violation is found, she notifies the violator and orders him to correct it.
- Identifies when a variance request is necessary.

What's the punishment for the ticket?

- Fine not exceeding \$500.00
- Imprisonment for no more than 30days
- Each day is a violation.



Appeals of a BOZA Decision

“On appeal, the findings of fact by the Board shall be treated in the same manner as findings of fact by a jury, and the court may not take additional evidence.”

S.C. Code Ann. § 6-29-840(A)



Appeal of BOZA Decision

“In reviewing the questions presented by the appeal, the court shall determine only whether the decision of the Board is correct as a matter of law.”



So what's the basis of the appeal of a BOZA decision?

A BOZA decision can be overturned if it is:

- Arbitrary and capricious OR
- Has no reasonable relation to a lawful purpose OR
- An abuse of discretion
- An error of law



Meeting & Notice Requirements

- FOIA applies
- Public meeting
- Public notice –
 - publication generally
 - posting notice near property (variance or special exception)



Where does BOZA / ZBA come in?

- Hear appeals when applicants disagree with ZA's findings.
- Hear appeals for variances.

BOZA Basics

- Chairman – 1 year term
- Secretary – Appointed by the board
- Members – 7 members

Voting /Quorum

- Majority rules
- Exception: Reversing the ZA requires FOUR votes

Appeals of ZA's Findings/Decisions

- What can be appealed?
 - Error in a requirement
 - Error in a decision
 - Error in enforcing the zoning ordinance
- Who can appeal the ZA's decision?
 - The “Aggrieved” Party

Appeals of ZA's Findings/Decisions

- Most common examples –
 - Nonconforming uses / grandfathered uses
 - Mobile homes
 - Duplexes in R-1
 - Sexually Oriented Businesses

Appeal Formula

- Totality of the Circumstances Test
- Procedure --
 1. An applicant approaches Gwen claiming that he should be allowed to continue his nonconforming use (height, mobile home, business in R1, etc.).
 2. Gwen looks at the facts to determine if the status has been abandoned.
 3. If so, the applicant can appeal Gwen's decision to BOZA.
 4. BOZA looks at the TOC to determine if the abandonment has occurred.

Nonconforming Uses

- Nonconforming uses that lose their status must comply with the statute.
- Must be a legal nonconforming use.
- When a violation occurs, an appeal can be filed.

Variances – The **Big** Picture

- A variance may be granted in a case of unnecessary hardship
- Bright-Line Test (Four Requirements)

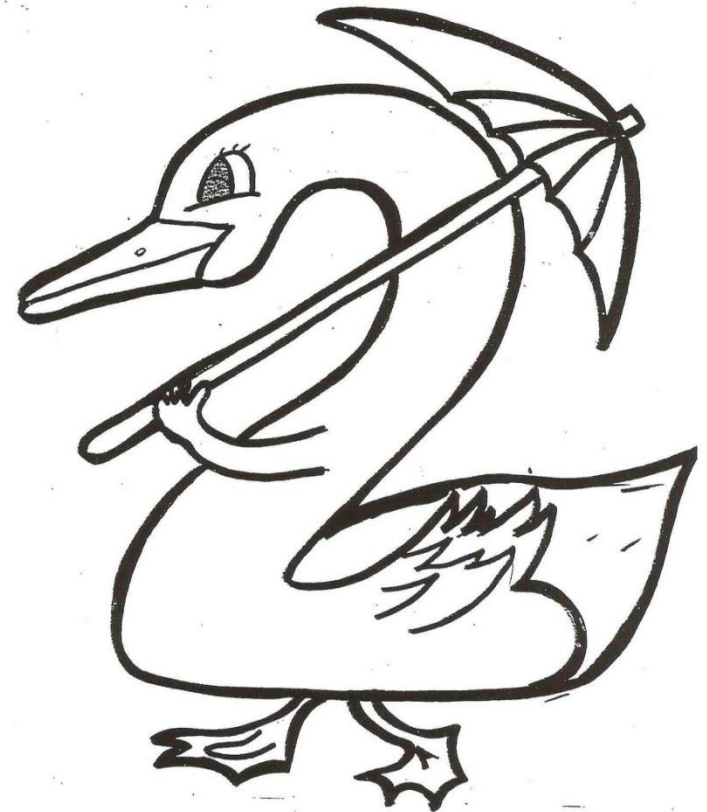
Variance Requirement

- Extraordinary and exceptional conditions pertaining to the particular piece of property



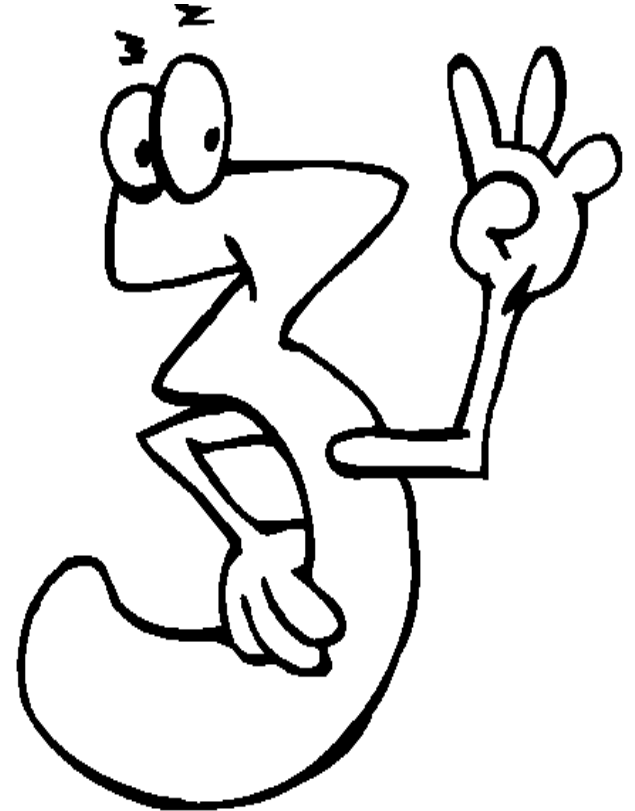
Variance Requirement

- These conditions do not generally apply to other property in the vicinity.



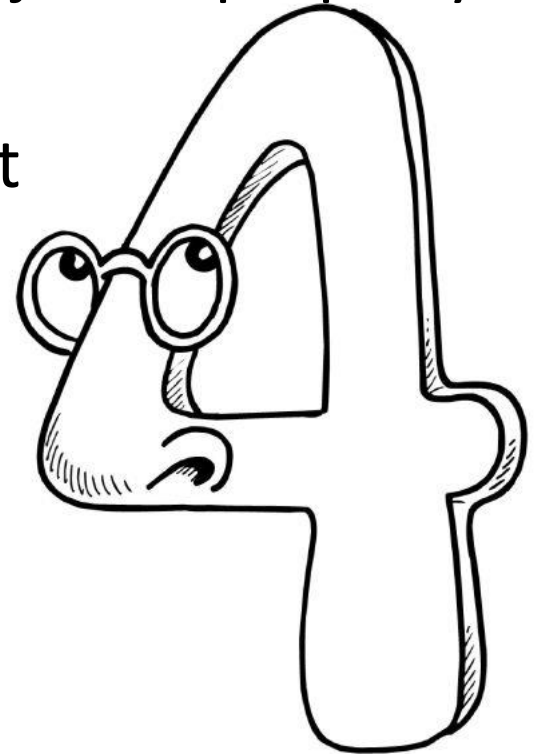
Variance Requirement

- Application of the ordinance here would prohibit or unreasonably restrict the use of the property



Variance Requirement

- The variance will not:
 - be of substantial detriment to adjacent property
OR public good AND
 - harm the character of the district



Can't grant a variance . . .

