

MOBILE CITY PLANNING COMMISSION MINUTES
MEETING OF JANUARY 6, 2005 - 2:00 P.M.
AUDITORIUM, MOBILE GOVERNMENT PLAZA

Members Present

Terry Plauche, Chairman
Victor McSwain, Secretary
James F. Watkins
Ann Deakle
John Vallas
Mead Miller (S)

Members Absent

James Laier, Vice-Chair
Clinton Johnson
Victoria L. Rivizzigno
Nicholas H. Holmes, III

Urban Development Staff Present

Richard L. Olsen, Planner II
David Daughenbaugh, Urban Forestry
Coordinator
Jennifer Henley, Secretary II

Others Present

Wanda Cochran, Assistant City Attorney
Jennifer White, Traffic Engineering
Pat Stewart, County Engineering
Beverly Terry, City Engineering

Mr. Plauche stated the number of members present constituted a quorum and called the meeting to order.

The notation *motion carried unanimously* indicates a consensus, with the exception of the Chairman who does not participate in voting unless otherwise noted.

HOLDOVERS:

Case #SUB2004-00245

Barnes Subdivision

Southeast corner of Old Shell Road and Fairview Street East.
1 Lot / 3.7± Acres

Mr. M. Don Williams of M. Don Williams Engineering, was representing the applicant and concurred with the staff recommendations.

There was no one present in opposition.

A motion was made by Mr. McSwain and seconded by Mr. Watkins to approve this subdivision subject to the following conditions:

- (1) the dedication of sufficient right-of-way to provide 50-feet from the centerline Old Shell Road;
- (2) the dedication of a 25-foot radius at the corner of Old Shell Road and Fairview Street East;

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- (3) the placement of a note on the final plat stating that the number, location, size, and design of all curb cuts to Old Shell Road must be approved by County Engineering;
- (4) dedication of adequate right-of-way to provide 25-feet from the centerline of Fairview Street East;
- (5) the placement of a note on the final plat stating that any lots which are developed commercially and adjoin residentially developed property must provide a buffer, in compliance with Section V.A.7. of the Subdivision Regulations; and
- (6) the placement of the 25-foot minimum setback lines on the final plat (from the dedications).

The motion carried unanimously.

Case #SUB2004-00252

Dawes Heights Subdivision, Resubdivision of Lot 1

West side of Dawes Road, 140'± North of Augusta Drive.

2 Lots /m 0.3± Acre

Mr. Don Coleman of Rester and Coleman Engineers, Inc., was representing the applicant and concurred with the staff recommendations.

There was no one present in opposition.

A motion was made by Mr. McSwain and seconded by Mr. Watkins to waive Section V.D.3., of the Subdivision Regulations, and approve this subdivision subject to the following conditions:

- (1) the provision of a 75-foot setback (which includes the required minimum building setback of 25-feet) from the centerline of Dawes Road;
- (2) the placement of a note on the final plat stating that Lots 1 and 2 are limited to one curb cut each to Dawes Road with the size, location and design to be approved County Engineering; and
- (3) the placement of a note on the final plat stating that any property that is developed commercially and adjoins residentially developed property shall provide a buffer, in compliance with Section V.A.7. of the Subdivision Regulations.

The motion carried unanimously.

EXTENSIONS:

Case #ZON2003-02562

The Preserve @ Knollwood & Girby Roads Subdivision

North side of Girby Road, 550'± West of the North terminus of Pepper Ridge Drive.

Planned Unit Development approval to allow reduced lot sizes, reduced building setbacks, and increased site coverage in a single-family residential subdivision.

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Request for a one-year extension of previous approval.

A motion was made by Mr. Plauche and seconded by Mr. McSwain to grant a one-year extension of previous approval for this application.

Mr. Vallas recused. The motion carried.

Case #SUB2003-00259

The Preserve @ Knollwood & Girby Roads Subdivision

North side of Girby Road, 550'± West of the North terminus of Pepper Ridge Drive, extending to the Southwest corner of Knollwood Drive and Southland Drive.

136 Lots / 70.0± Acres

Request for a one-year extension of previous approval.

A motion was made by Mr. Plauche and seconded by Mr. McSwain to grant a one-year extension of previous approval for this application.

Mr. Vallas recused. The motion carried.

GROUP APPLICATIONS:

Case #ZON2004-02578

Dauphin Way United Methodist Church (Bruce Alverson, Agent)

1507 Dauphin Street (South side of Dauphin Street, extending from Catherine Street to Lee Street, and the East side of Lee Street, 300'± South of Dauphin Street).

The request for Planning Approval to amend a previously approved Planning Approval to allow the expansion of an existing church in an R-1, Single-Family Residential district to include a new playground and expanded parking was considered.

Council District 2

The site plan illustrates the existing buildings, parking, and landscaping along with the proposed playground areas, and walks.

(Also see Case #ZON2004-02576 – **Dauphin Way United Methodist Church Subdivision (Bruce Alverson, Agent)** – Below; and Case #SUB2004-00259 – **Dauphin way United Methodist Church Subdivision** – Below)

Mr. Dave Reese, architect for the project, was present and stated that they had three applications on the agenda. The Planning Approval application was basically for the playground and they concurred with the staff recommendations. However, they wished to holdover the Planned Unit Development and Subdivision applications.

Mr. Olsen explained that typically when there were group applications, the Commission acted on all of them at the same time. He felt that since the Planning Approval and Planned Unit Development applications were so closely tied together that it would be best to hold all of them over.

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Mr. Reese felt this was acceptable.

Mr. Plauche announced that these applications would be heldover, but if anyone was present to speak today he would allow them to speak.

No one present wished to speak at this time.

A motion was made by Mr. Plauche and seconded by Mr. Miller to holdover this application until the meeting of January 20, 2005, at the applicant's request.

The motion carried unanimously.

Case #ZON2004-02576

Dauphin Way United Methodist Church Subdivision (Bruce Alverson, Agent)

1507 Dauphin Street (South side of Dauphin Street, extending from Catherine Street to Lee Street, and the East side of Lee Street, 300'± South of Dauphin Street).

