

**MOBILE CITY PLANNING COMMISSION MINUTES**  
**MEETING OF FEBRUARY 17, 2005 - 2:00 P.M.**  
**AUDITORIUM, MOBILE GOVERNMENT PLAZA**

**Members Present**

Victor McSwain, Secretary  
Ann Deakle  
Nicholas Holmes III(S)  
James Laier, Vice-Chair  
Mead Miller  
Victoria L. Rivizzigno  
James Watkins, III  
John Vallas

**Members Absent**

Clinton Johnson  
Terry Plauche, Chairman

**Urban Development Staff Present**

Richard L. Olsen, Planner II  
Margaret Pappas, Planner II  
Val Manuel, Secretary II

**Others Present**

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

Mr. McSwain chaired the meeting in Mr. Plauche's absence. He 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.

**EXTENSIONS:**

**Case #SUB2003-00272 (Subdivision)**  
**Colonnade Subdivision**

The request for a one-year extension of a previous approval was considered.

There was no one present in opposition.

A motion was made by Dr. Rivizzigno and seconded by Dr. Laier to approve this request.

The motion carried unanimously.

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**GROUP APPLICATIONS:**

**Case #ZON2005-00108 (Rezoning)**

**C. William Barnhill**

4860 Halls Mill Road (North side of Halls Mill Road, 460' ± West of Rochelle Street).

A request for a change in zoning from R-1, Single-Family Residential, to R-3, Multi-Family Residential, to allow the expansion of an existing mobile home park was considered.

The site plan illustrates the proposed area to be rezoned along with the proposed improvements.

**(Also see Case ZON2005-00307 – C. William Barnhill [Planning Approval] – Below).**

Jerry Byrd, Byrd Surveying, was present representing the applicant. Mr. Byrd said he had no problems with the staff recommendations except for condition #5, which required denial of access to Halls Mill Road. He said they needed that access because there was a rental house located on the property.

Ms. Pappas said the access should not be used for construction purposes.

Mr. McSwain asked if there was anyone present to speak in opposition.

Joe Salata stated that he lived at 4858 Halls Mill Road, which was in front of the subject property. Mr. Salata said his family had owned this property since the 1900's. They built their house there in 1965 at the same time his wife's brother built his house. He presented a petition signed by area residents in opposition to the proposed mobile home park. He also pointed out that the applicant had access across his property to get to 4860 Halls Mill Road. It was a narrow, nine-foot wide driveway. This had been like a buffer between his house and the mobile home park all these years.

Ms. Pappas explained that this was a court-ordered easement. These properties were legally subdivided, and while this lot technically had frontage on Halls Mill Road, it was along a drainage easement and actual access via the drainage easement was prohibited.

Mr. Vallas asked if there was anything in the Ordinance that would prevent a mobile home park development within the city limits.

Ms. Pappas said no. Mobile home parks were allowed with Planning Approval in an R-3 district. The applicant was requesting rezoning to R-3 as well as Planning Approval.

In rebuttal, Mr. Byrd stated that he was asking that the court-ordered driveway be allowed to remain until such time as the mobile home park was developed. He said any other frontage of this property was cut off by the City when they improved the ditch on

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Spring Creek. This driveway was actually on the west side of that ditch, the official frontage of this lot. If they could keep the residential traffic going to that one house until the time of development, they could do all the construction through the existing mobile home park. Mr. Byrd said this would be a very nice, well-maintained mobile home village that would have very little impact on the surrounding area.

Mr. Vallas asked if there would be some kind of a buffer between the back property line and the adjoining property, in addition to the ten foot setback.

The applicant said if there was a problem for some of the neighbors, he would suggest a privacy fence.

Ms. Pappas noted that condition #1 of the staff recommendation required a buffer-a privacy fence, a vegetative planting, or a wall. That would be in addition to the recommended 10' setback.

In executive session concern was expressed about increasing the number of mobile home parks within the city.

Ms. Pappas stated that Planning Approval takes into account the development of the surrounding area and whether or not the proposed use is compatible with the surrounding development. Mobile home parks are allowed with Planning Approval in R-3 districts. They could not have a mobile home park without both applications being approved.

There were further questions about the court-ordered easement. Ms. Pappas said the easement was executed prior to this property being subdivided and legal street frontage being provided. However, because of the drainage improvements for Spring Creek, true access via this frontage was not feasible. The court-ordered access was still used across the other lot. She noted that the applicant stated that if approved, once they began developing this parcel they would no longer use this access. Ms. Pappas said if approved, that could be a condition of approval.

The staff was asked what they saw as a justifying factor here to change the zoning.

Ms. Pappas said the applicant could probably better address the issue, but the need for affordable housing could be a factor.

After discussion a motion was made by Mr. Holmes to recommend this change in zoning to the City Council subject to the staff recommendations, with the exception of #5, to allow that access until construction begins.

Mr. McSwain called for a second to the motion. There being no second, the motion failed.

In further discussion Mr. Miller asked if there were any requirements as to density and lot size in mobile home parks.

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Mr. Olsen replied that there was a separate, specific Mobile Home Park Ordinance that does set the minimum lot size as requirements for open space on the lot, a shed, or storage unit on the individual lot. He said this was a totally separate ordinance, which would not be administered by the Commission, but it does come into play and the applicant would have to fully comply. Mr. Olsen said the plan does meet the density allowances for an R-3 district.

After discussion a motion was made by Dr. Rivizzigno and seconded by Mr. Watkins to recommend denial of this change in zoning to the City Council.

Mr. Watkins said his reasoning was based on the fact that he felt the applicant had not shown any justification for the rezoning.

The motion carried unanimously.

**Case #ZON2005-00307 (Planning Approval)**

**C. William Barnhill**

4860 Halls Mill Road (North side of Halls Mill Road, 460'± West of Rochelle Street).

A request for Planning Approval for an existing mobile home park expansion in an R-3, Multi-Family Residential district, was considered.

