

Order of Items
DeSoto County Planning Commission
SPECIAL MEETING
July 10, 2003

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OLD BUSINESS

ZONINGS

4. The Neighborhood at Cedar View (610) – Application is to rezone 75.1 acres to Planned Unit Development. Subject property is located on the west side of Highway 305 and south of College Road, currently zoned Planned Unit Development.
Section 16, Township 2, Range 6
5. Jefferson Planned Unit Development (613) – Application is to rezone 96.7 acres to Planned Unit Development. Subject property is located on the southeast corner of Jaybird and Holly Springs Roads, currently zoned Agricultural.
Section 21, Township 3, Range 7

The DeSoto County Planning Commission met at 7:00 p.m. on Thursday, July 10, 2003, in the Third Floor Boardroom of the Administration Building of DeSoto County located at 365 Loshier Street, Hernando, MS. Commissioners present were: Claudia Niebanck, Ed Williams, Leonard Lindsey, Robin James, Larry Sykes, Julius Cowan, Mitch Mitchell and Mike Robison. Planning Commission Staff included: Michael Garriga, DeSoto County Planner, Merritt Powell, Director, Jim McDougal, Transportation Coordinator, Denise Dingman, Planning Commission staff and Katie Jewell, County Attorney.

Chairman Mike Robison called the meeting to order at 7:50 p.m., (Did not have a quorum at 7:00), he then asked Mr. Larry Sykes to lead the Commission in prayer.

The Neighborhood at Cedar View (610) – Application is to rezone 75.1 acres to Planned Unit Development. Subject property is located on the west side of Highway 305 and south of College Road, currently zoned Planned Unit Development. Section 16, Township 2, Range 6

Mr. Garriga presented the application and presented the staff report to the Planning Commission. Mr. Garriga also gave a copy of a letter from the City of Olive Branch to the board members. He then recognized Mr. Bob Dalhoff as being present to represent the application.

Mr. Mitchell asked if there were covenants in Tommy White's development to the north/west (Belmor Lakes) and the minimum size homes. Mr. Garriga responded saying, "yes", there are covenants and believes the homes to be 2,200 –2,400 square foot minimum. Mr. White is here tonight and could answer questions if needed. Mr. Mitchell asked for a summary of the comments from the City of Olive Branch. Mr. Garriga gave the summary, saying, Mr. Page, Planner, City of Olive Branch said this type of development is similar to what is being approved in the City of Olive Branch. He then referred mainly to the covenants which govern the type of homes, and stated the county needs a copy of the covenants to be sure all items can be enforced. He also talked about road access. (See Letter)

Ms. Niebanck asked for clarification about the number of lots in this development, she said the packet states 159 lots and originally it stated 161 lots. Mr. Garriga answered saying 156 lots is the correct number of lots. Ms. Niebanck then asked about lot sizes, house sizes in the surrounding area. Mr. Garriga responded saying the average lot size in Belmor Lakes is 30,000 square feet, with open drainage ditches. Estates of Cedar View is an AR subdivision with 1½ acres with individual treatment plants. The west and south sides to this development is rural. Bell Ridge is in the City of Olive Branch and is an R-30 Overlay.

Mr. Sykes asked for the closest property with 8,000 square foot lots? Mr. Garriga said the City of Olive Branch, on the north side of Highway 78.

Mr. Robison said the representative would be allowed 20 minutes to present his case, and the floor will be open for about 40 minutes.

