

MOBILE CITY PLANNING COMMISSION MINUTES
MEETING OF JULY 7, 2005 - 2:00 P.M.
AUDITORIUM, MOBILE GOVERNMENT PLAZA

Members Present

Terry Plauche, Chairman
Adline Clarke
Ann Deakle
Mead Miller
Victoria L. Rivizzigno
James Watkins III
John Vallas

Members Absent

Nicholas Holmes
Clinton Johnson
Victor McSwain, Secretary
James Laier (S)

Urban Development Staff Present

Richard L. Olsen
Deputy Director of Planning
Madeleine Masters, Planner I
David Daughenbaugh, Urban Forestry
Val Manuel, Secretary II

Others Present

John Lawler, 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 #SUB2005-00106 (Subdivision)

Graceland Subdivision

North side of Howells Ferry Road, ¼ mile± East of the North terminus of Havens Road.
10 Lots / 11.5± Acres

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

There was no one present in opposition.

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

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- 1) the denial of the private street request, with the street being replaced by a dedicated public street built to Mobile County standards, and with a street stub to the north;
- 2) the dedication of 10 feet of right-of-way along Howells Ferry Road, including that contained within the proposed detention area;
- 3) the provision of a minimum rear yard setback of 58 feet for lots 1-5;
- 4) placement of a note on the Final Plat stating that lots 1 – 5 are denied direct access to Howells Ferry Road and the Spring Hill Avenue - Ziegler Boulevard thoroughfare / new connector to Moffett Road;
- 5) 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) placement of a note on the Final Plat stating that maintenance of the detention basin common area is the responsibility of the subdivision's homeowners association.

The motion carried unanimously.

Case #SUB2005-00104 (Subdivision)

Springhill Place Subdivision

159 Bishop Lane North (Northwest corner of Bishop Lane North and Broadway Drive).

8 Lots / 2.8± Acres

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

There was no one present in opposition.

After discussion a motion was made by Dr. Rivizzigno and seconded by Mr. Watkins to deny the above referenced subdivision for the following reasons:

- 1) the applicant has not submitted a full Planned Unit Development application, as is required for a private street subdivision;
- 2) the applicant has not submitted documentation of unusual difficulty or circumstances, or of innovative design, as is required for a private street subdivision; and
- 3) the plat as submitted does not meet the minimum standards of the Subdivision Regulations.

The motion carried unanimously.

Mr. Vallas opposed.

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Case #ZON2005-01115 (Rezoning)

Hilton H. Dembo

3758 Dauphin Island Parkway (West side of Dauphin Island Parkway, 200'± South of Boykin Boulevard).

A request for a change in zoning from R-1, Single-Family Residential, to B-2, Neighborhood Business, to allow the expansion of an existing restaurant was considered.

The plan illustrates the existing structure and paving, along with the proposed addition, asphalt, and curb reductions.

Joe Regan, Regan Land Surveying, was present on behalf of the applicant and concurred with the staff recommendation.

There was no one present in opposition.

After discussion a motion was made by Mr. Watkins and seconded by Dr. Rivizzigno to recommend to the City Council that the rezoning from R-1 to B-2 be denied, with the recommendation that the site be rezoned to LB-2 with a waiver of Section III.A.5.b subject to the following conditions:

- 1) compliance with the landscaping and tree planting requirements of the Zoning Ordinance;
- 2) provision of a sidewalk for the site along Dauphin Island Parkway, in conformance with Section V.B.15. of the Subdivision Regulations;
- 3) provision of a buffer between commercial and residential uses in conformance with Section IV.D.1. of the Zoning Ordinance; and
- 4) full compliance with all municipal codes and ordinances.

The motion carried unanimously.

Case #SUB2005-00123 (Subdivision)

CP Investment Subdivision, Resubdivision of Lot 2, Resubdivision of Lot 2B

North side of Wall Street, 380'± West of Hillcrest Road, and running through to the South side of Timbers Drive, 260'± West of Hillcrest Road.

6 Lots / 3.7± Acres

Michael Daniels, developer, stated that since the last meeting his engineer, Don Coleman, had conferred with Ms. Terry regarding the drainage easement. He noted that the plat showed a 30' sewer easement, when actually it was a drainage easement. He said they were offering to give 10 additional feet on Lots 5 and 6 for access to that drain.

Ms. Terry stated that she had met with Mr. Coleman and what they were proposing was acceptable for the drainage easement.

Mr. Olsen asked Ms. Terry if that meant there needed to be any change to condition #3.

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Ms. Terry said the existing drainage easement on their side of the property was 35 feet.

Mr. Plauche said it should be a 25' easement.

Mr. Olsen said Urban Development was not a party to the agreement between Mr. Coleman and Engineering, and asked how condition #3 should be worded.

Ms. Terry said it should state that the new drainage easement at the property line would be 25 feet.

Mr. Daniels said he agreed with whatever was required. He also noted that in his original application he had requested that the stormwater detention be maintained on each individual lot, as opposed to one big pond.

Ms. Terry said they had already agreed to that.

Mr. Daniels also asked if he could have individual curb cuts as opposed to shared curb cuts, mainly because of logistics and the legal aspects of maintaining shared curb cuts.

There was no one present in opposition.

After discussion a motion was made by Ms. Deakle and seconded by Mr. Vallas to approve the above referenced subdivision subject to the following conditions:

- 1) placement of a note on the Final Plat stating that each lot be allowed one curb cut, with the size, location and design to be approved by Traffic Engineering and conform to AASHTO standards;
- 2) dedication to the City of a drainage easement to include the AE flood zone, plus be limited to 25 feet along the west side of the flood zone; and
- 3) the approval of all applicable federal, state and local agencies regarding the wetlands, floodplain and stormwater issues.

The motion carried unanimously.

Case #SUB2005-00120 (Subdivision)

Richmond Subdivision, Fourth Addition

North side of Richmond Drive, 100'± East of the North terminus of Norfolk Place.

1 Lot / 0.4± Acre

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

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

Mr. Dale Watts, a resident of 3031 Richmond Drive, said he spoke in opposition to this subdivision at the last meeting. He contended that the proposed lot was previously

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platted as a common area, and was represented to him and all of the homeowners he had spoken with as a common area at the time they bought their lots. It was to be for the homeowners, for whatever they decided to do with it. He pointed out that across the street on Richmond there was another common area that contained a community pool. Mr. Watts said now that the subdivision was closer to being complete and the homeowners are closer to taking control of the subdivision, the developer wanted to develop it for a residence. Mr. Watts further stated that at the last meeting there was some discussion among the Commission that if everything met the requirements of the Subdivision Regulations, they might have to approve the subdivision. He said that the Subdivision Regulations and other general provisions state that the purpose of the Planning Commission was to help encourage innovative ideas in subdivisions, and that creating a subdivision with nice common areas certainly met that condition. Another purpose of the Subdivision Regulations was to create areas that were open and accessible to the community for their use. He felt this proposal was counter-intuitive to the whole purpose of the general provisions of the Subdivision Regulations.

Before hearing any other opposition, Mr. Plauche asked Mr. Lawler to comment on the legality of this proposal.