- Can't grant a variance that would establish a use not otherwise permitted in a zoning district.



Can't grant a variance . . .

- Can't grant a variance that would extend physically a nonconforming use of land.



Can't grant a variance . . .

- Can't grant a variance that would change the zoning district boundaries shown on the official zoning map.



Things you shouldn't consider:

- Profitability
- One owner for both parcels



Application of Variance Elements

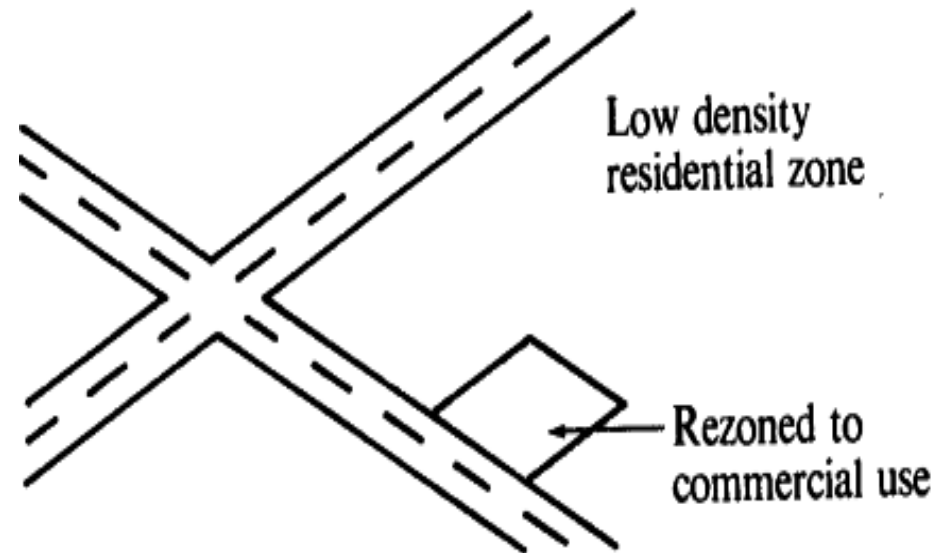
Review Packets

Conditional Variances

- Variance is allowed as long as the condition is met.
- Ceases when

Spot Zoning

- The “process of singling out a small parcel of land for use classification totally different from that of the surrounding area, for the benefit of owners of that property and to the detriment of other owners.”



Bob Jones Univ. v. City of Greenville, 243
S.C. 351 (1963).

Spot Zoning

- Invalid where the ordinance:
 - does not form a part of a comprehensive plan of zoning or
 - is for mere private gain as distinguished from the good of the common welfare.

How do Courts View City's Spot Zoning

- Consider the Following Factors:
 1. Whether the rezoning creates an injustice that is clearly shown; and
 2. Whether the zoning adheres to the City's comprehensive plan; and
 3. Whether the rezoning promotes the good of the common welfare.

How do Courts View City's Spot Zoning

Take-a-ways :

1. A Court cannot substitute its “wisdom” in lieu of the municipality’s decision.
2. City’s the decision can’t be “so unreasonable as to impair or destroy citizen’s constitutional rights.”
3. The alleged “spot zoning” is okay if it is fairly debatable.

How do Courts View City's Spot Zoning

Easiest Take-A-Way:

- Decision can't be *arbitrary* or *unreasonable*.



Buffers



PRIVATE PROPERTY

NO

USING IT FOR
ANYTHING BUT YOU
STILL HAVE TO PAY
TAXES ON IT

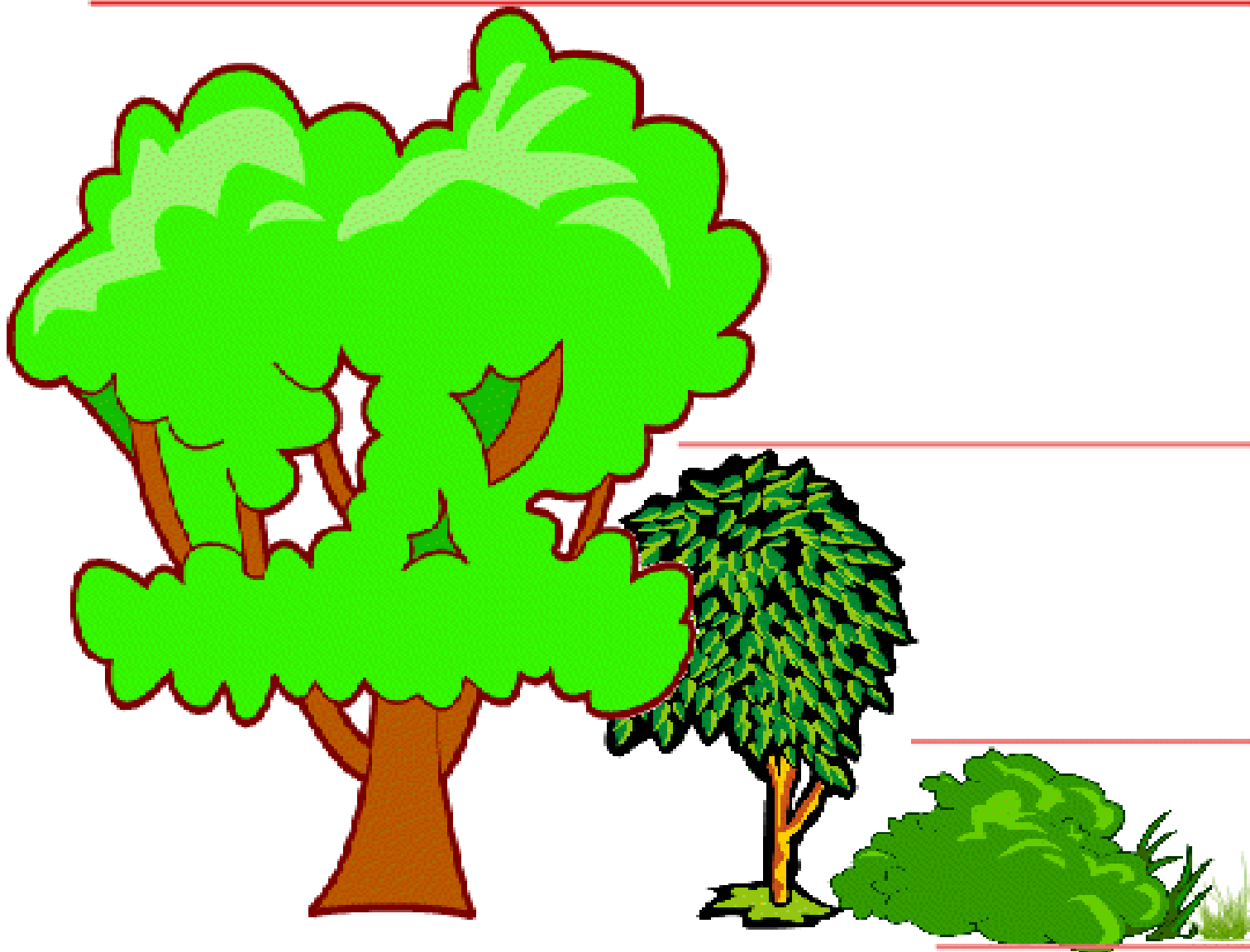
ALL OFFENDERS WILL BE PROSECUTED
TO THE FULL EXTENT OF THE LAW

Buffers

- Definition: Unit of yard that consists of plantings, fences, walls, and other screening devices.
- Location: Outer perimeter of a lot or parcel extending to the boundary line.

