

**M I N U T E S**

GLYNN COUNTY PLANNING COMMISSION  
WORK SESSION  
JANUARY 22, 1998 9:00 A.M.

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MEMBERS PRESENT: Glenda Jones, Chairman  
Richard Altman  
Lamar Cole  
Hal Hart  
Jeff Shell  
Iris Touw  
Jonathan Williams

STAFF PRESENT: Lee Gilmour, County Administrator  
Gary Moore, County Attorney  
Ron Milburn, Planning Official  
Dick Newbern, Planner III  
Deborah Taylor, Zoning Administrator  
Ellis Carter, Building Official  
Janet Loving, Administrative Secretary

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Chairman Glenda Jones called the meeting to order. She explained that she would discard the formalities (Invocation, Pledge of Allegiance) due to this being a work session.

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**Minor Plat  
King City, Redivision of Lots 88-92  
and portion of adjoining alley,  
located on the corner of Butler Ave.  
and Hamilton Street**

**Jingle Hice Davis and The Jean  
Langston Hice Trust, Owners**

Mr. Mark Podlin, attorney representing the Hice Trust, was present for discussion. Mr. Jaxon Hice was also present.

Mr. Jaxon Hice explained that he and his sister (Jingle Hice Davis) are trustees and are bound legally, financially and morally to represent their mother who is ill and unable to care for herself. He stated that his family has owned the subject property for 50 years. The ownership predates the current Zoning Ordinance and any revisions to the Zoning Ordinance. More valuable than the ownership is the tenure on the land, which is very important to his family.

Mr. Hice stated that at the January 6<sup>th</sup> Planning Commission meeting, he submitted an application for resubdivision of five original King City lots. He did this upon advice of financial planners, family planners, professionals in the field of land use and other resources. The best thing for his family and his mother would be to reconfigure the ownership from five parcels to four. He felt that this was a definite upgrade to the neighborhood. It would be an aesthetic and pleasing difference for short, medium and long-term planning on the property.

Mr. Hice stated that he conferred with the planning staff and others about whether such a proposal would be obtainable and if it would be acceptable by the Planning Commission. He spent \$1,000 dollars to get the map repaired, filled out the application and submitted it. The request was placed on the agenda, came before the Planning Commission at the January 6<sup>th</sup> meeting, and was subsequently approved on that day. Mr. Hice applauded the Planning Commission for making that decision. He felt it was an appropriate decision in terms of what is the right thing for his mother's Trust, for St. Simons in general, and for the King City neighborhood.

Mr. Hice stated the opportunity that his family has, the opportunity that the Planning Commission had on January 6<sup>th</sup>, and the action was handled appropriately. He stated that with the consolidation of the property and the change in lot lines, they now have the opportunity to plan for the possible development of properties in the future. He stressed that he would like to make it clear that his family has no interest in developing the property other than to build one house on the corner lot. He stated that he intends to live there personally. He will occupy the house and pay the Trust for the use of the home because his mother needs the money for the support. "That's what the Trust was designed for."

Mr. Hice stated that subsequent to the vote of the Planning Commission on the 6<sup>th</sup> of January, he received a letter from Mr. Milburn, which stated that he should take no reliance upon the vote of the Planning Commission and that no permit would be issued for any of the new lots. Mr. Hice stated that this put him in limbo and he became a quick learner of the Zoning Ordinance and the Subdivision Regulations within the county. He became familiar with numbers like 507, 802, 603, etc. He stated he has tried to make sense of these things, but instead he became confused as to whether a consolidation of property is even in fact a subdivision of property. The Subdivision Regulations, Section 802, may apply to the actual subdivision, but it may not apply to that and it may not apply to what is a reasonable move of making things larger by consolidation.

Mr. Hice stated that he has discussed this with county council, with members of the Board, planning staff, professionals in the business of land surveying, and he is more confused than he was before he got started. He stated there may be some other issues, such as whether a lot-of-record is in fact a zoning lot if it predates the ordinance. There are some matters of confusion about when the Zoning Ordinance applies, when a substandard lot applies and when a non-conforming lot applies.