Mr. Lawler stated that when a plat is recorded, the dedication of streets makes those streets public property. It was his opinion that the reservation of this property as a common area, and the representation to the lot owners, if that be the case, that it was a common area for them, represents a dedication and a transfer of an undivided interest in that property to all the lot owners. Mr. Lawler said that although he had not done any legal research, he felt the homeowners could make a very good argument that the developer no longer owns this lot, but by the fact of dedicating streets and dedicating this as a common area, the developer had lost control over it.

Mr. Vallas asked if it was known that the subject property was shown as common area on the recorded plat.

Mr. Lawler said he assumed that was true, as that was what the application said.

Ms. Deakle asked how, or if, this land had transferred.

Mr. Lawler said it would never transfer unless all the property owners in the subdivision got together and signed a transfer of their undivided interests.

Ms. Deakle asked if the property had not transferred was it still tenants in common for the subdivision.

Mr. Lawler said it was tenants in common of all the people who owned lots in the subdivision.

Mr. Plauche asked if that meant the application was null and void, and how should the Commission handle this.

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Mr. Lawler recommended the Commission to deny the application. He said the developer may want to file a declaratory judgment action to determine who actually owns the property. He recommended to the Commission, however, that they not approve this subdivision without having some direction from a court; because the representation was that these were common areas that belong to the subdivision. It was his opinion that the property owners had become owners of an undivided interest, and that the developer did not have control over it.

Mr. Plauche asked if there was anyone else to speak in opposition to this application.

Mr. Lawrence Beal, a resident of 3130 Richmond Drive, said he would like to reiterate from the last meeting that in the back in the third unit of this subdivision the streets did not get laid out properly. He said there was a piece of property back there that could not be built on, and the property owners would end up paying taxes on. Mr. Beal said he had moved there in 2001 and was told at that time that there would be one way in and one way out. Now they have opened Phase 4 of the subdivision to Saddlebrook, which would increase traffic through the subdivision. He said he had contacted the staff about a year ago regarding this connection, and was told that it was planned when they laid out Saddlebrook and Richmond subdivisions. He felt like the property owners were getting shafted, because they were told there would be one way in and one way out. He also said that people from a different entrance would try to use their pool, and he was concerned about the liability there.

Mr. Vallas interjected that many times the Planning Commission may require a developer to provide a connection between adjoining properties or adjoining streets, and they may have put a requirement on that developer to connect to Saddlebrook. His application may very well have been not to do that, and then the Planning Commission may have required it. Mr. Vallas suggested they just focus on the lot that Mr. Lawler spoke on.

Mr. Beal further stated that the bottom line was that in Unit 3, they did not lay the roads out right so they ended with a piece of property that is unusable to the subdivision. He said that they were going to have to pay taxes on it to keep it clean. Now the developer wants the lot across from the pool, which is going to have to be built up. He also said the property to the left of that is a natural drain that goes down to the pumping station, which is a useless piece of property. Mr. Beal reiterated that the developer told the property owners that the subject property was a common area to do with what they wanted, and now they were straying from that. There seemed to be no representative from the development company present, so apparently it wasn't a big issue to them.

Todd Pollock, 3030 Richmond Drive, wanted to go on record that he was in opposition to the recommendation for the issues that were raised earlier. He said there were other common areas there. He also said in a meeting of the homeowners earlier this year, the homeowners were told that they were paying taxes on those, which included the small grass circles, the cul-de-sac, the pool area, and across from the pool as well.

Mr. Plauche asked if a representative of the applicant wished to respond.

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Don Coleman, Rester and Coleman Engineers, stated that the subject lot still belonged to the developer. Even though there was a lot on the plat showing common area, they deed the streets out, but the common areas still belong to the developer until such time as they deed the common area to the property owners association. Mr. Coleman said that happens on all the subdivisions they do. The developer waits until the subdivision is almost completely developed, then deeds the common area property to the property owners association. He contended, therefore, that the subject property still belonged to the developer. Mr. Coleman further stated that since they had to connect to another subdivision, two lots were lost. He said they decided to clear this lot and found that the slope was not as bad as they thought. Since they lost those two lots, Mr. Coleman said they decided to try to make a lot out of this one so they would only lose one. He contended that the developer owned this property and would own it until they deeded it to the property owners association.

Ms. Deakle asked if the developer had been maintaining this property, and who was paying the taxes.

Mr. Coleman said he did not know about the maintenance of the property, but the developer was paying the taxes because he still owned it.

Ms. Deakle asked if there was anything in writing that the developer represented to the property owners that the subject property was to be a common area.

Mr. Lawler said it did not have to be in writing. He said if it was true that this lot was represented that it was going to be a common area, and based on that these people bought in, then they have a cause of action against the developer.

Mr. Vallas said the fact that it was shown on the plat and the plat was recorded was all the representation they needed.

Mr. Plauche asked if there was anyone else to speak in opposition.

John Lee, 2915 Richmond Drive, said he had talked to a number of other homeowners in their subdivision. Mr. Lee said they were almost ready to form a homeowners association and take over the common area. He said they were all told by the builders that this would be a common area. Now that the subdivision had been opened through to Saddlebrook, Mr. Lee said they have a high traffic area there. The children cannot play in the streets. He said they would like to have a safe place for them to play. Mr. Lee also said that if they were to have innovative, well-designed subdivisions, he felt this common area was one of the key things. They were also told by Southern Development that those who were living in the subdivision now were paying homeowners dues to a homeowners association that was run by Southern Development, and they were the Board of Directors because they hadn't turned it over yet. Mr. Lee, however, said the property owners had been told that the money they were putting into this was going for maintenance, as well as taxes, lighting, and other things for the subdivision. They felt that the developer was

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trying to pull a fast one over them and break the promises that they had made to each and every homeowner in the subdivision.

After discussion a motion was made by Mr. Miller and seconded by Ms. Clarke to deny approval of this subdivision.

Mr. Plauche asked for a reason for denial.

In further discussion Mr. Miller said he did not feel they should approve the subdivision until the ownership situation was resolved.

Mr. Lawler felt that the developer had no standing to make the application because in his opinion the ownership was in the lot owners, as represented by the plat that was filed. He said the property owners had an equitable interest in the property. They had an ownership, and he felt a court would enter such an order. Mr. Lawler said no one disputed the fact that the subject property was represented as a common area when it was proposed to this body and the plat was recorded. Now, after the fact, just to get another lot and make some money, the developer wants to change his mind and develop the property.

Mr. Miller agreed with Mr. Lawler. He further stated that the developer would have a horrible title issue with respect to whether the subdivision owned the property or the developer owned the property. He also said the money that the developer would make by selling one more lot would get eaten up pretty quickly in legal fees and judgements.

Mr. Vallas suggested they deny the subdivision because the applicant had not provided proper ownership documentation.

Mr. Olsen suggested reasons for denial of the application as the property was recorded as a common area, the applicant was without standing to file the application, and the entire subdivision must be a party to the application.

After discussion a motion was made by Mr. Vallas and seconded by Dr. Rivizzigno to deny the above referenced subdivision for the following reasons:

- 1) the property was recorded as common area;
- 2) the applicant is without standing to file the application; and
- 3) the entire subdivision must be a party to the application.

The motion carried unanimously.