The site plan illustrates the proposed area to be rezoned along with the proposed improvements.

**(For discussion see Case ZON2005-00108 – C. William Barnhill [Rezoning] – Above).**

After discussion a motion was made by Dr. Rivizzigno and seconded by Mr. Watkins to deny approval of this plan.

The motion carried unanimously.

**Case #ZON2005-00219 (Planned Unit Development)**

**Harkness Subdivision**

1601 East I-65 Service Road South (East side of I-65 Service Road South, 950'± North of I-65 Commerce Drive).

A request for Planned Unit Development approval to allow multiple buildings on a single building site, with shared access between multiple building sites, was considered.

The site plan illustrates the existing building along with the proposed buildings, parking, landscaping, and lot configuration.

**(Also see Case SUB2005-00008 – Harkness Subdivision – Below).**

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Frank Dagley, engineer for the developer, was present and objected to the recommended requirement which would allow only one curb cut for the two lots. Mr. Dagley said that initially they were going to use a common driveway for both lots. He said they would like not to be limited to one curb cut as they have over 100 feet of frontage on the service road and in ten years or so they may want to have another curb cut. Mr. Dagley also said they were submitting this PUD to put a building on Lots 1 and 2, and he did not understand why they had to submit an Administrative PUD.

Ms. Pappas stated that Lot 2 was predominantly developed with gravel. An Administrative PUD was being requested to make sure the access and any required parking for this building was provided prior to construction of the new warehouse.

In executive session it was asked if there was a reason for not granting more than one curb cut.

Mr. Olsen stated that the PUD does show the single curb cut. PUD's are site plan specific. If they desired a second curb cut in the future they would have to come back to the Commission anyhow, so they could submit a Subdivision application to remove that condition. At this point it was almost automatic.

After discussion a motion was made by Dr. Rivizzigno and seconded by Mr. Watkins to approve this plan subject to the following conditions:

- 1) full compliance with the landscaping and tree planting requirements of the Ordinance for Lot 1, as well as the provision of frontage trees for Lot 2;
- 2) provision of adequate paved parking for the existing building, and new showroom and warehouse;
- 3) the submission and approval of a Planning Approval application if the heavy equipment rental operation is expanded;
- 4) the submission and approval of an Administrative PUD application prior to the issuance of a permit for the warehouse on the eastern portion of Lot 2; and
- 5) full compliance with all municipal codes and ordinances.

The motion carried unanimously.

**Case #SUB2005-00008 (Subdivision)**

**Harkness Subdivision**

1601 East I-65 Service Road South (East side of I-65 Service Road South, 950'± North of I-65 Commerce Drive).

2 Lots / 4.0± Acres

**(For discussion see Case ZON2005-00219 – Harkness Subdivision [PUD] –Above).**

After discussion a motion was made by Dr. Rivizzigno and seconded by Mr. Watkins to approve the above referenced subject to the following condition:

- 1) placement of a note on the final plat stating that the site is limited to one

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curb cut, with the location and design to be approved by Traffic Engineering.

The motion carried unanimously.

**Case #ZON2005-00230 (Planned Unit Development)**

**McMurray Place Subdivision**

South side of Johnston Lane, extending from the West side of Rosedale Avenue (to be vacated) to the centerline of Dickerson Avenue (to be vacated), and to McCay Avenue (to be vacated), 95'± South of Johnston Lane.

A request for Planned Unit Development approval to allow reduced lot widths, sizes, and setbacks, and 45% site coverage in a zero-lot line single-family residential subdivision was considered.

The plan illustrates the proposed subdivision.

**(Also see Case SUB2005-00018 – McMurray Place Subdivision – Below).**

Don Coleman, Rester and Coleman Engineers, was present on behalf of the applicant and requested a holdover until March 3<sup>rd</sup>.

A motion was made by Mr. McSwain and seconded Dr. Rivizzigno to holdover this application until the March 3, 2005, meeting at the applicant's request.

The motion carried unanimously.

**Case #SUB2005-00018 (Subdivision)**

**McMurray Place Subdivision**

South side of Johnston Lane, extending from the West side of Rosedale Avenue (to be vacated) to the centerline of Dickerson Avenue (to be vacated), and to McCay Avenue (to be vacated), 95'± South of Johnston Lane.

60 Lots / 12.8± Acres

**(For discussion see Case ZON2005-00230 – McMurray Place Subdivision [PUD] – Above).**

Don Coleman, Rester and Coleman Engineers, was present on behalf of the applicant requested a holdover until March 3<sup>rd</sup>..

A motion was made by Mr. McSwain and seconded Dr. Rivizzigno to holdover this application until the March 3, 2005, meeting at the applicant's request.

The motion carried unanimously.

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**Case #ZON2005-00223 (Planned Unit Development)**

**Merrimac Subdivision**

262 and 264 West Drive (West side of West Drive, 125'± South of Northwoods Drive).

A request for Planned Unit Development approval to allow reduced front and side yard setbacks, reduced lot sizes, and 47% site coverage in a single-family residential subdivision was considered.

The plan illustrates the proposed lots and existing large trees.

