



DYANNE C. REESE, CMC

Office of the Clerk of Council Savannah, Georgia

April 1, 2005

Phillip McCorkle, Agent
James F. Gowen and Suntrust Bank as Custodian
For James F. Gowen
319 Tattnall Street
Savannah, GA 31401

Dear Mr. McCorkle:

Your petition requesting to rezone Petit Guave Islands from a C-M (Marsh Conservation) zoning classification to a C-A (Agriculture Conservation) zoning classification, subject to General Development Plan pursuant to Section 8-3031(D)(1)(a), for the two back barrier islands only, was heard at the regular Council meeting of March 31, 2005 and was reported on:

Denied _____
Cont'd _____
Other _____

Approved X (As stated below)
Deferred _____

Comments: The Metropolitan Planning Commission (MPC) recommends approval of the request to rezone the subject property from a C-M classification to a P-C-A (Planned Agriculture Conservation) classification in conjunction with General Development Plan approval in accordance with Section 8-3031 (D) (1)(a). Approval of a General Plan in conjunction with the requested rezoning can limit the use of the property and establish conditions for development in a manner that will protect the sensitive nature of the hammock environment. **Recommend approval of the MPC recommendation to approve the rezoning and General Plan.**

(Ordinance to cover will be drawn up for presentation at the next Council meeting).

Yours truly,

Dyanne C. Reese
Clerk of Council

PER _____

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Conservation) classification in conjunction with General Development Plan approval in accordance with Section 8-3031 (D) (1)(a). Approval of a General Plan in conjunction with the requested rezoning can limit the use of the property and establish conditions for development in a manner that will protect the sensitive nature of the hammock environment. **City Manager Brown recommended approval of the MPC recommendation to approve the rezoning and General Plan.**

Mayor Johnson outlined the ground rules for this hearing. Council has heard this rezoning request before and unless there is new information, we do not need to spend three hours hearing the same information again. This rezoning petition was sent back for clarification and work to MPC. Today, Council will hear what MPC has done and move this request forward one way or the other. He knew that the stated rules might be ignored, but did so because it might deter someone from coming back and rehearsing the same thing over again. Mayor Johnson asked MPC to make their presentation.

Ms. Charlotte Moore came forward and explained that this request is for the rezoning of the Petit Guave Island. Currently, the island is zoned C-M (Marsh Conservation). This request is for the upland portions only. The petitioner is requesting to rezone the islands to P-C-A (Planned Agriculture Conservation) and also is asking for a general development plan to be approved in conjunction with the rezoning. This request was previously before City Council on November 24, 2004. At that time, Council returned the petition so MPC could determine the proper use for the property and determine what development conditions would be appropriate if the property is to be developed. The tax parcel map of this property was shown on the monitor. The property is located south of Rose Dhu Island and the Girl's Scout camp. This is the only hammock within the City limits zoned C-M. The other hammocks are Steadman and Rose Dhu Islands. Both of these islands are zoned C-A. Rose Dhu is developed, but Steadman Island is not developed. She explained that the smaller hammock to the north is approximately 7.7 acres and is undeveloped. There is a utility building on the property, but the remainder is undeveloped and has a dock. The larger island is approximately 30 acres and is also undeveloped. This island has a dock as well. The existing C-M districts allow seven uses. MPC was concerned that the uses are limited. The uses include a temporary use of a public facility or park, carnival, rodeo horse show, shooting or athletic event, public use, public utility, facilities or boating, hunting or swimming, a wild life refuge, growing of parks, gardens and forestry. If approved by the Zoning Board of Appeals, the property could also be used for heliport or helistop, outdoor shooting range, or the removal or extraction of any national material or deposit. Because of these uses, MPC felt they were actually very limited. The petitioner is proposing to develop these islands for residential use. Ms. Moore showed area maps of both islands. The site for the small island was shown. The yellow coded portion represented the approximate location for a residence. The green area surrounding the island represented a 75 foot buffer, which would be left

