

MOBILE CITY PLANNING COMMISSION MINUTES
MEETING OF FEBRUARY 15, 2007 - 2:00 P.M.
AUDITORIUM, MOBILE GOVERNMENT PLAZA

Members Present

Terry Plauche, Chairman
Ann Deakle
William DeMouy
Mead Miller
Roosevelt Turner
James Watkins III

Members Absent

Nicholas Holmes, III
Clinton Johnson
Victoria L. Rivizzigno, Secretary
John Vallas

Urban Development Staff Present

Richard L. Olsen
Deputy Director of Planning
Frank Palombo, Planner II
Mae Sciple, Secretary II

Others Present

John Lawyer, Assistant City Attorney
Jennifer White, Traffic Engineering
Rosemary Sawyer, City Engineering
Pat Stewart, County 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.

APPROVAL OF MINUTES:

A motion was made by Mr. Plauche and seconded by Mr. Turner to approve the minutes of the meeting of December 21, 2006, as submitted.

The motion carried unanimously.

HOLDOVERS:

Case #SUB2006-00318 (Subdivision)

JSMM, LLC Subdivision

754 Government Street

(North side of Government Street, 56'± East of South Bayou Street, extending to Conti Street).

2 Lots / 0.3± Acre

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Matt Orrell, with Polysurveying, was present on behalf of the applicant.

(Also see **Case #ZON2006-02756 (Planned Unit Development) - JSMM, LLC Subdivision** - below.)

Mr. Orrell requested that this application be held over until the next meeting so they could get with their architect and get the revised plans for this project.

Mr. Olsen said the Commission could hear this matter at the next meeting, March 1, 2007, if the developer could submit the revised plans to the staff tomorrow - February 16.

Mr. Orrell said that would be fine.

Although the application would be held over to the meeting of March 1st, Mr. Plauche stated that if anyone was present and wished to speak, they could do so now.

No one came forward to speak.

After discussion a motion was made by Mr. Plauche and seconded by Mr. Turner to holdover this application until the March 1st meeting, at the applicant's request.

The motion carried unanimously.

**Case #ZON2006-02756 (Planned Unit Development)
JSMM, LLC Subdivision**

754 Government Street

(North side of Government Street, 56'± East of South Bayou Street, extending to Conti Street).

Planned Unit Development Approval to allow shared access and parking between two building sites.

Matt Orrell, with Polysurveying, was present on behalf of the applicant.

(For discussion see **Case #SUB2006-00318 (Subdivision) - JSMM, LLC Subdivision** - above.)

After discussion a motion was made by Mr. Plauche and seconded by Mr. Turner to holdover this application until the March 1st meeting, at the applicant's request.

The motion carried unanimously.

**Case #SUB2006-00302 (Subdivision)
Hadley Subdivision**

8125 Fordham Road

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(Southeast corner of Leroy Stevens Road and Fordham Road).
3 Lots / 4.2± Acres

Don Williams, Williams Engineering, was present on behalf of the applicant. Mr. Williams said that four weeks ago they submitted a plan for a subdivision of this 4.2 acre parcel into four lots. Due to concerns expressed by neighboring property owners, the application was held over until the February 1st meeting to allow them an opportunity to meet with the neighbors to discuss their concerns. They submitted a revised plan for a three-lot subdivision at the February 1st meeting, but since neither the staff nor the neighbors had time to review the revised plan before the meeting, they requested another two-week holdover. Mr. Williams said that in the revised plan they had carved off two, 1.14-acre lots from the 4.2-acre lot. Although they were aware that the covenants on this property restrict lots to a minimum of 2.5 acres, they were not going to abide by those covenants. The covenants go back to the 1960's, and they felt the neighborhood had changed over the last 40-50 years to the extent that 1.14-acre lots would be appropriate and would be in scale with the rest of the neighborhood. Mr. Williams pointed out that in the upper right hand quadrant of the intersection of Fordham and Leroy Stevens Roads, there were three lots. There were actually four lots total in the upper left hand quadrant, all of which were 1.14 acres each. The map also indicated a house on a lot in the lower left hand quadrant. According to Probate Court records, that lot had been divided into four 1.14 acre lots. That would make a total of eight lots of the same size as Mr. Hadley proposed, and although the lots pointed out were not under the same 2.5-acre minimum lot size restriction as Mr. Hadley's property, they felt like they were in the neighborhood. Mr. Williams noted that Mr. Hadley could stand at his mailbox in front of his house and actually see the eight lots referred to. They felt that would make Mr. Hadley's lots in character with the neighborhood. He said they had talked to legal counsel in this regard and were advised that they could make a very strong argument that the conditions for the neighborhood had changed, and they would prevail in Circuit Court. In summary, Mr. Williams said they felt the 1.14-acre lots were appropriate in size for the neighborhood, they met the criteria of the Subdivision Regulations, and the staff had recommended approval with conditions, which they agreed to.