Case #SUB2005-00111 (Subdivision)

Sawyer Subdivision

1271 Schillinger Road North

(West side of Schillinger Road North, 200'± South of Howells Ferry Road).

1 Lot / 0.4± Acre

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Mr. Olsen informed the Commission that the applicant's surveyor presented some documentation this morning, but the staff did not have an opportunity to review that documentation before the meeting. The staff recommended the application be held over.

There was no one present in opposition.

After discussion a motion was made by Dr. Rivizzigno and seconded by Mr. Miller to holdover this application until the July 21, 2005, meeting to allow the staff time to review additional documentation submitted.

The motion carried unanimously.

EXTENSIONS:

Case #ZON2003-01522 (Planned Unit Development)

Eastridge Place Subdivision, Lots 3-5 and 8-13

North and South sides of Eastridge Place.

A request for a one-year extension of the above referenced Planned Unit Development Approval to amend a previously approved Planned Unit Development to increase the maximum allowable site coverage to 45% in an R-1, single-family residential subdivision.

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

The plan illustrates the subdivision plat and setbacks.

Mr. Plauche stated that this application was recommended for denial.

Wendall Sawyer, Jr., representing the applicant, said that when he learned that the subdivision was recommended for denial he spoke with Ms. Masters of the Planning staff and learned that there was some information regarding the subdivision that the staff did not have. He said they were in the process of developing the subdivision and fully intended to continue to protect what had already been built, as well as the property owners in the subdivision.

Mr. Olsen explained that there were actually two extensions for Eastridge Place, one for Lots 3-5 and 8-13, and the other for Lot 15 alone. Lot 15 was recommended for approval because there was a pending building permit that had been submitted and was awaiting issuance. There had been no submissions for building permits for the other lots for two years now. Since they were separate applications, the staff recommended approval of the one that had a pending permit application, and denial of the ones that had not had submission in at least two years.

Mr. Vallas asked about the coverage ratio.

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Mr. Olsen said they would still be zero-lot-line, but their maximum site coverage would be 35 percent instead of 45 percent.

Mr. Sawyer said they were trying to keep from disrupting the style and layout of the lots for the subdivision, and protect the interest of the other homeowners as well as the investment they have in the property.

Mr. Sawyer said the house referred to was on Lot 14. He said this lot should not have been shown on the plat. It was not addressed in either of these applications.

Ms. Deakle asked if they were going to build everything like the residence on Lot 14.

Mr. Sawyer said the shape of the lots dictate different style houses. Also, he said part of their delay was that they came on board right after Hurricane Ivan. They had some drainage issues to take care of and worked with the City on that.

Mr. Vallas asked Mr. Olsen if Lot 14 was built to exceed the 35 percent coverage ratio.

Mr. Olsen said he was not certain.

Mr. Sawyer said it was 45 percent coverage. The other four houses in the subdivision were all above the 35 percent footprint.

Mr. Olsen noted that if the Commission was to consider approving the extension of the PUD, Ms. Terry had some comments regarding drainage and detention at this particular location.

Ms. Terry said Engineering was working with the applicant to correct some drainage issues with their detention system. She said it was never installed according to the design. It was an underground system and had filled up with sand, so it was non-functional. Engineering had put a hold on building permits on this street until they corrected their problems. If the extension is recommended for approval, Ms. Terry asked that the applicant be required to provide verification that the detention system could accommodate the increased coverage for which she did not believe it was designed. Also she asked that all existing problems be corrected prior to any building permits being issued.

Ms. Deakle asked if it was correct that the extension would be for one year. Also, she asked when the applicant comes back with the plan, could these items be addressed at that time, or did they need to be addressed when the Commission either approved or denied the extension.

Ms. Terry said that as far as building permits were concerned, it would help if there were a stop on it at this point. She said that Engineering was involved in issuing the building permits, but not so much like they were with commercial developments. On residential they issue addresses.

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Mr. Olsen said that basically Ms. Terry was asking that if the extension were approved, there would be a condition on that extension stating that no permits be issued until the drainage and detention issues had been corrected to the amended 45 percent site coverage.

Ms. Terry agreed.

Ms. Deakle further stated that one of the reasons for denial had to do with the construction of the new streets. She asked how that would be approved if this were approved.

Mr. Olsen explained that normally on extensions, if there was not a new street being constructed, if it was simply the development of existing lots, a recording of lots that do not require new road construction, the Commission would grant one extension. But since there were no infrastructure improvements required, the Commission would not grant the second extension.

Regarding the drainage issue, Mr. Sawyer said that Don Williams had engineering plans ready to submit to the City for approval of an alternative retention system.

There was no one present in opposition

After discussion a motion was made by Mr. Miller and seconded by Mr. Vallas to approve this request subject to the following condition:

- 1) that no permits will be issued until the drainage and detention issues are addressed and approved by City Engineering.

The motion carried unanimously.

Case #ZON2003-01521 (Planned Unit Development)

Eastridge Place Subdivision, Lot 15

Southeast corner of East Drive and Eastridge Place.

A request for a one-year extension of the above referenced Planned Unit Development Approval to amend a previously approved Planned Unit Development to increase the maximum allowable site coverage to 45% in an R-1, single-family residential subdivision.

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

The plan illustrates the subdivision plat and setbacks.

(This application was discussed in conjunction with Eastridge Place, Lots 3-5 and 8-13, above.)

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There was no one present in opposition.

After discussion a motion was made by Mr. Miller and seconded by Mr. Vallas to approve this request.

The motion carried unanimously.

Case #SUB2002-00037 (Subdivision)

Dix Subdivision, Unit Two, Resubdivision of & Addition to Lot 2

South side of Cottage Hill Road, 250'± West of Dawes Road, extending to the West side of Dawes Road, 200'+ South of Cottage Hill Road.

3 Lots / 5.7± Acres

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

After discussion a motion was made by Mr. Plauche and seconded by Mr. Vallas to approve this request.

The motion carried unanimously.

Case #SUB2002-00158 (Subdivision)

Ram's Head Addition to Tillman's Corner Subdivision (formerly Head's Addition to Tillman's Corner Subdivision)

South side of Cross Street, 100'± East of Middle Road.

5 Lots / 20.3± Acres

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

Don Coleman, Rester and Coleman Engineers, was present on behalf of the applicant. Mr. Coleman said he had talked to the owner and things were moving slow. He had developed buildings on three lots, and he still had two up for sale. He requested one more year to dispose of these lots.

After discussion a motion was made by Ms. Deakle and seconded by Mr. Vallas to approve this request.

The motion carried unanimously.

Case #SUB2002-00016 (Subdivision)

File #S98-120

Woodland Hills Subdivision, Remainder of

West terminus of Woodland Hills Drive and extending through to Woodstone Drive, Woodland Way and the East side of Eunice Drive, 600'± North of Eunice Circle.

191 Lots / 74.0± Acres

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

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Don Coleman, Rester and Coleman Engineers, was present on behalf of the applicant and concurred with the staff recommendations.

After discussion a motion was made by Mr. Plauche and seconded by Dr. Rivizzigno to approve this request.

The motion carried unanimously.

GROUP APPLICATIONS:

Case #ZON2005-01181 (Rezoning)

Richard Grayson

East side of Wolf Ridge Road, ¼ mile± North of Moffett Road.