The request for Planned Unit Development Approval to allow multiple buildings on a single building site with shared parking and access in an R-1, Single-Family Residential district was considered.

Council District 2

The site plan illustrates the existing buildings, parking, and landscaping along with the proposed playground areas, and walks.

(For discussion see Case #ZON2004-02578 – **Dauphin Way United Methodist Church Subdivision (Bruce Alverson, Agent)** – Above; also see Case #SUB2004-00259 – **Dauphin way United Methodist Church Subdivision** – Below)

A motion was made by Mr. Plauche and seconded by Mr. Miller to holdover this application until the meeting of January 20, 2005, at the applicant's request.

The motion carried unanimously.

Case #SUB2004-00259

Dauphin Way United Methodist Church Subdivision

1507 Dauphin Street (South side of Dauphin Street, extending from Catherine Street to Lee Street, and the East side of Lee Street, 300'± South of Dauphin Street).

2 Lots / 5.7± Acres

Council District 2

(For discussion see Case #ZON2004-02578 – **Dauphin Way United Methodist Church Subdivision (Bruce Alverson, Agent)** – Above; also see Case #ZON2004-02576 – **Dauphin way United Methodist Church Subdivision (Bruce Alverson, Agent)** – Above)

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A motion was made by Mr. Plauche and seconded by Mr. Miller to holdover this application until the meeting of January 20, 2005, at the applicant's request.

The motion carried unanimously.

Case #ZON2004-02582

N T G – C Investments

2202, 2204, 2206, and 2208 Airport Boulevard (Northeast corner of Airport Boulevard and Westwood Street).

The request for a change in zoning from B-1, Buffer Business, and B-2, Neighborhood Business, to B-2, Neighborhood Business, to allow a parking lot expansion for an existing retail shopping center was considered.

Council District 5

The plan illustrates the existing structures and parking along with the proposed parking.

(Also see Case #ZON2004-02597 – **Westwood Subdivision** – Below; and Case #SUB2004-00261 – **Westwood Subdivision** – Below)

Mr. Frank Dagley of Frank A. Dagley & Associates, Inc., was representing the applicant. He asked that they be allowed to have two curb cuts to the site, rather than just one as recommended by the staff. He explained their plans for combining the easterly portion of the site with the rest of the shopping center and enlarging the parking lot. His client also owned the property immediately east of this property at the corner of Crenshaw Street and Airport Boulevard, and in the future planned to put a new building there and use this parking lot to serve that building. At that time he would probably separate the Westwood Shopping Center from the parking lot addition and he would want another driveway. So they would rather go ahead and put that driveway in now than do it at a later date.

Mr. McSwain asked if the curb cut was already there, and would it have to be widened.

Mr. Dagley said there was a curb cut there now and they would have to widen it.

Ms. Leah Betts, a resident of 264 Crenshaw Street, said that she did not really have any objections to the parking lot or even developing the property, but her main concern was the curb cut. She felt there would be increased traffic and was concerned about transient traffic. There was a makeshift fence there now between the residential and business property, but she requested a permanent buffer, at the very least a privacy fence, be required if these applications were approved.

Mr. Plauche commented that they would be required to provide a fence or other buffer between the residential property and the subject property.

Mr. Dagley stated that the curb cut he was talking about would be on Airport Boulevard, not on Crenshaw Street. Both curb cuts would be on Airport Boulevard. The site did not

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front on Crenshaw Street. There was another lot there, owned by Mr. Catranis, but it did not have anything to do with this application.

Mr. Watkins inquired about traffic crossing Mr. Catranis' lot and accessing Crenshaw Street.

Mr. Dagley said that after this site was developed there would curb bumpers at the parking spaces so there would be no access across the other property.

In discussion, Mr. Olsen stated that Traffic Engineering did recommend there be only one curb cut, and that the existing cut on the new lot be closed, the proximity of the cuts to one another being less than 30 feet. If the ultimate plan were for the developer to construct a new building on the lot to the east and use this parking lot as the parking facility for the new building and then separate it, they would have to apply for a PUD to amend it at that time. Mr. Olsen said normally they would not recommend two curb cuts that were in close proximity to one another on a street like Airport Boulevard.

Mr. McSwain asked if the property to the east came in as the applicant indicated, would they have these other curb cuts?

Mr. Olsen said if the applicant came in as he indicated they would have to have a PUD and Subdivision to allow the use of this parcel since it was on a different property. The Commission at that point could determine where the curb cuts would be, moving it farther from the existing curb cut for Westwood Shopping Center or not.

A motion was made by Mr. McSwain and seconded by Mr. Watkins to recommend the approval of this change in zoning to the City Council subject to the following conditions:

- (1) provision of a buffer, in compliance with Section IV.D.1. where the site adjoins residential zoning;
- (2) full compliance with the landscaping and tree planting requirements of the Ordinance for the overall site;
- (3) that the site be limited to one curb cut to Airport Boulevard, with the size, location and design to be approved by Traffic Engineering; and
- (4) full compliance with all municipal codes and ordinances.

Mr. Vallas was opposed. The motion carried.

Case #ZON2004-02597

Westwood Subdivision

2202, 2204, 2206, and 2208 Airport Boulevard (Northeast corner of Airport Boulevard and Westwood Street).

The request for Planned Unit Development approval to allow multiple buildings on a single building site was considered.

Council District 5

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The plan illustrates the existing structures and parking along with the proposed parking.

(For discussion see Case #ZON2004-02582 – **N T G – C Investments** – Above; also see Case #SUB2004-00261 – **Westwood Subdivision** – Below)

A motion was made by Mr. McSwain and seconded by Mr. Watkins to approve this plan subject to the following conditions:

- (1) provision of a buffer, in compliance with Section IV.D.1. where the site adjoins residential zoning;
- (2) full compliance with the landscaping and tree planting requirements of the Ordinance for the overall site;
- (3) that the site be limited to one curb cut to Airport Boulevard, with the size, location and design to be approved by Traffic Engineering; and
- (4) full compliance with all municipal codes and ordinances.

Mr. Vallas was opposed. The motion carried.