There being no one else to speak in favor of this application, and there being no questions from the Commission at this time, Mr. Plauche asked if there was anyone who wished to speak in opposition.

Marla Knight, a resident of 8021 Fordham Road, said she lived next door to Marie Wilson, whose property bordered Mr. Hadley's property. Mrs. Knight said she had four acres and had lived at this location for ten years. Her mother also lived next door, and between their homes they enjoyed a quarter-acre pond stocked with bream and bass. She pointed out the wildlife in the area, including giant blue herons, geese, raccoons, opossums and foxes. She said they were able to exist there because the residents of this area had respected nature and left them their natural habitat. Mrs. Knight felt that to break up estate-size lots in this area would cause a chain reaction with resulting noise and traffic to annoy the residents, and could be deadly to the wildlife. She thanked the Planning Commission for listening to their concerns, and thanked her neighbors for their

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strong support. She asked the neighbors in the audience to stand. (A large contingent of neighbors stood.) Mrs. Knight said the neighbors really cared about the neighborhood and about one another and they were blessed to live in such a community. They were opposed to this subdivision, even though the plan had been revised from four lots to three lots. Mrs. Knight said that Mike Dean had submitted a petition against the proposed subdivision that included 53 signatures, which was quite a few more than the original petition they submitted in January. She noted that every one of those signatures represented actual neighboring homes in the area. Many of the residents could not attend the meeting today because they could not miss work or they had already taken too much time off for the two prior meetings. Others were ill or home-bound. The neighbors felt that Mr. Hadley was aware of their strong opposition and had not made much of an effort to contact them to ease their concerns. Mrs. Knight noted that Mr. Hadley had only lived at this location for two years, whereas Mrs. Wilson and many others had lived there for decades. She said this was not just a neighborhood. It was a way of life. She said there had been inconsistencies in Mr. Hadley's presentations to various neighbors of his intentions. The original plat was completely different than what he told them he had planned. In discussing the inconsistencies with Mr. Hadley in mid-January, Mrs. Knight said he seemed unaware. The neighbors felt the plat should have been corrected before it was submitted, and perhaps his hesitation to correct it was purposeful. Perhaps he thought they would soon tire of the battle and retreat and the Planning Commission would approve the plat as it was. Mrs. Knight said they would not retreat. They were there to protect their homes and protect their lifestyle. As Mrs. Patrick said at the last meeting, they considered this neighborhood their little piece of heaven. The residents loved their neighborhood and it showed. With regard to restrictive covenants, Mrs. Knight said they were aware that the Planning Commission cannot rule on restrictive covenants, however, she asked Mr. Lawler to comment on the impact of breaking a restriction on the property. She said that if this subdivision was approved, Mr. Hadley will have broken the first restriction, which states: "No dwelling shall be built on any tract less than 2 ½ acres". Mrs. Knight asked what would then happen to the power of the other restrictions. Would they be retained, lost, or significantly weakened? Also, if this subdivision were approved, would it be sensible to include protective covenants at the time the final plat was recorded to protect the future integrity of the land?

Mr. Plauche asked Mr. Lawler to comment.

Mr. Lawler stated that the Planning Commission does not have any authority to consider the validity or non-validity of restrictive covenants. It takes a court to make that decision. In cases that have been before the supreme court, the court has ruled that the Planning Commission does not have that authority. This is the case in Alabama, and the case generally around the country. Mr. Williams stated that, based on his conversations with an attorney, the covenants were dated and that a court would approve a subdivision. The neighbors felt differently, and probably had an attorney who would give a different opinion. But again, he said Planning Commissions have no role with regard to restrictive covenants. That decision would have to be made by the courts. Mr. Lawler further commented that in looking at the proposed subdivision and its relation to the other lots around, he felt it looked pretty much in character with regard to the lots that were catty-

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corner across and directly across the street from Mr. Hadley's property. As far as this body's authority, he felt the subdivision met the requirements. Whether it violates the covenants was something for the court to decide.

Mrs. Knight asked Mr. Lawler if he had no opinion as to whether it would weaken the other restrictions.