A request for a change in zoning from R-1, Single-Family Residential, to B-3, Community Business, to allow a mini self-storage facility was considered.

The site plan illustrates the proposed development and proposed zoning.

(Also see Case SUB2005-00131 – Grayson Subdivision – Below).

Richard Grayson, 336 Dalewood Drive, said he was applying for zoning change. Mr. Grayson said the property was previously a dairy farm. Mr. Grayson said it is wooded and across the street from the property is wooded. He presented this proposal which would allow him to use this property for a RV and boat storage business, for which he felt there was a need in this area. The storage areas would be 15 feet wide by 40 feet long. He planned to build a house for himself on the back part of the property, and there was a church just to the south. His brother and his family lived on the land just above the church. Across the street was the edge of the Beau Terra Subdivision and then woods, which all used to be part of the Van Antwerp dairy farm. The site would not be visible from the street except for a driveway to the property. Mr. Grayson said that he had talked to the neighbors across the street and some of them had signed a form saying they did not object. He also talked to Rev. Harris, the pastor of the church next door. Regarding the staff's recommendation for denial, Mr. Grayson said one of the reasons the Commission gave was that the site did not meet the 4-acre minimum size as recommended in the Zoning Ordinance. He felt two acres was large enough for what he proposed, but said he could make it four acres if required.

Willie Preah, 7801 Country Dr, is the Co-chairman of the Deacon Board of the Little Welcome Baptist Church. Mr. Preah said that his property adjoins the site. He stated that he was concerned as to what effect this rezoning would have on the church. Increased traffic and noise were issues mentioned. Mr. Preah did not feel the church would oppose the use if it were behind the wooded area.

Mr. Plauche commented that traffic would probably not be the same as a commercial business, but he would let Mr. Grayson address that.

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Mr. Grayson pointed out that there would be a 150-200 foot gap between the church property and the proposed area. The proposed driveway would be almost 600 feet away from the church. There would be woods completely surrounding the site, and he did not want any noise because he was going to live on the adjoining lot. He said the RVs and boats would be parked there for maybe six months at a time, so it would be a low traffic area.

John Lawler, counsel for the Commission, noted that while the best of intentions were expressed by the applicant, this was a B-3 zoning. A grocery store could be built there six months or a year from now. The Commission should consider what the possibilities are down the track.

Mr. Vallas noted that there were other commercial properties just to the north of this site. He indicated there was an antique store in one area, some dirt pits, and some commercial contractors in the immediate area.

Mr. Olsen said they were about a half-mile or a mile to the north. With reference to Mr. Lawler's statement that the B-3 zoning would allow a large number of uses, Mr. Olsen said that the buffers that the applicant discussed, while the site plan shows a 15' landscaped buffer, it does not say it is to remain in its natural state. There was no reference to a buffer in the front on the site plan. None of that was part of the application. Also, the Commission has discussed the reasons for rezoning at many meetings. The application did not include any one of those four reasons as stated in the Ordinance.

After discussion a motion was made by Ms. Deakle and seconded by Dr. Rivizzigno to recommend the denial of this change in zoning for the following reasons:

- 1) no error has been shown in the Ordinance;
- 2) no change in conditions have been identified in the area that would make such a change necessary or desirable;
- 3) no need to increase the number of sites available to business or industry has been identified;
- 4) the need to reclassify the land due to subdivision has not been shown to be necessary in order to permit development;
- 5) the rezoning site is less than the minimum 4 acre district size recommended in the Zoning Ordinance;
- 6) the site is not near the intersection of two major streets; and
- 7) the site is shown as residential on the General Land Use Component of the Comprehensive Plan.

The motion carried unanimously.

Case #SUB2005-00131

Grayson Subdivision

East side of Wolf Ridge Road, ¼ mile± North of Moffett Road.

2 Lots / 30.5± Acres

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(For discussion see Case ZON2005-01181 – Richard Grayson [Rezoning] –Above).

After discussion a motion was made by Mr. Vallas and seconded by Ms. Deakle to recommend denial of this request based upon the applicant's statement that without the rezoning, the subdivision was not desired.

The motion carried unanimously.

Case #ZON2005-01300 (Rezoning)

Hillcrest Commons, Inc. (John C. Bell, Agent)

North side of Johnston Lane, 237'± East of Hillcrest Road, extending to the East side of Rosedale Avenue (unopened right-of-way), 150'± South of Chandler Street.

A request for a change in zoning from R-1, Single-Family Residential, and B-1, Buffer Business, to B-1, Buffer Business, to allow professional offices was considered.

The plan illustrates the existing structures, along with the proposed structures and rezoning.

(Also see Case ZON2005-01299 – Hillcrest Commons Subdivision [PUD] – Below; and Case SUB2005-00136 – Hillcrest Commons Subdivision –Below).

Mr. Plauche informed the Commission that two letters concerning this project had been provided.

Don Coleman, Rester and Coleman Engineers, was present on behalf of the applicant and concurred with the staff recommendations.

Mr. Plauche asked if there was anyone present in opposition who wished to speak.

Dave Higgins, a resident of 1067 Dickenson Avenue, which was the northeast corner of Dickenson and Johnston Lane, said he was not sure if he was in opposition or not. Mr. Higgins noted that the report mentioned the vacation of Rosedale Avenue north of the former Duncan right-of-way. He asked if the south part of Rosedale Avenue also had to be vacated all the way down to Johnston Lane.

Mr. Olsen stated that the south part of Rosedale Avenue (which he pointed out on the plat) had already been vacated a number of years ago.

Mr. Higgins understood that this proposal was to start 150 feet south of Chandler and go all the way to Johnston Lane. He asked if they start coming back from Hillcrest going up Johnston Lane, then what was to stop movement on up Johnston Lane. Mr. Higgins was also concerned about the type of buffer between the B-1 and R-1.

Mr. Olsen stated that the required buffer would be either a 6' wooden privacy fence, or a landscaped strip that is 10' wide and densely planted that does not allow visible

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penetration. The buffer would be at the option of the developer, unless the Commission specified the type buffer.

Mr. Vallas expressed concern about parking. He indicated that some of the parking for the new development was existing, and was currently used by the development at the “front” of the site. He inquired about the size of the proposed improvements; the ability to accommodate more parking; and the possibility of a parking study. He felt people would be parking all over Pinehurst.

Mr. Olsen said that based on the plans the applicant submitted for these applications, they exceed the minimum parking requirements.

It was asked if that depended on the type of business going in there.

Mr. Olsen said that it did, and on the B-1 property it would have to be an office. It could not be any type of retail or food or beverage establishment.

After discussion a motion was made by Mr. Vallas and seconded by Ms. Deakle to holdover this application until July 21, 2005, meeting to allow the applicant time to submit a revised plan reflecting additional parking.

The motion carried unanimously.

Case #ZON2005-01299 (Planned Unit Development)

Hillcrest Commons Subdivision

1055 Hillcrest Road

Northeast corner of Hillcrest Road and Johnston Lane, extending to the East side of Rosedale Avenue (unopened right-of-way), 150'± South of Chandler Street.

A request for Planned Unit Development Approval to allow multiple buildings on multiple building sites with shared access and parking was considered.

The plan illustrates the existing structures, along with the proposed structures and rezoning.