**(Also see Case SUB2005-00014 – Merrimac Subdivision – Below).**

Jay Weber, with JBL Properties, was present and presented this proposal for a 19-lot subdivision and Planned Unit Development. The property is presently zoned R-1, single family residential. Mr. Weber said that JBL accepted the recommendations of the staff. The site plan submitted was substantially identical to that proposed to, and denied by the Planning Commission at its meeting of August 5, 2004. Mr. Weber said a prior commitment out of town prevented his presence at that meeting. Since that time, JBL had engaged its engineers, Rester and Coleman, to perform certain survey and engineering work on the site to address the concerns expressed at the prior meeting. The concerns pertained to density, topography, storm water drainage, tree preservation, and compatibility with surrounding properties. Regarding density, Mr. Weber said the site plan conformed to the R-1 density limitations. PUD approval was being sought as some lots contained approximately 6,500 square feet as opposed to the required 7,200 square feet. He noted that the staff comments stated that the site coverage parameters sought were typical for Planned Unit Developments within the City. Previously, an adjoining property owner had objected to the 10-foot rear yard setback. He noted that without their imposed self-limitation of 10 feet, the City's 8-foot setback would otherwise apply. Mr. Weber also pointed out that the adjoining subdivision to the south, Brandy Ridge, had as its northern boundary a 15-foot drainage and utility easement. This necessitated a minimum separation between buildings of 25 feet, which was not only greater than the 16 feet that would otherwise be required by the City, it also exceeded the building side yard separations within Brandy Ridge. Mr. Weber further stated that in February of 2003, this Commission approved a considerably more intense use of this site, recommending a change in zoning from R-1 to R-2 to accommodate 23 lots. This current proposal was for 19 lots with 50 percent building coverage. He stated he had been advised as recently as yesterday that those who expressed opposition to this site plan previously had said that for the Commission to approve an application identical to the one denied back in August would be arbitrary and capricious. The August 2004 denial succeeded the February 2003 approval of a substantially more intense use of the property. Therefore, the assertion that it was arbitrary and capricious was best reserved for the August 2004 denial. Concerning issues of stormwater drainage and topography, which were also raised at the August 5th meeting, Mr. Weber said JBL and its engineer fully appreciated that stormwater cannot be discharged from the site at a rate and concentration that exceeds pre-development runoff. The site would be engineered to that standard and to the satisfaction of the City Engineering Department. He said the topography of the site had been the subject of their

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further study since August 5th. He noted that the site falls from the north to the southwest. There would be a street that would bisect the property capturing all the stormwater that presently fell naturally from the north to the south. They would therefore be very much mitigating the stormwater that presently fell naturally. The area of concern south of that street was a subject of the topographic study that revealed about a five-foot drop over the area of concern, which is about a 120 foot run. Mr. Weber said it was JBL's belief, and that of its engineers, that the stormwater within the parcel could be handled adequately. Mr. Weber said Brandy Ridge residents had also expressed concern about houses along the southern portion of the property looking into their houses. He noted they would have a 25-foot separation. The topography was not as severe as initially thought. Also, the detention being handled within the detention area had been surveyed and shown to exist above the flood plain. As for preservation of trees, Mr. Weber said they had discussed the issue with Urban Forestry and the three trees identified previously as Live Oaks were actually Water Oaks, and there was no reason to believe that their removal would be an issue. As far as compatibility with the surrounding area, West Drive was currently being developed with single-family, detached, and higher density single-family in R-2 across the street. He indicated the green area on the site plan where there were 40 multi-family units on a 4-acre site. Further north towards Old Shell Road, there was an older apartment complex, two commercial sites, Morrison Nursery, and Anders Book Store. Mr. Weber pointed out that Brandy Run did not access West Drive. They were not part of the West Drive community. He felt this development would fit perfectly within the neighborhood, and on that basis asked that the subdivision and PUD applications be approved.

Mr. Vallas asked what was the approximate depth of the proposed lots.

Mr. Weber replied that 108 feet would be the shallowest, with about 60 feet in width.

It was asked what the rationale was for not pursuing the rezoning that had been recommended for approval by the Commission.

Mr. Weber said they were not the ones who sought that rezoning; that was a prior developer who was now developing much more densely across the street.

Grady Edmondson, a resident of 6220 Brandy Run Road North, which was to the south of this proposed development, was present representing himself as well as members of the Home Owners Association. Mr. Edmondson stated that the Home Owners Association had met and unanimously opposed the development. He provided the members with a copy of the August 6th letter in which the Commission unanimously turned down an identical PUD and subdivision. He was present today to address the same issues. He pointed out that although the applicant was not present at the meeting on August 5th, his project manager and one of his engineers were present. There was discussion about all the reasons the Commission denied this PUD. Mr. Edmondson said the first one was density. This proposed development would have 19 units. Adding to the 18 that were above it, the 42 over at Ridgefield Commons, and the 40 town homes along West Drive, you would have 119 residential units emptying out onto a 400 feet in



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length section of West Drive, which ends right there at Twelve Mile Creek. The size of the houses was also a concern. He noted that the living area on one plan was 1,343 square feet, on another 1,434 square feet, and another was 1,520 square feet. The average size houses in Brandy Run Subdivision were 3,000 square feet. He contended that if you put a 1,300 square foot house, 10 feet off the back property line, that could be elevated in some cases at least three or four feet above a 3,000 square foot house, it would have a negative impact on the character of their subdivision and the compatibility of the houses. Mr. Edmondson said the other problem with the property was the contours. He said from the top of proposed lot 7 down to the bottom of lot 13 was a 20-foot drop. With the flow of water on this property and the contours, Mr. Edmondson said you could not convince him that there would not be a problem. He said nature had taken care of the detention area. He did not have any problem with water right now because there was basically a sump. It was full of trees and undergrowth. The applicant planned to take out all of the trees, including three heritage trees. Mr. Edmondson said there were serious problems that had not been addressed by submitting the same PUD that was denied in August. He felt a decision by the Commission to totally reverse their position on the same PUD with the same issues would be arbitrary and capricious. He said there was no reason for them to change their vote.

Ms. Pappas stated that the Urban Forester was not present today, as he was in court. She pointed out that while the applicant illustrates the trees as Live Oaks, the Urban Forester said those trees are not Live Oaks, but Water Oaks, and he did not recommend preservation status for those trees.