Mr. Lawler said it would take a court case to decide that, and there were a lot of factors that would have to be considered when deciding whether or not covenants were still enforceable. He said covenants change. They were not forever. Things change and neighborhoods change. Covenants are violated and they are not enforced for a number of reasons. The passage of time and changes in the neighborhood may be one reason that covenants are sometimes set aside by courts. Mr. Lawler said he had not read the covenants in this case, but sometimes there were time limitations and they are subject to interpretation, all things that the Planning Commission was not in a position to rule on.

Mrs. Knight thanked the Planning Commission for their sincere interest in their community and for answering the questions of the residents and giving them the opportunity to speak.

Mr. Turner asked if he understood correctly that there were other lots in this neighborhood that were smaller than required by the covenants.

Mrs. Knight said no. She said that the restrictive covenants for Mr. Hadley's lot only fall within Mr. Hadley's and Mrs. Wilson's two lots together. That was originally a 10-acre plot, and it had specific restrictions, but the restrictions that go down the road for Prospect Hills were 2 ½ acres, and going back in the other direction there were 2 ½ minimum acre lots. It then winds around and some of the other lots do have 1-acre minimum lots. She was not sure about the rest of the lots, but said they were larger lots. Mrs. Knight said their real concern was the chain reaction that would occur if this subdivision was approved, and everyone else would want to subdivide their property and it would destroy their neighborhood.

Lee Patrick stated that she and her husband had resided at 7920 Fordham Road since August, 1999. Mrs. Patrick thanked the Commission for their concern and attention to this case, and hoped they realized how distraught the residents were. As she stated at the last meeting, many of the neighbors were older citizens and this was really causing them heartache. They were in agreement that this subdivision would be out of character. Also, they were concerned that if approved, this would just be the beginning of changes made on this property. They feared that at some future date the property may be used for other purposes such as a trailer park or a commercial use. She said that once restrictions were lowered, it would get easier each time to change the purpose of the land. Mrs. Patrick said they had heard several different statements about how this property would be used, and they were concerned that their neighborhood would be changed for the worse. As evidenced by the large number of residents at these meetings, Mrs. Wilson said it was evident that they were dedicated to preserving their property. Mr. Hadley, on the other

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hand, had not bothered to attend the hearings. She said the neighbors had met several times and were all in agreement that they wanted to preserve the natural beauty of this area as well as protect the wildlife, and if it meant having to go to court they would. Mrs. Patrick submitted pictures she had taken of the residences in this subdivision, which she said indicated that they cared for their homes and the natural surroundings. Mrs. Patrick said she had just been handed some information that indicated Mr. Hadley was requesting entrances on Fordham Road for all three plots. She asked if that was correct, and if so, how that would be possible since all the lots would front Leroy Stevens Road.

Regarding access, Mr. Olsen stated that the information Mrs. Patrick referred to was a typo on the staff's part. He said it should have stated that Lots 1 and 2 would be limited to one curb cut each to Leroy Stevens Road. Mr. Olsen apologized for the error.

Mrs. Knight said they were very fearful that Mr. Hadley's only interest in subdividing this property was personal gain, and beseeched the Commission to deny this plan.

Neil Herrington, a resident of 8312 Fordham Road, said the residents were trying to protect the area on the right lower quadrant of the map. The residents felt that what Mr. Hadley was proposing would break down that particular area of their neighborhood. Their big argument today was based on value; not monetary value, but on value that not many people had. He said everybody in Mobile did not live where they lived. They lived in a special place. They had West Mobile barking at their back door and were holding them off because of their wooded lots, and large areas. They felt that to give that up would be to let Mobile walk in their back door and they would become like everybody else. They did not want to do that. They were fighting for the uniqueness of their neighborhood. That was the reason they lived there. Mr. Herrington said he did not have any ill feelings towards Mr. Hadley. He had never met him, and he had never come to any of these hearings. He did not feel that Mr. Hadley realized what he had. Mr. Herrington said he realized the Commission could not make a ruling on the way the neighborhood was set up. The residents were in a position of ownership, and a lot of times ownership does not have a price. They were not going to sell out to little pink houses with white picket fences and sidewalks in the front. Mr. Herrington asked the Commission, if possible, to drive out to this neighborhood before they made a decision, and not to make their decision based upon a white piece of paper with black lines on it. He said that was not the case here. Not many people had what they had, and they considered it very valuable and wanted to protect it.