Design of TYPE A Buffers

- Used between a proposed use and the adjacent street.
 - Low-density landscaping
 - Minimum of 5 feet
 - Minimum of 35 shrubs, 2 canopy trees, and 4 understory trees



Design of TYPE B Buffers

- Used to block visual contact between uses.
 - Medium-density screening
 - Minimum of 10 feet
 - Minimum of 2 deciduous trees and 8 evergreen plants

Design of Type C Buffers

- Used to exclude all visual contact between uses.
 - High-density screening
 - Minimum of 15 feet
 - Minimum of 2 deciduous trees and 17 evergreen plants or understory trees

Location of Buffers

- Multi-family, mobile home park, or nonresidential *next to* the street ?
- Type A Buffers



Location of Buffers

- Mobile home park, multi-family, mini warehouse , institutional or commercial use *next to* single-family use?
- Type B Buffers



Location of Buffers

- Industrial, warehouse outdoor storage, etc., next to residential district?
- Type C Buffers



Location of Buffers

- A residential development located next to an industrial use?
- Type C Buffers



Location of Buffers

- A new detached, single family home next to a Dollar General?
- None



Buffer Maintenance

- Property owners are required to maintain buffers.
- Can be used as “passive recreation” but no plant material can be removed.
- Can't use as parking.

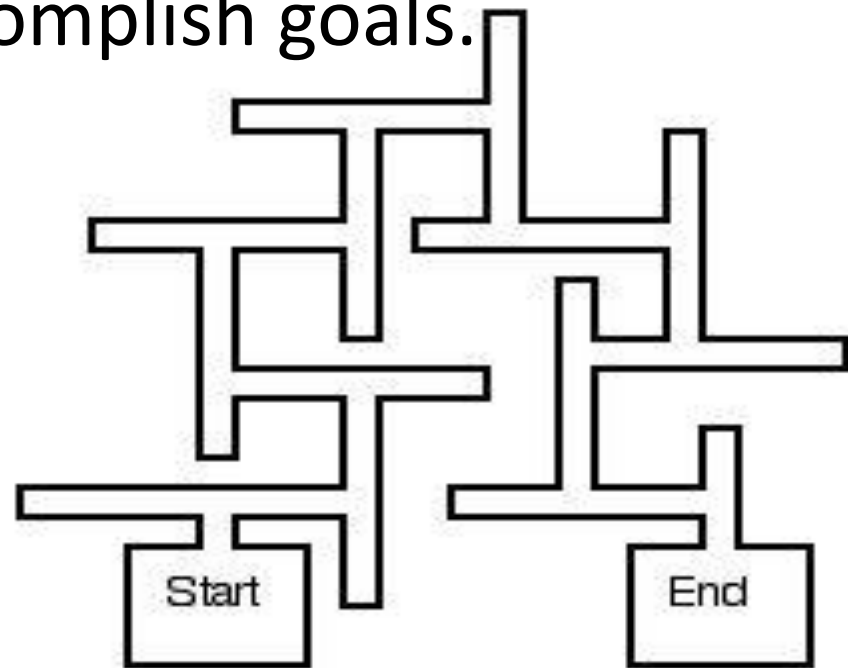
Fence as a Buffer



- Allowed when the required buffer area can't reasonably be met.
- Property line
- Requires zoning approval
- Finished side must be facing adjoining parcel

Purpose of Procedure

- Produce productive, effective meetings.
- Ensure meetings are conducted in a fair and democratic manner.
- Help decision makers accomplish goals.



Quorum

- The number of members required in the by-laws to hold a legal meeting.
- Majority -- Half plus ONE member
- Planning Commission Quorum – Five (5) Members
- BOZA Quorum – Four (4) Members

What if there isn't a quorum?

- If there isn't a quorum present, the chair can do the following:
 - Adjourn
 - Recess
 - Attempt to get a quorum present

Motions

- Proposal or resolution by a member to take a certain action or express a certain view.
- Different types:
 - Main Motion – Introduces a principal issue.
 - Motion to Table – Lays aside a pending question for an indefinite period of time.
 - Motion to Amend – Friendly amendment/slight change to the main motion.
 - Previous Question – Ends debate; forces vote
 - Point of Order – Used to show actions violate procedure.

Six Steps of Motion Practice

A member makes a motion.



Another member seconds the motion.



Chairperson restates the motion.



Members debate the motion.



Chairperson puts motion to a vote.



Chairperson reports vote.

What about a draw?

- If there is a tie – meaning equal “ayes” and “nays”:
 - The motion fails.
 - General Rule: If members are required to make a decision on an issue, they must continue discussion and or make another motion.
 - City’s Rule: The motion fails.



How does it usually work?

- MEMBER: “Mr. Chairman, I move that we adopt the recommendation of the department.”
- CHAIR: “I second that motion.”
- CHAIR: “Is there any discussion?”
 - The members discuss the motion, only.
 - The maker of the motion is not allowed to speak against the motion but may vote against it.
- CHAIR: “Is there any further discussion? If not, those in favor, say ‘aye.’ Those opposed, ‘nay.’”
- CHAIR: “The ayes have it; and the motion to adopt the recommendation of the department passes.”

10 Step Format for Agenda Items

1. Announce the agenda item.
2. Staff/Chair reports on the item.
3. Any clarifying technical questions.
4. Public comment.
5. Invite a motion.
6. Second a motion.
7. Understand the motion.
8. Discussion / Debate
9. Take a vote.
10. Announce the result.

Basic Motions

- Basic motion.
- Motion to amend.
- Substitute motion.



When can we DEBATE?

- General Rule: Motions are subject to debate (discussion).
- Exceptions:
 - Motion to adjourn.
 - Motion to recess.
 - Motion to fix the time to adjourn.
 - Motion to table.
 - Motion to limit debate.

VOTE: Majority vs. Supermajority

- General Rules:
 - Most motions require a simple majority.
 - A tie vote is not a majority.
- Exceptions:
 - Motion to limit debate.
 - Motion to close nominations.
 - Motion to suspend the rules.

Can I reconsider that motion?

- Motion to Reconsider
 - This is an exception to normal procedure.
 - Must be made at the same meeting.
 - Can only be made by members who voted in the majority for the original motion.
 - Requires a majority vote.
 - If the motion to reconsider passes, the original motion is back.

Courtesy & Decorum

- General Rule – Remember the golden rule.
- Limits on discussion.
- Members can interrupt speakers if an exception exists –
 - Point of Privilege (Personal Issue).
 - Point of Order (Procedural Issue).
 - Appeal of the Chair's Ruling (Decision).
 - Orders of the Day (Agenda only).
 - Withdraw a motion.
- Legal counsel shall act as parliamentarian.