There being no one else who wished to speak, Mr. McSwain asked Mr. Weber if he had any rebuttal.

Regarding drainage, Mr. Weber said that a considerable amount of engineering work had been done on the site. Mr. Coleman had satisfied himself and, in agreement with Ms. Terry of City Engineering, would not proceed unless the stormwater could be adequately handled. He noted that more than half of the stormwater would be diverted through the construction of the street. As far as the arguments on density and the character of the neighborhood, Mr. Weber found it somewhat disingenuous. Brandy Run does not have access onto West Drive. There was an 8-foot fence with two gates connecting Brandy Run Road to driveways to West Drive, but that was a direct contravention to their plat. As far as house sizes, he said 1,300 to 1,700 square feet of heating and cooling area is in Mobile today a six-digit home. He felt the issue of house values was not appropriate for this Commission and was an inaccurate statement.

After discussion a motion was made by Dr. Rivizzigno and seconded by Dr. Laier to approve this plan subject to the following conditions:

- 1) compliance with state and local laws that pertain to tree preservation and protection on both city and private properties (State Act 61-929 and City Code Chapters 57 and 64), tree removal permits are required for all Live Oak trees 24" and larger); and
- 2) full compliance with all municipal codes and ordinances

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In further discussion it was noted that the question of the Live Oak trees becomes moot, as the trees have been determined by the Urban Forester to be Water Oaks. Mr. McSwain said the Oak Trees were not an issue in the previous application.

Ms. Pappas stated that they had been an issue. That was one of the reasons for denial at the August 2004 meeting. She said the engineering and drainage concerns had been addressed.

Ms. Terry stated that the situation with the flood zone had not been resolved. Mr. Coleman's company did a topographical survey and they indicated that it was not in the floodway and flood plain itself. However, the applicant had to apply to FEMA for a revision to the map. She understood they had just begun the process.

Dr. Rivizzigno said she felt the density of the plat fit in with the properties north and east of it.

Further concern was expressed about the drainage.

Mr. Olsen stated that before the applicant could obtain any permits or record the plat, he would have to satisfy the City Engineering Department with regard to the flood zone and the design of the detention area to ensure that no water leaves the property faster, or to any greater degree or concentration, post development than it does currently.

Ms. Terry said that was correct.

There being no further discussion Mr. McSwain called the question. The vote was Dr. Rivizzigno, Ms. Deakle, Mr. Holmes, and Dr. Laier were in favor of the motion and Mr. Watkins and Mr. Miller were opposed.

The motion carried.

**Case #SUB2005-00014 (Subdivision)**

**Merrimac Subdivision**

262 and 264 West Drive (West side of West Drive, 125'± South of Northwoods Drive).  
19 Lots / 3.9± Acres

**(For discussion see Case ZON2005-00223 – Merrimac Subdivision [PUD] – Above).**

After discussion a motion was made by Dr. Rivizzigno and seconded by Dr. Laier to approve the above referenced subdivision subject to the following conditions:

- 1) full compliance with Urban Forestry Comments (property to be developed in compliance with state and local laws that pertain to tree preservation and protection on both city and private properties (State Act 61-929 and City Code Chapters 57 and 64), tree removal permits are required for all Live Oak trees 24" and larger); and
- 2) full compliance with all municipal codes and ordinances.

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The vote was Dr. Rivizzigno, Ms. Deakle, Mr. Holmes, and Dr. Laier in favor of the motion and Mr. Watkins and Mr. Miller were opposed.

The motion carried.

**Case #ZON2005-00227 (Planned Unit Development)**

**Rochester Place Subdivision, Revised Plat of**

Northwest corner of Airport Boulevard and General Pershing Avenue (not open), extending North and West to the South side of South Sunset Drive.

A request for Planned Unit Development approval to amend the buffer requirement of a previously approved Planned Unit Development, private street, single-family residential subdivision was considered.

The plan illustrates the existing lots, easements, and setbacks.

**(Also see Case SUB2005-00010 – Rochester Place Subdivision, Revised Plat of – Below).**

Mr. McSwain stated that the applicant was present and concurred with the staff recommendations.

There was no one present in opposition.

After discussion a motion was made by Dr. Rivizzigno and seconded by Mr. Miller to approve this plan subject to the following conditions:

- 1) compliance with the landscaping and tree planting requirements of the Ordinance;
- 2) placement of a note on the final plat stating that if the gate ceases to operate, the road must be dedicated to the City;
- 3) preservation of a 53" Oak (any work on or under this tree is to be permitted and coordinated with Urban Forestry; removal to be permitted only in the case of disease or impending danger), as well as protection status for any existing trees that are located within the existing right-of-way (permits required from the Urban Forester for trimming or removal); and
- 4) denial of direct access to Sunset Drive South.

The motion carried unanimously.

**Case #SUB2005-00010 (Subdivision)**

**Rochester Place Subdivision, Revised Plat of**

Northwest corner of Airport Boulevard and General Pershing Avenue (not open), extending North and West to the South side of South Sunset Drive.

13 Lots / 3.4± Acres

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**(For discussion see Case ZON2005-00227 – Rochester Place Subdivision, Revised Plat of [PUD] – Above).**

Mr. McSwain stated that the applicant was present and concurred with the staff recommendations.

There was no one present in opposition.

After discussion a motion was made by Dr. Rivizzigno and seconded by Mr. Miller to approve the above referenced subdivision subject to the following conditions:

- 1) compliance with the landscaping and tree planting requirements of the Ordinance;
- 2) placement of a note on the final plat stating that if the gate ceases to operate, the road must be dedicated to the City;
- 3) preservation of a 53" Oak (any work on or under this tree is to be permitted and coordinated with Urban Forestry; removal to be permitted only in the case of disease or impending danger), as well as protection status for any existing trees that are located within the existing right-of-way (permits required from the Urban Forester for trimming or removal); and
- 4) placement of a note on the final plat stating that the site is denied direct access to Sunset Drive South.