Mr. Hice pointed out that he is not here to explain to the Planning Commission what their role is, what the laws really mean, what Mr. Moore's interpretation is of those laws, or otherwise. The reason he is here today is to thank the Planning Commission for their interpretation at the January 6<sup>th</sup> meeting, which he believes was the right one for the land, for the neighborhood, for St. Simons Island, for his family and for his mother. He stated that if in deed there needs to be a consolidation of ordinances, then he would encourage the county to address that matter.

Mr. Hice stated that if there is some means by which he can achieve the objectives that he is charged with upholding, such as a variance or some other manner, then he needs direction from the Planning Commission so that he and his family can go forward. He stated there is no way that he would stand before the Planning Commission and try to break an existing law to find a loophole, or to coerce the county, or to force himself upon the neighborhood, and he certainly would not do this in the name of his mother. Mr. Hice thanked the Planning Commission and stated he trusts them to take appropriate action.

Mr. Mark Podlin stated that as Mr. Hice's attorney, he would address the legal aspects of this issue. He then stated the following:

"It is our interest, jointly as citizens and as the Planning Commission, to protect the decisions that the Planning Commission has made in the past. Whether or not that decision was entirely unanimous, if the decision was passed by the Planning Commission as it was on January 6<sup>th</sup>, then we believe it is the substance of the law to protect that interest. In fact, this Planning Commission and all Planning Commissions in most parts of the country are set up as a quasi-judicial body.

"It is your responsibility, vested in you by the Board of Commissioners, to interpret and construe the Zoning Regulations and the Subdivision Regulations. It is entirely your responsibility to do that. If you were to turn someone down who came before you for approval after filing appropriate petition, then that person would then have the right to appeal to the Board of Appeals or to the County Commissioners, depending upon the situation and their choice of action.

"In this situation though, we have an unusual situation where the Planning Commission approved the petition of Mr. Hice to reallocate the property lines on property he already owned. Instead of making his lots smaller, which is usually the case in a resubdivision, he wants to make his lots larger; all within the same perimeter of property his family has owned for over 50 years. Instead of building five tiny houses one day, and not in the immediate future, he would have the right to build four larger houses. Instead of building five houses with 40 ft. lot widths, he wants to build four houses with 50 ft. lot widths. We think this is in the interest of the community. It is in the interest of the neighborhood. I

also live in the King City Subdivision and would love to see the lots be as large as possible, but the regulations and the law today provide that a man who has 40 ft. width subdivision lots has the right to build on those lots.

"Normally, the concern of a Planning Commission or a governmental body is about increasing density and about building too many houses on too little space. Here we have a petitioner who has come before the Planning Board and asked for your permission to build fewer houses on a little more space on land that he already owned, and you approved that. Now the question is, once you've approved that, who has the right to challenge that? You are the quasi-judicial body, you are the judicial body, you are the people's court about property in this county. It's really your decision as to what the rules and regulations that this county meets. Now that being said, after you gave your approval for Mr. Hice to move the lot lines over a little bit and build upon the property so that he would have 50 ft. width lots, a letter was issued to him on January 8<sup>th</sup> by Ronald Milburn, the Planning Official."

Mr. Podlin submitted the January 8<sup>th</sup> letter into the records as "**Hice Trust Exhibit 1.**" Mr. Podlin pointed out that the letter states essentially that a permit would not be issued until this meeting was held today.

Mr. Podlin presented a letter dated January 9, 1998 written by Gary Moore, the County Attorney, essentially advising the Planning Commission that he thought in his opinion, that the action taken by the Planning Commission on January 6<sup>th</sup> to approve Mr. Hice's request was not consistent with his interpretation of the existing ordinances. Mr. Podlin submitted this letter into the records as "**Hice Trust Exhibit 2.**"

Mr. Podlin stated that at Mr. Hice's request, who is the Trustee of the Hice Trust, he contacted Mr. Moore by letter, dated January 20<sup>th</sup>, outlining various provisions of Sections 507 and 802. Mr. Podlin stated that Mr. Moore does not agree with the interpretation that the Planning Commission has placed on those ordinances in rendering its decision to approve Mr. Hice's request. Mr. Podlin submitted the January 20<sup>th</sup> letter into the records as "**Hice Trust Exhibit 3.**"

Finally, Mr. Podlin submitted a letter that he wrote to the Planning Commission, dated January 22, 1998 as "**Hice Trust Exhibit 4**" which outlines the technical and legal position of the Hice Trust with respect to the actions taken by the Planning Commission in the past. Mr. Podlin's presentation continued as follows:

"It is also our opinion that it is entirely up to the Planning Commission to render decisions as to the Zoning Ordinance and Subdivision Laws of this county. It is also the purview of the Planning Commission to give direction to the Zoning and Planning Officials.

