



STAFF REPORT

MORGAN COUNTY PLANNING COMMISSION

PETITION FOR: ZONING MAP AMENDMENT

Property location:	3010 Fairplay Road
Property tax parcel:	010-062 & 010-064
Acreage:	2 acres total
Applicant:	Patricia Knight
Applicant's Agent:	
Property Owner:	Patricia Knight
Existing Zoning:	AR (Agricultural Residential)
Proposed Zoning:	C1 (Neighborhood Commercial)

Summary

*Please note this staff report has been submitted by Morgan County Planning & Development at the request of the District 3 Commissioner on behalf of the applicant.

Patricia Knight is requesting the rezoning of two parcels, one acre each, located at 3010 Fairplay Road, from AR (Agricultural Residential) to C1 (Neighborhood Commercial).



The business, known as Knight's Used Cars, consists of three parcels. The subject parcels are one acre each (highlighted in blue). The third parcel is 2 acres located behind the subject parcels and is not part of the rezoning request.

The request is predicated on the belief that the parcels were rezoned in error in 2006.

The subject parcels have contained a business since before zoning was established in Morgan County. The first Zoning Atlas, in 1986, showed the subject parcels zoned C-1. The rear parcel was zoned AR.



The 2004 Zoning Map, showed that the zoning for the parcels had not changed.



A proposed new Zoning Atlas was discussed in 2005, when the updated Zoning Ordinance and Development Regulations were adopted. The Zoning Atlas was advertised 3 times for 2005 Planning Commission meetings (January 27, 2005, February 24, 2005 and March 3, 2005). A version of the Zoning Atlas was adopted at a March 2005 special called BOC meeting. The map was revised and resubmitted the following year.

The new Zoning Atlas was reviewed by the Planning Commission on May 25, 2006 and was adopted on June 6, 2006. The new map identified the subject parcels as AR.



The applicant says they were not notified that the zoning of the parcels was changing. Records from 2006 are sparse, as the Senior Planner who handled the Zoning Atlas left Morgan County in 2009. Many of her computer files have been removed and Planning Commission records were not as comprehensive as they are now.

Why the parcels were changed from C1 to AR cannot be positively identified. The May 11, 2006 Staff Report for the Zoning Atlas states:

At the direction of the Board of Commissioners, zoning changes have been made in certain areas to bring the zoning classification more in line with existing land use patterns.

Staff has been asked why the property was not posted with a sign, per the requirements of the Zoning Procedures Law. A sign is not required to be posted on the property if the rezoning is requested by the local government. When the rezoning is initiated by the local government, the meeting has to be

advertised only. Staff has a copy of the advertisement purchase order for the May 25, 2006 meeting for Zoning Atlas adoption, sent to the Morgan County Citizen on April 24, 2006.

OCGA § 36-66 Zoning Procedures Law

§ 36-66-4. Hearings on proposed zoning decisions; notice of hearing; nongovernmental initiated actions; reconsideration of defeated actions; procedure on zoning for property annexed into municipality

- **(a)** A local government taking action resulting in a zoning decision shall provide for a hearing on the proposed action. At least 15 but not more than 45 days prior to the date of the hearing, the local government shall cause to be published within a newspaper of general circulation within the territorial boundaries of the local government a notice of the hearing. The notice shall state the time, place, and purpose of the hearing.
- **(b)** If a zoning decision of a local government is for the rezoning of property and the rezoning is initiated by a party other than the local government, then:
 - **(1)** The notice, in addition to the requirements of subsection (a) of this Code section, shall include the location of the property, the present zoning classification of the property, and the proposed zoning classification of the property; and
 - **(2)** A sign containing information required by local ordinance or resolution shall be placed in a conspicuous location on the property not less than 15 days prior to the date of the hearing.

Typically, when a single parcel rezoning is initiated by Staff, a sign will be placed on the property regardless of the language above. This was the case late last year when Staff initiated rezoning for Blue Springs Marina. However, a cursory review of zoning changes in 2006 showed over 100 parcel zoning designation changes. Most were changing between AG and AR, but there were other locations where commercial zoning was changed or removed. The majority of the changes were logical, given the zoning of surrounding parcels.



Current zoning shows the parcels zoned AR, with surrounding parcels zoned the same.