Case #SUB2004-00261

Westwood Subdivision

2202, 2204, 2206, and 2208 Airport Boulevard (Northeast corner of Airport Boulevard and Westwood Street).

1 Lot / 0.8± Acre

Council District 5

(For discussion see Case #ZON2004-02582 – **N T G – C Investments** – Above; also see Case #ZON2004-02597 – **Westwood Subdivision** – Above)

A motion was made by Mr. McSwain and seconded by Mr. Watkins to approve this subdivision subject to the following condition:

- (1) placement of a note on the final plat stating that the site is limited to one curb cut to Airport Boulevard, with the size, location and design to be approved by Traffic Engineering.

The motion carried unanimously.

NEW ZONING APPLICATIONS:

Case #ZON2004-02589

Blackwood, Inc. (B. White-Spunner, Agent)

Southeast corner of Hutson Drive and Key Street.

The request for a change in zoning from I-1, Light Industry, to B-3, Community Business, to allow a church was considered.

Council District 5

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The plan illustrates the proposed structure and parking.

Ms. Nancy Stone, 3280 Dauphin Street, was representing the applicant. Ms. Stone said the applicant wanted to put a church on this corner and was asking for a downzone from I-1 to B-3. She also asked that the setback be reduced to 20' from the 25' recommended by the staff for the subdivision plat.

Mr. Olsen stated that the only application before the Commission today was the rezoning. The Subdivision was approved almost a year ago, so there was no action the Commission could take at this time. If the applicant wanted to change a condition of approval they would have to resubmit that one lot. Mr. Olsen said the subdivision had not actually been recorded yet, and that was the reason it was a condition of approval on this rezoning application. Before this rezoning was completed they would have to have a legal lot of record.

There was no one present in opposition.

A motion was made by Mr. Vallas and seconded by Mr. Miller to recommend the approval of this change in zoning to the City Council subject to the following conditions:

- (1) recording of the final subdivision plat; and
- (2) full compliance with all municipal codes, ordinances, and regulations.

The motion carried unanimously.

Case #ZON2004-02571

Ken L. Ferguson

3915 Cottage Hill Road (South side of Cottage Hill Road, 255'± East of Azalea Road, extending to the North side of Shelley Drive, 235'± East of Azalea Road).

The request for a change in zoning from B-1, Buffer Business, to LB-2, Limited Neighborhood Business, to allow a dental office and retail sales was considered.

Council District 4

The site plan illustrates the proposed building, parking, drives, and detention pond.

Mr. Vallas recused himself from the discussion and vote regarding this matter.

Ms. Kelly Ferguson, 1140 Heron Lake Circle, stated that she was a CPA and her husband was a dentist. They would like to have the property rezoned to LB-2 and construct a building on this site with her husband's dentist office occupying the majority of the square footage of the building, and then lease to one or two other tenants conducive to a dentist office, such as a hair salon and day spa or a florist. Ms. Ferguson said they would not expect this use to create any more traffic than what they would currently have in an office building. They felt this area would greatly benefit from a new development such as this. She said she and her husband lived in this district and their two children went to school in this area so they would not want to do anything to negatively impact the area.

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Ms. Ferguson said they would be willing to give up access to Shelley Drive if that was required.

Mr. William Goff, a resident of Shelly Drive adjoining the subject property, expressed concern about increased traffic, as this was a heavily traveled, congested intersection. There were already a lot of businesses in the area and a lot of vacant properties available that were already zoned for business. He pointed out Mark's Jewelers and Hardee's Restaurant, which were both closed, and there was space in the Cottage Hill Shopping Center for rent. Mr. Goff said the residents would like to maintain the quiet residential neighborhood they already had.

Mr. Watkins asked Mr. Goff if his main concern was the traffic pouring onto Shelley Drive, or was he concerned about traffic in general with respect to this application.

Mr. Goff replied that he was concerned about both. He noted that Shelley Drive was already a cut-through with people trying to avoid the intersection of Cottage Hill and Azalea Roads.

Ms. Christie Amezquita, representing Saad & Vallas Realty Group, asked that the Commission take into consideration that something, whether it was a retail building or an office building, was eventually going to be built on this site that would create traffic.

In discussion, Mr. Watkins said he was under the impression the proposed uses were already allowed in B-1.

Mr. Olsen said the dentist's office would be allowed in B-1, but the beauty salon, day spa and florist would require LB-2 zoning.

Mr. McSwain asked if this application had previously come before the Commission three or four times.

Mr. Olsen said it had come before the Commission four or five times previously. Some of those applications actually had been over a number of years starting back in the mid-late '80s. The initial rezoning to B-1 did deny access to Shelley Drive and was limited to a very specific site plan. Then several years ago it came in for B-1 to remove the condition limiting it to that specific site plan, still denying access to Shelley Drive, which was approved.

A motion was made by Mr. McSwain and seconded by Mr. Miller to recommend the denial of this change in zoning to the City Council for the following reasons:

- (1) the rezoning of the property would eliminate an appropriate buffer business district between the existing residences to the East and the B-2 district to the West; and
- (2) the placement of a driveway to Shelley Drive would place additional commercial traffic on a minor residential street.

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Mr. Deakle commented that right now was their opportunity to put some sort of buffer between the residential. She felt LB-2 was so restrictive.

Mr. McSwain felt that LB-2 was not restrictive enough.

The question was called. Ms. Deakle and Mr. Watkins were opposed. Mr. McSwain, Mr. Miller and Mr. Plauche voted in favor of the motion. Mr. Vallas recused. The motion carried.

In further comments, Mr. Vallas said that for future knowledge, when someone said there were other properties in the area that could be used for the proposed use, they should remember that other properties always had a story to them. He noted that the dentist's office mentioned was owned by Eckerds. The Hardee's and the gas station were also owned by Eckerds, so it was not like the applicant could just go and buy that property that was owned by Eckerds.

Ms. Deakle commented that similar remarks had been made regarding the Plaza De Malaga application not long ago.