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undisturbed, except for the area shown between the two black lines and would be considered a view corridor. Within this area, there could be some limited clearing of non-specimen trees and under-brushing as well. This would allow the residents to look out onto the marsh. However, as she stated, this would be limited clearing and would require that the City's landscaping architect review the plan for clearing. The area shown in orange is approximately 150 feet from the marsh. There will not be any septic tanks within this 150 foot area. The septic tank field will be approximately one-half acre. On the larger island, it is proposed to be up to four houses. This does not necessarily mean that this larger island would have four houses, but the petitioner would like the possibility of developing a site for up to four homes. The 75 foot buffer will remain and there is a view corridor as well. The County Health department would be responsible for improving the septic tanks in the drain fields in this area. The C-A districts allows a number of uses and these uses could be a commercial greenhouse, duplex and single-family detached residential. However, because the petitioner has a site plan along with the rezoning, the petitioner is agreeing to limit the uses only to single-family detached homes. Therefore, all of the other uses would not be allowed to be developed. If this property was rezoned and the petitioner wanted to develop for something other than single-family detached, the petitioner would have to return to City Council to have this approved. The development standards for both districts are similar. The lot size requirement within the C-A district is two acres, but these two lots are at least 7.5 acres each. Therefore, the proposed lots are substantially larger than what is required by the C-A district. The C-A district requires a minimum lot width of 200 feet and each lot is 275 feet or more. The front and rear yards setbacks are 25 and 50 feet respectively. Seventy-five (75) feet is being proposed and, therefore, exceeds the requirement. The side yard exceeds the requirement as 35 feet is required and 68 feet is being proposed. There is no height requirement within this particular zoning district. However, the petitioner has agreed to limit the height either to the height of the canopy or 30 feet, whichever is greater. There is no requirement for building coverage. The petitioner, however, has agreed to limit it to 115% of the footprint that is shown on the site plan. The building area would actually be very small. With regards to water and sewer, there will be private water and septic; with regards to electricity, the smaller island is already served. During the last hearing, they were not sure about the electricity on the larger island, but it is served by electricity as well. The petitioner has agreed to limit access to the island by boat only. The condition on the plan limits access by boat only. MPC feels that the P-C-A district would be appropriate for these hammocks and believes that certain conditions should be placed on the rezoning and on the site plan as well. A subdivision would be necessary for the larger hammock because of four lots being proposed. If City Council believes that any other conditions would be necessary to develop the property, those conditions should be placed on a revised general development plan. MPC believes further that the footprint of the building should be limited to no more than 115% of what is shown on the plan before City Council today. MPC believes also that the

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90 degree view corridor would be appropriate. Ms. Moore reported that MPC recommends approval of rezoning the uplands to P-C-A with the general development plan as well.

City Manager Brown affirmed and recommended approval of the recommendation of MPC and MPC staff. This rezoning petition was sent back to MPC for specifically additional review and recommendation if there were to be structural development on the island and if so, under what conditions would they occur? Mr. Brown believed that in this case, it has been carried out diligently and in a way that if City Council approves the rezoning, would very strictly limit the development. As Council saw, this is not just the rezoning petition, but also the approval of the general development plan with these requirements and most especially, the retention of the trees and view corridors. They could not simply cut down trees as this would have to be in accordance with what is seen on the view corridors. City Manager Brown stated that a discussion took place regarding whether there is a requirement for or an expectation of City services. The answer is there is not. The landowner would have to supply water with a well approved by the Health Department. They would have to completely provide for waste removal from the hammocks. The City would attempt to assist them if there was a fire or other types of public safety problems, but it would be only as we are able to provide that service along with the Marine Patrol. But there is no expectation of a fire truck going out to the hammock. This will not occur, although we do have firefighting capacity and we would attempt to respond. But the point the City Manager was making is there was a considerable amount of discussion about what are the service expectations. We would attempt to serve them as other places in the City, but we have no requirement to serve them. He wanted to make this clear. With these provisos, Mr. Brown believed they have attempted to diligently carryout the instructions that Council provided when this rezoning petition was referred back to the Planning Commission. Alderman Johnson said there is no requirement to serve the hammocks now and they are waiving services, but he wanted to know if Council approves this, in the future can a demand be made based on taxation. City Manager Brown answered no and explained that there is no expectation or requirement for service provision. The petitioner would be responsible for water, waste water, waste disposal, and the other services that they expect to have. These are not a municipal requirement. Alderman Felser asked if this meant forever. City Manager Brown stated that he believed they asked that this be noted on the site plan. If it was not stated, he believed it could be stated and put in writing on the site plan. Alderman Cook added that this is already on the site plan. Alderman Jackson asked if the monitoring of this would be done strictly by the Health Department regarding the sewage and so forth. City Manager Brown stated this would be done partly by the Health Department, but the petitioner would still be subject to all the City's building codes. The foundation, electrical, mechanical and plumbing would be inspected by our people. The septic tank installation would also be approved by the Health Department as well as by the City's building inspection staff. Alderman Cook said for a point of clarification, he believed that Ms. Moore stated that the roof height could not exceed the height of the