Mr. Dalhoff began his presentation by saying the owners and developers of this proposal are here tonight. He added, the covenants will be provided at a later date, he also submitted a petition in support of this project with 19 property owners which are located within 1,000 feet of the property, he then read the petition. He first presented an aerial photo and talked about the change in the area. Belmor Lakes with over 100 acres, Cedar View, etc. He continued saying the City of Olive Branch has moved closer to this property and they will provide sewer for this development. He then stated the letter from the City of Olive Branch stated they do not have a problem with this development. The extension of Church Road which anticipates future growth in the area, there is also sewer in the area. Mr. Dalhoff continued saying the change in the area is visualized in the new comprehensive plan that is currently being worked on and is one reason the owners purchased this property, assuming this was happening, and in the mean time, the comprehensive plan has been delayed. Change is happening in the area, it may not be 8,000 square foot lots today, but that is changing quickly. Mr. Dalhoff then talked about the public need. He said this is the fastest growing county in the state of Mississippi, which is to be proud of as long as there is quality growth to high standards. They have consulted with realtors and they support the need for this type of development in this area. The market is changing, not just in this area, but all over the U.S. Seniors, empty nesters and young professional people are attracted to this type of development which gives them an opportunity to live in an attractive/quality home without all the up keep of a large tract of land and they enjoy the amenities in the neighborhood. By the year 2030, 1 out of 5 people will be over 55 years old. The anticipated price of these homes will be \$165,000 to \$250,000. This project will include a clubhouse, pool, sidewalk system, etc. Mr. Dalhoff continued saying, if the comprehensive plan needs to be updated, something is wrong, and there is a mistake in the zoning. The City limits are about 1,200 – 1,300 feet from this property and is in their annexation area. He then provided a site analysis and described the property, trees, ridges, drainage, drainage flows, etc. Mr. Dalhoff then gave a lot size analysis. The premiter lots are a minimum of 15,000 square feet. He then explained the common areas, lot sizes, rear access in parts of the project, location of the pool, etc. He said they do not have a problem with stubbing the streets. The service drives will be private, there will also be curb and gutter in this development. Mr. Dalhoff continued saying, the frontage of this property there would be 40' wide street scape area, and out towards the street would be a white 3 rail fence with a green hedge behind it and a row of street trees (hardwoods) which would parallel Highway 305 and behind that there would be a 6' privacy fence (back of each lot). He added, there would be a homeowners association and restricted covenants. Mr. Dalhoff then explained the buffer for this project. He said there would be a 20' landscape buffer around the inside of this property, and the tree planning space as required by the county. There are 77 lots with a minimum of 15,000 square foot lots that go to 35,000. There would be 11 lots with a minimum 12,000 square foot lots and 68 rear access lots that range from 8,000 – 14,000 square feet. The minimum home sizes would be in zone one 2,200 heated square feet, zone two 2,000 heated square feet and zone three 1,800 heated square feet, all with 2 car garages. Mr. Dalhoff then stated this is 2 lots to the acre, they want the people to have nice views from the front of their houses, and the road would be tree lined. He then explained the circulation pattern, and that they wanted to be sure everything connected.

Mr. Dalhoff then discussed the phasing plan. He said there would be four phases and explained each of those phases. Mr. Dalhoff concluded by saying, the owners are committed to this development along with the quality and value and providing a positive attitude to the community.

Ms. Niebanck asked if Mr. Dalhoff has a copy of the covenants? Mr. Dalhoff responded saying, he will get a copy to the Planning Commission, he does not have it at this point, because it is not a requirement for this phase of the application.

Mr. Robison asked if there would be an architecture control committee for this project. Mr. Dalhoff said “yes”, this is a very important part of this development.

Mr. Robison then opened the floor and asked if there was anyone here for or against this application.