The motion carried unanimously.

**NEW ZONING APPLICATIONS:**

**Case #ZON2005-00225**

**Russell Adcock**

2411 Government Street (Southeast corner of Government Street and Pinehill Drive).

A request for a change in zoning from B-2, Neighborhood Business, to B-3, Community Business, to allow a tattoo parlor was considered.

The plan illustrates the existing structures and parking.

Mr. McSwain stated that the applicant was present and concurred with the staff recommendation.

In discussion Mr. Watkins asked the staff if there was a way to maybe request some voluntary restrictions or something along the lines of limiting the use there.

Mr. Olsen stated that if the applicant were to offer voluntary restrictions at this point, the staff would recommend a holdover so that it could be incorporated in the request. However, the Commission does not generally ask an applicant to do such.

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After discussion a motion was made by Dr. Rivizzigno and seconded by Dr. Laier to recommend this change in zoning to the City Council.

In further discussion Mr. Watkins commented that nobody had given him an indication as to why this merited rezoning. He felt the Commission needed to start holding folks to a higher standard than just meeting the ordinance.

It was asked if a variance would work here.

Mr. Olsen said that the Board of Adjustment denied a Use Variance for this property, because there was not evidence illustrating a hardship, which was required for the Board to approve a variance.

Mr. McSwain called the question. Dr. Rivizzigno, Dr. Laier, Mr. Holmes, and Mr. Miller voted in favor of the motion; Mr. Watkins and Ms. Deakle were opposed.

The motion carried.

**Case #ZON2005-00231**

**Kathleen McGuire**

350 Weinacker Avenue (West side of Weinacker Avenue, 150'± North of Virginia Street).

A request for a change in zoning from B-2, Neighborhood Business, to R-2, Two-family Residential, to allow a duplex dwelling was considered.

The site plan illustrates the existing building, drive, and landscaping, along with the proposed parking spaces.

Mr. McSwain stated that the applicant was present and concurred with the staff recommendation.

A motion was made by Dr. Laier and seconded by Ms. Deakle to recommend this change in zoning to the City Council subject to the following condition:

- 1) the site (and building) be brought into full compliance with all municipal codes and ordinances, including but not limited to building, electrical, mechanical, plumbing and fire codes (due to change in occupancy).

The motion carried unanimously.

**NEW PLANNING APPROVAL APPLICATIONS:**

**Case #ZON2005-00200**

**The House of Joshua Christian Center Church, Inc. (Rev. Joseph Day, Agent)**

2727 Mill Street (South side of Mill Street, 350'± East of Bay Shore Avenue).

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The request for Planning Approval to allow a church in an R-1, Single-Family Residential district was considered.

The plan illustrates the existing structure and drive.

Rev. Joseph Day, representing the church, stated that they had been using the parking lot across the street for church parking since April 20, 2004. Rev. Day said they were requesting permission to continue using this parking lot instead of having to pave their back yard at the church. He said they had been there about five years and had not had any problems.

Mr. Vallas asked if there was a specific condition Rev. Day was speaking to.

The staff said it was condition #2 of the staff recommendation which required that the site be brought into compliance with all requirements of the Zoning Ordinance, including paved parking, access, landscaping, tree plantings, and signage.

Rev. Day said this was just a thirty-two-member church. It had been a church since 1978. About five years ago Rev. Day said he bought the property and renovated it to be used as a church. He said they were not able to afford \$20,000 to pave the parking lot.

As clarification, Mr. McSwain stated that the purpose of this application was to remove a condition that was placed on a previous application, that being condition #2 as previously stated.

It was asked if there was a problem with the current parking situation across the street.

Mr. Olsen explained that the parking across the street did not appear to comply with the requirements of the Zoning Ordinance with regard to paving, striping, and things of that nature. He said there was adequate area across the street, and with it being a day care the hours of operation were such that they should not conflict with the hours of the church. Mr. Olsen said there was a letter on file from the day care allowing the church to utilize the subject property on Mill Street for parking. The staff recommendation included paving because the parking was a requirement of the Zoning Ordinance. He also said the site in question would have difficulty fully complying with the requirements as far as access was concerned due to the width of the structure on the lot. Mr. Olsen said the applicant would have to have a variance to allow the reduced access width.

With respect to the building code, it was asked if any permits or anything to that effect had been found.

Mr. Olsen said that in the process of analyzing and reviewing this application he found no permits issued to this property for it to be brought into compliance. He said there were certain things such as exit lights and other issues that would have to be addressed for a structure to be converted from residential to public assembly.

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Eric Day, also a member of the church, said they were willing to do whatever was necessary to make sure they were in compliance. Rev. Day, however, explained the situation about paved parking.

Dr. Rivizzigno asked if they would have any problem coming into compliance with landscaping, trees, and signage requirements.

Mr. Day said the property was already landscaped. There were trees and shrubbery already there.

It was asked if there were some enforcement authority to make sure the required improvements were made. This was something that was brought up from several years back.

Mr. Olsen said the application the Planning Commission approved was in May of 2004. At that time the application, as well as a representative for the church at the Commission hearing, indicated that this was a temporary location and that the site would be brought into compliance if they did not move by the end of last year. As for an enforcement authority, Mr. Olsen said if the Commission placed a condition on the approval requiring that it be brought into compliance, the City would issue a Notice of Violation and end up, if necessary, a citation to bring the site into compliance.

Mr. McSwain noted that they were talking about several issues. One was parking, and the other was a matter of public safety. One was kind of innocuous and the other was pretty severe.