"If the Planning Commission were to have requested an opinion of the County Attorney prior to rendering its decision, and the Planning Commission had relied on that opinion in deciding to deny Mr. Hice's request at the

January 6<sup>th</sup> Planning Board hearing, then it would have been entirely proper to deny that request, if you had voted to not approve Mr. Hice's petition. However, you did vote to approve it. Only subsequently to the approval on January 6<sup>th</sup> did someone contact the County Attorney and say give us your opinion as to whether we did right. The problem with that is you've already vested the Hice Trust with a valuable property right; the right to move his property lines over and build 50 ft. width lots rather than 40 ft. width lots. That right cannot now be taken away by a new vote or new motions of the Planning Commission.

"We have researched the law. As far as we can tell, and if there's other laws on the books that I'm not aware of please let me know, but as far as we can tell, there is no mechanism under local ordinances for the Planning Commission to act to take away rights of its own accord based upon a directive of the County Attorney. It's almost as if you gave us a property right deed on January 6<sup>th</sup> and then someone who's associated with you said 'you know you really shouldn't have given that deed; I'm having second thoughts about that; I don't think you should have done it,' and then you convene another meeting as a corporation and you say, 'you know what, we're gonna take that deed back.'

"Well as you know if a person gives you a deed to property, they can't come take it back. They may want to take it back, they may regret it, they may feel like it was a mistake, but the fact of the matter is, as far as I'm aware, nobody who appeared at the January 6<sup>th</sup> meeting in opposition to this readjustment of lot lines is an adjoining property owner. So then if your decision went unchallenged by the County Attorney, it's very likely that the rules and regulations as interpreted by you and as approved by you to give Mr. Hice his approval to go forward with his project, would have been totally unchallenged and gone ahead like anything else. So our position is that you've made your decision. If someone has a complaint about your decision, they have to go through whatever legal remedies they have to try to alter that decision. But it is not within the purview of the ordinance for the County Attorney or any other official in government, other than the Planning Commission, to try to overrule or veto the decision you've made.

"Now I've taken a very hard approach on this, but this is a very important matter. This is a property right. Mr. Hice and his Trust own this property. They're not asking for permission to own property. They already own this property. It's been in the family for 50 years. If you own property, don't you feel you have the right to do with it as you please. If you're improving property, why should anybody complain. If there were people who objected to the use that the Hice Trust wants to put on this property. There are people who perhaps have a general dissatisfaction with all development and would prefer to see less development taking place in their neighborhood, but we know that living on St. Simons Island as we do, more development is occurring.

"There are trees that are being bulldozed by the thousands today on Demere Road, but that development has all been approved. This is a very minor change. The family house that Mr. Hice grew up in is going to remain in place, straddling two of the lots that he's asking to adjust the lot lines on. He's not gonna go in there and bulldoze it immediately, but he wants the right one day to be able to do that. His mother is in a nursing home and they need to be positioned so that they can maximize the value of this property so that his mother doesn't become dependent upon the government for assistance through Medicaid.

"By being able to develop this property in a rational, intelligent way, they are able to get enough money to pay their mother's hospital bills. Now I just have to ask, why would anybody oppose someone improving a neighborhood by doing what they would have had the right to do anyway, and why would someone oppose someone taking property that they have that's only a diminimus intrusion on their own enjoyment of their property. So that being said, I say that the Planning Commission made the right decision.