Ms. Cochran said she wanted to point out that there were lots of ways to approach the zoning question, but the Ordinance was pretty clear that once a parcel had been zoned that it was to continue with that zoning unless the applicant demonstrated one of four conditions. The Ordinance was also very plain that rezoning should not be done on an ad hoc basis or lightly. So unless the applicant could clearly demonstrate that one of the conditions for rezoning was met, then the zoning should be denied. Ms. Cochran said she was not saying there were no conditions that would not call for that, but it was not just an inquiry about whether they thought it was a good idea or not. The Ordinance was pretty clear on the criteria for rezoning.

NEW SUBDIVISION APPLICATIONS:

Case #SUB2004-00273

Augusta Subdivision, Unit Three, Resubdivision of Lots 9, 10, 11, and 12

Northeast corner of Stonebridge Court and Aiken Way.

2 Lots / 1.1± Acres

Mr. Don Coleman of Rester and Coleman Engineers, Inc., was representing the applicant and concurred with the staff recommendations.

There was no one present in opposition.

A motion was made by Mr. Miller and seconded by Mr. Watkins to approve this subdivision subject to the following condition:

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- (1) Approval by all applicable federal, state, and local agencies prior to the issuance of any permits.

The motion carried unanimously.

Case #SUB2004-00275

Augusta Subdivision, Unit Six

Northwest terminus of Vasser Court, adjacent to the North side of Augusta Subdivision, Unit Two – Phase Two, extending to the West side of Augusta Subdivision, Unit Five, and the South side of Woodberry Forest Subdivision, Unit One.

21 Lots / 7.6± Acres

Mr. Don Coleman of Rester and Coleman Engineers, Inc., was representing the applicant and concurred with the staff recommendations.

Mr. Olsen stated that this subdivision had previously been approved. The purpose of this application was to reduce the front setback along the lots due to a sharp drop in the property to the rear. The staff had reviewed a topo submitted by Mr. Coleman and concurred with the request and revised their recommendation for approval.

There was no one present in opposition.

A motion was made by Mr. Miller and seconded by Mr. Watkins to waive Section V.D.9. of the Subdivision Regulations and approve this subdivision.

The motion carried unanimously.

Case #SUB2004-00257

Blackberry Lane Subdivision

3859 Old Shell Road (South side of Old Shell Road, 155'± East of Dogwood Lane).

2 Lots / 0.5± Acre

Ms. Linda Burkett, owner of Marshall McLeod, P.L.S., L.L.C., was present on behalf of the applicant and concurred with the staff recommendations.

Ms. Susan Brown, 3454 Loyola Lane, presented handouts and pictures of the surrounding area, as well as a petition in opposition signed by all her neighbors. Ms. Brown said she owned the property on Loyola Lane behind the subject property. She noted that there were lots in the immediate neighborhood that had been divided up from the original 10-lot subdivision. Those lots, however, fronted the street, unlike the proposed subdivision, which would have one house behind another. Also, those lots that were already smaller on this block had been there for decades. Some of the houses had been there since the '30s, and hers was built in 1941. Ms. Brown was concerned about maintaining the character and atmosphere of the immediate neighborhood with its gracious homes, large trees, shaded lots, and large azaleas and camellias. She pointed out that this particular block in Spring Hill was unique as it was surrounded on three sides by non-residential

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property, with Wilmer Hall to the east and St. Paul's to the west. The neighbors did not want to see their unique neighborhood block changed by crowding two houses, one in front of the other. Increased traffic was also a concern of Ms. Brown's. Although one house would not make a difference, she was concerned as to where it would stop. They did not want their neighborhood to become a collection of small houses all on top of each other. She asked that the Commission deny this subdivision.

Mr. John Peavy, a resident of 1401 Alicia Drive in District 7, stated that he was the representative for this district and had been contacted by many of the residents with the same concerns that Ms. Brown pointed out. He said the flag-shaped lot was not characteristic of the area and he was surprised at the staff's recommendation for this approval. He urged the Commission to look at the characteristics of the neighborhood and to stay consistent with what was there. Preservation of the nature of this block was of extreme importance and he urged the Commission to reconsider the recommendation.

Ms. Sue Phillips, 3863 Old Shell Road, pointed out her house adjacent to the subject property. She noted that her home was to one side of her lot. Their driveway went from her home out the left side out to Old Shell Road, and her house was just a few feet from the property line. The applicant was proposing a driveway right up against her property just a few feet from the house. Ms. Phillips said they bought their home in 1939 from the people who built it, and the house next door was built in 1938. They love the area and had invested a lot of time and money and planned to invest more money into improving it. It was a pleasant, homey area with nice people for neighbors, and although it fronted on a very busy street the neighborhood itself was very quiet. To have it changed so drastically did not seem right. She asked the Commission to deny approval of this subdivision.

Ms. Burkett stated that the applicant was an older woman who had moved and her son was now interested in developing this property. The house was extensively damaged during Hurricane Ivan and two of the Oak trees had been topped out. Ms. Burkett passed out a handout showing where other subdivided properties had occurred in that block and on Dogwood Lane. She said the property had ample room for two houses. She said the flag lot was very common in Mobile, although it may not be common in this block, but it fell within the parameters of the Code and the recommendation of the staff. She respectfully requested that the Commission approve this application.

In discussion, Mr. Miller said he was inclined to oppose this, but he was not sure what reason they should cite for denial.

Mr. Watkins said he felt that the Commission should look at the appropriateness of this type of subdivision in the surrounding neighborhood. He felt this was different than what other subdivided lots in that neighborhood looked like. All the other lots fronted on the street. Although there were some lots of similar size, he did not know that the Commission wanted to get in the business of allowing this kind of flag-shaped development in this area. He felt it would not be appropriate in this neighborhood.

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A motion was made by Mr. Miller and seconded by Mr. Vallas to deny this subdivision.

In further discussion, Mr. McSwain referred to application #26 for Wimbledon Subdivision. He said it was almost an identical application, although there was another one in that area.

Mr. Vallas noted that as mentioned by one of the neighbors, they had Wilmer Hall to the east and St. Paul's to the west and were kind of getting sandwiched in. He was concerned about the density in this little block.

Mr. Plauche asked what basis for denial they would note on the letter of decision.