In executive session a motion was made by Dr. Rivizzigno and seconded by Mr. Watkins to approve this plan subject to the following conditions:

- 1) the structure be immediately brought into compliance with all applicable building, electrical, mechanical, plumbing and fire codes;
- 2) the site be brought into compliance with all requirements of the Zoning Ordinance including but not limited to, landscaping and tree plantings, and signage, subject to the letter agreement from daycare regarding off site parking; and
- 3) Any work on or under the 35" Live Oak in the southeast corner of the property is to be permitted and coordinated with Urban Forestry; removal to be permitted only in the case of disease or impending danger.

In further discussion Mr. Olsen asked if the Commission wanted to set any type of time limit, as the condition does say immediate compliance with the building code issue.

Mr. McSwain said he would like to tie the waiver of condition #2 into condition #1, before waiving #2. He said they needed to do #1.

Dr. Rivizzigno said they were not waiving all of condition #2, only the paved parking and access part.

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It was asked what the safety concern was on this.

Mr. Olsen said the change of occupancy from residential to commercial or public assembly required some different codes to be complied with such as life safety, possible sprinklering of the building, fire protection, and exit lights.

Ms. Deakle commented that this started out as a temporary thing. Now it had evolved into a permanent occupancy.

Mr. Olsen said the application before the Commission last year was temporary. Rev. Day indicated they had been there five years and had done some renovations. The staff found that they did have permits from 2001 and 2002, but they were for residential use. They did not indicate any type of non-residential or public assembly use of this property.

Mr. Olsen recommended a time frame of from sixty to ninety days for the property to be brought into compliance.

Dr. Rivizzigno amended her motion to add the sixty to ninety day time frames for compliance. Mr. Watkins seconded the amended motion.

The final motion was for approval of the plan subject to the following conditions:

- 1) the structure be brought into compliance with all applicable building, electrical, mechanical, plumbing and fire codes within 60 to 90 days;
- 2) the site be brought into compliance with all requirements of the Zoning Ordinance, including but not limited to landscaping and tree plantings, and signage, subject to the letter of agreement from the daycare regarding off-site parking; and
- 3) Any work on or under the 35" Live Oak in the southeast corner of the property is to be permitted and coordinated with Urban Forestry; removal to be permitted only in the case of disease or impending danger.

The motion carried unanimously.

### **NEW SUBDIVISION APPLICATIONS:**

**Case #SUB2005-00009**

#### **Compton Subdivision**

East side of Dauphin Island Parkway, 665' ± North of Terrell Road.

1 Lot / 3.7 ± Acres

Frank Dagley, engineer for the applicant, stated that he did not agree with the staff's recommendation that this application be held over. Mr. Dagley said there was an irregularity in the lot. He pointed out all of the pieces of property in the area that were metes and bounds descriptions that went from Dauphin Island Parkway all the way to the bay. Mr. Dagley said at some time, forty or fifty years ago, a little jog was taken out of



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the subject property. The applicant bought this property and wanted to build a house on it. Since this was a metes and bounds description the applicant had to submit a subdivision plan. Mr. Dagley said the subdivision reflected what the applicant owned and he did not see where the property to the south had anything to do with what they were doing. He said the 1952 rule was mainly applied when you take a large piece of property and cut out a section to make a lot and then you create a two-lot subdivision. He did not understand why they could not do a one-lot subdivision on the piece of property the applicant owned.

Ms. Pappas explained that if this was taken out after 1952, it should have gone through the subdivision process. The staff was asking for documentation to that effect. Ms. Pappas said she understood Mr. Dagley's point that his client purchased the property in this configuration. However, if that was acquired from the adjoining property owner, go ahead and include it and that way when adjoining property was developed, he would not have to file a separate application to the Planning Commission.

Mr. Watkins said he understood if the adjoining landowner did not want to participate, there was no way to force that issue.

Ms. Pappas said the staff had only encountered this problem once where the person that owned the property was actually a party to creating the problem. It went to court and the judge was either going to set aside the sale or tell them to participate and go through the process. So it was dependent somewhat on how long this situation had existed, and if the parties involved that created the problem were still involved. Ms. Pappas said they contacted the engineer about two weeks ago and asked for information to substantiate this but did not receive anything.

After discussion a motion was made by Dr. Rivizzigno to hold over this application until the March meeting.

Ms. Pappas said the applicant would either need to include the balance of the property in the subdivision, or provide a letter from the owner to the south refusing to participate.

Dr. Rivizzigno amended the motion. Dr. Laier seconded the motion. The final motion was to holdover this application until the March 3, 2005, meeting in order to address:

- 1) the inclusion of the balance of the property in the subdivision application; or
- 2) the submission of documentation that the property was a non-conforming lot of record prior to 1952.

The motion carried unanimously.

**Case #SUB2005-00017**

**Fairfields Re-Subdivision, Resubdivision of a Portion of Lots 13 and 14, Block 2**

3308 Fairfield Road (West side of Fairfield Road, 100'± South of Gill Road).

3 Lots / 1.2± Acres

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Michael Friedlander, 744 Museum Drive, was present representing the applicant. Mr. Friedlander presented this proposal for a three-lot subdivision on what were originally two lots. There was currently one house on the property with a separate garage in the back that was falling down. He said they planned to remove the garage. They proposed a flag-shaped lot at the rear, creating a single drive basically to try to clean up the parking situation. The single drive would be a little bit wider than normal because it would be shared. Mr. Friedlander said they intended to build some spec houses to sell.

Mr. McSwain asked if there was anyone present in opposition.

Billy Kinard, a resident of 2851 Gill Road, said his house was on the north side of the subject property and he had been there for over twenty years. He objected to pushing these smaller units into this yard, saying it would be out of alignment with the houses that were already there. Most of the houses were set back 80' from the street. He said the driveway was not a problem. Mr. Kinard said that he was concerned about the type of houses to be constructed.