The owners have obtained an Occupational Tax Certificate (Business License) every year for Knight's Used Cars. The change in the zoning designation made in 2006 has not prevented them from operating the business, as they were considered a legal non-conforming use (grandfathered). One current issue is that another, different, commercial use cannot be started there.

The zoning change was brought to the attention of the property owners when someone inquired about buying the properties (all three known as Knight's Used Cars). The prospective buyer wants to change the business to another commercial use.

Criteria for Consideration

(Please note that the criteria below are bulleted in the Morgan County Zoning Ordinance, Section 19.3.1. They are numbered here for ease of use.

1. **Compatibility with Adjacent Uses and Districts:** Existing uses and use districts of surrounding and nearby properties, whether the proposed use district is suitable in light of such existing uses and use districts of surrounding and nearby properties, and whether the proposal will adversely affect the existing use or usability of adjacent or nearby properties.
2. **Property Value:** The existing value of the property contained in the petition under the existing use district classification, the extent to which the property value of the subject property is diminished by the existing use district classification, and whether the subject property has a reasonable economic use under the current use district.
3. **Suitability:** The suitability of the subject property under the existing use district classification, and the suitability of the subject property under the proposed use district classification.
4. **Vacancy and Marketing:** The length of time the property has been vacant or unused as currently used under the current use district classification; and any efforts taken by the property owner(s) to use the property or sell the property under the existing use district classification.
5. **Evidence of Need:** The amount of undeveloped land in the general area affected which has the same use district classification as the map change requested. It shall be the duty of the applicant to carry the burden of proof that the proposed application promotes public health, safety, morality or general welfare.
6. **Public Facilities Impacts:** Whether the proposal will result in a use, which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, schools, parks or other public facilities and services.
7. **Consistency with Comprehensive Plan:** Whether the proposal is in conformity with the policy and intent of the locally adopted comprehensive plan.
8. **Other Conditions:** Whether there are any other existing or changing conditions affecting the use and development of the property that give supporting grounds for either approval or disapproval of the proposal.

2006 Zoning Atlas Hearings

Excerpt from May 25, 2006 Planning Commission meeting

X. A petition has been received from **Morgan County** in regard to the Morgan County Zoning Atlas. The purpose of the petition is to adopt an updated official Zoning Map for Morgan County.

Allison Moon presented the staff report on behalf of Morgan County. She indicated that the Morgan County Planning and Development staff is presenting for consideration an updated zoning map. In an attempt to provide the most up-to-date information, the new map has been created to reflect the most recent parcel splits in the GIS database, as well as updated zoning changes through March 2006. At the direction of the Board of Commissioners, zoning changes have been made in certain areas to bring the zoning classification more in line with existing land use patterns. She indicated that staff has reviewed the original 1986 mylar zoning maps to make sure that each parcel that has not undergone a zoning change correctly reflects its intended zoning classification.

Ms. Moon indicated that several errors had been discovered during the time the map was reviewed by the public prior to the hearing. Specifically she recommended that the following changes should be made. Parcel # 036B- 079, 036B- 080, 036B- 085 all should be C-1, parcel # 041- 005 should be AG. She also indicated that she had received a letter in regard to parcel # 051- 003 and that the property owner was present to speak on behalf of the change of parcel 051- 003.

Ruth Ann McGehee (1140 Apalachee River Road, Madison, Georgia) spoke on behalf of parcel# 051- 003. She indicated that she just purchased the property and there were presently two manufactured homes on the site. The parcel was proposed to be LR-1 and she requested it to be changed to LR-2.

Ms. Moon clarified that LR-1 zoning classification did not allow manufactured homes. LR-2 did allow them. If the parcel was LR-2, Mrs. McGehee could replace the homes if they were destroyed by more 50%.

Motion: Mr. Cathey made a motion to approve the map with a condition that the zoning change on the following parcels: 036B-079 to C-1, 036B – 080 to C-1, 036B – 085 to C-1, 041 -005 to AG, and 051 – 003 to LR-2.

Second: Mr. Sidwell

Vote: 8-0

The motion was unanimously approved.