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existing tree canopy or 30 feet or whichever is greater, but according to the site plan, it is whichever is lower. Ms. Moore stated that this was correct. City Manager Brown stated that he thought they said 30 or 40 feet and this was the cap.

City Attorney Blackburn said he wanted to clarify a couple of points and have the MPC staff point out to Council the development standards. The existing land use element indicates in the comprehensive plan that this area is for wetlands or marsh. Thus, it was zoned C-M which is for wetlands or marsh. However, an examination of the land itself indicates that there are upland hammocks. He asked that in the original comprehensive plan, the land use element indicated that this was wetland or marsh. Ms. Moore answered that this was correct. City Attorney Blackburn asked Ms. Moore if her review of this initially and the other view, they confirmed that there are uplands that can be developed as highland. Ms. Moore answered correct. City Attorney Blackburn asked her that when City Council referred this back to MPC, was it to determine what the land use element should be and if it was determined that the land use element should allow for some development, what standards would they put in the development? Mr. Blackburn believed at that time, there was some mention of a subdivision being subject to the subdivision regulation as well as a general development plan. Ms. Moore answered correct. City Attorney Blackburn said in the general development plan and after that meeting, a question came up regarding putting on the site plan the designation or waiver of public services. He believed that he pointed out at that time and he points out again that laws made for the preservation of public order or good morals may not be dispensed with or abrogated by any agreement with anyone. However, they can waive or renounce what the laws established in their favor and does not, thereby, injure others or affect the public interest. The questions in his opinion that cannot be waived are if the public safety gets involved or a crime is committed, obviously the police jurisdiction is not waived; if there is a private well that supplies water, it must comply with all of the requirements for clean water; if someone disposes of the waste or sewage, it must be done with proper permits from the Health Department and the subdivision will have to get an environmental survey. The drainage runoff would have to meet the Corps of Engineers and the other permit requirements as well. Mr. Blackburn said without him going into them, he asked the staff if they reviewed the various requirements for the general development plan and in making this finding, determined the conditions as they were requested to do that should go in the development plan. Mr. Blackburn asked Ms. Moore if she made those findings and numerations in her report. Ms. Moore answered yes. The various user departments such as Stormwater have all reviewed this plan and indicated what the steps would be for the applicant. For example, Stormwater indicated that they would require a copy of the Georgia Department of Natural Resources permit and also a copy of the Army Corps of Engineers permit. The applicant has been put on notice that there are other steps that would have to be taken if the property is rezoned. Alderman Thomas said he wanted to go back to one point that was raised by the City Attorney. He is very concerned