"This is the way decisions are made in this county. This is the way they're made all over the country. You have the right to decide what the law is and what it means here based on those ordinances, and if you interpret a law or regulation in a way that someone else doesn't agree with, then they have their remedy, but it's not to say don't issue a building permit to one of your Planning Officials; and so what we say is, your Planning Commission should direct the Planning Official to issue a permit to Mr. Hice. He deserves it, he's entitled to it by law and we ask that the permit be issued.

"We appreciate your listening to us today. We know that this is a work session meeting, but we think if we don't protect our interest and let you know what we think the Planning Commission's rights are, then we're afraid that you may not be as vigilant as we are in protecting our interest. It's our duty to come here and tell you what we think and that's why we've done that. Thank you very much for hearing us."

Mr. Hice stated that this issue is complicated. He stated each person that he has spoken with, even the people who are opposed to the interpretation of the law, agrees with the intent on behalf of the Trust, to improve the neighborhood by consolidating the lots. They all say that it is a good thing. Mr. Hice stated that this is in fact a good thing.

Mr. Robert Fell, King City resident, stated that Mr. Podlin made a statement that he cannot agree with. He pointed out that when he was on the Planning Commission they were always told that they were an advisory board, that the County Commission has the final say. He disagrees with Mr. Podlin that the Planning Commission is the end of the road on decisions.

Mr. Fell stated that he was under the impression that if a lot was re-divided, it had to come under the current Zoning Ordinance, which in King City is now 6,000 sq. ft. He stated there are already several examples of this not being followed. Mr. Fell stated that the intent of the Zoning Ordinance change was to improve it and bring it up to what the ordinance now calls for, which is a minimum of 6,000 sq. ft. He pointed out that he realizes "that a man should be able to do with his property what a man wants to do," but if he had an empty lot next to his property, he would not want someone putting a parking lot or a McDonald's next to his property. Therefore, the people that live in the area also need to have their rights protected.

Mr. Fell stated he feels that a 6,000 sq. ft. lot has economic value and can be developed. "It's not like anybody is being denied a right to develop their property, but they have to develop it according to the ordinances governing that piece of property."

Mr. Gary Moore, County Attorney, explained that he got involved in this issue as a result of a phone call to him asking about the legitimacy of what was done on the 6<sup>th</sup> of January in apparently approving the subdivision of land that Hice Trust sought to make. He then stated the following:

"First of all, you have heard some things that are not true here this morning. You've heard that a property right was granted. No property right was granted. You cannot receive a property right, which is contrary to the laws enforced at the time. Those are always overturned because they are null.

"This is not an issue of less density. The decision that you have to make is not a decision to allow less density or more density. This is a decision that you're making, a decision that you made would in fact allow more density.

"The applicant freely admitted to me that they can only make, that they could not build five economically viable houses there, so what they'd like to do is build four; even though that still does not conform to the regulations and the ordinances that we all operate under. The truth is to create legal lots they'd have to resubdivide it to three if they want to choose this. So the real choice here is not between five and four. The choice is between four and three. So the decision that you need to make is a decision that should be applauded by the residents of King City, which is a decision to actually require that the densities be decreased down there if they are going to resubdivide it and reuse the property in an economically viable fashion.

"The other thing that I wanted to tell you that you've heard here today that is untrue is you do not have a right to grant rights to people which are in violation of the ordinances. You are not the final word. You are not the group that sets the policy or that sets the ordinances."

Mr. Moore then read the following:

Section 802 Resubdivision of Land:

For any change in an approved and recorded subdivision plat, "which King City is," or any map or plat legally **reached** prior to the adoption of August 5, 1976, "which King City certainly is," of these Subdivision Regulations, if such change affects any street layout, right-of-way, easement, improvement, area reserved for public use or any lot line shown on such plat, such change shall be approved by the Planning Commission as follows...

There are four instances; however, Mr. Moore pointed out that the one that really bears on this case is #3 which states, "proposed revisions to a recorded plat which significantly alters or changes any lot(s) or lot line(s) in which each resultant lot meets the minimum requirements of the Zoning Ordinance and these regulations shall be submitted under Section 802.1."