ZONING AND PLANNING IN-DEPTH

Planning Commission

- Appointed by the Mayor.
- Approved by Council.
- Consists of eight (8) members.
- Four-year terms.
- No compensation (except for expenses).

Planning Commission

- Functions, powers, and duties of local planning commissions:
 - Undertake a continuing planning program for the physical, social, and economic growth, development, and redevelopment of the area.
 - Individual powers:
 - Revise periodically redevelopment plans
 - Prepare and recommend:
 - Zoning ordinances
 - Regulations for subdivision or development of land
 - Official map
 - Landscaping ordinance
 - Capital improvements program

Planning Commission

- Planning Commission, its members and employees, in performance of its functions, may enter upon any land with consent of the property owner or after ten (10) days' written notification to the owner of record, make examinations and surveys
- Liable for any injury or damage to property.

Planning Commission

- Members elect a chairman and a vice-chairman.
- Serve for one (1) year; eligible for reelection.
- Secretary is appointed and can be an employee or a member of the commission.

Planning Commission

General Powers

Prepare and revise the comprehensive plan.

Prepare and recommend zoning ordinances and resolutions.

Prepare and recommend subdivision of land.

Recommend changes to the zoning ordinance and map of the city.

Name City Streets

Main Focus of the
Planning Commission

Evaluating

Potential Changes to the
Zoning Ordinance

Planning Commission

NO amendment to the Zoning Ordinance shall be lawful unless proposed by or first submitted to the planning commission for review and recommendation!

Planning Commission's Comprehensive Plan

- Commission must review as often as necessary based on the following factors:
 - Changes in growth,
 - Direction of development taking place in the community; or
 - Economic setbacks (loss of jobs).
- Must reevaluate the elements at least every five (5) years; and must update every ten (10) years.

Planning Commission – Comprehensive Plan Elements

- Population and demographics element.
- Economic development element.
- Natural resources element.
- Cultural and historical resources element.
- Community facilities element.
- Housing element.
- Land use element.
- Transportation element.
- Priority investment element.

Planning Commission & Street Names

- Planning Commission shall approve street or road names within the City in the following instances:
 - Creation of a new street or road;
 - Avoid a duplicate name to avoid confusion;
 - Change to simplify marking or give better directions;
or
 - Any good reason.
- Approval must be granted before a street or road name is listed on a plat, marking, or deed, etc.

Planning Commission & Street Names

- Must provide reasonable notice before naming or renaming a street or road.
 - Actual notice to parties affected
 - General notice to the public
- \$225.00 fee paid by applicant unless the change is initiated by the city.



Conduct the Public's
business in Public

FOIA'S MAIN GOAL

Freedom of Information Act or “FOIA”

- **SECTION 30-4-15. Findings and purpose.**
 - The General Assembly finds that it is **vital** in a democratic society that public business be performed in an **open and public manner** so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of **public policy**. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking **access to public documents or meetings**.

South Carolina's FOIA

- The proceedings and records of public bodies are subject to the state Freedom of Information Act.
- A public body is defined as “. . . any public or governmental body or political subdivision of the State, including . . . municipalities, . . . or any organization, corporation or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions ...” *Section 30-4-20(a)*.
- Public Bodies include Council, the BOZA, Council Committees, and the Planning Commission.

FOIA's Main Rules

- All written communication by elected officials is subject to disclosure unless protected by privilege. (Ex. Attorney-client; privacy)
- Communication by one or more members of a public body to a “quorum” of the body could constitute a “meeting”.
- All “meetings” are subject to all rules of FOIA – including notice requirements.

Meetings

**MOST COMMON COMMUNICATION
THAT ARE SUBJECT TO FOIA**

Meetings

- Assembling a quorum
- Any public body
- Where business is conducted or discussed
- No vote is necessary

“[W]hether corporal or by means of electronic equipment”

Section 30-4-20(d).

Examples of Communications Subject to Disclosure that are Meetings

- Emails between a quorum of members about a public matter.
- “Group” email.
- Series of individual emails.
- Voting is not required.

North Charleston City Council Issue

- City attorney and members of council had several small, secret meetings about removing power from the mayor.
- After several meetings, council voted to strip the mayor position from key authority.
- Only the vote was on record.

D.C. Council

(Washington, DC) March 2012

Received the following FOIA request in March 2012 from the Open Government Coalition:

"Any and all e-mails sent or received within the past sixty (60) days by current Councilmembers using private (non-governmental) email accounts, but only to the extent that such e-mails were generated in the course of the Councilmember's official duties - i.e., were received or sent by the Councilmember in his or her role as a public official."

Hill v. Fairfax Co. School Board (Fairfax, VA) June 2012

- **FACTS:** A school board voted to close a local school after discussing the matter through email prior to public vote.
- **PROCEDURE:** Case went to the State Supreme Court.
- **ISSUE:** Whether the particular email exchanges constituted a meeting.
- **OUTCOME:** Court sided with the Board based on the timing between messages.

COMMUNICATIONS SUBJECT TO DISCLOSURE THAT ARE NOT MEETINGS

Public Records

Public Records

- Any record that is in possession of a public body.
- Includes tangible documents, emails, electronic files, etc.
- Facebook
- Twitter
- Skype

Section 30-4-20(c).

Examples of Communications Subject to Disclosure that are not Meetings

- Emails from a member to another member relating to a city matter.
- Emails from a member to a nonmember (all inclusive) relating to a city matter.
- Emails between members – less than a quorum -- relating to a city matter.

Connolly v. Auburn City Council

(Auburn, CA) September 2011

- Citizen (along with a non-profit) requested emails between councilmembers and organizations or companies that discussed a particular ballot initiative.
- City said no records existed.
- Citizen found documents proving emails existed.
- Citizens said no to releasing emails claiming privacy concerns.
- Lawsuit filed.
- Reached a settlement.

News-Gazette v. City of Champaign

(Champaign, IL) July 2012

- **FACTS:** Newspaper requested copies of text messages sent by council members during meetings.
- **PROCEDURE:** City council refused to disclose; went to the circuit court.
- **OUTCOME:** Court ordered disclosure.

Common Misconceptions about Public Records

- FOIA applies to government and nongovernment email accounts.
- FOIA applies to government and nongovernment computers.
- FOIA applies to communications even if deleted from email accounts. (Proof that the communication existed.)

How can we live in the Electronic Age without Triggering FOIA?

- Send emails or correspondence to executive staff for distribution to members.
- Send emails or correspondence to legal counsel asking him to review and prepare information to distribute to other members.
 - Privileged Information.



How can we live in the Electronic Age without Triggering FOIA?

- Eliminate “position” from correspondence by providing information but not an opinion or not attempting to influence others.
 - “Here is a website that explains why we should make it unlawful for cats to roam. If we just require leashes, we could manage the problem!”
 - “Take a look at this website about leash laws and cats. You might find it helpful.”

How can we live in the Electronic Age without Triggering FOIA?

- Remember the following –
 - FOIA only deals with written or recorded information.
 - Face to face meetings “Coffee Shop”
 - Telephone

How can we live in the Electronic Age without Triggering FOIA?

- Separate emails into public and personal folders.
- Think about what you are saying – Always use the “Front Page of the Newspaper” Test
- If you have any concerns or questions, contact Legal Counsel.



