

**Kershaw County Planning and Zoning Commission  
Minutes - Regular Session  
August 13, 2009, 5:30 p.m.  
County Council Chambers, 515 Walnut Street  
Camden, SC 29020**

Members Present: Lewis Shaw, Charles Cottingham, Richard Simmons, Karen Eckford, George Gibson, and Dan Matthews

Members Absent: David Brown

Staff Present: John Newman

**Call to Order**

Chairman, Lewis Shaw, called the meeting to order at 5:30 p.m.

**Public Comment Period**

Marion Sadler, representing the Home Builders Association of Greater Columbia handed out comments (attached) that were a follow-up on his comments of July 9, 2009. He went over the hand-out. In general, he was requesting that all of the issues raised in the July 9<sup>th</sup> comments be included in amendments to the water quality buffer regulations. He did agree with staff that a stormwater review board may not be needed at this time.

Mr. Sadler had additional comments on the draft water quality buffer regulations concerning the placement of permanent boundary markers. He also asked for clarification that the tables showing additions to buffer widths due to steep slopes were not cumulative.

Austin Jenkins spoke about the Final Report of the Statewide Task Force on Riparian Forest Buffers. He stated that the Task Force had recommended a 35-foot buffer, but that recommendation was not backed up by any of the science presented in the report. He stated that the scientific evidence presented in the report supports a 100-foot buffer. He said he understood the politics at play, but encouraged the Planning Commission to stick to the science and retain the 100-foot buffer width on perennial streams and leave the politics to County Council. He also stated that retaining the 100-foot buffer as opposed to adjustments to a lesser buffer would keep things simpler. The buffers, he said, have a positive economic impact, as clean water supports business development.

There being no one else wishing to speak, the Chairman closed the public comment period

**Rezoning Public Hearing**

Lewis Shaw opened the public hearing on the rezoning request of George Watts for approximately 1.41 acres located on 929 and 933 Highway 1 North, George Catoe approximately .93 acre located on 939 Highway 1 North, and Houston Tyner approximately .79 acre located on 947 Highway 1 North to rezone their properties from RD-1 to RD-2. The Chairman noted that the public hearing had been posted and advertised, the properties had been posted, and adjacent property owners had been notified. He asked John Newman to go over the staff report and staff recommendations. John Newman stated that the rezoning would follow sound zoning principals

and that the request would not contradict Comprehensive Plan policies and objectives. He also stated that rezoning to allow manufactured housing in the area would not be out of character with the surrounding area as there are a lot of manufactured houses already in the area, and that staff recommended approval of the rezoning request. Newman next called on the people who had signed up to speak at the public hearing.

Houston Tyner said that the property had been in the family since 1962 and there had been a mobile home on the property since the original house burned down many years ago. He was requesting that zoning be restored which would allow him to place a manufactured house on the property.

Roth Baker, representing George Catoe, wanted the properties rezoned to allow manufactured housing because, until seven years ago, there had always been a manufactured home on the Catoe property, the septic tank and water line are still there, and he wishes to put a manufactured home there for his daughter.

Brian Jones spoke on behalf of his father who is an adjacent property owner. He stated that he had no problem with trailer houses, but Houston Tyner has a history of keeping his lot very junky and he didn't want to see another junky manufactured home placed on the property. He said he was tired of living next to a junk yard. He added that if the properties were to be rezoned to allow manufactured homes, they should be rezoned MRD-1 to ensure that Mr. Tyner would put in a decent unit.

Mary Ellen Ellis also spoke about the junk on Mr. Tyner's property and expressed concern that Mr. Tyner didn't have enough land for a trailer.

There being no one else wishing to speak, Lewis Shaw closed the public hearing.

