HOUSE BILL NO. 644

AN ACT TO REQUIRE THE BOARD OF SUPERVISORS OF EVERY COUNTY AND THE GOVERNING AUTHORITIES OF EVERY MUNICIPALITY TO ESTABLISH LOCAL PLANNING COMMISSIONS; TO PRESCRIBE THE POWERS AND DUTIES OF LOCAL PLANNING COMMISSIONS; TO PROVIDE FOR THE SELECTION OF MEMBERS OF THE COMMISSION AND TO PRESCRIBE THEIR QUALIFICATIONS, TERMS OF OFFICE AND COMPENSATION; TO PRESCRIBE THE PROCESS BY WHICH LOCAL PLANNING COMMISSIONS SHALL DEVELOP AND MAINTAIN THEIR POLICIES; TO PROVIDE FOR THE MANNER AND PROCEDURE THAT PLANNING COMMISSIONS SHALL FOLLOW IN ADOPTING AND ENFORCING ZONING ORDINANCES; TO PROVIDE A PROCEDURE FOR APPEALS FROM DECISIONS OF A COMMISSION AND FROM COURT DECISIONS PERTAINING TO ZONING ORDINANCES AND PLANNING COMMISSION ORDERS; TO REPEAL SECTIONS 17-1-1 THROUGH 17-1-39, MISSISSIPPI CODE OF 1972, WHICH AUTHORIZE THE GOVERNING AUTHORITIES OF ANY MUNICIPALITY AND THE BOARD OF SUPERVISORS OF ANY COUNTY TO ESTABLISH LOCAL AND REGIONAL PLANNING COMMISSIONS TO REGULATE AND RESTRICT THE ERECTION, CONSTRUCTION, RECONSTRUCTION, ALTERATION, REPAIR AND USE OF BUILDINGS, STRUCTURES AND LAND WITHIN THEIR JURISDICTION; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. This act shall be known and may be cited as the "Local Planning Commission Act of 2003."

ARTICLE 1

SECTION 2. (1) The governing authorities of each municipality and the board of supervisors of each county shall create a local planning commission. A municipality may exercise the powers granted under the provisions of this chapter in the total area within its corporate limits. A county may exercise the powers granted under the provisions of this chapter in the total unincorporated area or specific parts of the unincorporated area. Unincorporated areas of the county or counties adjacent to incorporated municipalities may be added to and included in the area under municipal jurisdiction for the purposes of this chapter provided that the governing authorities of the municipality and
the boards of supervisors of the counties involved, by ordinance
duly adopted and entered upon their respective official minutes,
establish the boundaries of the additional areas, limit of the
authority to be exercised by the municipality and provide for
representation on the boards and commissions provided for under
this chapter.

(2) The governing authorities of a municipality may
designate by ordinance the county planning commission as the
official planning commission of the municipality. In the event of
the designation and acceptance by the county, the county planning
commission may exercise the powers and duties as provided in this
chapter for municipal planning commissions as are specified in the
agreement reached by the governing authorities of the municipality
and the board of supervisors. The agreement must specify the
procedures for the exercise of powers granted under this chapter
and shall address the issue of equitable representation of the
municipality and the county on the boards and commissions
authorized by this chapter. This agreement must be formally
stated in appropriate ordinances by the governing authorities
involved.

SECTION 3. (1) A local planning commission, when created by
an ordinance passed by the governing authorities of municipality
or the county board of supervisors, or both, must undertake a
continuing planning program for the physical, social and economic
growth, development and redevelopment of the area within its
jurisdiction. The plans and programs must be designed to promote
public health, safety, morals, convenience, prosperity or the
general welfare as well as the efficiency and economy of its area
of jurisdiction. Specific planning elements must be based upon
careful and comprehensive surveys and studies of existing
conditions and probable future development and include recommended
means of implementation. The local planning commission shall
make, publish and distribute maps, plans, reports and
recommendations relating to the plans and programs and the
development of its area of jurisdiction to public officials and
agencies, public utility companies, civic, educational,
professional and other organizations and citizens. All public
officials, upon request, shall furnish to the planning commission,
within a reasonable time, such available information as it may
require for its work. The planning commission, its members and
employees, in the performance of its functions, may enter upon any
land with consent of the property owner or after ten (10) days'
written notification to the owner of record, make examinations and
surveys and place and maintain necessary monuments and marks on
them; however, the planning commission shall be liable for any
resulting injury or damage to property. In general, the planning
commission has the powers as may be necessary to enable it to
perform its functions and promote the planning of its political
jurisdiction.

(2) In the discharge of its responsibilities, the local
planning commission has the power and duty to:

(a) Periodically prepare and revise plans and programs
for the development and redevelopment of its area as provided in
this chapter; and

(b) Prepare and recommend for adoption to the
appropriate governing authority or authorities as a means for
implementing the plans and programs in its area:

(i) Zoning ordinances to include zoning district
maps and appropriate revisions thereof, as provided in this
chapter;

(ii) Regulations for the subdivision or
development of land and appropriate revisions thereof and to
oversee the administration of the regulations that may be adopted
as provided in this chapter;

(iii) An official map and appropriate revision on
it showing the exact location of existing or proposed public
street, highway and utility rights-of-way and public building
sites, together with regulations to control the erection of
buildings or other structures or changes in land use within the
rights-of-way, building sites, or open spaces within its political
division or a specified portion of it, as set forth in this
chapter;

(iv) A landscaping ordinance setting forth
required planting, tree preservation and other aesthetic
considerations for land and structures;

(v) A capital improvements program setting forth
projects required to implement plans which have been prepared and
adopted, including an annual listing of priority projects for
consideration by the governmental bodies responsible for
implementation before preparation of their annual budget; and

(vi) Policies or procedures to facilitate
implementation of planning elements.