Virginia Roundtree stated that she had been a resident of 8035 Hilltop Street for the last 35 years. Mrs. Roundtree said she had come before the Commission today for the third time to plead with them to reject Hadley Subdivision because they felt it could well be the beginning of the ruin of their neighborhood as they have known it. She thanked the Commission for explaining to them how the process works, and for explaining that the Commission does not enforce restrictive covenants. She apologized for concentrating on that at the last two meetings. Mrs. Roundtree said all of the residents of the neighborhood bought their property because this was the kind of setting they wanted to live in. The lots were large and the houses were set far back on the lots. There was

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generous space between the houses. The neighborhood has a country setting with carefully preserved trees. The houses blend in with the environment, and they have enhanced the natural beauty by planting additional trees and shrubs. The large wooded lots allow them to live with tranquility, quiet privacy and closeness to nature. A stream runs through the back of her property and she can hear the birds and occasionally see a wild rabbit. This was a sharp contrast to a traditional subdivision where one house is jammed up to the next house with a driveway in between, and where the view from the back of the yard is one of privacy fences and other houses, along with the inevitable noise and traffic. They felt their neighborhood was unique and special and should be preserved, and the neighbors felt that the proposed Hadley Subdivision was a threat to their way of life. Mrs. Roundtree noted that Mr. Hadley had only lived in the neighborhood for two years and he obviously did not appreciate it. It appeared that he wanted to capitalize to the greatest extent possible on his land. She said the basic underlying component that had allowed this area to develop as it had was the size of the lots; lots with acreage of at least 2 1/2 acres. She pointed out that the area with the large lots, with the restrictions of the 2 1/2 acres, was more to the south than the photograph showed. It was a large area where the restrictions had not been broken. Mrs. Roundtree asked that the Commission deny Hadley Subdivision and preserve the neighborhood that they treasure.

Mr. Plauche asked Mr. Williams if he would like to respond.

Mr. Williams stated that when he went on the internet to locate this property on the city website, within a one-mile radius of this site he found three subdivisions of 30, 50, and 40 lots, all of which had lots of less than 1.14 acres. They submitted, therefore, that the character of the neighborhood had already changed before Mr. Hadley moved in. The lots catty-corner and across the street from him were already 1.14 acres. He again noted that there were eight lots of this size within direct sight of the subject property. Mr. Williams said they felt like the neighborhood had changed in the last 40 years, and the proposed subdivision would be in character with the neighborhood. He also noted that it met the requirements of the Subdivision Regulations.

In deliberations session Mr. Miller commented that he was not really in favor of the proposed subdivision, although three lots would have less impact than the original proposed four-lot subdivision. As pointed out, there were other lots in the area of the same size as the proposed lots. Mr. Miller said he was sympathetic to the neighbors, but he understood that the Commission did not have a right to deny the subdivision based on the restrictive covenants. He asked for Mr. Lawler's opinion.

Mr. Lawler stated that the Planning Commission had been to the supreme court three times regarding this issue. The first case, Smith versus the Planning Commission, involved a proposed subdivision in the Spring Hill area. The neighbors were opposed, arguing that the subdivision would be out of character because the lots in this area were big. When they bought their property the lots were big and they wanted them to stay big. The Planning Commission denied approval of the subdivision. The case went to the supreme court, and the court stated that the proposed lots met the requirements of the

Subdivision Regulations in terms of size and all of the other technical requirements, and therefore the Planning Commission was in error in turning down the subdivision.

Mr. Lawler said that several years later there was another case in the Spring Hill area - Nugen versus the Planning Commission. The applicant proposed to divide one lot, which formerly had one residence on it, into three lots. The neighborhood rose up again with the same argument, that the lots would be out of character and would cause depreciation of their property. They contended the lots were not like the lots that were laid out originally. The case went back to the court of civil appeals. The court of civil appeals said that the neighbors *said* their property would be depreciated, but they were only expressing their fears. In this case, the developer brought an M.I.A. appraiser to the hearing who testified that the proposed subdivision would not depreciate the properties surrounding it in terms of value. The court reversed the case and the subdivision was approved.

Mr. Lawler said there was another case four or five years ago involving three lots in Pinehurst. The lots did not face an open street, and the developer simply wanted to turn the lots around so that they would be on an open street. The neighbors came to the hearing and objected, saying that the lots would be out of character with the other lots in the subdivision, and that the subdivision would cause a depreciation in property values. The Planning Commission approved the subdivision. The neighbors filed a suit in circuit court. They cited the Nugen case, which said that if the neighbors could show that their property values would depreciate because of the proposed subdivision, then they were entitled to object to it and the Planning Commission should reverse their action. They cited traffic and contended that because the lots were turned they were not like the other lots. The circuit court reversed the action of the Planning Commission. The case then went to the court of civil appeals, and in that opinion the court upheld the action of the circuit court, although it did not, in his opinion, include a lot of really strong facts on behalf of the objectors stating that their property would be depreciated. Mr. Lawler said he got the impression from that, that what the Planning Commission actually finds as fact in determining their decision is something that is important, and would be an important factor to be cited in a later court case, if that happens. He said they really had not had the guidance needed from the courts. As an example, in the Hadley case, if the neighbors had had an M.I.A. appraiser to come in and say that the proposed subdivision would devalue their property, that certainly would bolster their case that the neighborhood was going to be destroyed by this development.