### **Planning Commission Discussion and Vote on Rezoning Request**

Lewis Shaw asked John Newman about mobile home regulations. John Newman explained the difference between mobile homes: units built prior to 1976, and Manufactured Housing: units built after 1976 to HUD standards. He said there were minimum habitability standards and underpinning requirements for manufactured homes that would have to be met. Mr. Shaw asked Mr. Tyner what kind of manufactured home he would place on the property. Mr. Tyner responded that he would put doublewide on the property.

Karen Eckford asked John Newman to explain the process where someone could get a neighbor violating county codes such as junk in the yard, to comply with the rules. Newman explained the process and noted that Mr. Tyner was currently under enforcement action.

George Gibson asked about MRD-1 appearance standards. Newman explained that modern doublewides are built to meet these standards.

There being no further discussion, Richard Simmons made a motion to recommend approval to rezone the subject properties from RD-1 to RD-2. George Gibson seconded the motion which was unanimously approved by the Planning Commission.

### **Approval of Minutes**

Dan Matthews made the motion to approve the minutes for the July 30, 2009 special called meeting. Richard Simmons seconded the motion, and the minutes were unanimously approved.

### **County Council ZLDR Work Session**

Lewis Shaw mentioned the letter he had sent to County Council Chairman Steve Kelly canceling the August 18, 2009 ZLDR work session as the Planning Commission needed more time to finalize their recommendations to County Council. The Planning Commissioners were given copies of the letter. Mr. Shaw said he would work with staff to coordinate another date for the work session.

### **Draft ZLDR Discussion**

Mr. Shaw opened the discussion by pointing out that the Planning Commission had received a number of comments and had reviewed and given preliminary approval to staff's recommended amendments in response to the public comments. He then asked if the Planning Commission had any additional comments or recommendations in response to the public comments received. None were given.

Lewis Shaw then moved to a discussion of the water quality buffer (WQB) regulations. He gave a summary of original staff recommendations for buffer widths and noted that staff continues to support these recommendations. He then stated that John Newman had put together and had given the Commissioners draft copies of a potential amendment to the WQB regulations based on discussions made during the July 30<sup>th</sup> meeting.

Mr. Shaw stated that he personally felt that there are strong arguments to stay with the 100-foot buffers, but smaller buffers may be protective of water quality under some circumstances. If one reviews the WQB regulations of other SC jurisdictions, there is a lot of variability on buffer widths. It doesn't appear that there is a one magic number. Mr. Shaw added that he is looking proactively at getting something approved, as Kershaw County currently does not have any buffer requirements at all. Next John Newman and the Planning Commission went over the provisions of the referenced regulations that Newman had prepared for the meeting; taking into consideration Marion Sadler's latest comments.

John Newman stated that he would clarify that the buffer width tables were not cumulative. There followed a general discussion on the problems with determining slope of a specific site.

Lewis Shaw then asked the Commission what their comfort level was with the draft WQB regulations under consideration. Richard Simmons stated that he liked the graduated approach based on slope even if there were some problems in determining slope. George Gibson stated that he thought that these regulations gave a way to inject some common sense in adjusting a buffer up or down as needed. He wasn't sure that the 50-foot base was the appropriate or right number, but was OK with it. Richard Simmons said that he thought 50 feet was OK as long as there were means of increasing the width as necessary. All seemed to be in agreement, so the discussion continued.

Lewis Shaw brought up the subject that there are lesser buffer width requirements for lots under three acres, and a major loop hole potentially exists if large tracts of land could be subdivided into smaller lots prior to development, thus avoiding the more stringent buffer requirements for lots of three acres or larger. The Planning Commission agreed, and asked Mr. Newman to suggest text amendments that would require the buffer be established prior to the subdivision of the property.

Newman requested, and the Planning Commission agreed, to address Mr. Sadler's comments (Item 2) concerning the provisions for Application for Exception and County Engineer Determination in the next draft to the WQB regulations.

Next there followed a general discussion about permanent buffer boundary markers. Mr. Newman suggested language to the effect that the location and placement of the markers was to be based on individual site conditions. On lots where there are discrete access points with access to the remainder of the buffer restricted, signage at these access points would suffice.