1. Margaret Bird – She began by saying she is a state certified general appraiser and a broker in the state of Mississippi and has been for 30 years and she owns the 6.9 acres in the lower left of this proposed project. She then presented photos. She said there is no dedicated road all the way to this property, she owns the land. She said she does not mind it being a road, she has made her living with development. The fact that DeSoto County has been growing has made her a lot of money, but it needs to grow in the correct way. She knew when she purchased this property that some day the road would connect into this property and she does not mind the road being in front of her home, but she owns the ground, and someone needs to purchase that land from her. This property is currently zoned AR-Agricultural-Residential. This is not zoned for high density and nothing within one mile is less than a $\frac{3}{4}$ acre lot. The photo's display the end of the road and the drainage ditch. She said the area beside her property is a major drain there is a total 83 acres. The ditch is 15' deep with 3 fingers going into it. She said there are 11 lots backing up to her property and does not know how they are going to build through the ditch. The fill will need to come from somewhere, and where is the water going to go? This plan shows a retention pond that is $\frac{1}{3}$ of an acre, she has talked with engineers and there is a big question whether or not it can handle 83 acres of runoff. She then wanted to know if the county engineer has looked into the drainage issue? This is an important issue and needs to be addressed. She then asked if Dalhoff, Thomas and Daws are the same people who recommended drainage ditches for the Forest Meadows subdivision in Hernando. She continued saying there are ongoing drainage problems in that subdivision to this day. The picture being presented is nice, but who is going to enforce it and is it going to be in writing? She has 6.9 acres, and there is only two lots with one acre, everyone else surrounding this property has between 3-5 acres. She has worked her whole life for her home and land, and she does not want to see it de-valued by a subdivision that is below the quality that is surrounding it. The people in Belmor Lakes pay \$50,000 for a $\frac{3}{4}$ acre lot, and generally 20% of the home is the lot cost. There are very large homes in that subdivision, and her home is valued between \$280,000 – \$320,000 and she is not the only new big home in this area. She has vested her entire life in her home and land. Ms. Bird concluded by saying, there

is a lot of land remaining in the county and there is plenty of places to put the PUD's rather than in the middle of an AR zone with large rural residential lots. One day it may change, but until it does, she will fight tooth and nail to be sure the Comprehensive Plan reflects the quality of development and maintenance of quality development.

Ms. Niebanck then asked how long Ms. Bird has owned the property? Ms. Bird said for 7 years. Ms. Niebanck then asked when she was considering purchasing that property, did she consider the zoning of the whole area? Ms. Bird responded saying, of course she did, she is a real estate agent, she figured out what was going on there, she liked the AR zoning.

2. Tim Rudolph – He lives on Dunn Lane, and agrees with all of Ms. Bird's concerns. The only thing he has not heard is the legal justification for the rezoning. He has looked at other subdivisions and believes this subdivision should also be an AR subdivision. He is also concerned with the drainage. There are some big pipes that go under Dunn Lane and water channels through his property. He knew the ditch was there when he purchased the property, but did not realize how much water flows through that ditch until there was a good size rain. The ditch is getting bigger every year, it is 15' wide and 12' deep. When it rains it washes out the side of the ditch. Mr. Rudolph then asked for the board members to go out and look at the property before making a decision. He also realizes this property will develop, but is concerned about the type of development.
3. Ms. Lisa Rudolph – She also has many concerns and most of them are the same as Ms. Bird's. She has lived her for 4 years and loves her neighborhood. This area is zoned AR which is low density, she understands the owner has a right to develop, but wants to keep the rural atmosphere. The rural atmosphere is the reason they moved into this area. She also believes she has the right not to have someone else's commercial interest remove the atmosphere from her. Ms. Rudolph said Belmor Lakes has very nice homes and has done a good job at keeping us informed on what is going on in that area. She further explained that she is not against development, but wants to keep it AR, she is opposed to the 8,000 square foot lots. Ms. Rudolph loves the community and does not want it to change, especially with this type of development. She then wanted to know who the people are that signed the petition and what was their motivation? Ms. Rudolph concluded by saying, she hopes this board will not vote on it tonight to give them more time to work with these developers and come up with a solution that would work for everyone.
4. Charlie Jackson – He began by saying he was out of town for the last meeting, and believes the notification of ¼ mile should be changed. He continued saying, at 7:00 a.m. along Highway 305 the traffic is so bad, it is hard to get onto the road, there needs to be a traffic light, and if there is going to be an additional 300 cars out of that subdivision, it will put a strain on the traffic. This needs to be addressed now, before this application is approved. He had read in the newspaper two years ago, Bethel Road would be widened. The subdivision is fine, other than the lot square footage. Mr. Jackson concluded saying, he would like the traffic problem to be addressed.
5. Steve Milligan – 8722 Dunn Lane North, he began saying he has a five acre tract of land across from the "so called" connection road. He strongly opposes the road being

