



## TANEY COUNTY PLANNING COMMISSION

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**MINUTES**  
**TANEY COUNTY BOARD OF ADJUSTMENT**  
**WEDNESDAY, OCTOBER 15, 2008, 7:00 P.M.**  
**COUNTY COMMISSION HEARING ROOM**  
**TANEY COUNTY COURTHOUSE**

Call to Order:

Chairman Dave Clemenson called the meeting to order at 7:00 p.m. A quorum was established with four members present. They were Dave Clemenson, Alan Lawson, Bob Hanzelon, and Tom Gideon. Staff present: Eddie Coxie, Bonita Kisse, Dan Nosalek, Marla Pierce, Keith Crawford, and Bob Paulson.

A statement explaining the meeting procedures was read and the Taney County Development Guidance Code was placed into evidence as Exhibit A, the Staff Report as Exhibit B, and the staff files, including all pertinent information as Exhibit C, and the Taney County Board of Adjustment bylaws as Exhibit D. The State Statutes that empower and govern the Board of Adjustment were read.

Public Hearings:

Barbara Jernigan: a request by Ms. Jernigan for a variance from the Code requirements for cul-de-sacs for a single family residential subdivision located at 232 Bent Oak Road. Mr. Coxie read the staff report and presented pictures and a video of the site. The Taney County Planning Commission denied the request July 21, 2008 based on the project not complying with the County Road Standards, because there is not an easement on Lot C. Mr. Coxie gave an example of a modified hammerhead which could be constructed instead of a cul-de-sac. Mr. Clemenson swore in Mrs. Jernigan and Mr. Faubion to speak. Mr. Faubion, Ms. Jernigan's surveyor, presented site plans for the property and explained that his company did the survey for Ms. Jernigan. He explained the first survey that was done and that the road was never made public only to get to the lots. The applicant does not own the land to the north making it impossible to place a cul-de-sac there. If a hammerhead was approved, the applicant could put in half of it, then when the other property is sold that person could construct the other half. Mr. Lawson asked if North St. would ever cross, Mr. Faubion stated that it would not. Lot C has plenty of access and frontage. Mr. Lawson asked if the Planning Commission saw this information. Mr. Faubion and Mr. Paulson reported that they had not. The hammerhead had not been discussed at the Planning Commission meeting. Discussion followed regarding what the Code requires. With no other discussion a motion was made by Tom



Gideon to approve the modified hammerhead request. Bob Hanzelon seconded. The vote to approve was unanimous.

Joni Glessner: a request by the Circuit Court for the Board to rehear this request and score the project. The request was an appeal of the Taney County Planning Commission decision of June 18, 2007 to approve a permit to Big Cedar Wilderness Club to construct condominiums located at 588 Crestview Dr., Ridgedale. Mr. Clemenson gave a brief history of the project. Mr. Coxie read the staff report and presented pictures and a video of the site. Mr. Clemenson discussed the size of the original project with Mr. Coxie. Mr. Clemenson swore in Joni Glessner, Brian Wade, and Howard Kitchen. Mrs. Glessner spoke first and presented packets of information to the Board, which included petitions against the project. She gave a history of the request and read a prepared statement. She pointed out that other property owners within the Oakmont Subdivision had been denied the option to do business, but Big Cedar was approved and she doesn't feel this is fair. In Mrs. Glessner's opinion the project is not compatible with the surrounding area, and listed other negative impacts it would have to the area. Mr. Hanzelon asked Mrs. Glessner to state the three biggest reasons for the Board to deny the project. She replied, sewer, water, and traffic. Mr. Gideon discussed with Mrs. Glessner the number of feet the closest appurtenance of the project was to the nearest house. Discussion followed regarding the reason this request has come before the Board again. Mr. Paulson asked Mrs. Glessner if any of her reasons violated the Code. She replied that she didn't know. Mr. Paulson also pointed out that the business requests denied in the area were denied by the homeowners association not the Planning Commission. Mr. Paulson also pointed out that the Planning Commission does not enforce private restrictions. Mr. Paulson asked Mrs. Glessner if she or her attorney had any suggestions regarding the scoring since it was pointed out in the request. There were none. Mr. Clemenson reported that the water table in his area had dropped as well, but that was the price for progress in the entire area, not just that one. Mr. Wade, representing Blue Green/Big Cedar presented Exhibit H, which was the transcription of the Board of Adjustment meeting the request was denied at. He then also gave a history of the project as he saw it, and discussed density, now and after this project is built out. Mr. Wade reported that there will be no discernable impact on the sewer, water, traffic, or density. Exhibit I was presented by Mr. Wade who stated that error of law had not been proven either time the request was heard. Exhibit J and L was also presented. He presented his own finding of fact for the Board's consideration, and cited some case law. Exhibit O was presented by Mr. Wade which was the covenants and restrictions of Oakmont Subdivision. Mr. Paulson discussed the scoring of the project by staff with Mr. Wade. Howard Kitchen, General Manager of the development explained the density level of the development, and how they decided how and where to construct this project. The required buffering and parking was done to the requirements of the code according to Mr. Kitchen. He reported that the