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about this issue because it is somewhat like getting a foot in the door and then they worry about everything else later. He was looking at the site plan that showed four houses, 7 acres on the remote island that will overlook Green Island Sound and Vernon River. Everybody is saying they will waive their rights. But, what happens when the multimillion dollar houses are built on this island and suddenly vandalism occurs, people come off the boats and start messing with the property; one house burns on this island and cannot be extinguished. Alderman Thomas wanted an explanation about what was actually meant by "waiving rights." As he sees this, as he as stated, is a foot in the door and later at some point when this is built, someone will say that they pay taxes and, therefore, will demand services. He wanted to know what position the City would be put in to provide this kind of services. City Attorney Blackburn stated that he was not sure he is the individual to answer Alderman Thomas's question. He explained that he read the statutes to Council of some explanations of what can and cannot be waived. They cannot waive the general police power. They can make an arrest or assist in putting out a fire, any of those things that are in the general police power of the community. However, the law enforcement powers if they did not do something with them would be a detriment to the community. But whether or not he has a public water and sewage system, they can develop a subdivision regulation with the proper regulations through the agencies that handle this. Contrast to supplying within the City limits of public systems, obviously can be waived. The question is difficult to answer, but as long as they meet the requirements that are set by the Health Department and clean water, and by those things that are not detriment to the public or if they have the proper permits, the stormwater runoff and have a stormwater plan that meets the permitting requirements, you can waive any storm drainage provided by the public body. Alderman Thomas stated that he understood this portion of it, but what he was asking about is the actual police services to the island. City Attorney Blackburn said he believed the police services could be waived in a sense to say that they do not have it paroled all the time, but the idea of enforcement of laws, nobody has the right to waive. Alderman Thomas asked if they, as a city, have the responsibility to police this island. City Attorney Blackburn answered absolutely. But, this does not appear to give Alderman Thomas the answer he is seeking. Alderman Thomas stated that it gives him an answer because he wanted to know how they will do it. When they breakdown policing in this community, why is it that we would not provide a citizen that lives in a district such as in District 1 and spend less money policing them then we would on policing this one island. It will cost more money to police this island with these fewer residents here. City Manager Brown wanted it to be clear. If there is a call to this area, we would respond as best we could. As he said, there are Marine patrols that go along the waterways and make contact with the docks, but there is no expectation and no provisions of routine patrol services at the island. This is why it is listed on the site plan and the petitioner acknowledges it. It says on the site plan that "according with the Georgia Code and in connection with the ownership of this island commonly known as Petite Guave, Mr. Gowen does hereby for his agency assigned, attorneys, successors,

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predecessors and representatives waive any and all rights which he may currently have or which may exist in the future services and protections provided by the City of Savannah, Georgia to its citizen." Mr. Brown said this is in the site plan and they cannot change this. The only way they can change the zoning of the site plan is to come back to City Council and do just as they are doing now. There is no expectation. The City will provide services as it can, but there will not be a garbage truck going here, no water and sewage services; no patrol vehicles designated to visit here. The services will be provided as best possible by the City, but there is no special provisions to them.

Alderman Thomas said his next question probably incorporates the Chatham County Health department, the DNR and others. When they talk about septic systems, drainage and drain fields, they are dealing with an issue now where the City of Savannah is engaged with Vernonburg and the EPA in monitoring pollution in the Vernon River, which this island is located on. They are going to put in additional septic systems that will drain into the marsh and the other surrounding areas that could potentially get into the Vernon River. If we, as a City, are charged at any point in the future of having to take these individual septic systems that are throughout Coffee Bluff and along Halcyon Bluff and put them on a municipal system of some sort to prevent the drainage from entering into the river, how would this impact their responsibility if they grant this?

City Manager Brown said that Alderman Thomas raised a valid concern that in the Vernon basin as he recalls, there is nearly 200 units most of which are not inside the City of Savannah and have septic systems. It is almost highly probable that some of these systems are draining into the water force. Most of these have to do with high densities, septic fields and systems and not working the way they should. They were not designed to present day standards and many of them or in close proximity to the marsh line. But, in this particular case, there is a 150 foot septic tank setback line. He believed that Ms. Moore said a half-acre minimum size for the drain field. Most of the septic tanks in this basin that are doing badly have to do with not having an adequate drain field being close to the marsh, not being built to present day standards and not being inspected. City Manager Brown believed it needs to be made clear with this application and believed it was discussed at MPC that the petitioner would have to require on an ongoing basis the highest level of septic systems to protect the marsh. He believed it would be our goal to ultimately eliminate 99 percent of all septic tanks as possible in areas in Rose Dhu and areas that are a mile or a half-mile from the sewage system. These will probably have to do what this one does and have high quality systems that are set back from streams and be well-maintained. It is the other conditions that lead to water quality problems. Overly dense small fields not properly maintained and not built to today's standards and so forth.

