

**RECOMMENDATION FROM PLANNING
AND ZONING COMMISSION OF CITY OF DIAMONDHEAD, MS
TO DENY ZONING CHANGE FOR
DIAMONDHEAD REAL ESTATE, LLC
CASE NO. 2013-06**

WHEREAS, the Diamondhead Planning and Zoning Commission held a public hearing on June 26, 2013; and

WHEREAS, an application was filed by **Diamondhead Real Estate LLC** for a Zoning Change request from R-2 and R-3 to C-2, stating that the proposed change was to insure that the zoning on the S. side of Diamondhead which permits gaming in an area N. of Airport Dr. complies with Mississippi Law. This property bears the following parcel numbers:

132J-1-10-011.000, 132J-1-10-010.000, 132J-1-10-009.000, 132J-1-10-008.000, 132J-1-10-007.000, 132J-1-10-006.000, 132J-1-10-005.000, 132J-1-10-004.000, 132J-1-10-003.000, 132J-1-10-002.006, 132J-1-10-002.007, 132J-1-10-002.008, 132J-1-10-002.009, 132J-1-10-002.010, 132J-1-10-002.011, 132J-1-10-002.012, 132J-1-10-002.013, 132J-1-10-002.014, 132J-1-10-002.015, 132J-1-10-002.016, 132J-1-10-002.017, 132J-1-10-002.018, 132J-1-10-002.019, 132J-1-10-002.020, 132J-1-10-002.021, 132J-1-10-002.022, 132J-1-10-002.023, 132J-1-10-002.024, 132J-1-10-002.025, 132J-1-10-002.026, 132J-1-10-002.027, 132J-1-10-002.029, 132J-1-10-002.030, 132J-1-10-002.031, 132J-1-10-002.032, 132J-1-10-002.033, 132J-1-10-002.034, 132J-1-10-002.035, 132J-1-10-002.036 132J-1-10-002.037, 131M-2-11-059.000, 132J-1-10-002.001, 132J-1-10-002.038; and

WHEREAS, the application filed by Diamondhead Real Estate LLC included parcel number 132J-1-10-002.028 (Harbor House Unit 28) as part of the area to be rezone, but that parcel is not included in the list of parcels above and was not included in the public notices for the rezoning because proof of ownership or right of possession pursuant to Section 2.8.6(A)(i) of the zoning ordinance was not provided in the application, and the application specifically indicated that Unit 28 was not owned by the applicant; and

WHEREAS, pursuant to Section 2.8.8(A) of the zoning ordinance, the Zoning Administrator made the following recommendations regarding the application, should the Commission recommend approval:

1. Harbor House Unit 28 should not be included within the area to be rezoned. Even though Unit 28 was listed in the application as an area to be rezoned, proof of ownership or right of possession pursuant to Section 2.8.6(A)(i) of the zoning ordinance was not provided in the application, and the application specifically indicated that Unit 28 was not owned by the applicant.
2. No Gaming or Casino facilities shall be located on the property the application has requested to be rezoned; rather, the gaming or casino

facilities themselves should be physically located within the existing C-2 areas.

3. Permitted Uses shall be limited to Hotels/Suites, Villas, Condominiums, Townhomes and those resort amenities as approved by the City of Diamondhead through the review processes under Article 2 of the zoning ordinance.
4. The restrictive covenants in the proposed rezoning area should either be removed or amended consistent with the foregoing recommendations.

and

WHEREAS, the Commission did accept public testimony at the hearing; and

WHEREAS, Mr. Mike Cavanaugh attorney for the Jacobs Group and David Gruenwald with the Jacobs Group appeared before the Planning Commission to present the zoning change request on behalf of Diamondhead Real Estate LLC. Mr. Cavanaugh stated that there are changes in the character of the neighborhood, including ownership of roadways in the area conveyed to the city. He stated that the City of Diamondhead's Comprehensive Plan, in Chapter 4, recognizes that these particular residential properties could develop for nonresidential uses if protective covenants expire or are removed. Mr. Cavanaugh further stated that Jacobs group owns more than 95% of the Harbor House property and that conditions have changed in that area due to the fact that most of the property has been left vacant. Mr. Cavanaugh also stated that the mean high tide requirement is based at the south side on the Harbor House site and the Public need would be for the tax revenue and to bring tourist into the City of Diamondhead. Mr. Cavanaugh stated that the applicant agrees to all of the recommendations made by the Zoning Administrator; and

WHEREAS, Mr. Robert B. Wiygul, attorney for a group of Diamondhead residents and property owners, spoke in opposition to the application. He stated that the Jacobs Group presented information that was different from what was submitted in the rezoning application and that it should be stricken from the record. He further stated that the area was zoned residential only nine months prior, and that the changes since that time urged by the applicant do not meet the legal standard for rezoning. He elaborated with additional comments in opposition to the application, and also urged any board members who have already taken a position on the rezoning to recuse themselves from voting on it; and

WHEREAS, there were a large number of citizens in opposition and in favor of the application who presented their views to the Commission; and

WHEREAS, proper publication and notice were served on the affected landowners and other persons throughout the City of Diamondhead in accordance with the requirements of the zoning ordinance; and

WHEREAS, the Commission members were polled by the Chairman as to whether they found that there was an error in the original zoning or whether there was a change in the area to

warrant zoning and each member responded in the negative as to each issue, and the members concluded that a motion to **deny** the Zoning Change request from R-2 and R-3 to C-2 was in order,

NOW THEREFORE BE IT RESOLVED by the Diamondhead Planning and Zoning Commission, upon motion by Denise Catone and seconded by Chuck Garrison, the Diamondhead Planning and Zoning Commission votes to recommend **denial** of Case No. 2013-06 to the City Council.

A vote was called for with the following results:

Voting Yea: Denise Catone
Chuck Garrison
Nita Hensley
Jane Lee
Norm Parker
Roger Smith
Thomas Sislow

Voting Nay: None

Absent: None

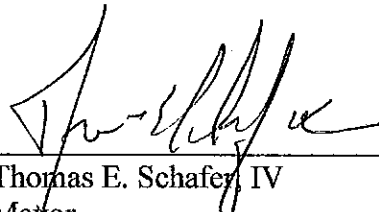
Dated the 26th day of June, 2013



Thomas Sislow, Chairman
Diamondhead Planning and Zoning Commission

After the foregoing Planning and Zoning Recommendation was reduced to writing, Councilmember Sislow moved, seconded by Councilmember Rech, to accept the Planning and Zoning Commission recommendation to deny the zoning change for Diamondhead Real Estate, LLC, Case No. 2013-06

	Aye	Nay	Absent
Councilmember Lopez	_____	<input checked="" type="checkbox"/>	_____
Councilmember LaFontaine	_____	<input checked="" type="checkbox"/>	_____
Councilmember Sislow	<input checked="" type="checkbox"/>	_____	_____
Councilmember Rech	<input checked="" type="checkbox"/>	_____	_____
Councilmember Knobloch	<input checked="" type="checkbox"/>	_____	_____
Mayor Schafer	<input checked="" type="checkbox"/>	_____	_____

APPROVED: 
 Thomas E. Schafer IV
 Mayor

ATTEST: 
 Sue W. Foster, City Clerk

SEAL

THIS IS TO CERTIFY THAT THE FOREGOING RESOLUTION WAS ADOPTED BY THE CITY OF DIAMONDHEAD, MISSISSIPPI, ON THE ^{15th} 1st DAY OF July, 2013.


 CITY CLERK