Ms. Cochran said the motion was based on Section V.D.1. of the Subdivision Regulations about appropriate lot size for the area.

Mr. Miller and Mr. Vallas amended their motion and second respectively. The final motion was to deny this subdivision based on Section V.D.1. of the Subdivision Regulations.

The question was called. The motion carried unanimously.

Case #SUB2004-00271

Essex Place Subdivision

South side of Johnson Road, 485' ± East of Scott Dairy Loop Road West.

27 Lots / 8.7± Acres

Mr. Plauche noted that there was a corrected report at the members' places for this case.

Mr. Richard Jay of Speaks & Associates Consulting Engineers, Inc., was present on behalf of the applicant and concurred with the staff recommendations.

Mr. Olsen said that the difference in the recommendation was the leading condition that required the street stub to the east. There was a previous approval of the subdivision to the east that did not require a street stub, so there would be nothing to connect it to.

Mr. George Casteau stated that he was currently building a house at 3255 Scott Dairy Loop Road West. He said he had restrictive covenants that applied to the whole Scott Plantation of which Essex Subdivision was Lot #7. The covenants clearly stated that there shall be no subdivision or resubdivision of any lot.

Mr. Olsen stated that the restrictive covenants that prohibited future subdivision of any of these lots was basically an agreement between the property owners. It was a civil matter to be dealt with through the Circuit Court. Restrictive covenants were not enforceable by the Planning Commission.

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Mr. Cochran stated that Mr. Olsen was correct. Any property owner who owned property in a subdivision had the right to go to Circuit Court and get an injunction prohibiting the construction of this subdivision. She said it was also true that the restrictive covenants were not binding on the Planning Commission. The Planning Commission, however, could certainly take into account the existence of the covenants in rendering its decision.

Mr. McSwain asked if they could deny based on the covenants.

Ms. Cochran said they could.

Mr. Plauche asked the applicant to address his position on the covenants.

Mr. Jay said he was not aware of the situation with the covenants and did not know if the owner was or not.

Mr. Plauche said it may be that they would have to hold this matter over.

Ms. Cochran said that restrictive covenants were not binding on the Commission. So if in looking at the Regulations the Commission determined to approve the subdivision, that was fine despite the restrictive covenants. On the other hand, if they chose to take into account the covenants, that would not void their decision. Ms. Cochran said between now and the time of the next meeting she would do some additional research in this matter and have that at the next meeting.

It was asked if the Commission denied a subdivision based on restrictive covenants, could they be sued.

Mr. Watkins said they were not in the position to give a legal opinion as to whether the covenants and restrictions were valid or binding as to those two parties. He would like to hear, however, what the owner had to say about why these did not apply to him.

Ms. Kitty Sizemore, a resident of 3355 West Scott Dairy Loop, said the proposed subdivision would butt up to the back of her property. She said even though it was not legally binding, when the owner of that 40 acres on West Scott Dairy Loop and Johnson Road decided to sell that property, he sent around to everybody that lived in the area notice that he was going to sell it on the condition that it would be divided into large, single-family dwellings. It would be in the sales agreement and it would be made evident that the lots could not be subdivided in any way. The residents who lived across the street and faced that section all agreed that if they were going to keep this as single-family property lots they would be large lots and would not downgrade the property in any way. Even though it was not legally binding, it was done in good faith. She requested that the Commission deny this request for Essex Subdivision.

A motion was made by Mr. Plauche and seconded by Mr. McSwain to holdover this application until the meeting of January 20, 2005, to allow additional time to research possible restrictive covenants.

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The motion carried unanimously.

Case #SUB2004-00258

Grubbs – Smith Subdivision

1000 and 1002 Dauphin Street (North side of Dauphin Street, 330'± East of North Pine Street, extending to the East terminus of New St. Francis Street).

2 Lots / 1.1± Acres

Council District 2

The applicant was present and concurred with the staff recommendations.

There was no one present in opposition.

A motion was made by Mr. Vallas and seconded by Mr. Miller to waive Section V.D.3, of the Subdivision Regulations, and approve this subdivision subject to the following conditions:

- (1) submission of documentation establishing the parcels prior to 1952;
- (2) rezoning of the parcel to a single zoning classification;
- (3) the depiction of the 25' building setback lines on the final plat; and
- (4) the provision of a buffer between the property and abutting R-1 zoned parcels, per Section V.A.7 of the Subdivision Regulations.

The motion carried unanimously.

Case #SUB2004-00277

Haiman Beltline Subdivision, Resubdivision of Lot 2, Resubdivision of Lot 2

Southeast corner of Springhill Memorial Drive South and Springhill Memorial Place.

3 Lots / 4.4± Acres

Council District 5

Mr. Don Coleman of Rester and Coleman Engineers, Inc., was representing the applicant and concurred with the staff recommendations.

There was no one present in opposition.

A motion was made by Mr. Vallas and seconded by Mr. Miller to approve this subdivision.

The motion carried unanimously.

Case #SUB2004-00270

Hargrove Estates Subdivision

210 South Washington Avenue (Northwest corner of South Washington Avenue and Canal Street).

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1 Lot / 0.7± Acre
Council District 2

Mr. Don Coleman of Rester and Coleman Engineers, Inc., was representing the applicant and concurred with the staff recommendations.

There was no one present in opposition.

A motion was made by Mr. Vallas and seconded by Mr. Miller to approve this subdivision subject to the following conditions:

- (1) the placement of a note on the final plat stating that the number, location, size, and design of all curb cuts to South Washington Avenue and Canal Street must be approved by Traffic Engineering; and
- (2) full compliance with landscaping and tree requirements of the Zoning Ordinance to be coordinated with Urban Forestry.

The motion carried unanimously.

Case #SUB2004-00279

Hollingers Island Subdivision, Island Farms, Resubdivision of Lot 36, Block 5

6478 Bay Road (West side of Bay Road, 630'± South of Bay Road North).

2 Lots / 10.0± Acres

Mr. Jerry Byrd of Byrd Surveying, Inc., was representing the applicant and concurred with the staff recommendations.

There was no one present in opposition.