Alderman Clifton Jones said his concern was based on some of Alderman Thomas's concerns. He wanted to know if a policy would be included in this or some means of checking the systems from time to time. He knew of cases where there is good soil, but sometimes they do not work. Alderman Jones did not know if the Health Department would be responsible for this, but knew that based on the other concerns in this area, this is something that needs to be included in the

plan. He wanted to know if there is a provision for a boat to go to this island to clean the septic tanks. City Manager Brown stated that his answer is they would have to meet all of the present standards. If there is a concern about this, they could amend item 6 on the General Development plan that not only would they have to meet current septic standards, which are subject to Inspections that if there is any indication or failure or improper operation, that this site would have to meet present and any future general standards dealing with septic tanks. It is important in the future not to single these folks out, but if there is a higher standard for septic tanks operations and if there is a problem with their septic tank, they would have to upgrade to the higher standards of septic zones. City Manager Brown believed this would be a reasonable site provision in this case. Every septic tank is not a problem, but the ones that are not designed and maintained properly. Eventually, everyone will be a problem if it is not properly maintained. City Manager Brown said if it is the will of Council, he recommends that this site would be subject to any future design or requirement for septic systems in the event of failure or failure to perform under the present system. Alderman Jackson said she saw where the garbage and trash would be removed from the island. City Manager Brown stated that this is correct. Alderman Jackson asked if the garbage and trash would be removed by the private owner on a regular basis. City Manager Brown said that the owner would be responsible for proper packaging and removal of all garbage and disposal off the island. This will be an absolute requirement and will be their full responsibility to properly disposal of it on the mainland and by some other arrangement that meets all of our sanitary requirements. Alderman Thomas asked if presently there are any island servers that remove trash from these islands. City Manager Brown answered that it would be the owners' responsibility to do this or have an agent remove the trash for them. Basically, they are talking about household waste. But, during the construction period, they would have to remove the construction debris material according to City codes. It would be the same thing as required at a residential development today, except between the spot and the mainland is water. This would have to be taken by boat or barge.

Attorney Philip McCorkle came forward and stated that he was representing Dr. Gowen. He had some handouts and most of it was aimed at showing the technical aspect of the different general development plans that were involved starting since last August. There have been four iterations of the plan as more and more fine-tuning has occurred. He believed that the MPC staff went over this fine; Council has seen the general development plan and the City Manager also spoke about some particular issues. Therefore, he will stay away from this and was ready to answer a couple of questions that were raised and then reserve some time at the end if he needed to answer any more questions and then make his closing statement. Attorney McCorkle said with regards to the septic tanks, the soil has been tested on the island and it is good sandy soil. The small island has an elevation of 14 feet. There will not be a problem with septic tanks. The science says that you should not have a drain field within 50 feet of the marsh line. The stakeholder group that the Department of National Resources