connected due to the high traffic. If this road is connected it is hardly wide enough for two cars to get down it now, what is going to be done with it then. His next concern is the home sizes on the perimeter of the property. Why would this be considered? It will bring down the property value. He also agrees with Ms. Bird's comments. Mr. Milligan continued by saying, he is concerned with the trees being removed, there are beautiful trees that are over 300 years old, and if it is not writing to preserve these trees, what is going to happen to them. He then stated he is concerned with who signed the petition, he had not seen it before, and he lives close to this development. Mr. Milligan then wanted to know about the buffer yard. Mr. Garriga read the buffer yard requirements. His last concern was if there was going to be a barrier fence between his property and this development. He has a 2 ½ acre pond and would like to prevent a drowning or something on that order, it is a big liability concern to him. He understands accidents cannot be prevented but they can be detoured. Mr. Milligan asked for a buffer yard to be constructed between his land and the development.

6. Mike Kennedy – Lives in Belmor Lakes, he came from Dallas, Texas and lived in Dickens Place for three years, the property values did not increase, due to high density and home size. They then looked at Mr. Tommy White's development (Belmor Lakes) and purchased a home and has lived there for one year. High density will lower our property values, this will effect all of us.
7. Gary Keffner - Lives at 8354 Belmor Lakes Drive. He then asked for everyone from Belmor Lakes to stand up, there was approximately 25 people. They moved to this area to get away from the city and high density developments. This development is not necessary under the current Comprehensive Plan. We will be fighting annexation from the City of Olive Branch. He is against changing this zoning from AR – PUD. This is not part of the current plan, so really this is a cut and dry issue, it cannot be done without changing the zoning. He was also concerned with the increase traffic.
8. Tommy White – Developer of Belmor Lakes, when he submitted his proposal this board made him change his plan to ¾ acre lots, due to the Comprehensive Plan. The minimum home size is 2,400 square feet heated but the average home size is 3,600 square feet. The only thing that has changed over the past ten years is Oakwood and Belmor Lakes. “What is fair”. This board needs to stick with the Comprehensive Plan, which calls for one lot per acre.
9. Kenneth Orman – He lives on Highway 305 and has lived there for 37 years. He does not have a problem with them developing the property, what he has a problem with is; people moving into the county, buying land, rubbing their hands and making a fortune. He wants everyone to go by the rules. He then said it was mentioned that the state is already acquiring land along Highway 305, well he has not heard from them. If you call the state to ask questions they cannot answer them. He has a problem with these people who never spent a Mississippi tax dollar and coming in and asking for special treatment. They need to go by the rules, one house per acre. This development will have city services, well he still does not have it and he pays city taxes.

Mr. Robison closed the floor. Mr. Bruce Niebanck stood up to speak.

At this time Ms. Niebanck recused herself, which at this point there was no longer a quorum. Ms. Niebanck was then brought back into the room. Ms. Katie Jewell, County Attorney, said it is up to Ms. Niebanck whether or not she believes there is a conflict of interest and if she should vote, but she needs to be in the room to hear the information.