**Once you click the mouse . . .
You can't take it back.**

Sign Violations



Purpose of the sign ordinance

- Eliminate confusion
- Avoid distracting and unsafe signs
- Preserve open areas for beautification
- Reduce visual clutter

Top Sign Violations

- Top Sign Violations
 - Flashing Signs
 - Moving Signs
 - Abandoned Signs
 - Dilapidated Signs
 - Houses without numbers
 - Multiple Signs
 - Free standing signs
 - Entrance pairs

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Current ordinance is effective; it just needs to be enforced.

Proper procedure for enforcing the sign ordinance.

Conflicts of Interest



No Economic Benefit Allowed

Under the ethics rules, a public official is prohibited from using his office to obtain an economic benefit for himself, a member of his immediate family, an individual with whom he is associated or a business with which he is associated. S.C. Code § 8-13-700.

No Economic Interest Involved

An economic interest is an interest distinct from that of the general public in a transaction in which the public official may gain an economic benefit of \$50 or more.

S.C. Code § 8-13-100(11)(a).

If a decision affects an economic interest within the prohibition, the following steps must be taken. S.C. Code § 8-13-700(B).

1. The official prepares a **written** statement describing the matter requiring action or decision and the nature of the potential conflict.
2. The official furnishes a copy of the statement to the presiding officer who will have the statement included in the minutes.
3. The presiding officer excuses the official from any votes, deliberations and other actions on the matter.
4. The presiding officer causes the statement and reasons for disqualification to be noted in the minutes.

The Disqualified Member --

- Can stay in the meeting.
- Cannot participate in the deliberations.
- Cannot participate in the voting.



Quorum: If a bare quorum is present and a board member leaves the room, the meeting may terminate.

RECUSAL STATEMENT

Member Name: _____

Meeting Date: _____

Agenda Item: **Section** _____ **Number:** _____

Topic: _____

The Ethics Act, SC Code §8-13-700, provides that no public official may knowingly use his office to obtain an economic interest for himself, a family member of his immediate family, an individual with whom he is associated, or a business with which he is associated. No public official may make, participate in making, or influence a governmental decision in which he or any such person or business has an economic interest. Failure to recuse oneself from an issue in which there is or may be conflict of interest is the sole responsibility of the council member (1991 Op. Atty. Gen. No. 91-37.) A written statement describing the matter requiring action and the nature of the potential conflict of interest is required.

Justification to Recuse:

_____ **Professionally employed by or under contract with principal**

_____ **Owens or has vested interest in principal or property**

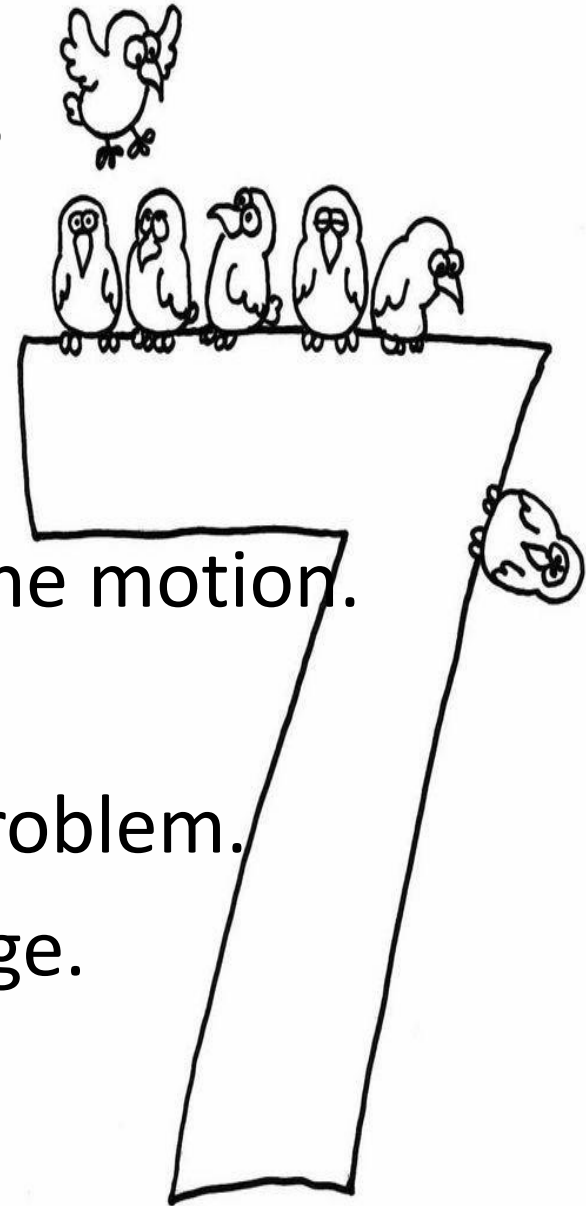
_____ **Other:** _____

Date: _____

Member

Meeting Procedure Hints

1. Don't provide legal advice.
2. Don't indicate the vote.
3. Don't explain your reason for the motion.
4. Don't conduct sidebars.
5. Don't try to solve everyone's problem.
6. Don't wait to review the package.
7. Don't take it personal.



Got Questions?



SCAPA FALL 2015

What's Law Got To Do With It?
A Case Law Update

Cases

- ***Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586 (U.S. 2013)**
- ***Furr v. Horry County Zoning Board of Appeals*, 411 S.C. 178, 767 S.E.2d 221 (Ct. App. 2014)**
- ***Helicopter Solutions, Inc. v. Hinde, Op. No. 5350*, (SC Ct. App. filed September 2, 2015)**

Koontz v. St. Johns River Water Mgmt. Dist.

- 5-4 Decision In Favor of Landowner
- Easily one of the most significant Supreme Court decisions on land use law in recent years.
- Clarifies the now decades old *Nollan v. California Coastal Commission (1987)*/*Dolan v. City of Tigard (1994)* “nexus” and “rough proportionality” test.

Koontz v. St. Johns River Water Mgmt. Dist.

- *Nollan/Dolan* Test
- Example
- Open Questions:
 - What if the permit is denied?
 - Does it only apply to physical exactions?
- *Koontz v. St. Johns River Water Mgmt. Dist.* addresses both of these questions.

Koontz v. St. Johns River Water Mgmt. Dist.

- ***Facts***

- Koontz owned land east of Orlando that consisted, in part, of wetlands.
- He proposed a conservation easement to the St. Johns River Water Management District with his development permit application.
- The District rejected his proposal, informing him that his permit would be denied unless he agreed to do one of two things: (1) scale back his planned development and give the District a larger conservation easement; or (2) maintain the proposal, but also hire contractors to make improvements to separate land owned by the District.
 - **Option #2 called for payment of money.**
- The District offered to consider alternative approaches as well.

Koontz v. St. Johns River Water Mgmt. Dist.

- ***Facts (continued)***

- Koontz found the District's demands unreasonable, and he sued under a state law governing the water districts that permits property owners to recover money damages based on an alleged unconstitutional taking.
 - State Law Claim → Fla. Stat. § 373.617(2)
- After a trial and appeal, the Florida Supreme Court held that the suit must be dismissed because a takings claim was not an appropriate response to the District's conduct. Specifically, the court held that *Nollan/Dolan* does not apply in this case for two reasons:
 - 1. Those cases dealt with conditions on land use accompanying a permit that was approved, while in this case, the permit was denied.
 - 2. This case did not involve a taking of a particular property interest – for example, a piece of land – but instead only a demand for money (to pay the contractors).
- The Supreme Court reversed on both points.