SECTION 4. (1) A local planning commission serving not more
than two (2) political jurisdictions may not have less than five
members; and not more than twelve (12) members. A local planning
commission serving more than two (2) political jurisdictions shall
have a membership not greater than four (4) times the number of
jurisdictions it serves. In the case of a joint city-county
planning commission, the membership must be proportional to the
population inside and outside the corporate limits of

municipalities.

(2) No member of a planning commission may hold an elected
public office in the municipality or county from which appointed.
Members of the commission first to serve must be appointed for
staggered terms as described in the agreement of organization and
shall serve until their successors are appointed and qualified.
The compensation of the members, if any, must be determined by the
governing authority or authorities creating the commission. A
vacancy in the membership of a planning commission must be filled
for the unexpired term in the same manner as the original appointment. The governing authority or authorities creating the commission may remove any member of the commission for cause.

(3) In the appointment of planning commission members, the appointing authority shall consider their professional expertise, knowledge of the community and concern for the future welfare of the total community and its citizens. Members shall represent a broad cross section of the interests and concerns within the jurisdiction. The members shall also represent the diversity of the total community.

SECTION 5. (1) A local planning commission shall organize itself electing one (1) of its members as chairman and one (1) as vice chairman whose terms must be for one (1) year. It shall appoint a secretary who may be an officer or an employee of the governing authority or of the planning commission. The planning commission shall meet at the call of the chairman and at such times as the chairman or commission may determine.

(2) The commission shall adopt rules of organizational procedure and shall keep a record of its resolutions, findings and determinations, which record must be a public record. The planning commission may purchase equipment and supplies and may employ or contract for such staff and such experts as it considers necessary and consistent with funds appropriated.

SECTION 6. The governing authorities of a municipality or the board of supervisors of any county may provide for the reference of any matters or class of matters to the local planning commission; however, final action on it may not be taken until the planning commission has submitted a report on it or has had a reasonable period of time, as determined by the governing authorities or board of supervisors, to submit a report.

SECTION 7. A local planning commission may cooperate with, contract with or accept funds from federal government agencies, state government agencies, school districts, special purpose
districts, including those of other states, public or eleemosynary institutions or agencies or private individuals or corporations. A commission may expend the funds and it may carry out such cooperative undertakings and contracts as it considers necessary.

ARTICLE 3

THE COMPREHENSIVE PLANNING PROCESS

SECTION 8. (1) The local planning commission shall develop and maintain a planning process that will result in the systematic preparation and continual reevaluation and updating of those elements it considers critical, necessary and desirable to guide the development and redevelopment of its area of jurisdiction.

(2) Surveys and studies on which planning elements are based must include consideration of potential conflicts with adjacent jurisdictions and regional plans or issues.

(3) The basic planning process for all planning elements must include, but not be limited to:

(a) Inventory of existing conditions;
(b) A statement of needs and goals; and
(c) Implementation strategies with time frames.

(4) A local comprehensive plan must include, but not be limited to, the following planning elements:

(1) A population element that considers historic trends and projections, household numbers and sizes, educational levels and income characteristics;

(2) An economic development element that considers labor force and labor force characteristics, employment by place of work and residence and analysis of the economic base;

(3) A natural resources element that considers coastal resources, prime agricultural and forest land, plant and animal habitats, parks and recreation areas, scenic views and sites, wetlands and soil types. Where a separate board exists under this chapter, this element is the responsibility of the existing board;
(4) A cultural resources element that considers
historic buildings and structures, commercial districts,
residential districts, unique, natural or scenic resources,
archaeological and other cultural resources. Where a separate
board exists under this chapter, this element is the
responsibility of the existing board;

(5) A community facilities element that considers
transportation network; water supply, treatment and distribution;
sewage system and wastewater treatment; solid waste collection and
disposal, fire protection, emergency medical services and general
government facilities; education facilities and libraries and
other cultural facilities;

(6) A housing element which considers location, types,
age and condition of housing, owner and renter occupancy and
affordability of housing; and

(7) A land use element which considers existing and
future land use by categories, including residential, commercial,
industrial, agricultural, forestry, public and quasi-public,
recreation, parks, open space and vacant or undeveloped.

(5) All planning elements must be an expression of the
planning commission recommendations to the appropriate governing
bodies with regard to the wise and efficient use of public funds,
the future growth, development and redevelopment of its area of
jurisdiction and consideration of the fiscal impact on property
owners. The planning elements whether done as a package or in
separate increments together comprise the comprehensive plan for
the jurisdiction at any one point in time. The local planning
commission shall review the comprehensive plan or elements of it
as often as necessary, but not less than once every five (5)
years, to determine whether changes in the amount, kind, or
direction of development of the area or other reasons make it
desirable to make additions or amendments to the plan. The
comprehensive plan, including all elements of it, must be updated at least every ten (10) years.

SECTION 9. (1) In the preparation or periodic updating of any planning elements for the jurisdiction, the planning commission may use advisory committees with membership from both the planning commission or other public involvement mechanisms and other resource people not members of the planning commission. If the local government maintains a list of groups that have registered an interest in being informed of proceedings related to planning, notice of meetings must be mailed to these groups.