Mr. Lawler cited another case in Montgomery that was denied on the basis of traffic. The court upheld the Planning Commission's decision, and cited the Nugen case as authority. Mr. Lawler said each case was different, but there were reasons why a subdivision can be denied even though it might meet the technical requirements of the Subdivision Regulations.

Mr. Turner asked if restrictive covenants on a subdivision were not adhered to, was there some limit or some procedure to go through for the City to enforce them.

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Mr. Lawler said no. The Planning Commission has the authority to consider applications for subdivisions, in accordance with the Subdivision Regulations, but the Planning Commission is not in a position to make a ruling as a matter of law as to whether or not covenants are still enforceable. Covenants are a private contract and can be enforced. Mr. Lawler said he had observed over the years, however, that people were reluctant to go to court and file a petition for an injunction to stop the very proceeding the Commission had today in this matter.

Mr. Miller commented that no matter how this Commission ruled on this matter today, that would not preclude either party from going to court.

Mr. Lawler said it was important for the Planning Commission to have facts upon which to base their opinion, and they also had to look at how they have approved properties in the past. In the Spring Hill area, for example, one could not make such of an argument about things being out of character anymore, because the Commission has approved time after time the slicing up of lots, as long as they met the technical requirements.

Mr. Miller asked Mr. Lawler if being in the county made any difference, in terms of his opinions.

Mr. Lawler said he did not think it made any difference, except that you could look at it as a different area. You could say that the property had the appeal, the beauty, and all those things about their lots. That was certainly *some* evidence of a uniqueness and something that could be protected.

Mr. Miller commented that whether they approve or deny this subdivision today, obviously their decision might sway a court case. He asked if a court would just look at their “yes” or “no”, or would they look at the process with which they came to their decision. In this case, Mr. Miller said that, obviously, if the motion was for approval, he would vote for approval with hesitations, but he did not want it to look like this was a strong stand the Commission took because of the way they think it should be as opposed to a way perhaps that they feel they need to rule.

Mr. Lawler said he would hope that the court would look back at what was said at the meeting and what was in the record and use that as some kind of guidance to make a decision. He said there were so many factors, however, that go into predicting what was going to happen in court. They do not even know before going to court who the judge would be, or whether or not he/she had ever seen a Zoning Ordinance.

Mr. Plauche noted that Mr. Lawler mentioned that traffic could be one tangible reason for denial. One of the neighbors spoke about aesthetic value. He asked if that would be a tangible enough item to give as a reason for denial.

Mr. Lawler referred back to the Pinehurst case, where he said the evidence was not too strong. There was no appraiser who testified. It was only the property owners who testified.

Mr. Miller commented that obviously if someone built a fabulous house on an over one-acre lot, he did not think it would hurt anyone, but then you never know what they might do, especially in the county.

After discussion a motion was made by Ms. Deakle and seconded by Mr. Watkins to approve the above referenced subdivision subject to the staff's recommendations.

In further discussion Mr. Watkins asked if the motion needed to be amended to correct the typo as discussed earlier on condition #1.

Mr. Olsen said condition #1 should be corrected to allow one curb cut each to Lots 1 and 2 to Leroy Stevens Road, rather than Fordham Road.

Ms. Deakle amended her motion as discussed, and Mr. Watkins seconded the motion to approve the above referenced subdivision subject to the following conditions:

- 1) **the placement of a note on the final Plat stating that Lots 1 and 2 be allowed one curb cut each to Leroy Stevens Road and Lot 3 be allowed one curb cut to Fordham Road and Leroy Stevens Road, all curb cuts location, size and design are to be approved by County Engineering;**
- 2) **provision of a certification letter from a licensed engineer to the Planning Section of Urban Development, certifying that the stormwater detention, drainage facilities, and release rate comply with the City of Mobile stormwater and flood control ordinances, prior to the signing and recording of the final plat;**
- 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 lines on the Final Plat.**

The motion carried unanimously.

EXTENSIONS:

Case #SUB2004-00041

Cambridge Place Subdivision

West side of Eliza Jordan Road North, 3/10 mile± South of Kelly Road.