Koontz v. St. Johns River Water Mgmt. Dist.

- ***Issues***

- Does *Nollan/Dolan* apply only to cases where government approves a permit and actually gets the demanded exactions?
- Does *Nollan/Dolan* apply only to physical exactions?

Koontz v. St. Johns River Water Mgmt. Dist.

- ***Holding (First Question)***

- As to the first question, the Supreme Court unanimously held that *Nollan/Dolan* equally applies to situations where the government approves a permit or where it denies a permit.
- A contrary result would “draw a map to circumvent *Nollan* and *Dolan*.”
- NOTE: No takings claim with permit denial.
Why?

Koontz v. St. Johns River Water Mgmt. Dist.

- ***Holding (Second Question)***

- *Nollan/Dolan* extended to requirements that the property owner pay money as a condition for permit approval.
- This is the aspect of the decision that has potentially far reaching implications.
- Where to draw the line?

Koontz v. St. Johns River Water Mgmt. Dist.

- ***Holding (Second Question)***

- The Court observed that “the ‘fulcrum this case turns on is the direct link between the government’s demand and a specific parcel of real property.’”
- But, no clear test.
- Chilling Effect?

Koontz v. St. Johns River Water Mgmt. Dist.

- ***Applicability to South Carolina Practice***
 - **Additional Scrutiny Over Development Review and “Negotiations”**
 - **Legal Claims:**
 - **Equal protection**
 - **Substantive Due Process**
 - ***Gross Negligence Under Tort Claims Act***
 - **S.C. Code 15-78-60(12)**

Recent SC Case Law on Standard of Review for Challenges Over Interpreting Zoning Ordinance

- ***Furr v. Horry County Zoning Board of Appeals*, 411 S.C. 178, 767 S.E.2d 221 (Ct. App. 2014)**
- ***Helicopter Solutions, Inc. v. Hinde*, Op. No. 5350, (SC Ct. App. filed September 2, 2015)**

Furr v. Horry County Zoning Board of Appeals

- ***Facts***

- Proposed Use → 14 bed hospice facility
- “Hospice” not in the Table of Uses
- “Group Housing” & “Nursing Home” allowed in the relevant zoning district, but “Hospital” was not.
- Zoning Administrator decided it was permitted, and opponents appealed interpretation to the BZA (de novo review).

Furr v. Horry County Zoning Board of Appeals

- ***Facts (continued)***

- Proponents and Opponents introduced evidence and legal arguments before the BZA.
- BZA upheld ZA's interpretation.
- Opposition appealed the BZA's decision to circuit court.
- Circuit Court reversed the BZA, finding the ZA's interpretation was incorrect as a matter of law.

Furr v. Horry County Zoning Board of Appeals

- ***Issue***

- **By treating the interpretation of the zoning ordinance as a legal question, did the Circuit Court apply the proper standard of review?**
- **NOTE: Different standard of review in zoning cases (legal vs. factual)**

Furr v. Horry County Zoning Board of Appeals

- ***Holding***

- The Court of Appeals reversed the circuit court, and re-affirmed the BZA's decision.
- Citing *Heilker v. Zoning Board of Appeals for the City of Beaufort*, 346 S.C. 401, 552 S.E.2d 42 (Ct.App.2001), the Court held that the determination of a “use” in the zoning context is a factual determination.
- Therefore, the circuit court should have deferred to the BZA and the ZA.

Furr v. Horry County Zoning Board of Appeals

- ***Observations***

- **Day to Day Practice**
- **Significance of Standard of Review in Zoning Cases (legal vs. factual)**

Well, that cleared things up, right?

Helicopter Solutions, Inc. v. Hinde

- ***Facts***

- **Proposed Use** → “helicopter sight-seeing tour facility”
- **Relevant zoning** allowed for “sight-seeing depos,” but not helicopter depos by name
- **Staff assured applicant** proposed use was allowed
- **Applicant obtained all necessary permits** and opened for business
- **Neighbor appealed, challenging the ZA’s decision**

Helicopter Solutions, Inc. v. Hinde

- ***Facts (continued)***

- **By a 4-3 vote, the BZA overturned the zoning administrator's decision.**
- **Applicant appealed to circuit court.**
- **Circuit court upheld the BZA's findings of fact, but reversed its error of law interpreting the zoning ordinance**
- **Neighbor appealed.**

Helicopter Solutions, Inc. v. Hinde

- ***Issue***

- **By treating the interpretation of the zoning ordinance as a legal question, did the Circuit Court apply the proper standard of review?**
- **Sound familiar?**

Helicopter Solutions, Inc. v. Hinde

- ***Holding***

- Court of Appeals agreed with the circuit court, disagreed with the BZA, and reinstated the ZA's approval.
- Neighbor argued, citing *Heilker v. Zoning Board of Appeals for the City of Beaufort*, that determination of use was a question of fact and deference should have been given to the Board.
- COA disagreed, saying the ZA and BZA interpretation of the zoning ordinance was a legal conclusion; therefore, the standard of review for legal conclusions applied.
- COA agreed with the circuit court's and ZA's interpretation of the ordinance.

Helicopter Solutions, Inc. v. Hinde

- ***Observations***

- **Furr and Helicopter Solutions seem to be at odds.**
- **Is the interpretation of a zoning ordinance a factual or legal determination?**
- **Again, the stakes are high.**
- **What are we to make of these two cases, both arising out of Horry County?**



End.

What's Law Got To Do With It?
A Case Law Update

MEMORANDUM

To: The Zoning Board of Appeals (ITEMS III)
From: Gwen Moultrie, Zoning Administrator
Date: October 01, 2012
Re: Request for Variance from Article VI, Section 6-2.1, Paragraph (c)

Mr. Daniel C. Forsberg is seeking a variance on behalf of MTAV, LLC from Article VI, Section 6-2.1, Paragraph (c) relating to the 10 ft. rear yard setback requirement for the property located at 2695 Elms Plantation Boulevard (TMS# 486-02-00-014) in the B-2, General Business Zoning District and University Boulevard Overlay. The applicant, Mr. Daniel Forsberg, is designing a new medical office development and would like to position a number of condensing units within the required 10 ft. rear yard setback area. However, he is prevented from doing so by the building setback requirements for structures located in the B-2 zoning district.

The applicant, Mr. Forsberg, argues that the property owner would like to place a number of air conditioning units along the rear property line within the 10 ft. rear yard setback. He notes that the new building will exceed the 10 ft. rear yard setback but that the air conditioning units would encroach 5 ft. into the required setback. As a result, he is proposing to reduce the minimum setback from 10 ft. to five feet to allow for the placement of the air conditioning units at the rear of the site. He also argues that the alternative would be to place the air conditioning units on the roof top with screening; however, he believes this situation is less desirable.

The parcel proposed for redevelopment is positioned at the corner of University Boulevard and Elms Plantation Boulevard in the University Boulevard Overlay District. The lot is somewhat narrower when compared to other lots within the vicinity of the site with dimensions of 167' x 388' which in this case the lot turns out to be twice as long as it is wide. Additionally, because the parcel has dual frontage, the site requires a 15' buffer to be installed along University Boulevard and buffering along Elms Plantation Boulevard which is also typically not the norm but unique to corner parcels. As a result of the buffer requirement, portions of an area along Elms Plantation Boulevard that ordinarily would have been devoted to parking is now buffer area. The parking spaces and driveway aisles have been relocated further within in the site further restricting the manner in which the applicant is able to develop without encroaching in required setbacks. The applicant's request of a 5 ft. setback reduction will only result in the accessory use structures being placed at the rear of the site enclosed between the building and 8 ft. opaque privacy fence. As all other applicable setback requirements will be met and the

proposal will not have a detrimental impact on the adjacent properties or to the public good, I am recommend approval of the requested variance.