Donald Chekenowicz stated that he lived at 2901 Riverside Drive, which was on the west side of the subject property and had lived there for 22 years. Mr. Chekenowicz said that he was also concerned about the alignment of the houses. He felt they were trying to crowd too much on that lot. Mr. Chekenowicz also noted a wooded area on the property and expressed concern about potential drainage problems.

A motion was made by Dr. Rivizzigno and seconded by Ms. Deakle to deny the above referenced subdivision subject to the following reasons:

- 1) the plat does not include the overall existing lots of record;
- 2) the flag-shaped nature of the proposed Lot 3 is uncharacteristic of other lots in the area and thus does not comply with Section V.D.1. of the Subdivision Regulations; and
- 3) the proposed Lot 3 does not conform to Section V.D.3.

The motion carried unanimously.

**Case #SUB2005-00007**

**Kirkland Estates Subdivision**

5962 Lundy Road (West side of Lundy Road, 160'± South of Aloyis Drive).

4 Lots / 2.8± Acres

Dana Adams, 5974 Lundy Road, stated that she and her brother owned this property. Ms. Adams said they were in the process of trying to get a house built for her daughter on proposed Lot 1. There was a trailer on Lot 4, and Lots 2 and 3 would be given to her other two children if, and when, they ever decided to build a house or place a mobile home there. She said the reason they subdivided the property was because they did not want to put the whole three acres on the title for the house.

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Mr. McSwain noted that the subdivision was recommended for denial because of the flag-shaped nature of the lots.

Ms. Adams said she was not aware of that until today.

Mr. McSwain asked if the trailer was the only structure on the property.

Ms. Adams replied that it was. Lots 2 and 3 were at one time horse pastures.

In executive session there was discussion as to whether or not the lots could be reconfigured, reducing the number of lots.

A motion was made by Mr. Watkins and seconded by Dr. Rivizzigno to holdover this application until the March 17, 2005, meeting to allow the applicant time to reconfigure the layout, reducing the number of lots.

The motion carried unanimously.

**Case #SUB2005-00016**

**Raouf Subdivision**

6280 and 7471 Theodore Dawes Road (West side of Theodore Dawes Road, 130'± North of Garden Grove Drive).

1 Lot / 8.4± Acres

Mr. McSwain stated that the applicant was present and concurred with the staff recommendations.

There was no one present in opposition.

A motion was made by Dr. Rivizzigno and seconded by Dr. Laier to waive Section V.D.3. and approve the above referenced 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) placement of a note on the Final Plat stating that the subdivision is limited to the existing curb cut, to be reviewed and approved by the Mobile County Engineering Department; and
- 3) correction of the dimension discrepancy along the eastern property line of the site.

The motion carried unanimously.

**Case #SUB2005-00019**

**Robinson Brothers Subdivision**

1611 and 1739 East I-65 Service Road South (East side of East I-65 Service Road South, 115'± North of I-65 Commerce Drive).

1 Lot / 7.2± Acres

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Mr. McSwain stated that the applicant was present and concurred with the staff recommendations.

There was no one present in opposition.

A motion was made by Dr. Rivizzigno and seconded by Mr. Holmes to approve the above referenced subdivision subject to the following conditions:

- 1) the depiction of the right-of-way on the final plat;
- 2) the placement of a note on the final plat stating that the site will be limited to the existing curb cuts; and
- 3) the depiction of the 25' building setback lines on the final plat.

The motion carried unanimously.

**Case #SUB2005-00013**

**Southland Park Subdivision**

10245 Howells Ferry Road (South side of Howells Ferry Road, 1,850'± West of Raymond Tanner Road, extending to the North side of Raymond Tanner Road, 800'± West of Howells Ferry Road).

37 Lots / 18.0± Acres

Millard Austin, Austin Engineering, was present representing the applicant. With regard to the recommended condition for the dedication of sufficient right-of-way to provide 50' from the centerline of Howells Ferry Road, Mr. Austin said Howells Ferry Road dead ends at the lake, not too far from this property. He asked if that was really a major thoroughfare.

Mr. McSwain replied that Howells Ferry Road was on the Major Street Plan.

Mr. Austin requested that this be handled by setback rather than dedicating ten extra feet. With regard to condition #3 requiring a street stub to the west, Mr. Austin said the property to the west was a 15-acre tract with frontage on Howells Ferry Road. He did not see where a street stub would serve any purpose and asked that it be waived.

Mr. McSwain asked if anyone was present in opposition to this request.

Dr. Tracy Freeman, 10485 Howells Ferry Road, said she and a lot of her neighbors had a number of concerns, number one being the traffic in the area. Allentown Elementary School was right in front of where the entrance to the subdivision would be and the area was already bottlenecked with traffic. The County installed in a turn lane in that area, but even with that, traffic can still get backed up as far as Snow Road. With thirty-seven new houses, that would put about eighty more vehicles in that area. She also said that she and her neighbors had horses in that area and they were concerned about children getting access to those pastures on one side of the fence line where ten new houses would be.

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Dr. Freeman worried about injury to the children and to the horses, and asked that a privacy fence be required all the way down the pasture line. Concern was also expressed about the preservation of the tree line and the location of the retention pond. With the large number of horses, they were worried about mosquitoes and the potential for West Nile Virus in this swamp area. Dr. Freeman also voiced concern about water runoff with chemicals, pesticides, and everything associated with construction.

The staff was asked about the guidelines in the county with respect to buffering.

Mr. Olsen said the Commission could require a buffer based on the Subdivision Regulations when commercial property abuts residential property, but he does not recommend it for residential abutting residential.