Mr. Moore's presentation continued as follows:

"The authority that you have under this section is if somebody wants to change an accepted or a previously recorded, prior to 1976, plat and change the lot line, your authority is that you can approve it if it meets all of the requirements. No question in the world, this resubdivision does not meet the requirements. It's not 6,000 sq. ft. They are 4,500 sq. ft., I believe is what they are, but at any rate, they are not 6,000 sq. ft. lots that would be created as a result of this particular endeavor. It is for that reason that I recommend that you reconsider and rescind your prior action and that you disapprove.

"Now I have been told that you will be sued in this case. The county will be sued. There will be at least one suit and possibly two. Quite frankly, there are a lot of issues because of that litigation that may be dealt with better in an Executive Session. I would urge you if you have questions of me, let's go into an Executive Session and discuss those questions. But, very simply, the case laid out before you is your approval on the 6<sup>th</sup> violated 802 Subdivision (3) and it cannot be. It just cannot be. They can't receive rights as a result of that because it's just plain illegal. It violates the plain terms of this ordinance. You can't change the ordinance yourselves. If you wish, you may ask that the ordinance be changed. I'll give you a little history on that.

"In 1996, an issue came up which was legally similar to this where we had two developers at the time, or two different locations, which would have involved two developers and in both of those cases lot resubdivisions had been allowed by staff long years prior I think in one case, and in the other case, he was coming in asking for the same treatment right then that the Hice's are now asking for from this Board. It was determined that the one that had already been resubdivided, that had been permitted administratively, was illegally done because of these very provisions.

"There were two issues that came before the Planning Commission and the Board of Commissioners at that time. The first issue was what are we going to do with these lots that had been created. People who didn't subdivide them now owned these lots. People are out there trying to get loans. People would like to sell them. They are illegal lots. Under your regulations, it is also illegal to sell an illegal lot in essence. So it created a huge problem for the already existing illegally created resubdivided lots. And then there was the policy issue as to whether or not we're going to allow that to happen again in the future, but of course we would have amended the ordinance if that's what both commissions had wished to do.

"The ordinance would have been amended, and in fact an amendment was prepared by me and sent out to them for their consideration, which was eventually sent to the Planning Commission then during the summer of 1996 for their consideration. And it did those two things; #1 said that the lots that had already been created were legitimate and were legal; and #2 also said that under certain circumstances you can continue to create these lots in the future and generally the circumstances were that the lots that you've created, the resulting lots were less non-conforming than the lots from which they were taken. That was debated, it was debated by the public. There was keen public interest in that. I can tell you from having attended some of those hearings.

"The final decision, after it went to the Planning Commission and came back and was adopted by the Board of Commissioners, the final decision was no we do not wish to have these kind of resubdivisions take place in the future to create non-standard lots, substandard non-conforming lots. That was absolutely it, and that part of the amendment was simply not done.

"The second thing, which was in fact done, was that the lots that had already been created were legitimate. In other words, it was decreed that those were legitimate, legal lots and could be treated as any other lots for any purpose so that the people who had purchased those lots would not have to pay the price of that mistake having been made in the first instance.

"I submit to you that the action that was taken after the 6<sup>th</sup>, after the erroneous consent to this resubdivision, that action by Mr. Milburn in informing these people not to rely on that act and informing them that this body would readdress these issues at its earliest opportunity, which was today, that all of those actions were appropriate from thereon. And as I said, this is a litigation issue, there is pending litigation on this case and if you have questions of me, I would ask you to go into Executive Session and let's discuss it there."

Mr. Hal Hart had questions regarding definitions, specifically, the term "subdivision" on Page V-8 of the Glynn County Subdivision Regulations. Mr. Moore explained that the provisions of Section 802 states "for any change in an approved subdivision that affects any lot line." However, Mr. Hart pointed out that in reading the definition of a subdivision, which states that a

subdivision is defined as "all divisions of a tract or parcel of land into two or more lots," we're going the other way. Is this a subdivision? Mr. Moore stated this does not fall under that definition of a subdivision because this is a re-subdivision. He stated that these are lots that have already been taken from raw land and subdivided. He explained that what is happening today is we're taking already approved lots and re-subdividing them, and that has to fall under Section 802. Mr. Moore stated that "Section 802 is exactly on point, this situation exactly meets the requirements set forth in Section 802."