City of North Charleston, SC

APPLICATION FOR ZONING VARIANCE
CITY OF NORTH CHARLESTON ZONING ORDINANCE

DATE: 9.10.2012
\$75.00 Application Fee

TMS# 486-02-00-014 ZONING B-2

LOCATION ADDRESS 2695 ELMS PLANTATION BLVD. NORTH CHARLESTON, SC 29405

REQUEST FOR VARIANCE FROM THE PROVISIONS OF ARTICLE VI, SECTION 2.1C

PARAGRAPH 2.1C, OF THE ZONING ORDINANCE RELATING TO THE AREA

YARD X, HEIGHT, PARKING, OR OTHER

PROVISIONS OF THE REGULATIONS.

PRESENT USE OF PROPERTY: OFFICE

PROPOSED USE OF PROPERTY: OFFICE

Applicant/Owner/Representative

Applicant FORSBERG ENGINEERING & SURVEYING, INC.

Print Daniel C Forsberg Signature [Signature]

Address P.O. BOX 30575 CHARLESTON, SC 29417

Phone # (Home) N/A Phone # (Work) (843) 571-2622

Owner(s) (If different from applicant) MTAV, LLC.

Print Signature

Address 200 FERRY STREET MOUNT PLEASANT, SC 29464

Phone # (Home) Phone # (Work)

Representative (If different from applicant)

Print Signature

Address

Phone # (Home) Phone # (Work)

City of North Charleston, SC

A SITE PLAN SHOWING THE FOLLOWING MUST BE SUBMITTED WITH THIS APPLICATION:

- X 1. SITE PLAN (Showing all existing and proposed buildings, roads, driveways, 9' x 19' minimum parking spaces, fences, etc.) (10 Copies Required)
- X 2. STATEMENT OF APPELLANT containing the following:

THE FOLLOWING ISSUES MUST BE ADDRESSED AS PART OF THE APPLICATION PROCESS:

A. Please identify the particular requirements of this ordinance which prevent the proposed use or construction.
10' SIDE SET BACK AS APPLIED TO A/C UNITS.

B. Indicate any extraordinary and exceptional conditions of the subject property which prevent compliance with said requirements of this ordinance.
REDEVELOPMENT OF AN EXISTING PARCEL. THE NEW BUILDING WILL EXCEED THE SIDE YARD SETBACK BUT THE A/C UNIT WILL NOT.

C. What is the minimum reduction of the requirements of this ordinance which would be necessary to permit the proposed use or construction?
10' TO 5'

D. Identify the particular hardship which would result if said particular requirements of this ordinance were applied to the subject property.
THE UNITS COULD POSSIBLY BE SITUATED ON THE ROOF WITH SCREENING. WE BELIEVE THIS IS THE LESS DESIRABLE ALTERATION.


Signature of Applicant

THIS APPLICATION MUST BE COMPLETED IN ITS ENTIRETY BEFORE SUBMITTAL.

- 1. Forwarded to the Zoning Board of Appeals.
- 2. This application with supporting documents meet all applicable regulations of the Zoning Ordinance except indicated.

Scheduled for _____ Zoning Board of Appeals Meeting
Form corrected February 2008

MEMORANDUM

To: The Zoning Board of Appeals (ITEMS VI)

From: Gwen Moultrie, Zoning Administrator

Date: February 04, 2013

Re: Request for variance from Article VI, Section 6-1, Paragraph (c) 3 (a)

Ms. Linda Mann is seeking a variance from Article VI, Section 6-1, Paragraph (c) 3(a) relating to the location of a detached accessory use structure for the property located at 3073 Nantuckett Avenue (TMS# 484-08-00-427) in the R-1, Single Family Residential Zoning District and Ladson Overlay / Council District 2. The applicant, Ms. Mann, would like to place an accessory use building in her side yard but is prevented from doing so because the Zoning Ordinance relegates accessory use structures to rear yards and makes no provision for them in side yards. According to our Zoning Ordinance, the rear yard is defined as the area between the rear wall of a house and the rear property line. The applicant has already poured the foundation without the benefit of a building permit or zoning review and is now seeking a variance to enable her to place the accessory use structure within the side yard.

Ms. Mann argues that the foundation for the accessory use shed was poured in the side yard prior to her learning about the provision of the ordinance that requires these types of structures to be placed in the rear yard. Ms. Mann further argues that by allowing the shed to be placed in her side yard this would prevent the rear yard from becoming cluttered. Additionally, Ms. Mann explains that adherence to the application of the ordinance would cause a hardship as she would lose the \$1,000 she has already paid for the work to be performed plus additional monies would have to be spent paying to have the foundation removed. Lastly, she asserts that she would lose value in the back yard area due to the shed being placed in the middle of the rear yard because of the existing drainage easement.

The applicant began performing the work without the benefit of an approved building permit or without receiving zoning approval back in April 2012. As a result, she is now seeking relief by a way of a variance asserting that the exceptional or unique conditions are: 1. the foundation has already been pour in the side yard; 2. she has already paid \$1,000 to have the foundation poured and additional monies would be required to pay for the removal of the foundation from its present location; 3. placing the shed in the rear yard would lead to clutter since the shed would have to be placed in the back yard due to an existing easement. Staff believes that the hardship the applicant is presently experiencing is the result of having work performed without the benefit of zoning approval or an approved building permit application rather than out of a hardship from the City's regulations. She argues that there is an existing drainage easement on the property but

she has not provided any proof that an encroachment permit was denied by our Public Works Department. It appears that the hardship the applicant is presently experiencing is the result of her own actions and not the result of the City's regulations. Consequently, I recommend denial of the requested variance.

APPLICATION FOR ZONING VARIANCE
CITY OF NORTH CHARLESTON ZONING ORDINANCE

DATE: 14 Jan 13
\$75.00 Application Fee

TMS# 484-08-00-427 ZONING R-1

LOCATION ADDRESS 3073 Nantuckett Ave. N. Charleston 29420

REQUEST FOR VARIANCE FROM THE PROVISIONS OF ARTICLE 6, SECTION 6-2

PARAGRAPH 2 OF THE ZONING ORDINANCE RELATING TO THE AREA _____

YARD Side, HEIGHT -, PARKING -, OR OTHER _____

PROVISIONS OF THE REGULATIONS.

PRESENT USE OF PROPERTY: Side yard

PROPOSED USE OF PROPERTY: Shed

Applicant/Owner/Representative

Applicant Linda Mann

Print _____ Signature Linda Mann

Address 3073 Nantuckett Ave

N. Charleston, SC 29420

Phone # (Home) _____ Phone # (Work) _____

Owner(s) (If different from applicant) _____

Print _____ Signature _____

Address _____

Phone # (Home) _____ Phone # (Work) _____

Representative (If different from applicant) _____

Print _____ Signature _____

Address _____

Phone = (Home) _____ Phone = (Work) _____

A SITE PLAN SHOWING THE FOLLOWING MUST BE SUBMITTED WITH THIS APPLICATION:

1. SITE PLAN (10 Copies) (Showing all existing and proposed buildings, roads, driveways, 9' x 19' minimum parking spaces, fences, etc.)
2. STATEMENT OF APPELLANT containing the following:

THE FOLLOWING ISSUES MUST BE ADDRESSED AS PART OF THE APPLICATION PROCESS:

A. Please identify the particular requirements of this ordinance which prevent the proposed use or construction.

I have laid the foundation in the Sideyard, prior to finding out it was subject to the ordinance.