A motion was made by Mr. Vallas and seconded by Mr. Miller to waive Section V.D.3. (width to depth ratio), of the Subdivision Regulations, and approve this subdivision subject to the following conditions:

- (1) the placement of a note on the final plat stating that any lots which are developed commercially and adjoin residentially developed property must provide a buffer, in compliance with Section V.A.7. of the Subdivision Regulations;
- (2) the placement of the 25-foot minimum setback line on the final plat; and
- (3) the approval of all applicable federal, state and local agencies prior to the issuance of any permits.

The motion carried unanimously.

Case #SUB2004-00263

Izusniaissance Subdivision

3616 Bay Front Road (Northwest corner of Bay Front Road and Hannon Road).

January 6, 2005

2 Lots / 0.8± Acre
Council District 3

The applicant was present and concurred with the staff recommendations.

There was no one present in opposition.

A motion was made by Mr. Vallas and seconded by Mr. Miller to approve this subdivision subject to the following conditions:

- (1) the approval of all applicable federal, state and local agencies prior to the issuance of any permits; and
- (2) full compliance with the City Engineering Comments (minimum finished floor elevation [13] required on each lot; must comply with all stormwater and flood control ordinances; any work performed in the right-of-way will require a right-of-way permit).

The motion carried unanimously.

Case #SUB2004-00269

Kings Branch Subdivision, Phase Two

North termini of Kings Gate Drive, Kings Branch Drive East, and Meadow Lane.

175 Lots / 101.9± Acres

The applicant was present and concurred with the staff recommendations.

There was no one present in opposition.

A motion was made by Mr. Vallas and seconded by Mr. Miller to waive Section V.B.1. (street connection) of the Subdivision Regulations, and approve this subdivision subject to the following conditions:

- (1) the approval of all applicable federal, state and local agencies prior to the recording of the final plat;
- (2) the placement of note on the final plat stating that the northern portion of the site may be impacted by the planned Eight Mile Creek Parkway and a study will be conducted at that time to determine the exact location of the parkway;
- (3) that the large unlabeled area be identified as common area with a note on the final plat stating that the maintenance thereof shall be responsibility of the property owners;
- (4) that all common areas have a minimum of 25-feet of access to a public street; and
- (5) placement of a note on the final plat stating there will be no further resubdivision of Lot 175 until the lot has additional frontage on a dedicated and improved public street.

January 6, 2005

The motion carried unanimously.

Case #SUB2004-00266

Kings Branch Subdivision, Unit Five

West side of Kings Gate Drive at its North terminus.

1 Lot / 0.4± Acre

The applicant was present and concurred with the staff recommendations.

There was no one present in opposition.

A motion was made by Mr. Vallas and seconded by Mr. Miller to approve this subdivision subject to the following condition:

- (1) placement of the required 25-foot minimum building setback line on the final plat.

The motion carried unanimously.

Case #SUB2004-00264

Roy Miller Subdivision, Resubdivision of Lot 3

3800 McFarland Road (Northwest corner of McFarland Road and Dawes Cemetery Road).

8 Lots / 10.3± Acres

The applicant was present and concurred with the staff recommendations.

There was no one present in opposition.

A motion was made by Mr. Vallas and seconded by Mr. Miller to waive Section V.D.3. (width to depth ratio) of the Subdivision Regulations, and approve this subdivision subject to the following conditions:

- (1) the placement of a note on the final plat stating that there will be no further resubdivision of Lots 7 and 8 until frontage on a paved public road is provided;
- (2) placement of a note on the final plat stating that Lot 6 is denied direct access to Dawes Cemetery Road;
- (3) the approval of all applicable federal, state and local agencies prior to the issuance of any permits;
- (4) the placement of a note on the final plat stating that any lots which are developed commercially and adjoin residentially developed property must provide a buffer, in compliance with Section V.A.7. of the Subdivision Regulations; and
- (5) the placement of the 25-foot minimum setback line on the final plat.

January 6, 2005

The motion carried unanimously.

Case #SUB2004-00274

Pleasant Subdivision, Resubdivision of Lots 3, 4, & 5

West side of Montlimar Drive, extending from Michael Boulevard to Pleasant Valley Road.

1 Lot / 1.8± Acres

Council District 5

Mr. Frank Dagley of Frank A. Dagley & Associates, Inc., was representing the applicant and concurred with the staff recommendations.

There was no one present in opposition.

A motion was made by Mr. Watkins and seconded by Mr. Vallas to approve this subdivision subject to the following condition:

- (1) the approval of all applicable federal, state and local agencies prior to the issuance of any permits.

The motion carried unanimously.

Case #SUB2004-00272

Spring Grove Subdivision, Unit Two

West terminus of Spring Grove South, extending to the North terminus of Summer Crossings and the West terminus of Spring Grove North; and the West side of Dawes Road extending to the North terminus of Spring Grove Court.

173 Lots / 36.7± Acres

Mr. Don Coleman of Rester and Coleman Engineers, Inc., was representing the applicant and concurred with the staff recommendations.

There was no one present in opposition.

A motion was made by Mr. Watkins and seconded by Mr. Vallas to waive Section V.D.2. of the Subdivision Regulations, and approve this subdivision subject to the following conditions:

- (1) the dedication of the necessary right-of-way to provide 50-feet from the centerline of Dawes Road, as shown on the plat submitted;
- (2) the provision of traffic calming (to be coordinated with and approved by County Engineering) at the intersections of Lots 53-55 and 78 and 79;
- (3) provision of a street stub to the West in the area of Lots 26 and 28; and
- (4) the approval of all applicable federal, state and local agencies prior to the recording of the final plat.

January 6, 2005

The motion carried unanimously.

Case #SUB2004-00268

Timberlane Woods Subdivision

North terminus of Cross Creek Drive, extending to the West termini of Larchmont Drive and Timberline Ridge.

33 Lots / 15.7± Acres

Council District 6

Mr. Don Coleman of Rester and Coleman Engineers, Inc., was representing the applicant and concurred with the staff recommendations.