10. Mr. Niebanck began by saying he is a concerned citizen of DeSoto County. He is very concerned about the explosive growth in the county. Mr. Niebanck said the staff report attempted to mask the major issue, which is the Comprehensive Plan and the land use category designation. If the Comprehensive Plan is law, it is mandated by Mississippi State Code 17-1-1 through 17-1-27 that a zoning ordinance must be consistent with the Comprehensive Plan and there must four elements in that plan. One of the elements is the land use map. He then read the rural residential section from the plan. The issue of this development should be the density, when the applicants are exceeding the 3.5 density. Mr. Niebanck then said the public has identified that there has not been a change in the neighborhood nor a public need. Mr. Dalhoff indicated the change and pointed to the Comprehensive Plan that is being updated. The applicants purchased the land accordingly to a draft plan that is not legal that states this area will be low residential. Mr. Niebanck continued saying, one person said they are working on the Comprehensive Plan and the other said it has been delayed. There has not been any public announcement that the plan has been delayed. He then talked about the RE (Residential Estate) proposal in the Comprehensive Plan. This area can eventually be at a lower density due to the RE proposal. He concluded by saying, this plan should not be heard due to the density, which is mandated by the Comprehensive Plan.

Mr. Robison once again closed the floor to the public and asked Mr. Dalhoff to return so that some questions could be answered.

Mr. Robison said he made a list of questions from the public that needs to be answered. The first question refers to the south line, Dunn lane and the ditch that runs through it, how is 11 homes going to be built in that area. Mr. Dalhoff responded by pointing to the location of the ditch, and said the acreage of that ditch being 83 acres is incorrect. He then explained the drainage issue by pointing to different locations and the amount of water coming from each of those locations. Mr. Dalhoff then made reference to the comment being made about Forest Meadows, and wanted to make clear that Dalhoff, Thomas, Daws is not an engineering firm, they are a Planning and Landscape Architecture firm.

Mr. Robison then asked about the tree planting being shown on the plan. Mr. Dalhoff responded by saying, the tree planting is in the proposed plan.

Mr. Robison then asked about the property values. Mr. Dalhoff answered saying, they expect the homes to be valued between \$165,000 – \$250,000 at the minimum square footage, people will build larger than the minimum. Mr. Robison then asked if the lots for sale would be available for custom homes or any builder. Mr. Dalhoff responded by

saying, both opportunities will be available as long as they meet the minimum square footage requirements. He added, just because a home is put on an 8,000 square foot lot, has nothing to do with the value of what is put on that lot. He has been in this business for over 30 years and knows a large expensive home can be built on a smaller lot. He also said just because a project like this goes in, it does not mean home values are lowered in the surrounding area.

Ms. Niebanck then asked if the design would be in conformity with standards? Mr. Dalhoff said “yes”, with high standards.

Mr. Robison then asked about the ditch that runs through one of the property owners property. Mr. Dalhoff said the ditch would be stabilized with a pipe, it would be underground drainage, they will not exceed current run off. There would not be any improvements off site, all improvements will be on the site.

Mr. Robison then asked if Dunn Lane would be improved with curb and gutter? Mr. Dalhoff responded by saying, in the staff report it mentions, the asphalt needs to be widened, currently there is no curb and gutter.

Mr. Robison then asked about the trees along the south property line. Mr. Dalhoff said they have no intention of removing any trees off site, we do not get on other peoples property, unless it is at there request. We want as many trees as possible. Mr. Powell replied saying, they may even be required to plant additional trees, Mr. Dalhoff agreed.

Mr. Robison then asked about the petition? Mr. Dalhoff said he did not handle the petition, the developers may want to comment on that.

Mr. Robison then stated one of the comments was regarding the buffer yard, but believes that to have been taken care. Mr. Dalhoff said “yes”, he has already explained that.

Mr. Robison then asked about the noise along Highway 305. Mr. Dalhoff at the point of the 53’ from center line, there would be a 40’ buffer zone, with a white rail fence, hedge row, street trees and privacy fence. Mr. Robison also asked about the gentleman who requested a solid fence along his property due to the pond. Mr. Dalhoff agreed to put a solid fence along his property (Mr. Milligian). There was some discussion between the audience and board members regarding the buffer yard.

There was some discussion among board members regarding lot sizes, R-30’s, etc.

Ms. Niebanck then questioned road access. Mr. Powell said the developer has agreed to access at either of the two points. Mr. Robison said he considers that part of the record, because Mr. Dalhoff pointed that out in his presentation.