B. Indicate any extraordinary and exceptional conditions of the subject property which prevent compliance with said requirements of this ordinance.

We hoped to use the Sideyard to prevent cluttering the backyard. The foundation has been laid prior to finding out we needed a permit.

C. What is the minimum reduction of the requirements of this ordinance which would be necessary to permit the proposed use or construction?

Allowing accessory building in the Sideyard without attachment to the home.

D. Identify the particular hardship which would result if said particular requirements of this ordinance were applied to the subject property.

I would lose the \$1000.00 paid for foundation plus pay for removal. As the homeowner I believe I would lose value by losing the backyard area, due to easement placement, the shed would be in the middle of backyard.

[Signature]
Signature of Applicant

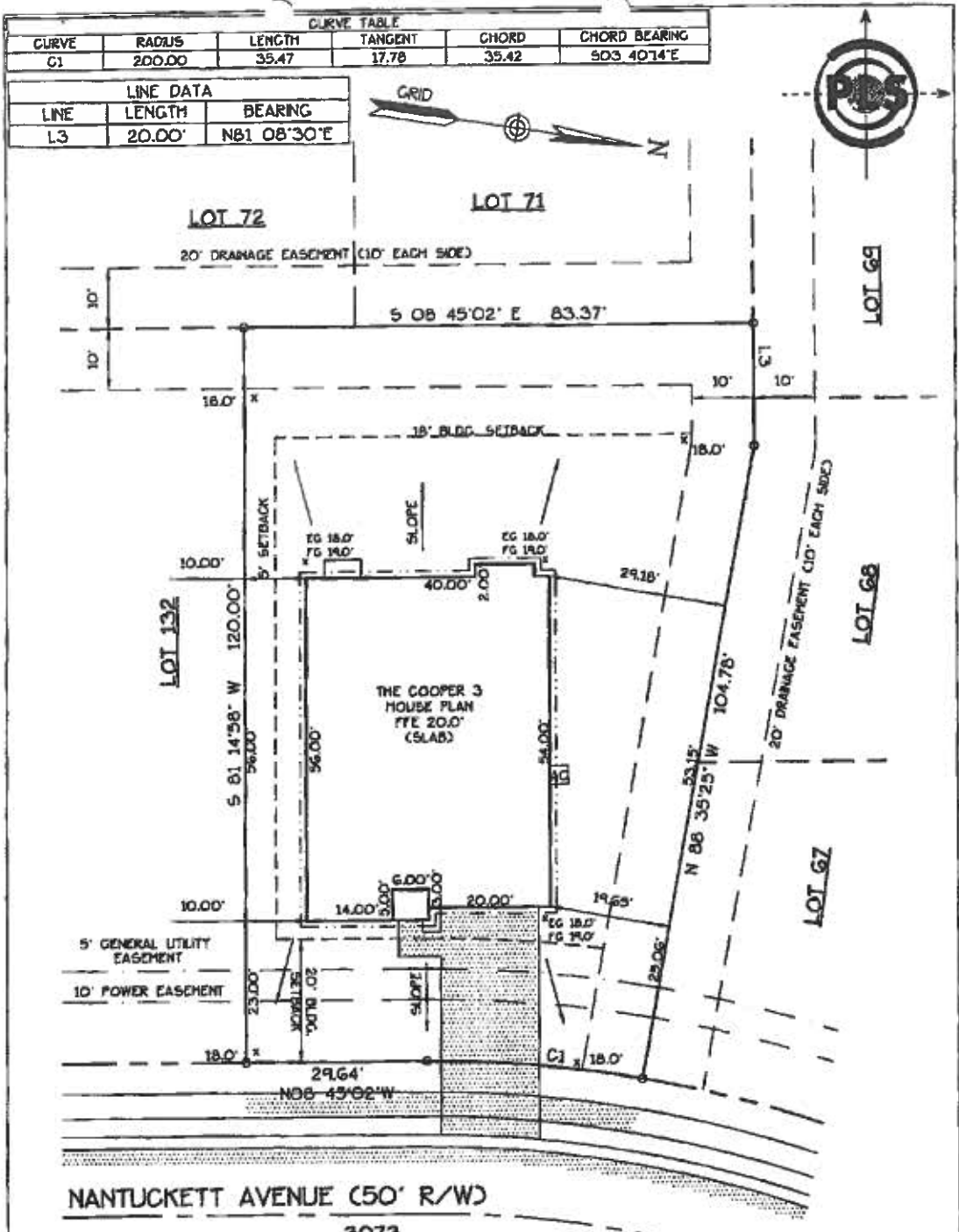
THIS APPLICATION MUST BE COMPLETED IN ITS ENTIRETY BEFORE SUBMITTAL.

1. Forwarded to the Zoning Board of Appeals.
2. This application, with supporting documents, meet all applicable regulations of the Zoning Ordinance except as noted.

Scheduled for _____ Zoning Board of Appeals Meeting
Form corrected June 2008

CURVE TABLE					
CURVE	RADIUS	LENGTH	TANGENT	CHORD	CHORD BEARING
C1	200.00	35.47	17.78	35.42	S03.40°14'E

LINE DATA		
LINE	LENGTH	BEARING
L3	20.00'	N81.08°30'E



NANTUCKET AVENUE (50' R/W)

TOTAL AREA FOR
LANDSCAPING IS
3432.5 sq. ft.

APPROX. AREA FOR
DRIVE AND FRONT WALK
639.4 sq. ft.



PREPARED FOR DAN RYAN BUILDERS
PLOT PLAN SHOWING LOT 132
THE RESERVE at COLONY NORTH PHASE II
 LOCATED IN THE CITY OF NORTH CHARLESTON, CHARLESTON COUNTY, SC

SCALE: 1" = 20' DATE: JULY 10, 2009
 REFERENCE: PLAT RECORDED IN PLAT BOOK L04, PAGE 277-279
 LOT MAY BE SUBJECT TO EASEMENTS AND RESTRICTIONS NOT OBVIOUS OR APPARENT TO THE SURVEYOR.
 PROPERTY APPEARS TO LIE IN FLOOD ZONE X, 45019C 0280 J, REVISED NOVEMBER 17, 2004
 FLOOD ZONE SHOULD BE VERIFIED WITH GOVERNING MUNICIPALITY BEFORE CONSTRUCTION.
 NOTE: ALL ELEVATIONS ARE ASSUMED
 GN-133PP etc

PARKER LAND SURVEYING, LLC
 1220 YEAMANS HALL ROAD, HANAHAN, SC 29410
 TEL: (843) 584-7777 FAX: (843) 584-7779

THIS PLOT PLAN DOES NOT REPRESENT A LAND SURVEY, WAS NOT
 PREPARED FOR RECORDATION, AND IS NOT SUITABLE FOR DEEDING
 OF PROPERTY. NO GROUND SURVEY WAS PERFORMED.