Karen Eckford asked John Newman to address Mr. Sadler's comments on stream crossings (Item #4). He replied that he would.

Lewis Shaw then asked for preliminary approval of a draft WQB regulation, amended to address the items discussed. Richard Simmons made a motion to approve and it was seconded by Karen Eckford. The Planning Commission voted unanimously to give preliminary approval the referenced WQB regulations.

### **Special Called Meeting Date**

Several alternate dates to the August 27, 2009 date were discussed. In the end it was decided to keep to the August 27<sup>th</sup> date as that was the date that the most members would be able to attend. Karen Eckford will not be able to attend, but will review all of the material and provide any comments she may have.

### **Other Items**

Lewis Shaw and Karen Eckford discussed a possible amendment to the signage regulations to allow for temporary open house signs. Rebecca Best, representing the Realtor's Association, stated that they had worked with Richland County and the City of Columbia on regulations addressing this issue, and that she would send these regulations to John Newman. Mr. Newman stated that he would review these regulations to see how they might be incorporated into the draft sign regulations. Newman will forward the Realtor's Association regulations and staff proposals for amending the ZLDR to the Planning Commission for consideration.

John Newman then presented two additional amendments to the ZLDR pursuant to discussions at an internal Kershaw County staff meeting on the ZLDR. They are as follows:

**6:1.1 Planning Official** - *The County Administrator shall appoint the Planning Official who is hereby charged with the administration of this Ordinance subject to the provisions of the South Carolina Home Rule Act. Planning Official means the Kershaw County Planning and Zoning*

Director or his designated Building Official or other Planning and Zoning Department official designated by the Planning and Zoning Director to administer the provisions of this Ordinance.

**Add Definition of County Engineer to Article 2, Definitions**

*County Engineer – The County Engineer shall mean the County Engineer, Stormwater Manager, Public Works Director, or other County official designated by the County Administrator to perform specified engineering functions.*

The Planning commission gave unanimous consent to include these amendments.

**Adjournment**

There being no further business, George Gibson made the motion to adjourn. It was seconded by Karen Eckford, and approved unanimously.

Respectfully Submitted,

*John Newman*

John Newman

Austin Jenkins

Naturalist by profession. I'm here representing myself as a concerned citizen of this county.

I just want to give you a few thoughts. Before the meeting I had recommended during the public input period a 300 foot buffer width. This was based on the same buffer document compiled by a buffer task force in 2000 and by USC Center for Environmental Policy, a document that has been discussed numerous times

This document does recommend a regulatory buffer width of 35 feet, although 35 feet is not supported by the scientific literature discussed within the same document, a point to which I will return momentarily. The document also says that, over and beyond 35 feet,

Enhanced water quality protection and additional wildlife protection may be accomplished by the following:

- 100 foot buffer of native vegetation on both sides of the water body to better enhance water quality in non-forested areas and to provide additional benefits to wildlife; and
- 300 foot buffer of native vegetation on both sides of the water body to provide comparable benefit of an undisturbed riparian system.

So, I recommended 300 feet, I stand by that, and I believe anything less than 100 feet is not safe. My conclusion that the 100 ft represents an absolute minimum was also reached using the science discussed in this report.

For example, in regards to:

**Trapping and removal of sediment:** "long term studies suggest the need for 100-foot buffers (Lowerance et al. 1988; Wenger 1999)."

**Phosphorus removal:** "buffers wide enough to provide adequate sediment control (30-100 feet) should provide efficient *short term* removal of sediment bound phosphorus (Wenger 1999)."

**Nitrogen removal:** wider buffers "on average, will provide more denitrification sites than narrower buffers. Wenger (1999) recommends a minimal width of 50 feet to reduce nitrogen levels, but suggests that buffers of 100 feet or greater will provide more nitrogen removal."