137 Lots / 61.4± Acres

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

After discussion a motion was made by Mr. Plauche and seconded by Mr. DeMouy to grant a one-year extension of approval for the above referenced subdivision.

The motion carried unanimously.

Case #SUB2006-00011

Springbrook Farms Subdivision, Phase Two and Phase Three, and Springbrook Villas Subdivision, Phase Two

East termini of Estate Drive, Misty Leaf Drive North, and Spring Meadow Drive South; and, South termini of Bloomington Drive and Spring Meadow Drive East.

96 Lots / 33.1± Acres

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

After discussion a motion was made by Mr. Plauche and seconded by Mr. DeMouy to grant a one-year extension of approval for the above referenced subdivision.

The motion carried unanimously.

NEW SUBDIVISION APPLICATIONS:

Case #SUB2007-00008

McLeod Subdivision, Resubdivision of

1283 Azalea Road

(East side of Azalea Road, 900'± South of Government Boulevard).

1 Lot / 1.3± Acres

There was no one present representing the applicant.

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

- 1) **the placement of a note on the Final Plat stating the development is limited to two curb-cuts onto Azalea Road, with the size, design to be approved by Traffic Engineering, and comply with AASHTO standards;**
- 1) **labeling of the lot with its size in square feet, or provision of a table on the plat with the same information; and**
- 2) **full compliance with all other municipal codes and ordinances.**

The motion carried unanimously.

Case #SUB2007-00009

Downtowner Executive Center Subdivision

1020 Downtowner Boulevard

(West side of Downtowner Boulevard, 250'± North of Michael Boulevard).

1 Lot / 4.6± Acres

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

recommendations.

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

- 1) **the placement of a note on the Final Plat stating the development is limited to three curb cuts onto Downtowner Boulevard, with the size and design of any new curb cuts to be approved by Traffic Engineering, and comply with AASHTO standards;**
- 2) **labeling of the lot with its size in square feet or acres, or provision of a table on the plat with the same information; and**
- 3) **full compliance with all other municipal codes and ordinances.**

The motion carried unanimously.

Case #SUB2007-00012
Cody Road Food Mart Subdivision

950 Cody Road North

(Northeast corner of Cody Road North and Zeigler Boulevard).

1 Lot / 1.8± Acres

Mr. Plauche announced that this application was recommended for holdover to the March 15th meeting.

Jerry Byrd, Byrd Surveying Company, was present on behalf of the applicant. Regarding the parcels to the North referred to by the staff, Mr. Byrd said he had furnished the deeds for that property. He said the subject property was not created prior to 1952, but it had been 35 years. It was subdivided in 1972. One of the other parcels was created in 1967. Regarding confusion about overlapping deeds as referred to in the staff report, Mr. Byrd said that in 1972 their deed was for 400 feet north and south. Today it was only 350 feet, but their deed started at the center of what is now Zeigler Boulevard. Fifty feet was taken for right-of-way, leaving them 350 feet, and that was the overlapping issue that was mentioned. Mr. Byrd said they did not feel it was necessary to holdover this application to add a 25-foot building setback and a radius on the corner, as that could be added to the final plat.

Mr. Olsen noted that there was another issue with regard to a discrepancy between the tax assessor's map, the city's map, and the plat that was submitted. He said the original rezoning amendment for the site required dedication for widening for the service road. The plat did not reflect the 90 feet from center line, which would be what was required for widening and service road. That should have been dedicated to the city.

Mr. Byrd said that back in those days it was not uncommon to reserve a widening strip for purchase and dedicate the service road.

Mr. Olsen said there were cases where that was specifically addressed in those terms in

the amendment. This particular amendment said: "Provision, dedication for widening and service road".

Mr. Plauche asked what was involved in taking care of those discrepancies.

Mr. Olsen said the staff needed something to show whether that had in fact been dedicated or not, or it would need to be dedicated via this application to bring it into compliance with that rezoning. Also, as referenced in the staff report, the applicant had requested vacation of the service road right-of-way, at a minimum. He was not sure they were requesting that everything be vacated. Mr. Olsen said the request for vacation had been denied by three different City departments.

Mr. Byrd said they could live with the 40-foot service road, if it was a service road. He said the City took the deed for that 40-foot strip. It was 1400 feet long starting on their property going north. They landlocked themselves with a 40-foot strip. Mr. Byrd said they would agree to dedication of 10 feet for widening on Cody Road if necessary.

Mr. Watkins asked for clarification on the finger of property on the west side of the property running north.

Mr. Byrd said that strip was 10 feet wide and about 200 feet long. The description conveyed to the City for the rezoning of this property started at the Zeigler Boulevard end and went north and into the applicant's property 10 feet to the point of beginning and described the 40-foot by whatever strip of land, and left it in there.