Excerpt from the June 6, 2006 Board of Commissioners meeting

1. Morgan County is requesting adoption of Updated Official Zoning Map for Morgan County.

MOTION by Comm. Warren and seconded by Comm. Butler to table until afternoon session.

Unanimously Approved

MORGAN COUNTY REQUEST TO ADOPT UPDATED OFFICIAL ZONING MAP FOR MORGAN COUNTY

MOTION by Comm. McGinnis, seconded by Comm. Warren, to take off the table Morgan County Request to Adopt Updated Official Zoning Map for Morgan County.

Unanimously Approved.

County Planner Allison Moon reported that the Planning Commission voted to adopt an official zoning map with recommended changes:

<u>Tax Map & Parcel No.</u>	<u>From</u>	<u>To</u>
039028		AR
	AG	
039029		AR
	AG	
039030		AR
	AG	
036B-079		R1
	C1	
036B-080		R1
	C1	
041005		ROW
	AG	
051003		LR1
	LR2	

Chairman Bohlen allowed proponents to speak. No proponents were present

Chairman Bohlen allowed opponents to speak. No opponents were present.

MOTION by Comm. Thomas, seconded by Comm. Butler to approve the Updated Official Zoning Map for Morgan County as presented with proposed changes. Unanimously Approved.

Staff Comments

This topic has already been publicly discussed at BOC meetings. The attached newspaper article, although poorly written with regard to zoning identification, accurately describes sentiments expressed at the meeting. If the rezoning was in error, Staff would have no concerns about the rezoning proposal. The following concerns are offered for your review and consideration:

1. The 2006 Zoning Atlas was legally advertised and adopted. It is unknown whether Staff contacted every property owner with a proposed zoning change in 2006, but it is doubtful. Firstly, because of the number of parcels involved. Secondly, it was not legally required. An argument could possibly be made that the lack of formal notification wasn't "nice," but it doesn't negate the fact that it was legal.
2. Evidence exists to suggest that Staff was directed by the BOC at the time to review and change zoning that was inconsistent with existing land uses. These parcels were spot zoned in 2006, which may have been the reason they were chosen for change. Rezoning the parcels back to commercial would also constitute spot zoning. Furthermore, the prospective buyer has expressed interest in a commercial use that will not fit on the two small parcels. The use would require additional commercial rezoning which could be considered a domino effect. The Morgan County Comprehensive Plan does not identify commercial uses in this area.

3. Rezoning these parcels to their pre-2006 zoning designation could set a dangerous precedent. If allowed, any property owner could approach the county, claim ignorance of a 2006 zoning change, and request to be zoned back to their pre-2006 zoning designation.
4. It is completely understandable that the property owners would approach the county regarding a change back to commercial zoning when their prospective buyer wants commercial zoning. It is not the county's responsibility, however, to backtrack legal zoning decisions to facilitate a property sale.

From March 30, 2018 Lake Oconee News



Riden

Continued from A1

"We called it the beer joint years ago," Riden said.

In 1986, Morgan County zoned part of the property C-1. To the best of the Knights' knowledge all three were zoned C-1 and have remained the same ever since. Recently, the family had an offer to purchase the three-parcel property. In the process of making the deal, the Knights realized a 1-acre lot is zoned C-1, but the other two parcels totaling approximately 4.2 acres are zoned Ag-residential.