(For discussion see Case ZON2005-01300 – Hillcrest Commons, Inc. (John C. Bell, Agent) [Rezoning] – Above; and Case SUB2005-00136 – Hillcrest Commons Subdivision –Below).

After discussion a motion was made by Mr. Vallas and seconded by Ms. Deakle to holdover this application until July 21, 2005, meeting to allow the applicant time to submit revised plan reflecting additional parking.

The motion carried unanimously.

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Case #SUB2005-00136 (Subdivision)

Hillcrest Commons Subdivision

1055 Hillcrest Road

Northeast corner of Hillcrest Road and Johnston Lane, extending to the East side of Rosedale Avenue (unopened right-of-way), 150'± South of Chandler Street.

2 Lots / 5.6± Acres

(For discussion see Case ZON2005-01300 – Hillcrest Commons, Inc. (John C. Bell, Agent) [Rezoning] – Above; and Case ZON2005-01299 – Hillcrest Commons Subdivision [PUD] –Above).

After discussion a motion was made by Mr. Vallas and seconded by Ms. Deakle to holdover this application until July 21, 2005, meeting to be considered with the accompanying Rezoning and Planned Unit Development applications.

The motion carried unanimously.

Case #ZON2005-01291 (Planned Unit Development)

D'Iberville Town Homes Subdivision

South side of Southland Drive, 800'± West of Knollwood Drive, extending to the West terminus of Southland Drive.

A request for Planned Unit Development Approval to allow reduced lot widths, reduced building setbacks, increased site coverage, shared parking, and reduced street widths in a single-family residential town home subdivision was considered.

The site plan illustrates the proposed development.

(Also see Case SUB2005-00132 – D'Iberville Town Homes Subdivision – Below).

After discussion a motion was made by Mr. Plauche and seconded by Mr. Miller to holdover this application until the August 4, 2005, meeting.

Mr. Vallas recused in this matter.

The motion carried.

Case #2005-00132 (Subdivision)

D'Iberville Town Homes Subdivision

South side of Southland Drive, 800'± West of Knollwood Drive, extending to the West terminus of Southland Drive.

58 Lots / 10.8± Acres

(For discussion see Case ZON2005-01291 – D'Iberville Town Homes Subdivision [PUD] – Below).

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After discussion a motion was made by Mr. Plauche and seconded by Mr. Miller to holdover this application until the August 4, 2005, meeting.

Mr. Vallas recused in this matter.

The motion carried.

NEW ZONING APPLICATION:

Case #ZON2005-01298

Douglas L. Anderson

3300 Dauphin Island Parkway (Southwest corner of Dauphin Island Parkway and Gill Road).

A request for a change in zoning from R-1, Single-Family Residential, to B-3, Community Business, to allow a restaurant was considered.

The plan illustrates the existing structures and paving.

There was no one present in opposition.

After discussion a motion was made by Ms. Deakle and seconded by Mr. Miller to recommend to the City Council that the rezoning to B-2 Neighborhood Business be approved and the rezoning to B-3 Community Business be denied. Approval of the zoning of B-2 Neighborhood Business is subject to the following conditions:

- 1) that the site be brought into compliance with the parking requirements of the Zoning Ordinance, the landscaping and tree planting requirements of the Ordinance, and all stormwater and flood control ordinances;
- 2) limited to one curb cut to Dauphin Island Parkway, and one curb cut to Gill Road to be approved by Traffic Engineering;
- 3) the submission of a subdivision application, and completion of the subdivision process; and
- 4) full compliance with all municipal codes and ordinances.

The motion carried unanimously.

NEW PLANNING APPROVAL APPLICATIONS:

Case #ZON2005-01293

Tower Resource Management, Inc.

6200 Grelot Road (North side of Grelot Road, 790'± East of Hillcrest Road).

A request for Planned Unit Development Approval to allow a 180-foot monopole communications tower in a B-2, Neighborhood Business district was considered.

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The plan illustrates the existing structure, parking and proposed tower location.

Mr. Plauche 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 Dr. Rivizzigno to approve this plan subject to the following conditions:

- 1) approval of the requested height and setback modifications by the Board of Zoning Adjustment; and
- 2) full compliance with all municipal codes and ordinances.

The motion carried unanimously.

NEW SUBDIVISION APPLICATIONS:

Case #SUB2005-00133

Bainbridge Subdivision

3650 McFarland Road

(West side of McFarland Road, 140'± South of McFarland Way).

32 Lots / 10.0± Acres

Mr. Plauches 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 Ms. Deakle and seconded by Dr. Rivizzigno to approve the above referenced subdivision subject to the following conditions:

- 1) provision of a street stub to the South;
- 2) depiction of the traffic calming / traffic island devices, and labeling of the areas as common areas;
- 3) placement of a note on the Final Plat stating that maintenance of the common areas is the responsibility of the subdivision's homeowners association;
- 4) placement of a note on the Final Plat stating that Lots 1 and 32 shall not have access onto McFarland Road,
- 5) conversion of angles in the Legal Description and on the plat to standard directional bearings;
- 6) labeling of the 25-foot minimum building setback line from the rights-of-way;
- 7) 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;
- 8) dedication and construction of roads to Mobile County standards; and

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

The motion carried unanimously.

Case #SUB2005-00134

Bridge Mill Subdivision, Phase Two

East terminus of Meadow Wood Drive, extending to the South termini of Fenwick Loop and Fenwick Loop West.

39 Lots / 18.5± Acres

David Deal, with Engineering Development Services, was present on behalf of the applicant. Mr. Deal said they were in agreement with the staff recommendations except for condition #1, which requires the connection between Meadow Wood Drive and Fenwick Loop. Mr. Deal said this plat was previously approved in October of 2003, at which time a compromise was worked out to where they were not required to make the connection to Meadow Wood Drive. Instead, a three-point turnaround would be constructed. They were asking for that same approval again. He said the only thing that had changed since the previous approval was that they lost a lot or two to increase the detention area.

In discussion Ms. Deakle asked if Mr. Deal was addressing only Meadow Wood Drive and not Fenwick Loop.

Mr. Deal said the condition was that Fenwick Loop be connected with Meadow Wood Drive. Fenwick Loop will actually have a cul-de-sac on the dead end street to provide a turnaround on that street.

Richard Rowan stated that they had met with the property owners association before they submitted the original plan. They had requested that the developer try to work out something so that there would not be a stub street but a turnaround, the design approved by the Planning Commission some months ago. He asked that the Commission give consideration to this and approve it the way it was originally worked out.

The staff was asked their opinion regarding the Meadow Wood connection. Mr. Olsen stated that the staff was always going to ask for connection to an existing street stub. The developer was proposing a modified "T" or hammerhead turnaround that was approved by the Commission previously.

There was no one present in opposition.

After discussion a motion was made by Ms. Deakle and seconded by Mr. Vallas to approve the above referenced subdivision subject to the following conditions:

- 1) the provision of a three point turn around at the east end of Meadow Wood Drive, as shown on the plat and subject to the approval by County Engineering;

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- 2) the construction and dedication of the new streets;
- 3) the placement of a note on the final plat stating that maintenance of the common detention area shall be the responsibility of the property owners; and
- 4) the placement of a note on the final plat stating that any lots that are developed commercially and adjoin residentially developed property must provide a buffer, in compliance with Section V.A.7 of the Subdivision Regulations.