(2) Recommendation of the plan or any element, amendment, extension or addition must be by resolution of the planning commission carried by the affirmative votes of at least a majority of the entire membership. The resolution must refer expressly to maps and other descriptive matter intended by the planning commission to form the whole or element of the recommended plan and the action taken must be recorded in its official minutes of the planning commission. A copy of the recommended plan or element of it must be transmitted to the appropriate governing authorities and to all other legislative and administrative agencies affected by the plan.

(3) In satisfying the preparation and periodic updating of the required planning elements, the planning commission shall review and consider, and may recommend by reference, plans prepared by other agencies that the planning commission considers to meet the requirements of this article.

SECTION 10. The local planning commission may recommend to the appropriate governing body and the body may adopt the plan as a whole by a single ordinance or elements of the plan by successive ordinances. The elements shall correspond with the major geographical sections or divisions of the planning area or with functional subdivisions of the subject matter of the comprehensive plan, or both. Before adoption of an element or a
plan as a whole, the governing authority shall hold a public hearing on it after not less than fifteen (15) days' notice of the time and place of the hearings has been given in a newspaper having general circulation in the jurisdiction.

**SECTION 11.** When the local planning commission has recommended and local governing authority or authorities have adopted the related comprehensive plan element set forth in this chapter, no new street, structure, utility, square, park or other public way, grounds, or open space or public buildings for any use, whether publicly or privately owned, may be constructed or authorized in the political jurisdiction of the governing authority or authorities establishing the planning commission until the location, character and extent of it have been submitted to the planning commission for review and comment as to the compatibility of the proposal with the comprehensive plan of the community. If the planning commission finds the proposal to be in conflict with the comprehensive plan, the commission shall transmit its findings and the particulars of the nonconformity to the entity proposing the facility. If the entity proposing the facility determines to go forward with the project that conflicts with the comprehensive plan, the governing or policy making body of the entity shall publicly state its intention to proceed and the reasons for the action. A copy of this finding must be sent to the local governing body, the local planning commission and published as a public notice in a newspaper of general circulation in the community at least thirty (30) days before awarding a contract or beginning construction. Telephone, sewer and gas utilities, or electric suppliers, utilities and providers, whether publicly or privately owned, whose plans have been approved by the local governing body or a state or federal regulatory agency, or electric suppliers, utilities and providers who are acting in accordance with a legislatively delegated right are exempt from
ARTICLE 5

LOCAL PLANNING -- ZONING

SECTION 12. (1) Zoning ordinances must be for the general purposes of guiding development in accordance with existing and future needs and promoting the public health, safety, morals, convenience, order, appearance, prosperity and general welfare. To these ends, zoning ordinances must be made with reasonable consideration of the following purposes, where applicable, to:

(a) Provide for adequate light, air and open space;

(b) Prevent the overcrowding of land, to avoid undue concentration of population and to lessen congestion in the streets;

(c) Facilitate the creation of a convenient, attractive and harmonious community;

(d) Protect and preserve scenic, historic or ecologically sensitive areas;

(e) Regulate the density and distribution of populations and the uses of buildings, structures and land for trade, industry, residence, recreation, agriculture, forestry, conservation, airports and approaches thereto, water supply, sanitation, protection against floods, public activities and other purposes;

(f) Facilitate the adequate provision or availability of transportation, police and fire protection, water, sewage, schools, parks and other recreational facilities, affordable housing, disaster evacuation and other public services and requirements. "Other public requirements" that the local governing body intends to address by a particular ordinance or action must be specified in the preamble or some other part of the ordinance or action;
(g) Secure safety from fire, flood and other dangers; and

(h) Further the public welfare in any other regard specified by a local governing body.

SECTION 13. (1) When the local planning commission has prepared and recommended and the governing body has adopted at least the land use element of the comprehensive plan as set forth in this chapter, the governing body of a municipality or county may adopt a zoning ordinance to help implement the comprehensive plan. The zoning ordinance shall create zoning districts of such number, shape and size as the governing authority determines to be best suited to carry out the purposes of this chapter. Within each district the governing body may regulate:

(a) The use of buildings, structures and land;

(b) The size, location, height, bulk, orientation, number of stories, erection, construction, reconstruction, alteration, demolition or removal in whole or in part of buildings and other structures, including signage;

(c) The density of development, use or occupancy of buildings, structures or land;

(d) The areas and dimensions of land, water and air space to be occupied by buildings and structures and the size of yards, courts and other open spaces;

(e) The amount of off-street parking and loading that must be provided and restrictions or requirements related to the entry or use of motor vehicles on the land;

(f) Other aspects of the site plan including, but not limited to, tree preservation, landscaping, buffers, lighting and curb cuts; and

(g) Other aspects of the development and use of land or structures necessary to accomplish the purposes set forth throughout this chapter.
(2) The regulations must be made in accordance with the comprehensive plan for the jurisdiction and be made with a view to promoting the purposes set forth throughout this chapter. Except as provided in this chapter, all of these regulations must be uniform for each class or kind of building, structure, or use throughout each district, but the regulations in one (1) district may differ from those in other districts.