existing residential structure on the property will not be torn down as previously reported by Mrs. Glessner. There is a precedence for more buildings in the future according to Mr. Kitchen who explained how many and where they were planned. Mr. Lawson asked about the rock pile in the road. Mr. Kitchen stated that it did not belong to them nor did they put it there, but it is now gone. Discussion followed regarding ingress and egress. Mr. Hanzelon asked if when the property was purchased how it was zoned. Mr. Kitchen stated that it was multi-family as far as he knew. Mr. Clemenson swore Eddie Coxie in to discuss the relative policy checklist. Mr. Coxie explained how the checklist is used, where the information is obtained, and how it applied to this project. He stated that this checklist is a tool for the Planning Commission to be used as clarification on a project based upon the facts presented by an applicant. Sewer and Water quality was reviewed by Mr. Coxie as the policy checklist is scored. Mr. Paulson noted that neither party submitted scoring sheets, and that if the Board does not disagree with the scoring, it should be construed as fact. Mr. Clemenson clarified that the Board accepts this scoring. A motion was made by Bob Hanzelon that the Board shall adopt the score sheet. Alan Lawson seconded. The vote to approve was unanimous. Mr. Clemenson reported to the visitors that the Board must have three positive votes to approve a request. Mr. Hanzelon made a motion to deny the appeal based upon the findings of fact and conclusions of law. Mr. Paulson advised what to include in the motion. Mr. Lawson discussed that the Board was hearing this as the first time with the new Exhibits presented. Mr. Hanzelon withdrew the motion. Discussion followed. Mr. Lawson summed up the request. Mr. Gideon made a motion to deny the appeal. Mr. Hanzelon seconded. The vote to deny was unanimous. Mr. Lawson made a motion to accept the findings of fact in Exhibit N presented by Blue Green/ Big Cedar Vacations. Seconded by Tom Gideon. The names on the Exhibit shall be changed to reflect the members of the Board that have left and the replacements inserted. The vote to approve was unanimous.

Holly Perryman: a request for an appeal of the Highway 65 Multi-Use Project at Emory Creek approved by the Taney County Planning Commission August 18, 2008. Mr. Coxie read the staff report and presented pictures and a video of the site. Mr. Clemenson swore in all the parties wishing to speak. Holly Perryman spoke first and explained her request. She stated that in her opinion this project should not have been heard again by the Planning Commission because the changes made were not significant enough required by the Code. Ms. Perryman presented a site map, and explained where her property is located and other neighbors, and discussed how the noise would travel to these locations. She stated that self imposed fines discussed at the Planning Commission meeting would not lessen the sound. Ms. Perryman discussed other issues including environmental issues, water quality, wetlands, and scoring. Deborah Doyle representing the applicant presented Exhibits which included, state statutes, Section 7 of the Development Code, and the formal appeal. Ms.



Doyle gave a history of the request, and pointed out mistakes in the process that were made in her opinion. She pointed out that an error of law was made in the resubmission of the request with the Planning Commission. Mr. Paulson discussed this point with Ms. Doyle. Mr. Lawson asked for clarification of Ms. Doyle of her interpretation of a change in a project as the Code requests. Discussion followed. Mr. Clemenson discussed with Mr. Paulson if there was an error of law when the appeal was withdrawn by the applicant. Mr. Paulson agreed that substantial change is in the "eye of the beholder". Mr. Coxie gave a timeline of the project. Brian Wade representing the project gave a synopsis of the original request. He also referred to the requirements of the Code as it addresses appeals and discussed this particular appeal. In Mr. Wade's opinion scoring was not an issue on the appeal request, and no error of law had occurred. He feels the appellant meets the burden of proof in this case. Mr. Hanzelon asked why the Board couldn't use the scoring mechanism in this case. Mr. Wade suggested that scoring was not appealed in this case. Discussion followed. Mr. Hanzelon discussed the self imposed fine with Mr. Wade. Mr. Clemenson asked both lawyers if they would like to address the time frame of the appeal. Ms. Doyle addressed the issue and stated that the appeal is of the decision of the Planning Commission and not to give the project the opportunity to argue their case again. Discussion followed. Mr. Clemenson read Article 15 of the Bylaws, then suggested to table this request until , Mr. Hanzelon made a motion to postpone the request until next month so the Board has time to review the evidence presented this evening. The vote to continue was unanimous. Mr. Lawson stated that he would continue to serve the Board at the next meeting.

#### Old and New Business:

Mr. Coxie reported that the restructure of the Code had been approved by the Planning Commission to be sent to the County Commission for approval.

#### Review and Action:

Minutes: September 2008; with no additions or corrections a motion was made by Alan Lawson to approve the minutes as written. Seconded by Bob Hanzelon. The vote to approve was unanimous.

#### Adjournment:

With no other business on the agenda for October 15, 2008, Mr. Clemenson declared the meeting to be adjourned. The meeting adjourned at 10:00 p.m.