The motion carried unanimously.

Case #SUB2005-00137

Landmark Industrial Park Subdivision, Unit Three

South side of Halls Mill Road, 375'± West of Riviere du Chien Road.

5 Lots / 17.5± Acres

Mr. Plauche 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. Vallas 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 an Administrative Planned Unit Development application be submitted as lots are developed;
- 2) the placement of a note on the final plat stating that access is limited to two curb cuts to Halls Mill Road, with the size, design and location to be approved by Traffic Engineering;
- 3) the placement of a note on the final plat stating that there be no further resubdivision of the lots; and
- 4) the placement of the 25-foot minimum building setback lines on the final plat.

The motion carried unanimously.

Case #SUB2005-00130

Maggie's Snow Road Subdivision

West side of Snow Road, 3/10 mile± South of Tanner Williams Road.

2 Lots / 10.2± Acres

Mr. Plauche 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. Rivizigno and seconded by Mr. Vallas to approve the above referenced subdivision subject to the following conditions:

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- 1) the placement of a note on the final plat stating that Lot 1 limited to one curb cut and Lot 2 is limited to two curb cuts to Snow Road, with the location, size, and design to be approved by County Engineering; and
- 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.

The motion carried unanimously.

Case #SUB2005-00129

Maggie's Theodore Dawes Road Subdivision

West side of Theodore Dawes Road, 760'± North of Garden Grove Drive.

4 Lots / 7.1± Acres

Mr. Plauche 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. Rivizigno and seconded by Mr. Vallas 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 the site is limited to a maximum of three curb cuts to Theodore Dawes Road, with the size, location, and design to be approved by County Engineering; and
- 2) 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.

Case #SUB2005-00138

Orso Subdivision

411 Begeman Road

(South side of Begeman Road, 150'± West of its East terminus).

2 Lots / 2.6± Acres

Mr. Plauche 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. Vallas to waive Section V.D.3. and approve the above referenced subdivision subject to the following conditions:

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- 1) the placement of a note on the final plat stating that there be no further resubdivision of the site until Begeman Road is constructed to County standards;
- 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 building setback lines on the final plat.

The motion carried unanimously.

Case #SUB2005-00135

Springhill Medical West Subdivision

North side of Cottage Hill Road, 480'± West of Schillinger Road South, extending to the West side of Schillinger Road South, 350'± North of Cottage Hill Road.

1 Lot / 8.9± Acres

Don Coleman, Rester and Coleman Engineers, was present on behalf of the applicant 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. Vallas to waive Section V.D.3. (width-to-depth ratio) and approve the above referenced subdivision subject to the following conditions:

- 1) the dedication of adequate right-of-way to provide 50-feet from the centerlines of Schillinger Road and Cottage Hill Road;
- 2) the placement of a note on the final plat stating that the site is limited to one curb cut each to Schillinger Road and Cottage Hill Road;
- 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; and
- 4) the placement of the 25-foot minimum building setback line on the final plat

The motion carried unanimously.

NEW SIDEWALK WAIVER APPLICATIONS:

Case #ZON2005-01295

Blue Rents (Grant Harkness, Agent)

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

A request to waive construction of a sidewalk along East I-65 Service Road South was considered.

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Mr. Olsen said that City Engineering recommended the sidewalk waiver due to the location of the roadside stormwater, and that it could not be constructed without significant drainage improvements and cost to the property owner.

There was no one present in opposition.

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

The motion carried unanimously.

Case #ZON2005-01313

Community Bible Church

1251 Navco Road (East side of Navco Road, 275'± South of Buena Drive North).

A request to waive construction of a sidewalk along Navco Road was considered.

Mr. Olsen said City Engineering recommended waiver of the sidewalk, as there were topography issues and stormwater would run across the sidewalk.

There was no one present in opposition.

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

The motion carried unanimously.

OTHER BUSINESS:

Case #ZON2005-00787 (Planning Approval)

Port City Church of Christ

2901 Hillcrest Road (East side of Hillcrest Road, 125'± South of Medearis Court)

A request for Planning Approval to allow a parking lot expansion at an existing church in an R-1, Single-Family Residential, district was considered.

Mr. Watkins recused in this matter.

Mr. Plauche pointed out to the members that they each had before them a copy of a letter to the Planning Commission from Gary Tyler and Richard Blake requesting that the Planning Commission reconsider its May 19, 2005 decision approving these applications.

Dave Pruitt, of 11519 Hwy. 188 in Grand Bay, was present on behalf of the church. Mr. Pruitt provided the members with a chronological history of what had transpired since the church bought this property. He hoped it might answer some of the questions proposed by Mr. Tyler in his letter. Mr. Pruitt stated that the church bought this property in April of 2004. In June 2004, Mr. Tyler approached the church and asked to buy a strip of property. Mr. Pruitt said they had just moved in and were not ready to make any sales at

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that time and declined. In December 2004, the church had a campaign to do some additions to the facility, including an upgrade of the parking, additional classrooms, and also to put a facelift on the property. The church submitted a Planning Approval application as well as a Planned Unit Development application for review at the Planning Commission meeting of April 21, 2005. There was opposition by Mr. Tyler and Mr. Blake about the number of parking spaces, drainage, and lighting. Mr. Pruitt said the church asked that the matter be held over until the next meeting. They asked Robert Meeks, a member of the church, to meet with Mr. Tyler and Mr. Blake and find out what the concerns of the neighbors were. Mr. Pruitt said that at no time did they ask Mr. Meeks to be their sole authority. The church has a leadership organization that handles most of the decisions, which would later go to the congregation in general to get their input. After meeting with Mr. Tyler, Mr. Meeks reported back to their leadership group and said they wanted to purchase 20 feet on the south side of the property for \$50,000. Mr. Pruitt said that peaked their interest so they contacted their bank to ask if they would be allowed to make such a transaction.

Mr. Plauche interrupted, stating that the Planning Commission was only concerned about what the church was not doing according to the approved plan. He said the sale of land had nothing to do with them.

John Lawler, counsel for the Planning Commission, stated that the Commission had received a letter from Mr. Tyler and Mr. Blake. The letter stated that Mr. Meeks had indicated that he had the authority to negotiate for the church. Mr. Tyler and Mr. Blake thought that they had a deal. Based on that, they did not attend the meeting and thus did not voice their concerns about the impact of this development on their property. Further, what they were seeking by suggesting that they purchase this land was a buffer to protect them from the development. When they didn't appear and the plan was approved without their input, then they were told that they could not buy the property, they felt like they missed an opportunity to speak.

Mr. Lawler said this complaint first came through the Council's attorney, Mr. Rossler. He said they discussed it and decided that the Planning Commission should hear the application again to allow the objectors an opportunity to say how this would impact them. Afterward, the Planning Commission can take whatever action they think is necessary, if anything, to protect them from this development. Mr. Lawler said he knew nothing about the merits of this case one way or the other, but he said that certainly neighboring property owners should have the right to come in and voice their feelings. In this case, apparently the property owners were told that they did not have to come in; they had a deal to buy some property. At least that was their side of it.