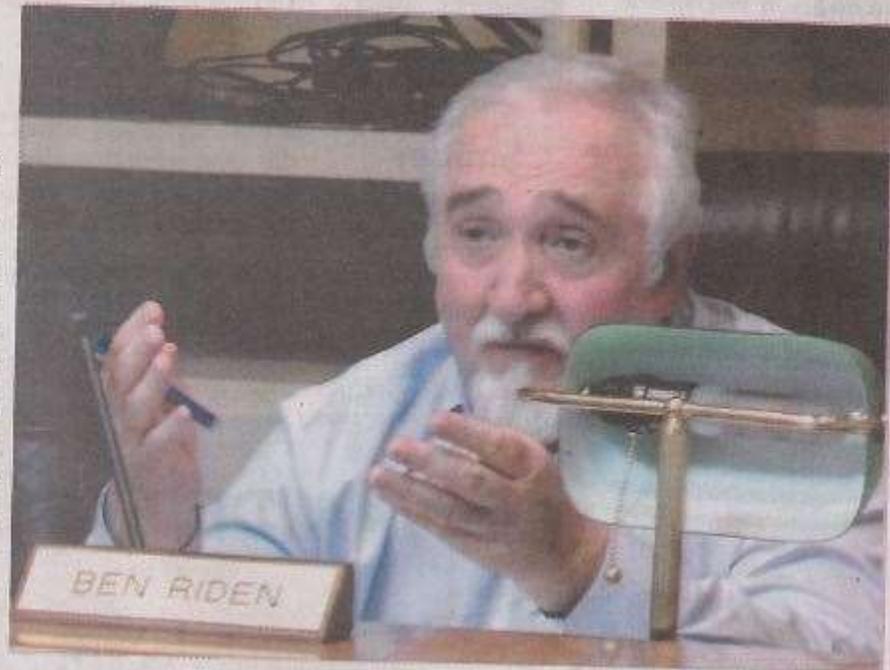
"They are all right there together," Riden said.

The purchaser wants all three parcels zoned C-1.

Planning & Development director Chuck Jarrell researched the issue and found the two C-1 parcels were rezoned to Ag in 2004, he had no way of knowing if it was intentional or by error. He said when the county adopted a new property atlas in 2006, it may have been properly advertised. On the other hand, all the property around it continues to be zoned C-1, he said.

"Nobody knows why it was changed," Riden said. "The family did not request the change."

Riden suggested to the commissioners and Jarrell that the process of changing the zoning back could be



Commissioner Ben Riden contemplates ways to fast track a zoning problem.

SHELLIE SMITLEY/Staff

expedited.

"I would like to go ahead and vote on it to make the change," Riden said. "The technically-correct protocol would be to take it back to the Zoning Board last month, and then they would have to approve it, and then it would come back to us."

Riden said he did not want to jump through all the hoops and instead asked attorney Christian Henry if there was enough leeway in the legal area to skip the rest of the process.

Jarrell said he respectfully disagreed with the commissioner. He was not opposed to changing the two parcels back to C-1 zoning, however,

he did not agree with violating the state's zoning procedures law.

Riden asked Jarrell to clarify how the rezoning could be anything but an error on the county's part.

Jarrell explained to the commissioner that the county, as a zoning tool, can rezone property to a different category to eliminate a use from an area, without notifying a property owner if it is done through a total map adoption.

"I am struggling with the fact that, look, they are in my district and I want to do what is right by them," Riden continued to argue. "I fully respect what you are saying,

but if there is not a downside to it, I don't see why we can't just correct the error right here."

Henry said operating outside of protocol was not something he felt comfortable discussing at the public hearing. After a private meeting with the Knights in the hallway, Henry announced that the family was willing to go through the process.

The commissioners will address the issue again May 1.

"I still like to cut corners," Riden said after he asked the Knights if they were sure they were all right with following the proper procedures.



Zoning Action Report

To: Morgan County Planning Commission/ Board of Commissioners/
City and Town Councils

From: Morgan County Planning and Development

Date: May 11, 2006

Application # 2006.05.C

Application Information

Name of Applicant: Morgan County Planning and Development

Address of Applicant: 384 Hancock Street, Suite 300, Madison, Georgia 30650

Name of Applicant's Agent:

Address of Applicant's Agent:

Name of Property Owner (if different):

Address of Property Owner (if different):

Information Concerning the Request

The Morgan County Planning and Development staff is presenting for consideration an updated zoning map. In an attempt to provide the most up-to-date information, the new map has been created to reflect the most recent parcel splits in the GIS database, as well as updated zoning changes through March 2006. At the direction of the Board of Commissioners, zoning changes have been made in certain areas to bring the zoning classification more in line with existing land use patterns. Staff will highlight those areas at the public hearing. Additionally, staff has reviewed the original 1986 mylar zoning maps to make sure that each parcel **that has not undergone** a zoning change correctly reflects its intended zoning classification.

The official copy of the map is in our office for review. Planning staff is bringing this map forward to be approved as presented. However, if it is the desire of the Planning Commission or Board of Commissioners, changes can still be made to the form of the map as long as they are done by majority vote at the time of the public hearing.

Respectfully submitted.