Mr. Jay Morris stated that he was speaking on behalf of residents who lived at 5517 Cross Creek Road. He expressed their concern about increased traffic on Cross Creek Road and the drainage. They requested that the City perform a traffic study, along with a water runoff study, in order to determine whether this would be a feasible development in terms of traffic on Cross Creek Road. They were also concerned about the safety of children in the area. They asked that approval be denied pending those studies.

Mr. Vallas noted that only 11 of the proposed lots would cross Cross Creek Road.

Mr. David Bleau stated that he was a resident of 5551 Thomas Jefferson Court in Madison Place Subdivision, which would back up to the proposed subdivision. He expressed concern about drainage and increased traffic in Madison Place. He mentioned that there was already some cut-through traffic to Knollwood Drive. He asked who the developer was and wanted to see a copy of the detailed plans for the subdivision.

Mr. John Hensley stated that he was a resident of 5563 James Madison Drive South, which was on the south end of the circle in Madison Place Subdivision. Mr. Hensley said there had been a kind of natural cut-through from Demetropolis Road to Knollwood Drive and traffic was a real problem. He was also concerned about the safety of the children in the area and had brought these concerns up to Councilperson Connie Hudson previously. He asked if the Planning Commission could suggest what he could do to further insure that people were slowed down along the south side of the circle. He was not opposed to this subdivision if these issues were addressed.

Mr. McSwain commented that he did not see the subdivision contributing to cut-through traffic.

Mr. Hensley said the problem was between Demetropolis Road and Knollwood Drive and people generally coming from Canterbury Heights and White Pine Drive, cutting through into the south side of the circle and exiting on Knollwood Drive. He said it may be a traffic issue, but it would contribute to the concentration of people in that area.

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Mr. Mike Daniels, 5617 Cottage Hill Road, applicant, stated that his name was on the application and he had asked Mr. Whistler to be sure to call him if anyone had any concerns about the proposed subdivision. He said several neighbors did call and he had talked to them. Mr. Daniels said he did not mind meeting with the residents after this meeting to go over the plans. As far as Briarfield, there was no true access to Madison Place. It was not a cut-through but there were more than 20 streets total that come through all the way from Cottage Hill Road. He felt that cul-de-sacs would benefit the city as fire trucks and garbage trucks would be able to turn around in them. As far as a buffer, Mr. Daniels said they were aware that the creek side was environmentally sensitive. There was a ravine that backed up to James Madison Drive and most of it would probably be left in a natural state.

In discussion, a motion was made by Mr. Vallas and seconded by Ms. Deakle to approve this subdivision subject to the following conditions:

- (1) developer to obtain all necessary federal, state and local approvals prior to the issuance of any permits;
- (2) all areas not designated as lots be identified as common areas; and
- (3) the placement of a note on the final plat stating that maintenance of all common areas shall be the responsibility of the property owners association.

Mr. Watkins stated that other municipalities were gearing toward staying away from cul-de-sacs. In this instance it looked like that with at least one of those streets, it would be very easy just to connect in and be a loop. He asked if the Planning Commission had the authority to require that. He felt that would lower the number of lots available and maybe make the traffic flow a little better. Mr. Watkins asked if it was reasonable to connect Larchmont and Cross Creek Drives.

Mr. Olsen stated that it was reasonable, and at this point if that was the inclination of the Commission, they could hold the application over and ask the applicant to submit a revised plat illustrating that.

Ms. Deakle stated that from the way this plan was laid out, it was putting the minimum amount of traffic and speeding to over three streets, and the two that were most objectionable would be getting the least amount of overflow from this.

There being no further discussion Mr. Plauche called the question. The motion carried unanimously.

Case #SUB2004-00265

Turtle Creek Subdivision

Southeast corner of Repoll Road and Richmond Pearson Road.

162 Lots / 26.7± Acres

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Mr. Olsen stated that the initial report on this subdivision that was mailed out to the members indicated that there was a parcel that had been omitted, leaving a triangular, landlocked parcel. The developer had since submitted a revised plat, including that parcel as well as the parcel to the east in the subdivision, as far as showing them as future development. There would ultimately be a street stub to the east. At this point Mr. Olsen said the staff recommended approval of the subdivision subject to the street stub; the entire parcel to the east being shown on the final plat as future development; placement of a note on the final plat stating that maintenance of all common areas be the responsibility of the property owners association; placement of a note on the final plat that no lot shall have direct access to Repoll Road or Richmond Pearson Road; and that the developer obtain all necessary federal, state and local approvals prior to the issuance of any permits. Mr. Olsen noted that part of the subdivision was in a flood zone. He also noted that there was a common area that ran the entire length of Repoll Road. There would be a buffer required separating the lots from Repoll Road.

Mr. David Neal, with Engineering Development Services, was present on behalf of the applicant and concurred with the staff recommendations.

Ms. Arie Zitsos said she owned adjoining property and had no problem with the proposed subdivision. She just wanted to get information as to what was going on, such as the type of housing proposed and what they planned to do with the big ditch.

Mr. Plauche explained that the applicant was not required to provide that type of information. She suggested Ms. Zitsos talk to the applicant.

Ms. Sarah Freeman, 9941 Alderway, wanted to bring to the attention of the Commission the gopher turtles that lived in the woods that were endangered. She also pointed out the wetlands along Richmond Pearson Road and wanted to know if they would be affected.

Mr. Gordon Sands, 9861 Alderway, was concerned about whether this subdivision would be subsidized housing. He said they lived in a quiet neighborhood and did not want anything coming in that would cause them problems with crime or cause them to lose value in their property. He was also concerned about wildlife in the area.

Regarding the type of housing proposed, Mr. Neal said they proposed to build single-family, custom-built homes, so they did not feel they would detract from property values at all. As far as environmental concerns, he said they had an environmental consultant who was delineating the wetlands, which they were not planning to touch. If there were any endangered species on the site they would have to address that with the proper authorities.

A motion was made by Mr. Vallas and seconded by Ms. Deakle to approve this subdivision subject to the following conditions:

- (1) the provision of a street stub to the East, exact location to be coordinated with Urban Development Staff;

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- (2) the entire parcel(s) to the East be shown on the final plat as Future Development;
- (3) placement of a note on the final plat stating that maintenance of all common areas shall be the responsibility of the property owners association;
- (4) placement of a note on the final plat stating that no lots shall have direct access to Repoll Road or Richmond Pearson Road; and
- (5) developer to obtain all necessary federal, state and local approvals prior to the issuance of any permits.