Mr. Garriga said that legal justification is the most critical for a rezoning application. Mr. Mitchell asked about the Comprehensive Plan. Mr. Garriga replied saying, the Comprehensive Plan is a guide, it is not law, it is an adopted policy document. The

Comprehensive Plan is a complex document with a lot of statistic's, figures and data and the land use map is the most visible implemation tool we have for implementing the Comprehensive Plan. We are currently working under the 2010 Comprehensive Plan, it is a good document that our office refers to daily, it is how we operate, make decisions. The study began in 1991 and adopted in 1994, there is a lot of work that goes into the Comprehensive Plan. If you read the plan it recommends that the plan be updated every 5-6 years. The Comprehensive Plan is meant to be flexible, it is a guide that dictates where we want to be in a given year, state law projects 20 years. State law requires any rezoning to be justified by a change in the neighborhood, and a public need for the proposal at hand. That state statute is 17-1-17. Consistency in policy implementation is critical and this board should be commended for following the plan, but to say we cannot hear the request is inaccurate, the applicant is entitled to due process, the Planning Commission is required by law to hear any request for zoning. Ms. Katie Jewell reiterated what Mr. Garriga said, in that there must be proof that there has been a change in the neighborhood, public need, and when making the decision, give the reasons why. One of the reasons can refer to the Comprehensive Plan, but not the only reason.

Mr. James read Article 1, from the DeSoto County Zoning Oordinance, he then said this application does not conform to the Comprehensive Plan.

Mr. Robison said there is creditability in the Land Use map, and he understands it is a guide, but he cannot see justification for this request, and said it looks and feels like spot zoning. Mr. Robison said the burden of proof has not been met, and believes there has not been a change in the area that warrants a public need for this type of development.

Ms. Niebanck said she is concerned with the property values, when purchasing property people want security. She continued saying, Mr. White's development had to conform, there is nothing like this proposal in the area. Several people here tonight stated they moved out of similar developments, she then questioned the public need.

Mr. Mitchell said public need and change has not been established. He added, the traffic has increased, it was not like this 4-5 years ago. Mr. Mitchell further stated, he does not believe the residents object to development on this property, just this proposal.

Mr. Sykes stated there is only one lot that exceeds the 30,000 square feet out of 156 lots, and that is lot 85. Everything else is smaller than 30,000, which is not in conformity to the surrounding area. He said if this plan established 30,000 square foot lots, it would be more in conformity, than this type of mix.

Mr. Robison entertained a Motion.

Mr. Leonard Lindsey made a Motion to deny this application, due to the lack of evidence proving a significant change in the neighborhood to warrant a public need for this type of development. He also mentioned this project does not meet the Rural Residential land use criteria outlined on the Land Use Map thus it does not conform to the 2010 DeSoto

County Comprehensive Plan. Mr. Ed Williams seconded the Motion. The project was denied by a roll call vote of 8-0.

At 10:00 p.m. the commission took a 15-minute break.

Jefferson Planned Unit Development (613) – Application is to rezone 96.7 acres to Planned Unit Development. Subject property is located on the southeast corner of Jaybird and Holly Springs Roads, currently zoned Agricultural. Section 21, Township 3, Range 7

Mr. Robison began by stating there has been a request from several homeowners to carryover this item due to the time constraint and several homeowners have already left for the evening and for the planning board members to discuss this issue. There was some discussion regarding whether or not to carryover this item.

Mr. Ed Williams made a Motion to hear this application tonight. Mr. Mitch Mitchell seconded the Motion. The Motion fails with a 2-6 vote.

Mr. Lindsey made a Motion to carryover this item until the July 31st Planning Commission meeting. Mr. Sykes seconded the Motion. The Motion passed with a 5-2 vote.

There being no further business in front of the Commission, the Planning Commission adjourned at 10:30 p.m. These Minutes were recorded and transcribed by Denise Dingman.