**Removal of Organic Matter, Biological Contaminants, Pesticides and Metals:** The jury is still out. But, examples exist of uninformed homeowners depositing chemicals into the grounds close to water, even directly into stormwater drains. If we don't yet know the potential hazards of these toxins with regard to buffer width, wouldn't it make sense to air on the side of safety, and to keep more distance, rather than less?

**Wildlife Habitat and preservation of biodiversity**

The science discussed shows that 100 feet is clearly not enough

### **Water Quality the Issue**

So, the currently drafted regulatory buffer width of 100 feet, while based on the minimum that is needed, is nonetheless science-based. I might add that in addition to being science-based, it was publicly supported during the comment period. So, with all due respect for everyone on the planning commission - **if water quality is truly the issue here**, then I have a hard time understanding why the conversation at last meeting and the one to follow at this meeting, will be focused on reducing the buffer width by 50 ft. If the goal is to protect water quality, any conversation stemming from a science-based 100 ft buffer should be one that considers *increasing* the buffer by 50 ft, just in case our science is

incorrect. Yet, here we've stimulated discussion on how to reduce the buffer width while still finding science to still support it, and I fail to see the logic in such a discussion. The only reason I heard to support that discussion was that a 100 foot buffer might be "dead on arrival" when it gets to county council. I know where that thought comes from, but this too I fail to understand, since council has the power to reduce the buffer itself if it so decides. If I were in your shoes, I'd sleep better knowing I gave council the recommendation that will best protect our waters, rather than seeing how close we can get to the water and still get away with it.

### **Complexity**

From the conversation last time I understood that a change to the drafted 100 feet to 50 feet may incorporate calculations for slope and then increased buffer widths depending on that slope. I understand that in rare instances this may result in a greater than 100 ft buffer, but I think it's obvious to everyone that this would be the rare exception. Moreover, which method do you think will be easier to understand and to enforce? Does KC or the regulating entity, truly have the capacity to enforce a more complex buffer width? The answer to this is simple

### **Economic Impact**

Businesses - further demanding that we do more than less.

The document discussed earlier also mentions positive economic impacts of buffers, which include...

#### **1. Minimizing Property Damages**

Buffers mitigate property destruction by maintaining some undeveloped land along waterways and keeping developing areas away from floodwaters, storm surges, and extreme high tides

#### **2. Decreased Public Investment Needs**

By reducing flooding, erosion, and sedimentation, vegetated buffers minimize public investment in stormwater management and waterway protection and restoration (Baltimore Buffer Subcommittee). Buffers can also reduce the number of drainage complaints received by local publicworks departments.

#### **3. Increased Property Values**

In a national study of ten programs that diverted development away from flood-prone areas, researchers discovered that land next to protected floodplains had increased in value by an average of \$10,427 per acre (Burby, 1988). In another national study, buffers were thought to have a positive or neutral impact on adjacent property values in 32 out of 39 communities surveyed (Schueler, 1995). Homes located near seven California stream restoration projects had a 3 to 13% higher property value than similar homes located on unrestored streams. "When managed as a 'greenway,' stream buffers can expand recreational opportunities and increase the value of adjacent parcels (Flink and Searns, 1993). Several studies have shown that greenway parks increase the value of homes adjacent to them..." (WPT, June 1997 pp. 471-472).

#### **4. Reduced Maintenance Costs**

"Corporate landowners can save between \$270 to \$640 per acre in annual mowing and maintenance costs when open lands are managed as a natural buffer area rather than turf," (Wildlife Habitat Enhancement Council, 1992 - as cited in WPT June 1997, pp. 471-472).

Finally, at the end of the day, we are talking about the difference in 50 feet and 100 feet. When you get home tonight, walk off 50 feet, turn around and look at it, and realize how silly it is that we have not the courage to secure 100ft in the draft ordinance that goes to council. For 50 mere feet, we can better secure all the positive things I've just discussed. If there is a price to pay at all for securing 50 extra feet, surely it is a small one to pay - for the health of our streams, the health of the people in this county, their children, and the many generations that will follow. Thank you for your attention.