Mr. Pruitt said their discussion with the church had been the purchase a 20' strip of property. It had nothing to do with the original plan regarding parking.

Mr. Lawler said that was true, but the objectors probably wanted to have the opportunity to say how not having the buffer was going to have a negative impact on their land, and ask the Planning Commission for some protections.

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Mr. Plauche asked Mr. Pruitt to continue.

In the interest of time, Mr. Pruitt referred to a meeting that occurred on May 17, 2005, which was two days prior to the Planning Commission meeting of May 19, 2005, where nobody spoke in opposition. He said at that time Mr. Meeks, representing the church, met with Mr. Blake and Mr. Tyler. Mr. Pruitt said there were some concerns that were voiced by Mr. Tyler and Mr. Blake regarding the preliminary drawings. Mr. Meeks told them that as soon as he got complete drawings that would show all the drainage, the underground pipe, the sloping and the retention ponds, he would sit down with them. He met with Mr. Blake on May 17th and explained the new lighting they put on the plan, and the buffer zone with a curb that ends approximately 50 feet from their property line. Mr. Meeks also showed where the retention area would be. At the end of the meeting Mr. Blake said that everything looked fine and he didn't see any problems. At that point Mr. Blake received a phone call from Mr. Tyler, and Mr. Meeks was able to hear during the conversation that Mr. Blake said everything looked great. After Mr. Blake got off the phone Mr. Meeks again said that everything looked fine and he saw no need for the neighbors to attend the Planning Commission meeting. Mr. Pruitt said they therefore proceeded with the application.

Robert Meeks, 3613 Lundy Lane East, said he did meet with Mr. Blake and showed him all the detailed plans. He asked a question about the retention pond, and he explained to Mr. Blake that the water slowly dissipates. After he explained to Mr. Blake where the parking lot would be and where the water was going, he said it looked fine and had no other questions.

Dr. Rivizzigno asked if she understood correctly that the Commission was supposed to re-hear this application.

Mr. Lawler said he felt they should hear the objections that are raised to see whether or not they wanted to do something to it.

Dr. Rivizzigno stated that it would be helpful if the Commission had the application packet before them.

Mr. Olsen apologized and said it would take just a few minutes to have copies made and brought down to them.

Dr. Rivizzigno asked if they could again address the application and not the aftermath of the he said, she said.

Mr. Olsen said that the request was for a parking lot expansion for the church. Currently they were parking on the grass. Since Planning Approvals and PUD's are site plan specific, to increase the parking area, pave it, alter the circulation or make it permanent, as this case would be, there was a requirement for these applications

Mr. Plauche asked if there was any further opposition.

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James Thomason, 6310 Hillcrest Oaks Drive just to the south of the subject property, said he had received notice of this meeting last Friday and had not had time to review the holdover. Mr. Thomason said the neighbors were concerned about changing the plans from 109 to 166 to 125 parking spaces. He said that he was also concern with the runoff and wanted to know exactly where the retention ponds were going to be since this was a flat piece of property. It was mentioned that the neighbors would pay \$50,000 for 20 feet of property to their south side, but Mr. Thomason said that was not true. Originally it was 35 feet to include the heritage oak on that piece of property for \$50,000, and the five property owners on that side of the street were going to contribute \$10,000 each for that cause. Mr. Thomason said that Mr. Tyler and Mr. Blake were very much opposed to the water runoff. He said he did not see as much runoff on his property as on theirs, it was still a concern. Mr. Thomason said the reason they did not come to the last meeting was because of the agreement to provide a permanent buffer by purchasing the 20 feet as amended for market value. The market value came back substantially less than \$50,000. It was their contention that they would be able to build that permanent buffer zone and not have to worry with the runoff as much into their properties.

Mr. Olsen stated that when the plan was first submitted to the Commission on April 21, 2005, there was a proposal for just over 109 parking spaces. It was held over to May 19, 2005, and when it came back the site plan had been reconfigured and the parking proposed was increased to 167 parking spaces. There was a substantial increase in the number of parking spaces proposed from the April 21st meeting to the May 19th meeting.

Ms. Deakle asked if, at the May 19, 2005 meeting, the Planning Commission approved this application without any revisions to any of the proposals.

Mr. Olsen stated that the Planning Commission approved the revised drawing that was submitted on May 10, 2005, which the members had.

Mr. Vallas asked if there were any landscaping or buffering requirements other than the preservation status of the oaks.

Mr. Olsen said that all the conditions were listed on the report. He read the conditions of approval from the letter of decision, as follows: (1) placement of a note on the site plan stating that the Planning Approval and PUD are site plan specific; (2) that modifications or additions will require new Planning Approval and PUD applications; (3) provision of landscaping and tree planting in accordance with the quantities and ratios set forth in Section IV.E.3., Minimum Landscape Requirements, of the Zoning Ordinance, as amended, and comply with Sections IV.E.4 and IV.E.5 of the Ordinance; (4) full compliance with Section VI.A., Off-Street Parking Requirements, of the Zoning Ordinance, as amended; (5) placement of a note on the site plan stating that the lot is limited to a maximum of two curb cuts, one existing and one new, with no new breach of the existing median on Hillcrest Road; and the size and location of curb cuts to be approved by Traffic Engineering; (6) full compliance with the stormwater drainage ordinance, including the provision of a new stormwater detention basin to be indicated on the final site plan; (7) placement of a note on the final site plan stating that preservation

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status is to be given to the 48" oak tree located on the south side of the lot, and the 50" oak tree located in the southeast corner of the lot; any work on or under these trees is to be permitted and coordinated with Urban Forestry, removal to be permitted only in the case of disease or impending danger; and (8) full compliance with all other applicable codes and ordinances.

Ms. Deakle asked if she understood correctly that when the applicant added those parking spaces, the Ordinance required them to make sure the landscaping complied with the Ordinance, so they were bound to comply.

Mr. Olsen said that was correct.

Asked where the retention pond would be located, Mr. Olsen said that would have to be calculated and put on the final plan submitted for permitting and for review by the Engineering Department to ensure its compliance with the stormwater detention.

Mr. Miller asked Mr. Thomason if he was a party to the meeting where an agreement was made, either verbally or in any other form, that the neighbors would not attend the meeting.

Mr. Thomason said he was out of town at the time. He said Mr. Tyler briefed him on the meeting a few days afterward.

Mr. Miller assumed Mr. Tyler and Mr. Blake were the ones in that meeting, and asked if either of them were present today.

Mr. Blake stated that he was present.

Richard Blake, a resident of 6318 Hillcrest Oaks Drive, which is the second house on the left on the south border of the property in question. Mr. Blake stated that the meeting Mr. Meeks and he had on May 17th involved a review of plans, which Mr. Meeks brought to the meeting with him. Mr. Blake said the plans showed not 167 parking spaces, but 195 spaces. It had gone from 109 to 195. He said the entire sum and substance of their meeting involved the 20' strip buffer that the neighbors had requested the church sell to them so that they would not further oppose this entire development. Mr. Blake said that at no time did Mr. Meeks ever inform him, Mr. Tyler, or anyone else that he was not authorized to negotiate on behalf of the church. In a subsequent conversation with Mr. Kirby, Mr. Blake was informed that Mr. Meeks did have authorization to negotiate on behalf of the church, but that authority had subsequently been taken away from him. Mr. Blake said they had an agreement that the church would sell that 20' buffer to the neighbors for fair market value. To further substantiate that, Mr. Blake presented an appraisal done by Thomas Bealle the very next day, May 18, showing the value of the strip of land. He said he called Mr. Kirby on the 18th or 19th to ask if his appraisal had come, and he said no, it would not come for a few days. Mr. Blake said they did not attend the meeting, because the plans were approved. He said they did not hear from the church for almost two or three weeks. It was then that Mr. Tyler and he contacted Mr.