(3) The zoning ordinance may use the following or any other zoning and planning techniques for implementation of the goals specified above. Failure to specify a particular technique does not cause use of that technique to be viewed as beyond the power of the local government choosing to use it:

(a) "Cluster development" or the grouping of residential, commercial or industrial uses within a subdivision or development site, permitting a reduction in the otherwise applicable lot size, while preserving substantial open space on the remainder of the parcel;

(b) "Floating zone" or a zone that is described in the text of a zoning ordinance but is unmapped. A property owner may petition for the zone to be applied to a particular parcel meeting the minimum zoning district area requirements of the zoning ordinance through legislative action;

(c) "Performance zoning" or zoning that specifies a minimum requirement or maximum limit on the effects of a land use rather than, or in addition to, specifying the use itself, simultaneously assuring compatibility with surrounding development and increasing a developer's flexibility;

(d) "Planned development district" or a development project comprised of housing of different types and densities and of compatible commercial uses, or shopping centers, office parks and mixed-use developments. A planned development district is established by rezoning prior to development and is characterized by a unified site design for a mixed-use development;
(e) "Overlay zone" or a zone that imposes a set of requirements or relaxes a set of requirements imposed by the underlying zoning district when there is a special public interest in a particular geographic area that does not coincide with the underlying zone boundaries; and

(f) "Conditional uses" or zoning ordinance provisions that impose conditions, restrictions, or limitations on a permitted use that are in addition to the restrictions applicable to all land in the zoning district. The conditions, restrictions, or limitations must be set forth in the text of the zoning ordinance.

SECTION 14. The regulations may provide that land, buildings and structures and the uses of them that are lawful at the time of the enactment or amendment of zoning regulations may be continued although not in conformity with the regulations or amendments, which is called a nonconformity. The governing authority of a municipality or county may provide in the zoning ordinance or resolution for the continuance, restoration, reconstruction, extension or substitution of nonconformities. The governing authority also may provide for the termination of a nonconformity by specifying the period or periods in which the nonconformity is required to cease or be brought into conformance, or by providing a formula where the compulsory termination of nonconformities may be so fixed as to allow for the recovery or amortization of the investment in the nonconformity.

SECTION 15. In order to achieve the objectives of the comprehensive plan of the locality and to allow flexibility in development that will result in improved design, character and quality of new mixed-use developments and preserve natural and scenic features of open spaces, the local governing authority may provide for the establishment of planned development districts as amendments to a locally adopted zoning ordinance and official zoning map. The adopted planned development map is the zoning
The planned development provisions must encourage innovative site planning for residential, commercial, institutional and industrial developments within planned development districts. Planned development districts may provide for variations from other ordinances and the regulations of other established zoning districts concerning use, setbacks, lot size, density, bulk and other requirements to accommodate flexibility in the arrangement of uses for the general purpose of promoting and protecting the public health, safety and general welfare. Amendments to a planned development district may be authorized by ordinance of the governing authority after recommendation from the planning commission. These amendments constitute zoning ordinance amendments and must follow prescribed procedures for the amendments. The adopted plan may include a method for minor modifications to the site plan or development provisions.

**SECTION 16.** (1) Before enacting or amending any zoning regulations or maps, the governing authority or the planning commission, if authorized by the governing authority, shall hold a public hearing on it, which must be advertised and conducted according to lawfully prescribed procedures. At least fifteen (15) days' notice of the time and place of the public hearing must be given in a newspaper of general circulation in the municipality or county. In cases involving rezoning, conspicuous notice shall be posted on the property affected, with at least one such notice being visible from each public thoroughfare that abuts the property. If the local government maintains a list of groups that have expressed an interest in being informed of zoning proceedings, notice of such meetings must be mailed to these groups. No change in or departure from the text or maps as recommended by the local planning commission may be made pursuant to the hearing unless the change or departure is first submitted to the planning commission for review and recommendation. The
planning commission shall have a time prescribed in the ordinance that may not be more than thirty (30) days within which to submit its report and recommendation on the change to the governing authority. If the planning commission fails to submit a report within the prescribed time period, it is deemed to have approved the change or departure. When the required public hearing is held by the planning commission, no public hearing by the governing authority is required before amending the zoning ordinance text or maps.

(2) A landowner whose land is the subject of a proposed amendment is allowed to present oral or written comments to the planning commission. At least ten (10) days' notice and an opportunity to comment in the same manner must be given to other interested members of the public, including owners of adjoining property.

(3) An owner of adjoining land or his representative has standing to bring an action contesting the ordinance or amendment; however, this subsection does not create any new substantive right in any party.

(4) No challenge to the adequacy of notice or challenge to the validity of a regulation or map, or any amendment to it, whether enacted before or after the effective date of this act, may be made thirty (30) days after the decision of the governing body if there has been substantial compliance with the notice requirements of this section or with established procedures of the governing authority or the planning commission.

SECTION 17. (1) Agencies, departments and subdivisions of this state that use real property, as owner or tenant, in any county or municipality in this state are subject to the zoning ordinances.

(2) A county or agency, department or subdivision of it that uses any real property, as owner or tenant, within the limits of
any municipality in this state is subject to the zoning ordinances
of the municipality.

(3) A municipality or agency, department or subdivision of
it, that uses any real property, as owner or tenant, within the
limits of any county in this state but not within the limits of
the municipality is subject to the zoning ordinances of the
county.

(4) The provisions of this section do not require a state
agency, department or subdivision to move from facilities occupied
before the enactment of this act, regardless of whether or not
their location is in violation of municipal or county zoning
ordinances.

SECTION 18. (1) As a part of the administrative mechanism
designed to enforce the zoning ordinance, the zoning ordinance may
provide for the creation of a board to be known as the Board of
Zoning Adjustments. Local governing bodies with a joint planning
commission and adopting a common zoning ordinance may create a
board to be known as the Joint Board of Adjustments. All of these
boards are referred to as the board.