Mr. Watkins asked for clarification on the 40-foot wide strip that dips into the applicant's property.

Mr. Byrd said they presumed that was the service road. He noted that the title commitment on this land picked up the 40-foot strip. It did not pick up any additional widening that may have been dedicated, so apparently that had never been dedicated.

If the Commission chose to vote on this matter today, Mr. Plauche asked if the staff had any recommendations.

Mr. Olsen said the staff would recommend the following: (1) dedication of 10 feet for widening along Cody Road; (2) dedication of sufficient right-of-way at the intersection for a radius, which would be determined by Traffic Engineering; (3) a note on the final plat stating that the site is limited to two curb cuts to Cody Road and one to Zeigler Boulevard, size, location, and design to be approved by Traffic Engineering; (4) provision of a buffer along the east property line where the site abuts residentially zoned property in compliance with Section V.A.7. of the Subdivision Regulations; and (5) provision of the minimum building setback line from both street frontages.

Mr. Byrd concurred with the recommendations as stated.

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

- 1) dedication of 10' for the widening of Cody Road;
- 2) dedication of sufficient right-of-way at the intersection of Cody Road and Zeigler Boulevard for radius to be approved by Traffic Engineering;
- 3) placement of a note on the final plat stating that the site is limited to one curb cut to Zeigler Boulevard and two curb cuts to Cody Road, size, location and design to be approved by the Traffic Engineering Department;
- 4) provision of a buffer in compliance with Section V.A.7. of the Subdivision Regulations; and
- 5) illustration of the required 25' minimum building setback line along both street frontages.

The motion carried unanimously.

Case #SUB2007-00011

Todd Acres Subdivision, Fifth Unit, Lot 19, Resubdivision of

5235 Todd Acres Drive

(East side of Todd Acres Drive, 430'± North of Todd Boulevard).

2 Lots / 0.5± Acre

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

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

- 1) the placement of a note on the Final Plat stating the Lot A should be limited to the existing curb-cut onto Todd Acres Drive, and Lot B should be limited to one curb-cut onto Todd Acres Drive, with the size, design and location to be approved by Traffic Engineering, and comply with AASHTO standards;
- 2) labeling of the lot with its size in square feet, or provision of a table on the plat with the same information;
- 3) placement of a note on the plat stating that approval of all applicable federal, state and local agencies is required prior to the issuance of any permits or land disturbance activities; and
- 4) placement of the minimum building setback lines on the Final Plat.

The motion carried unanimously.

Case #SUB2007-00014

Thelma Williams Subdivision

10165 McLeod Road

(South side of McLeod Road, 160'± West of McCovery Road Extension).
2 Lots / 1.0± Acre

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

After discussion a motion was made by Mr. Turner and seconded by Mr. DeMouy to waive Sections V.D.1. and V.D.3. of the Subdivision Regulations for Lot 1 and approve the above referenced subdivision subject to the following conditions:

- 1) **placement of a note on the final plat stating that Lot 1 is limited to one curb cut onto McLeod Road, that Lot 2 is limited to two curb cuts onto McLeod Road, and that the size, design and location of all curb cuts are to be approved by the Mobile County Engineering Department;**
- 2) **placement of a note on the final plat stating that no future subdivision of Lot 1 is allowed until additional frontage on a public street is provided;**
- 3) **placement of a note on the plat stating such, and provision of a letter from a licensed engineer certifying compliance with the City of Mobile's stormwater and flood control ordinances to the Mobile County Engineering Department and the Planning Section of Urban Development prior to the issuance of permits;**
- 4) **labeling of each lot with its size in square feet, or provision of a table on the plat with the same information; and**
- 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.**

The motion carried unanimously.

Case #SUB2007-00015

Dykes Road Farmettes Subdivision, Lot 12, Resubdivision of

Southeast corner of Eliza Jordan Road South and Turmac Drive.

2 Lots / 2.6± Acres

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

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

- 1) **adjustment of the 25-foot minimum building setback line to reflect a future right-of-way width of Eliza Jordan Road of 50 feet, as measured from the centerline of the road;**
- 3) **placement of a note on the final plat stating that Lots 1 and 2 are limited to one curb-cut each onto Eliza Jordan Road, and that Lot 1 is allowed a**

- maximum of two curb-cuts onto Turmac Drive, with the size, design and location of all curb-cuts to be approved by the Mobile County Engineering Department;
- 3) placement of a note on the final plat stating that a letter from a licensed engineer certifying compliance with the City of Mobile's stormwater and flood control ordinances must be provided to the Mobile County Engineering Department and the Planning Section of Urban Development prior to the issuance of permits;
 - 4) labeling of each lot with its size in square feet, or provision of a table on the plat with the same information; and
 - 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.