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Meeks, who told them that he no longer had any authority to negotiate on behalf of the church, that it was up to Mr. Kirby. When they contacted Mr. Kirby, he told them that the church had no intention of selling them any land. Further, he said that this was a temporary location, and that they were currently looking for a much larger site to build offices or possibly apartments. When Mr. Blake pointed out that this site was zoned R-1, Mr. Kirby responded that that was not a problem if you knew how to get these things changed.

Mr. Vallas said he did not think his threatening future rezoning was an issue.

Mr. Blake said he was just simply stating that everything that they had dealt with regarding Port City Church of Christ had fallen to pieces. The church had not lived up to one agreement they had made. Furthermore, Mr. Kirby said that he was looking at their personal properties to possibly try and buy from them for their expansion. Mr. Blake said they had all kinds of concerns without this buffer. They now have 200 cars driving around that could be as close as their back fence. They already have a light pollution problem, which is going to increase. He further expressed concerns about the drainage runoff and flooding, which he said was the worst it had been in the nine years since he had lived there. Mr. Blake asked that the Commission make the church live up to the agreement that they made before they put the final approval on the plans. Or, they would have no choice but to seek further action.

Mr. Vallas said it sounded like Mr. Blake was asking the Commission to make the applicant sell a 20' strip of property to the neighbors. He questioned how you would determine fair market value for a 20' strip when there necessarily wasn't a market for 20 feet of property. He said it was almost like you're requiring them to sell that piece of property so the neighbors would back off when they were in opposition to this application.

Mr. Blake said that was correct.

Mr. Vallas said he did not want to be a party to that.

Ms. Deakle stated that the entire purpose of this re-hearing was to give the neighbors an opportunity to speak, and the Commission had fulfilled their obligation. She said they were not here to determine who should have sold what to whom.

Mr. Miller asked if he understood correctly that the appraisal made for the neighbors was \$11,000.

Mr. Blake said that was the appraisal made by Thomas Bealle.

Mr. Miller asked if he understood correctly that on May 17, 2005, Mr. Blake met with Mr. Meeks, who he felt could represent the church, and agreed that they would reach the middle point of two estimates.

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Mr. Blake said that was correct.

Mr. Miller further understood that the \$50,000 price the church came up with was not necessarily based on an appraisal.

Mr. Blake said that was correct.

Dr. Rivizzigno asked if they were looking at 167 spaces or more than 190 spaces.

Mr. Olsen said it was more than 167 spaces. The most recent revised plan, which was time stamped May 10, 2005, and was before the Commission now, had 195 spaces.

Mr. Blake further commented that the minutes of the last meeting would show where Mr. Frank Dagley entered into the minutes of the meeting the terms of the agreement that the church and the neighbors had come to with regard to selling the property.

Mr. Olsen said that with regard to the number of parking spaces, the amended plat was submitted to staff after the reports were mailed, and since the staff had been asked not to change reports, they did not. It was presented to the Commission at the May 19th meeting with 195 spaces.

In executive session Ms. Deakle said she would like to make a motion that the Commission take no action on this application. She felt they had fulfilled their obligation to the adjacent property owners to give them an opportunity to speak their piece on it.

Mr. Miller stated that he was a little uncomfortable with this as it stood, and asked counsel his opinion on it.

Mr. Lawler advised that it would be best, if the Commission's desire was to affirm the action taken previously when the neighbors were not present, to make a motion to affirm that decision and vote on it again. If anyone was dissatisfied with that, Mr. Lawler said they could take the next step and appeal it. Had the neighbors been at the first hearing, and the Commission had approved it, as it seems inclined to do today, then those people who were there would have had an opportunity to file an appeal. Mr. Lawler felt the Commission should not do anything that would put them in a position to be impeded in their efforts, if that were their desire.

Mr. Miller said then that their options were to do nothing, which of course would allow things to stand.

Mr. Lawler said that if they do nothing, they would create a situation where the time for an appeal, that is 15 days for a Planning Approval, would be past. The neighbors would not have an opportunity to appeal. If they do nothing, they would create another impediment to their desire, if they wanted to take it to the next level. Mr. Lawler said he had no feeling about it one way or the other, whether it's proper or improper. He felt very strongly, however, that people should have an opportunity to participate in the

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proceedings, and the neighbors, he felt, made a pretty credible showing that they did not come because of what they thought was an agreement that they had. Mr. Lawler said that today, they did not have a presentation by the applicant. This was kind of an abbreviated hearing and they came forward and made their objections known, but did not have a complete hearing. He did not know if that would have changed anything.

Mr. Vallas pointed out that prior to the holdover they had a complete hearing on this application. They heard the complete presentation by the applicant, and after they made their presentation and the neighbors opposed, there was a decision to hold over. The Commission has heard it on more than one occasion.

After discussion a motion was made by Ms. Deakle and seconded by Mr. Vallas that the Commission affirm their previous decision of May 19, 2005, which approved this request.

In further discussion Mr. Miller asked if the passing of this motion would reopen the neighbors ability to appeal.

Mr. Lawler said it may, but he was not sure. He had read several cases where there were representations made about what was proposed and the neighbors were told it would be one way and agreed with it, but when it got to the hearing all that changed and it turned out to be something different. The neighbors did not show up. The court held in that case and held in other cases in that situation that being misled voided the proceedings. Mr. Lawler said that was the reason he had given the opinion that he had. He had no interest in it one way or the other.

Mr. Miller asked what action they could take to allow an appeal.

Mr. Lawler said if the Commission considered that they had the rehearing today and indicated their decision, they've done it. If they wanted to appeal, it was his opinion that they would have the right to do so.

Mr. Miller said they could therefore reaffirm basically to follow this motion and hopefully still give them that opportunity.

Mr. Lawler said the motion as stated would do that.

There being no further discussion Mr. Plauche called the question.

The motion carried unanimously.

Case #ZON2005-00846 (Planned Unit Development)

Port City Church of Christ

2901 Hillcrest Road (East side of Hillcrest Road, 125' ± South of Medearis Court).

July 7, 2005

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

(See Case ZON2005-00787 (Planning Approval) Port City Church of Christ - Above, for discussion)

After discussion a motion was made by Ms. Deakle and seconded by Mr. Vallas to affirm the previous decision of the May 19, 2005, meeting, which approved the request.

The motion carried unanimously.

2005-2006 Planning Commission Meeting Schedule

The schedule of meetings for 2005-2006 were presented to the Commission. It was moved, seconded and so ordered to approve the schedule as submitted.

There being no further business, the meeting was adjourned.

APPROVED: August 18, 2005

Victor McSwain, Secretary

Terry Plauche, Chairman

vm