(2) The board consists of not less than three (3) nor more
than nine (9) members, a majority of which constitutes a quorum.
The board shall be appointed by the governing authority or
authorities of the area served. The members shall serve for
overlapping terms of not less than three (3) nor more than five
(5) years or after that time until their successors are appointed.
A vacancy in the membership must be filled for the unexpired term
in the same manner as the initial appointment. The governing
authority or authorities creating the board of zoning adjustments
may remove any member of the board for cause. The appointing
authorities shall determine the amount of compensation, if any, to
be paid to the members of a board of zoning appeals. None of the
members shall hold any other public office or position in the
municipality or county.
SECTION 19. The board shall elect one (1) of its members chairman, who shall serve for one (1) year or until he is reelected or his successor is elected and qualified. The board shall appoint a secretary who may be an officer of the governing authority or of the zoning board. The board shall adopt rules of procedure in accordance with the provisions of an ordinance adopted pursuant to this chapter. Meetings of the board must be held at the call of the chairman and at such other times as the board may determine. Public notice of all meetings of the board of appeals shall be provided by publication in a newspaper of general circulation in the municipality or county. In cases involving variances or special exceptions conspicuous notice shall be posted on or adjacent to the property affected, with at least one such notice being visible from each public thoroughfare that abuts the property. The chairman or, in his or her absence, the acting chairman, may administer oaths and compel the attendance of witnesses by subpoena. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact and shall keep records of its examinations and other official actions, all of which must be immediately filed in the office of the board and must be a public record.

SECTION 20. (1) The board of adjustments has the following powers:

(a) To hear and decide appeals where it is alleged there is error in an order, requirement, decision or determination made by an administrative official in the enforcement of the zoning ordinance;

(b) To hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship. A variance may be granted in an individual case of
unnecessary hardship if the board makes and explains in writing the following findings:

(i) There are extraordinary and exceptional conditions pertaining to the particular piece of property;

(ii) These conditions do not generally apply to other property in the vicinity;

(iii) Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and

(iv) The authorization of a variance will not be of substantial detriment to adjacent property or to the public good and the character of the district will not be harmed by the granting of the variance.

The board may not grant a variance the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a nonconforming use of land or to change the zoning district boundaries shown on the official zoning map. The fact that property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance. Other requirements may be prescribed by the zoning ordinance.

A local governing body by ordinance may permit or preclude the granting of a variance for a use of land, a building or a structure that is prohibited in a given district and if it does permit such a variance it may require the affirmative vote of two-thirds of the local adjustment board members present and voting. Notwithstanding any other provision of this section, the local governing body may overrule the decision of the local board of adjustment concerning a use variance.

In granting a variance, the board may attach to it such conditions regarding the location, character, or other features of the proposed building, structure or use as the board considers
advisable to protect established property values in the
surrounding area or to promote the public health, safety or
general welfare.

c) To permit uses by special exception subject to the
terms and conditions for the uses set forth for such uses in the
zoning ordinance.

(2) (a) Appeals to the board may be taken by any person
aggrieved or by any officer, department, board or bureau of the
municipality or county. The appeal must be taken within a
reasonable time, as provided by the zoning ordinance or rules of
the board, or both, by filing with the officer from whom the
appeal is taken and with the board of appeals notice of appeal
specifying the grounds of it. If no time is provided, the appeals
must be taken within thirty (30) days from the date the appealing
party has received actual notice of the action from which the
appeal is taken. The officer from whom the appeal is taken
immediately shall transmit to the board all the papers
constituting the record upon which the action appealed from was
taken.

(b) An appeal stays all legal proceedings in
furtherance of the action appealed from unless the officer from
whom the appeal is taken certifies to the board, after the notice
of appeal has been filed with him, that by reason of facts stated
in the certificate a stay, in his opinion, would cause imminent
peril to life and property. In that case, proceedings may not be
stayed otherwise than by a restraining order which may be granted
by the board or by a court of record on application, on notice to
the officer from whom the appeal is taken and on due cause shown.

(c) The board shall fix a reasonable time for the
hearing of the appeal or other matter referred to it and give at
least fifteen (15) days' public notice of it in a newspaper of
general circulation in the community, as well as due notice to the
parties in interest, and shall decide the question within a
reasonable time. At the hearing, any party may appear in person, by agent or by attorney.

(d) In exercising the power under this section, the board of appeals, in conformity with the provisions of this chapter, may reverse or affirm, wholly or in part, or may modify the order, requirements, decision or determination and to that end shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit. The board in the execution of the duties specified in this chapter, may subpoena witnesses and, in case of contempt, may certify this fact to the circuit court having jurisdiction.

(e) All final decisions and orders of the board must be in writing and be permanently filed in the office of the board as a public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the board which must be delivered to parties of interest by certified mail.

SECTION 21. In case of contempt by a party, witness or other person before the board of appeals, the board may certify this fact to the circuit court of the county in which the contempt occurs and the judge of the court, in open court or in chambers, after hearing, may impose a penalty as authorized by law.

SECTION 22. A person who may have a substantial interest in any decision of the board of adjustments or an officer or agent of the appropriate governing authority may appeal from a decision of the board to the circuit court in and for the county by filing with the clerk of the court a petition in writing setting forth plainly, fully and distinctly why the decision is contrary to law. The appeal must be filed within thirty (30) days after the decision of the board is mailed.