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(DNR) appointed studied this issue. They decided that the septic tank drain fields should not be closer than 50 feet, but one or two members said it should be further, 75 to 100 feet. Their drain fields are 150 feet from the marsh. Therefore, they are a factor of three times what the science says is a safe place. Attorney McCorkle believed the drain fields and the septic tanks would be fine. He wanted it understood that there are a number of islands in this state where people occupy the islands where there is no bridge access. There is only one instance that somebody's permanent everyday residence has some quarantine island is in Brunswick. The others that he was aware of are eight (8) or nine (9) islands in Camden County and a few are in McIntosh County, they are second homes. This is what Dr. Gowen's will be as well. The question has come up how you build a house if you have to take everything over by boat or barge. The answer is you do so a stick at a time. These houses will not be very big and tend to be a second home get-a-way where you get on the island and enjoy nature, have a nice weekend, put your garbage in a black plastic bag, put it on the boat and take it with you. This is what happens on these islands and it is not unheard of. This is not a new idea. Dr. Gowen lives in the Brunswick area and has seen a lot of this in that part of Georgia. He guessed this was why he did not anticipate a problem when he purchased the island. Dr. Gowen believed that he would be able to do something similar in Chatham County. The removal of trash and cleaning out a septic tank will have to be done. At the proper time the container will have to filled up, get it off the island and the tank will have to be serviced every few years. With a structure being used occasionally, they feel that a septic tank will do well for a long time. He had no objections modifying the site plan requiring Dr. Gowen to stay updated with new technology if the Health Department came in and said they needed to use new septic tanks. The DNR studied the issue of the use of back barrier islands for approximately one and one-half (1 ½) years. Their initial charge to the stakeholder group was to give them some advice concerning policies that are most protective of hammocks and surrounding tidal marshes environments while making certain to the maximum extent possible that none of the actions or recommendations proposed violate private property rights. There was never any inkling or suggestion from the DNR that privately owned back barrier islands be barred from use. The activities that were of great concern were bridges, septic tanks, how much impervious surface and if you would allow these types of issues, how much could you clear? What would the view corridor be? The DNR stakeholder group said they believed you should be able to clear 50 percent of your frontage on the marsh. They have limited theirs basically to 25 percent. Dr. Gowen has exceeded every suggestion that the stakeholder group made and has done everything he can to request the ability to use his property in an environmentally sensitive way. If everyone thinks about it, a back barrier island is any island between the mainland and the barrier island, which are Tybee and Ossabaw. These islands are along the ocean and people all over this community live on back barrier island. Rose Dhu is a back barrier island, Skidaway Island, Wilmington Island, Talahi Island, Whitmarsh Island and Isle of Hope. All of these are back barrier islands and we are accustomed in this community to living on these islands.

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It is just rare that somebody would want to put a structure perhaps on one that cannot be accessed by a bridge. This is what Dr. Gowen would like to do. Attorney McCorkle said he believed that Dr. Gowen has basically bent over backwards to agree to anything that was reasonable on any issues that were real, but there are issues not real that they cannot do anything about. They know there are birds on the islands and if there are wood storks here, they will live with them. He has clients building in areas where there are wood storks. These are issues they will deal with. Dr. Gowen just wants to be able to put a cabin on the seven (7) acres and potentially one day, put up to four on the 30 acre island. The better of two choices - do you let him to something that is environmentally sensitive or do you say no you cannot do anything basically with your property. Attorney McCorkle said he would have to put into the records that this would be an unconstitutional taking of Dr. Gowen's property rights and a violation of the due process. Approximately one and one-half years ago, he prepared a two page waiver liability in addition to the note of waiver of services that he put on the general development plan and would be glad to present the City with an extra sheet of waiver of liability in a form that would be satisfactory to Mr. Blackburn as well. They do not intend to expect or demand services. The other folks up and down the coast who have second homes on these inaccessible islands earn the same vote. You take a chance. He called his insurance agent and asked how Dr. Gowen buys insurance. The agent told him that he could buy insurance, it just costs money and if the place catches on fire, it just burns down. There will not be a multimillion dollar structure. This will be a weekend cabin. They don't believe they will hurt anybody and asked for Council's kind consideration.

Attorney Glen Darbyshire came forward and stated that he was representing the historic Beaulieu and Montgomery community association. He realized that Council wanted to hear new information and would make this quickly as he could. He was pleased to hear that there has been a subsequent discussion among City Council. When they were here in November, 2004, they sat through the afternoon and the motion came fast to send this back to MPC. Therefore, they felt there was not full discussion within City Council and they were pleased to see this today. He explained that a prominent Savannah banker came to his hometown many years ago and bought the local bank. He came in, had the meeting, all hands were shaken and the closing documents were read. The family who founded the bank, the leader stood up and said this has been a wonderful, development bank for the community and has done many things, but the thing he was proudest of was the fact that the bank had never lost a dime on a loan. To this the Savannah banker said you have not served your community. You have not taken risks that need to be taken at times and you are going to lose some money on loans some times. Attorney Darbyshire said this City Council occasionally will make a decision that gets them in a law suit and occasionally they may lose. This is good government when it is wisely taken and you make a close call. He said this because he sensed that the City is concerned that there will be a law suit, the adverse publicity of the lost and maybe having to pay attorney's fees in this instance. He is a litigator and