The motion carried unanimously.

Case #SUB2004-00262

Washington Boulevard Estates Subdivision

Northwest corner of Washington Boulevard and Burroughs Lane.

9 Lots / 1.5± Acres

The applicant was present and concurred with the staff recommendations.

There was no one present in opposition.

A motion was made by Mr. McSwain and seconded by Mr. Miller to approve this subdivision subject to the following conditions:

- (1) the dedication of a 25-foot radius at the corner of Washington Boulevard and Burroughs Lane;
- (2) the placement of a note on the final plat stating that any lots which are developed commercially and adjoin residentially developed property must provide a buffer, in compliance with Section V.A.7. of the Subdivision Regulations; and
- (3) the placement of the 25-foot minimum setback line on the final plat.

The motion carried unanimously.

Case #SUB2004-00276

Wimbledon Subdivision, Resurvey of Block 9, Resubdivision of Lot 6

5 Crossway (North side of Crossway, 130'± East of Wimbledon Drive West).

2 Lots / 1.1± Acres

Council District 5

Mr. Don Coleman of Rester and Coleman Engineers, Inc., was representing the applicant and requested that the staff recommendation for the dedication of adequate right-of-way to provide 25' from the center line of Crossway Drive be waived. He said in 1994 he did a subdivision right next to this at Wimbledon and Crossway Drives and no additional right-of-way was taken out of Crossway Drive. Also in 1994 he did a subdivision at the

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intersection of Country Club Road and Crossway Drive and no additional right-of-way was given there for Crossway Drive. He said Crossway Drive was a 40' road.

Ms. Susan Maisey, a resident of 3 Crossway, said she objected to waiving the right-of-way requirement for Crossway. She said their house was set back from the street according to the regulations and they wanted the applicant to be required to provide the same dedication that they did.

Mr. Olsen stated that the properties both to the north and to the south that were subdivided back in 1994 did not provide dedication, as Mr. Coleman stated. That was the reason for Mr. Coleman's request. It would remain the same as those adjacent properties.

Ms. Maisey asked how close to the street they could build.

Mr. Olsen said that the standard setback from the street required by the Subdivision Regulations was 25' from the front property line.

A motion was made by Mr. McSwain and seconded by Mr. Vallas to approve this subdivision subject to the following condition:

- (1) the depiction of the required 25' building setback lines from Crossway on the final plat.

The motion carried unanimously.

Case #SUB2004-00260

YNG Place Subdivision, Resubdivision of Lot 6

2805 Grant Street (Southwest corner of Cottage Hill Road and Grant Street).

1 Lot / 0.7± Acre

Council District 5

Mr. Frank Dagley of Frank A. Dagley & Associates, Inc., was representing the applicant and requested this application be heldover until the first meeting in February.

There was no one present in opposition.

A motion was made by Mr. Plauche and seconded by Ms. Deakle holdover this application until the meeting of February 3, 2005, at the applicant's request.

The motion carried unanimously.

NEW SIDEWALK WAIVER APPLICATION:

Case #ZON2004-02581

Cabinet Station (Ray Starling, Agent)

January 6, 2005

4412 Government Boulevard (North side of Government Boulevard, 710'± East of Demetropolis Road).

Request to waive construction of a sidewalk along Government Boulevard.

Council District 4

Mr. Frank Dagley of Frank A. Dagley & Associates, Inc., was representing the applicant and presented handouts to the Commission showing where the proposed sidewalk would be with respect to the adjacent buildings and roadway. The proposed sidewalk would be 108' from the edge of Highway 90. He noted that this piece of property had a dedicated service road in front of it, whereas the adjacent properties did not. The sidewalk would go on the extreme west side of the service road dedication. He said this was the classic case of a sidewalk that went to nowhere. There would never be any way to connect this sidewalk with another sidewalk; it would serve no purpose. Mr. Dagley respectfully requested that the sidewalk waiver be granted.

Mr. Vallas asked if there was any chance the City would ever vacate that service road.

Mr. Dagley said they went through all of this. The problem there was time and the trees. They looked into vacating the service road but the trees were still going to have to remain and they would still have to put the building behind the trees, so it did not really make any sense to vacate the service road.

Mr. Olsen stated that it had been the practice of the Commission, whether the sidewalks would actually connect or not, that unless there was an engineering problem that the sidewalk could not be installed, that a waiver would not be approved. Mr. Olsen asked Ms. Terry of City Engineering if she had visited the site.

Ms. Terry said she did visit the site. She said there were a hodge-podge of businesses out there with different distances from either the traveled Highway 90 or the service road. She said the sidewalk could still be constructed, but it did not look like it would go anywhere.

Mr. Dagley commented that the purpose of a sidewalk was for pedestrian traffic. He felt a sidewalk at this location would not serve any purpose whatsoever for pedestrian traffic.

In discussion, a motion was made by Mr. McSwain and seconded by Mr. Vallas to approve this request.

Mr. McSwain commented that the Commission had been very strong on sidewalks, and that was the reason Engineering had recommended denial. The Commission had to ask, however, if a sidewalk would be reasonable in this situation. He did not feel it would be reasonable.

With respect to the Tree Ordinance, it was stated that if the trees could not be planted then they had to bank them. It was asked if there was ever such a way to bank sidewalks.

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Mr. Olsen said the staff had looked at the issue of sidewalk banks over the years and had not been able to determine a way in which they could do that. He said the only pause he had with this was Mr. Dagley's statement that the reason they did not go with the vacation process was the time factor and that they would still have to set the building back because of the trees. Still, he said they could go through the vacation process and then build a sidewalk where it would line up, but that was assuming that there would ever be a sidewalk on the properties north and south.

The question was called. The motion carried unanimously.

There being no further business, the meeting was adjourned.

APPROVED: April 7, 2005

/s/ Victor McSwain, Secretary

/s/ Terry Plauche, Chairman

/ms and jlh