SECTION 23. (1) Upon the filing of the appeal, the clerk of the circuit court shall give immediate notice of it to the secretary of the board and within thirty (30) days from the time of the notice the board shall file with the clerk a certified copy
of the proceedings held before the board of appeals, including a
transcript of the evidence heard before it, if any, and the
decision of the board including its findings of fact and
conclusions.

(2) The filing of an appeal in the circuit court from a
decision of the board shall not ipso facto act as a supersedeas,
but the judge of the circuit court may in his discretion grant a
supersedeas upon such terms and conditions as may seem reasonable
and proper.

SECTION 24. At the next term of the circuit court or in
chambers, upon ten (10) days' notice to the parties, the presiding
judge of the circuit court of the county shall proceed to hear and
pass upon the appeal on the certified record of the board
proceedings. The findings of fact by the board of adjustments
shall be treated in the same manner as a finding of fact by a jury
and the court may not take additional evidence. If the judge
determines that the certified record is insufficient for review,
the matter may be remanded to the zoning board of adjustments for
rehearing. In determining the questions presented by the appeal,
the court shall determine only whether the decision of the board
is correct as a matter of law. If the decision of the board is
reversed by the circuit court, the board is charged with the costs
and the costs must be paid by the governing authority that
established the board of appeals.

SECTION 25. A party in interest who is aggrieved by the
judgment rendered by the circuit court upon the appeal may appeal
in the manner provided by the Mississippi Rules of Appellate
Procedure.

SECTION 26. The governing authority may appropriate such
monies, otherwise unappropriated, as it considers fit to finance
the work of the board of adjustments and to provide generally for
the enforcement of any zoning regulations and restrictions
authorized under this chapter that are adopted and may accept and
SECTION 27. (1) A local government that enacts a zoning ordinance that makes specific provision for the preservation and protection of historic and architecturally valuable districts and neighborhoods or significant or natural scenic areas, or protects or provides, or both, for the unique, special or desired character of a defined district, corridor or development area or any combination of it, by means of restriction and conditions governing the right to erect, demolish, remove in whole or in part, or alter the exterior appearance of all buildings or structures within the areas, may provide for appointment of a board of architectural review or similar body.

(2) The board shall consist of not more than ten (10) members to be appointed by the governing authorities of the municipality or the board of supervisors of the county which may restrict the membership on the board to those professionally qualified persons as it may desire. The governing authorities creating the board may remove for cause any member of the board that it has appointed.

(3) The appointing authorities shall determine the amount of compensation, if any, to be paid to the members of a board of architectural review. None of the members may hold any other public office or position in the municipality or county.

(4) The board shall elect one (1) of its members chairman, who shall serve for one (1) year or until he is reelected or his successor is elected and qualified. The board shall appoint a secretary who may be an officer of the governing authority or of the board of architectural review. The board shall adopt rules of procedure in accordance with the provisions of any ordinance adopted under this chapter. Meetings of the board must be held at the call of the chairman and at such other times as the board may determine. The chairman or, in his or her absence, the acting
chairman, may administer oaths and compel the attendance of witnesses by subpoena. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact and shall keep records of its examinations and other official actions, all of which immediately must be filed in the office of the board and must be a public record.

SECTION 28. The board of architectural review has those powers involving the structures and neighborhoods as may be determined by the zoning ordinance. Decisions of the Planning Director or other appropriate administrative official in matters under the purview of the board of architectural review may be appealed to the board where there is an alleged error in any order, requirement, determination or decision.

SECTION 29. (1) Appeals to the board may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality or county. The appeal must be taken within a reasonable time, as provided by the zoning ordinance or rules of the board, or both, by filing with the officer from whom the appeal is taken and with the board of architectural review notice of appeal specifying the grounds of it. The officer from whom the appeal is taken immediately shall transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(2) An appeal stays all legal proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board, after the notice of appeal has been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In that case, proceedings may not be stayed otherwise than by a restraining order which may be granted by the board or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.
(3) The board shall fix a reasonable time for the hearing of the appeal or other matter referred to it and give public notice of it, as well as due notice to the parties in interest, and shall decide the same within a reasonable time. At the hearing, any party may appear in person or by agent or by attorney.

SECTION 30. A person who may have a substantial interest in any decision of the board of architectural review or any officer, or agent of the appropriate governing authority may appeal from any decision of the board to the circuit court in and for the county by filing with the clerk of the court a petition in writing setting forth plainly, fully and distinctly why the decision is contrary to law. The appeal must be filed within thirty (30) days after the affected party receives actual notice of the decision of the board of architectural review.

SECTION 31. In case of contempt by a party, witness or other person before the board of architectural review, the board may certify the fact to the circuit court of the county in which the contempt occurs and the judge of the court, in open court or in chambers, after hearing, may impose a penalty as authorized by law.

SECTION 32. (1) Upon filing of the appeal, the clerk of the circuit court shall give immediate notice of it to the secretary of the board and within thirty (30) days from the time of the notice the board shall file with the clerk a duly certified copy of the proceedings had before the board of architectural review, including a transcript of the evidence heard before it, if any, and the decision of the board including its findings of fact and conclusions.