Ginger McSween, a resident of 10385 Howells Ferry Road, said her property line was down where the ten houses would be on the cul-de-sac shown on the left-hand side of the plat. Ms. McSween said she ran a stable where they constantly had riding activities. She said her barn, with fourteen stalls, was less than ten feet from the property line. Ms. McSween felt this would attract young children. She also said that they could not afford for the children or the horses to get hurt. For that reason she requested a privacy fence. Noting that her property was lower than the subject property, Ms. McSween expressed concerns about runoff, the proposed holding pond, standing water breeding mosquitoes, and West Nile Virus. She said that she lives directly across from the Allentown School and she was also concerned about the additional traffic thirty-eight homes would create. It was kind of a blind curve where they were planning on putting the entrance. She further stated that a lot of the neighbors felt the name of the proposed subdivision sounded like a commercial park, and they wondered if the developer could come up with something a little more neighborhood friendly.

Carolyn Owens, 10150 Howells Ferry Road, lives to the north side of the subject property. Ms. Owens said they bought their property in 1947 when there was no electricity or paved roads. She said they were sentimentally attached to the property. Ms. Owens also said they had cows and will do everything they can to be good neighbors. She said they wanted to be sure the property was developed appropriately and conducive to fine farm living, since they were going to continue to live there as a farm family.

Mike Howell said he lived at 24070 Raymond Tanner Road, which was right on the curve where they proposed the entrance to the subdivision. Mr. Howell was concerned about an increase in traffic and questioned the need for an exit onto Raymond Tanner Road when there was already an exit coming off Howells Ferry Road. There had already been three accidents on that curve in the last two years.

In executive session there was discussion about requiring a fence. Ms. Deakle noted that this was residential to residential and a fence was not required. This property was in the county, and regardless of its use, it was residential and not anything else. She said there is no agricultural zoning in the county.

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Mr. Vallas asked Mr. Stewart about dedication versus setback on Howells Ferry Road.

Mr. Stewart said the school had experienced traffic problems out there and the county had to create a third lane for ingress and egress to the school.

Mr. Vallas asked if the street stub to the west was needed.

Ms. Pappas said the Regulations require that the street layout provide for the future projection into unsubdivided land.

A motion was made by Dr. Rivizzigno and seconded by Mr. Vallas to approve the above referenced subdivision subject to the following conditions:

- 1) the dedication of sufficient right-of-way to provide 50 feet from the centerline of Howells Ferry Road;
- 2) the placement of a note on the final plat stating that maintenance of the common areas shall be the responsibility of the property owners;
- 3) the construction and dedication of new streets to County Engineering standards; and
- 4) the correction of errors and omissions in the curve table on the final plat.

In further discussion Mr. McSwain asked if the Commission could require the developer to do anything on Howells Ferry Road to improve the traffic situation in addition to the dedication.

Mr. Stewart said he did not know if there was anything else the county could do other than the dedication. He said the second entrance was right on the curve, which was not the most optimum place to put a street stub.

Mr. Holmes suggested moving it further down from the curve to improve access, but the developer would lose a lot or two.

Mr. Stewart agreed, but said it would require that the applicant submit a revised plat.

Mr. McSwain asked if they knew what the future development was going to be.

Mr. Olsen said no. It was under a separate ownership.

There being no further discussion, Mr. McSwain called the question. Ms. Deakle, Mr. Holmes, Mr. Miller, Dr. Rivizzigno, Mr. Watkins and Mr. Vallas in favor of the motion; and Dr. Laier opposed.

The motion carried.

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**Case #SUB2005-00011**

**Willow Pointe Subdivision, Unit Three, Resubdivision of Lots 100 A-F, Lots 104 A-D, and Lots 105 A-F**

Southwest and Northeast corners of Willow Bridge Drive West and Willow Bridge Drive South.

10 Lots / 1.8 $\pm$  Acres

Mr. McSwain stated that the applicant was present and concurred with the staff recommendations.

There was no one present in opposition.

A motion was made by Ms. Deakle and seconded by Mr. Miller to waive Section V.D.2. and approve the above referenced subdivision.

The motion carried unanimously.

**Case #SUB2005-00012**

**Willow Pointe Subdivision, Unit Four, Resubdivision of Lots 122 A-D, Lots 123 A-D, and Lots 126 A-F**

Northwest and Northeast corners of Willow Springs Drive and Willow Bridge Drive.

13 Lots / 1.5 $\pm$  Acres

Mr. McSwain stated that the applicant was present and concurred with the staff recommendations.

There was no one present in opposition.

A motion was made by Ms. Deakle and seconded by Mr. Miller to approve the above referenced subdivision.

The motion carried unanimously.

**NEW SIDEWALK WAIVER APPLICATIONS:**

**Case #ZON2005-00234**

**Hazel Gardner**

1809 Wolf Ridge Road (West side of Wolf Ridge Service Road, 100' $\pm$  South of Beau Terra Drive South).

A request to consider a sidewalk waiver at the above referenced location was considered.

Mr. McSwain stated that this application was recommended for a holdover.

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Jerry Hutchison, 3280 Baumhauer Road, engineer for the developer, was present. Mr. Hutchison said they had planned to put in a sidewalk and fill in part of the ditch, but the Right-of-Way Department did not like that plan; right-of-way recommended a waiver.

Mr. McSwain said the Engineering Department recommended holdover because inaccurate information was submitted.

A motion was made by Dr. Rivizzigno and seconded by Dr. Laier to holdover this application until the March 3, 2005 Planning Commission meeting to allow the submission and review of the required scaled drawing.

The motion carried unanimously.

**OTHER BUSINESS:**

Mr. Olsen announced that the Commission's business meeting would be held March 10, 2005, at 2:00 p.m., at the office of Plauche-Johnson Landscape Architects, 724 Downtowner Loop West.

There being no further business, the meeting was adjourned.

**APPROVED:** April 7, 2005

/s/ Victor McSwain, Secretary

/s/ James Laier, Vice-Chairman

vm