Mr. Hart pointed out that in the Zoning Ordinance, Page III-10 (Lots, Zoning) states that "...A lot-of-record may or may not be a zoning lot." Mr. Hart wanted to know when is a lot-of-record not a zoning lot. Mr. Moore stated that he'd have to refer to his Zoning Ordinance in order to answer the question; however, in this case, these are lots-of-record. He stated these are approved lots. The King City Subdivision was approved probably before we had a Zoning Ordinance. He stated that it certainly meets the definitions set forth in Section 802 as a regularly recorded subdivision plat prior to 1976. He reiterated that these are lots-of-record. Under Section 507 they are substandard lots-of-record in that they don't meet the standards today. In essence, according to Section 507 we are stuck with the substandard lots that are already record, and substandard lots-of-record can be built on in accordance with that section.

Mrs. Touw stated that having been here when the changes were done, she thinks that it makes it easier. She stated there was a lot a discussion, pros and cons, and the decisions that were made clarified this for her. She doesn't think we can go back and look for something that might be a contradictory definition. She stated that "if we're going to make the ordinance something that we can respect and stand on, then we can't pick it apart." Mrs. Touw stated that she has no problem agreeing with Mr. Moore.

Mr. Ed Chesire of King City Subdivision stated that he agrees with the intent of the law, and "if we're going to do anything, we need to stick with the R-6 zoning." He pointed out that he has owned his lot for approximately 20 years, and if the Hice's are worried about making money, his lot is a good example of what has happened in the King City area. He stated that his lot has increased in value six to seven times in 18 years. He stressed that the Hice's would make more money if they stick with the R-6 zoning because the lots are more viable. Mr. Chesire stated that from a human standpoint, Mrs. Jean Hice (Mr. Hice's mother) would not lose any money if they were to build three houses and stick by the law.

Following discussion, a motion was made by Mrs. Iris Touw to revisit the action on the King City lots and to rescind the Planning Commission's previous action. The motion was seconded by Mr. Richard Altman. Discussion continued.

Mr. Hart stated that if we're going to let definitions get in the way of what the book is suppose to be talking about, then he has a problem with that. Mr. Hart stressed that he is very upset about several issues surrounding this case.

After discussion, the following vote was taken on the motion to revisit the action on the King City lots and to rescind the Planning Commission's previous action: Voting Aye: Mr. Richard Altman and Mrs. Iris Touw. Voting Nay: Mr. Lamar Cole and Mr. Jonathan Williams. Abstained From Voting: Mr. Hal Hart, Mrs. Glenda Jones and Mr. Jeff Shell.

A motion was then made by Mrs. Iris Touw to recommend that the Planning Commission go into Executive Session to discuss pending litigation due to the action taken on this request. The motion was seconded by Mr. Richard Altman and unanimously adoption.

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The meeting resumed at 10:40 a.m. and Chairman Jones called the meeting back to order.

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At this time, a motion was made by Mr. Jeff Shell to reconsider and rescind the decision made by the Planning Commission at the January 6<sup>th</sup> meeting regarding the King City Subdivision. The motion was seconded by Mr. Jonathan Williams. Voting Aye: Mr. Richard Altman, Mr. Lamar Cole, Mrs. Glenda Jones, Mr. Jeff Shell, Mrs. Iris Touw and Mr. Jonathan Williams. Abstained From Voting: Mr. Hal Hart.

A motion was made by Mr. Jeff Shell to deny the King City request as presented. The motion was seconded by Mr. Jonathan Williams. Voting Aye: Mr. Richard Altman, Mr. Lamar Cole, Mrs. Glenda Jones, Mr. Jeff Shell, Mrs. Iris Touw and Mr. Jonathan Williams. Abstained From Voting: Mr. Hal Hart.

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Chairman Jones explained that today's meeting was advertised as a work session; however, due to the Board having to correct action taken at the January 6<sup>th</sup> meeting, perhaps the work session should be rescheduled to continue discussing pending items. Therefore, it was the consensus of the Planning Commission to reschedule the work session for Thursday, February 12, 1998 at 9:00 a.m. in Room 234 of the Office Park Building.

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There being no further business to discuss, the meeting adjourned at 10:50 a.m.