(2) The filing of an appeal in the circuit court from any decision of the board does not ipso facto act as a supersedeas, but the judge of the circuit court may in his discretion grant a supersedeas upon such terms and conditions as may seem reasonable and proper.
SECTION 33. At the next term of the circuit court or in chambers upon ten (10) days' notice to the parties, the resident presiding judge of the circuit court of the county shall proceed to hear and pass upon the appeal on the certified record of the board proceedings. The findings of fact by the board of architectural review are final and conclusive on the hearing of the appeal and the court may not take additional evidence. If the judge determines that the certified record is insufficient for review, the matter must be remanded to the board of architectural review for rehearing. In determining the questions presented by the appeal, the court shall determine only whether the decision of the board is correct as a matter of law. If the decision of the board is reversed by the circuit court, the board must be charged with the costs and they must be paid by the governing authority that established the board of architectural review.

SECTION 34. A party in interest who is aggrieved by the judgment rendered by the circuit court upon the appeal may appeal in the manner provided by the Mississippi Rules of Appellate Procedure.

SECTION 35. (1) The governing authorities of municipalities or the boards of supervisors of counties may provide for the enforcement of any ordinance adopted pursuant to the provisions of this chapter by means of the withholding of building or zoning permits, or both, and the issuance of stop orders against any work undertaken by an entity not having a proper building or zoning permit, or both. It is unlawful to construct, reconstruct, alter, demolish, change the use of or occupy any land, building or other structure without first obtaining the appropriate permit or permit approval. No permit may be issued or approved unless the requirements of this chapter or any ordinance adopted pursuant to it are complied with. It is unlawful for other officials to issue any permit for the use of any land, building or structure, or the construction, conversion, demolition, enlargement, movement or
structural alteration of a building or structure, without the approval of the planning director or his/her designee. A violation of any ordinance adopted pursuant to the provisions of this chapter is a misdemeanor. If a building, structure or land is or is proposed to be used in violation of any ordinance adopted pursuant to this chapter, the planning director or other appropriate administrative officer, municipal or county attorney, or other appropriate authority of the municipality or county or an adjacent or neighboring property owner who would be specially damaged by the violation may in addition to other remedies, institute an injunction, mandamus or other appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use, or to correct or abate the violation, or to prevent the occupancy of the building, structure or land. Each day the unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use continues is considered a separate offense.

(2) If a building, structure or land is or is proposed to be used in violation of an ordinance adopted pursuant to this chapter, the planning director or other designated administrative officer, in addition to other remedies, may issue and serve upon a person pursuing the activity or activities a stop order requiring that entity to stop all activities in violation of the zoning ordinance.

SECTION 36. When the regulations made under authority of this chapter require a greater width or size of yards, courts or other open spaces, or require a lower height of building or smaller number of stories, or require a greater percentage of lot to be left unoccupied, or impose other more restrictive standards than are required in or under another statute, local ordinance or regulation, the regulations made under authority of this chapter govern. When the provisions of another statute require more restrictive standards than are required by the regulations made
under authority of this chapter, the provisions of that statute
govern.

ARTICLE 7
LOCAL PLANNING -- LAND DEVELOPMENT REGULATION

SECTION 37. As used in this article:

(a) "Land development" means the changing of land
characteristics through redevelopment, construction, subdivision
into parcels, condominium complexes, apartment complexes,
commercial parks, shopping centers, industrial parks, mobile home
parks and similar developments for sale, lease or any combination
of owner and rental characteristics.

(b) "Subdivision" means all divisions of a tract or
parcel of land into two (2) or more lots, building sites, or other
divisions for the purpose, whether immediate or future, of sale,
lease or building development and includes all division of land
involving a new street or change in existing streets and includes
re-subdivision that would involve the further division or
relocation of lot lines of any lot or lots within a subdivision
previously made and approved or recorded according to law; or, the
alteration of any streets or the establishment of any new streets
within any subdivision previously made and approved or recorded
according to law and includes combinations of lots of record;
however, the following exceptions are included within this
definition only for the purpose of requiring that the local
planning agency be informed and have a record of the subdivisions:

(i) The combination or recombination of portions
of previously platted lots where the total number of lots is not
increased and the resultant lots are equal to the standards of the
governing authority;

(ii) The division of land into parcels of five (5)
acres or more where no new street is involved and plats of these
exceptions must be received as information by the planning agency
which shall indicate that fact on the plats; and
(iii) The combination or recombination of entire lots of record where no new street or change in existing streets is involved.

**SECTION 38.** The public health, safety, economy, good order, appearance, convenience, morals and general welfare require the harmonious, orderly and progressive development of land within the municipalities and counties of the state. In furtherance of this general intent, the regulation of land development by municipalities, counties or consolidated political subdivisions is authorized for the following purposes, among others:

(a) To encourage the development of economically sound and stable municipalities and counties;

(b) To assure the timely provision of required streets, utilities and other facilities and services to new land developments;

(c) To assure the adequate provision of safe and convenient traffic access and circulation, both vehicular and pedestrian, in and through new land developments;

(d) To assure the provision of needed public open spaces and building sites in new land developments through the dedication or reservation of land for recreational, educational, transportation and other public purposes; and

(e) To assure, in general, the wise and timely development of new areas and redevelopment of previously developed areas in harmony with the comprehensive plans of municipalities and counties.

**SECTION 39.** (1) When at least the community facilities element of the comprehensive plan as authorized by this chapter has been adopted by the local planning commission and the local governing body or bodies, the local planning commission may prepare and recommend to the governing body or bodies for adoption regulations governing the development of land within the jurisdiction. These regulations may provide for the harmonious
(2) These regulations may include requirements as to the extent to which and the manner in which streets must be graded, surfaced and improved and water, sewers, septic tanks and other utility mains, piping, connections or other facilities must be installed as a condition precedent to the approval of the plan. The governing authorities of the municipality and the board of supervisors of the county may adopt and amend the land development regulations after a public hearing on it, giving at least thirty (30) days' notice of the time and place by publication in a newspaper of general circulation in the municipality or county.