August 13, 2009

Memo:

To: Kershaw County Planning and Zoning Commission

From: Marion Sadler  
Sadler Environment Assistance  
400 Shortbow Court  
Columbia, SC 29212

Re: Proposed Water Quality Buffer Ordinance

My name is Marion Sadler. I am here on behalf of the Home Builders Association of Greater Columbia.

I provided comments to you previously on July 9. You have made changes and are proposing changes for discussion that address some of the issues we raised. Thank you for your consideration of those comments.

There are still issues that we think must be addressed. The issues and our comments are as follows:

1. The buffer width increases due to slope and environmentally sensitive areas given in the proposed regulation appear to be additive. These should not be cumulative and the proposed ordinance should be revised to address this.
2. While the section of the ordinance entitled "Application for Exception" seems to allow exceptions under certain circumstances, upon carefully examination you can see it sets a nearly, if not, impossible standard to achieve as it requires:

"the same water quality protection as the required width in the following standards:

- 1) Erosion prevention and sediment control.
- 2) Nutrient, pesticide, and biocontaminant (fecal coliform) removal.
- 3) Stream Temperature."

There will always be some difference in the performance of different width buffers (the word "same" is problematic). The issue here is what level of protection is needed for a particular water body so that buffer width reductions can be considered without sacrificing water quality protection. Factors such as stream type, existing water quality, extent of development of the watershed, etc. are factors that also need to be considered and balanced with the other factors.

3. The section entitled "County Engineer Determination" has the same problem as outlined in item 2 above.

(over)

4. The section on Stream Crossings and Utilities Easements under item d. still has a wording problem in that it still states "never along the front" whereas the section starts with "Where feasible". Never along the front" needs to be deleted.
5. Hardship waivers (economic situations and other situations where is it impracticable to provide buffers when there is viable need for a project to be built). I recommend using the proposed language submitted with my July 9, 2009 comments.
6. Other BMPs in lieu of buffers are not allowed. I recommend using the proposed language submitted with my July 9, 2009 comments.
7. Buffer width reductions should be allowed to be presented when conservation measures such as low impact development are used.
8. The ordinance still only partially addresses individual lot exemptions while not addressing "Entitled Property" except for the projects that have submitted applications prior to the effective date of the Ordinance. I recommend using the proposed language submitted with my July 9, 2009 comments.
9. Buffer averaging is not addressed. This should be allowed as it will add much needed flexibility to the ordinance. Please note that Lexington County has allowed this and Richland County's proposed Ordinance also allows it. Further, EPA and DHEC both support buffer averaging. I recommend using the proposed language submitted with my July 9, 2009 comments.
10. The section on "Water Quality Buffer Plat Requirements" is vague on the number of the signs that must be shown on the plat as it just asks the location of the permanent boundary marker signs. We request that a sign should only be required at the primary public access point.
11. Based on staff's discussion on the historically low number of appeals, a review panel was not added. We agree with this decision at this time. However, in the future appeals may increase so as to warrant a review panel. Therefore, we are asking you to periodically review this situation to determine when a review panel may be needed.

As you can see we are again asking for flexibility to be added to the ordinance such that the Professional Engineers can develop the best site plans for water quality protection for each specific development. In other words, we are asking that Professional Engineers be allowed to make alternative proposals (that still must adequately protect water quality) to the County under new sections on BMPs in Lieu of Buffers, Buffer Averaging, the Use of Conservation Measures, etc. Ultimately, the County has the final decision on these proposals so please don't shut the door on these types of proposals without even giving the Professional Engineers a chance to present them to the County.

Again, thank you for allowing me to speak to you today. I will be glad to answer any questions you may have at the appropriate time later this evening. If you would like to discuss these issues with me after tonight, please call me at (803) 732-0345. Thank you for your kind consideration to these concerns.