SECTION 40. After the local governing authority has adopted land development regulations, no subdivision plat or other land development plan within the jurisdiction of the regulations may be filed or recorded in the office of the county where deeds are required to be recorded and no building permit may be issued until the plat or plan bears the stamp of approval and is properly signed by the designated authority. The submission for filing or the recording of a subdivision plat or other land development plan without proper approval as required by this chapter is declared a...
misdemeanor and, upon conviction, is punishable as provided by law.

**SECTION 41.** (1) The land development regulations adopted by the governing authority must include a specific procedure for the submission and approval or disapproval by the planning commission or designated staff. These procedures may include requirements for submission of sketch plans, preliminary plans and final plans for review and approval or disapproval. Time limits, not to exceed sixty (60) days, must be set forth for action on plans or plats, or both, submitted for approval or disapproval. Failure of the designated authority to act within sixty (60) days of the receipt of development plans or subdivision plats with all documentation required by the land development regulations is deemed to constitute approval and the developer must be issued a letter of approval and authorization to proceed based on the plans or plats and supporting documentation presented. The sixty-day time limit may be extended by mutual agreement.

(2) A record of all actions on all land development plans and subdivision plats with the grounds for approval or disapproval and any conditions attached to the action must be maintained as a public record. In addition, the developer must be notified in writing of the actions taken.

(3) Staff action, if authorized, to approve or disapprove a land development plan may be appealed to the planning commission by any party in interest. The planning commission shall act on the appeal within sixty (60) days and the action of the planning commission is final. An appeal from the decision of the planning commission may be taken to circuit court within thirty (30) days after actual notice of the decision.

**SECTION 42.** The county official whose duty it is to accept and record real estate deeds and plats may not accept, file or record a land development plan or subdivision plat involving a land area subject to land development regulations adopted pursuant
to this chapter unless the development plan or subdivision plat has been properly approved. If a public official violates the provisions of this section, he is, in each instance, subject to the penalty provided in this article and the affected governing body, private individual or corporation has rights and remedies as to enforcement or collection as are provided and may enjoin any violations of them.

SECTION 43. The approval of the land development plan or subdivision plat may not be deemed to automatically constitute or effect an acceptance by the municipality or the county or the public of the dedication of any street, easement or other ground shown upon the plat. Public acceptance of the lands must be by action of the governing body customary to these transactions.

SECTION 44. In circumstances where the land development regulations adopted pursuant to this chapter require the installation and approval of site improvements before approval of the land development plan or subdivision plat for recording in the office of the county official whose duty it is to accept and record the instruments, the developer may be permitted to post a surety bond, certified check or other instrument readily convertible to cash. The surety must be in an amount equal to at least one hundred twenty-five percent (125%) of the cost of the improvement. This surety must be in favor of the local government to ensure that, in the event of default by the developer, funds will be used to install the required improvements at the expense of the developer.

SECTION 45. The owner or agent of the owner of any property being developed within the municipality or county may not transfer title to any lots or parts of the development unless the land development plan or subdivision has been approved by the local planning commission or designated authority and an approved plan or plat recorded in the office of the county charged with the responsibility of recording deeds, plats and other property
records. A transfer of title in violation of this provision is a
misdemeanor and, upon conviction, may be punished, in the
discretion of the court. A description by metes and bounds in the
instrument of transfer or other document used in the process of
transfer does not exempt the transaction from these penalties.
The municipality or county may enjoin the transfer by appropriate
action.

SECTION 46. (1) A local planning commission created under
the provisions of this chapter, by proper certificate, shall
approve and authorize the name of a street or road laid out within
the territory over which the commission has jurisdiction. It is
unlawful for a person in laying out a new street or road to name
the street or road on a plat, by a marking or in a deed or
instrument without first getting the approval of the planning
commission. Any person violating this provision is guilty of a
misdemeanor and, upon conviction, may be punished, in the
discretion of the court.

(2) A commission, after reasonable notice through a
newspaper having general circulation in which the commission is
created and exists, may change the name of a street or road within
the boundary of its territorial jurisdiction:

(a) When there is duplication of names or other
conditions that tend to confuse the traveling public or the
delivery of mail, orders or messages;

(b) When it is found that a change may simplify marking
or giving of directions to persons seeking to locate addresses; or

(c) Upon any other good and just reason that may appear
to the commission.

(3) On the name being changed, after reasonable opportunity
for a public hearing, the planning commission shall issue its
certificate designating the change, which must be recorded in the
office of the register of deeds or clerk of court and the name
changed and certified is the legal name of the street or road.
SECTION 47. Sections 17-1-1, 17-1-3, 17-1-5, 17-1-7, 17-1-9, 17-1-11, 17-1-13, 17-1-15, 17-1-17, 17-1-19, 17-1-21, 17-1-23, 17-1-25, 17-1-27, 17-1-29, 17-1-31, 17-1-33, 17-1-35, 17-1-37 and 17-1-39, Mississippi Code of 1972, which authorize the governing authorities of any municipality and the board of supervisors of any county to establish local and regional planning commissions to regulate and restrict the erection, construction, reconstruction, alteration, repair and use of buildings, structures and land within their jurisdiction, are repealed.

SECTION 48. This act shall take effect and be in force from and after July 1, 2003.