The motion carried unanimously.

Case #SUB2007-00018

Pinto Island Industrial Park Subdivision

410, 530, and 660 Dunlap Drive

(All property on Dunlap Drive, South of the Pinto Pass Bridge, encompassing all of Pinto Island).

4 Lots / 545± Acres

Mr. Watkins recused from discussion and voting in this matter.

(Note: The original plat submitted illustrated the proposed 4-lot subdivision and a private street that bisected one of the lots, thereby actually making this a 5-lot subdivision. The applicant was made aware of this and agreed to submit a revised plat showing a subdivision of 5 lots.)

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

After discussion a motion was made by Mr. Turner and seconded by Mr. DeMouy to approve the above referenced 5-lot subdivision subject to the following conditions:

- 1) provision of an operation gate or security guard on Dunlap Drive, on the South side of Pinto Pass, prior to signing of the final plat;
- 2) Submission of documentation to verify that the ALDOT standard of the private road meets or exceeds the standard specified in the Subdivision Regulation;
- 3) compliance with Section VIII.E.2 of the Subdivision Regulations;
- 4) the submission of Administrative PUD applications for any new building (site built or modular), parking area, circulation drives, or major equipment;

5) approval from all applicable federal, state and local agencies be obtained prior to the issuance of any permit.

The motion carried unanimously.

Case #SUB2007-00010

Howells Ferry Development Subdivision

6055 Howells Ferry Road

(South side of Howells Ferry Road, 450' ± West of Hall Rd).

16 Lots / 4.1± Acres

Mr. Plauche stated that the staff recommended this application be held over.

Frank McFadden, engineer for the project, as well as Don Williams, owner of the property, were present in this matter. Mr. McFadden said that this application was previously approved several years ago, but had expired. He said Mr. Williams would give a history of the property.

Don Williams, 8275 Easley Road, explained that due to Hurricanes Ivan and Katrina, as well as an accident involving their project manager, they were delayed on all of their developments, including this subdivision which was originally approved in 2004. In the meantime approval had expired, and they were requesting approval of the same plan as previously approved.

Mr. McFadden further stated that there was an issue when this subdivision was first approved about connecting this subdivision street through to Princess Helen Road West. The staff was again recommending this connection, in accordance with Section V.B.1. of the Subdivision Regulations. Mr. McFadden said they felt this connection would create a thoroughfare through this subdivision between Howells Ferry Road and Overlook Road. There were many children that lived along Princess Helen Road West, and this connection would create a safety issue. Mr. McFadden also pointed out Donham Drive and Scottsdale Drive to the west, which were cul-de-sacs, and felt that not requiring those two subdivisions to be connected to the adjoining subdivision had set a precedent. There were also nine or ten other cul-de-sacs to the east of the subject property. Mr. McFadden said this subdivision was previously approved as submitted, and they again requested the same approval.

Mr. Watkins said he could understand why the applicant would not want to connect to Princess Helen Drive West, and asked why the staff wanted that connection.

Mr. Olsen stated that whenever there was an existing street stub the staff always recommended a connection to that existing stub. He recalled that when the subdivision was previously approved, the staff still recommended to the Commission that they require that connection. They contend that while it does provide access from Overlook to Howells Ferry, it was not a direct shot. It may allow the residents within the subdivision to pick whichever street they want to exit the subdivision. As far as actually

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creating a cut-through, however, Mr. Olsen said he was not sure it would generate additional traffic other than that within the subdivision. Additionally, the connection of a stub to the adjoining subdivision was a requirement of the Subdivision Regulations.

Mr. Plauche asked if the staff would recommend any conditions if the Commission chose to go ahead and vote on this application today.

Mr. Olsen said he did not have the previous file on hand, but he could simply say that they would require the conditions as placed on the previous approval, which they would enumerate in the letter of decision. He did not think the applicant or Mr. McFadden would have a problem with that.

Mr. Byrd and Mr. McFadden said they would accept the conditions of the previous approval.

Mr. Plauche asked if there was anyone else who wished to speak in this matter.

George Stephens, a resident of 5932 Heatherwood Court, stated that his house was downhill from the proposed subdivision and he was concerned that runoff from that property would come straight down on him. He said he had already had to build up his back yard to keep water from coming into his den. Mr. Stephens also felt there were too many lots in the proposed subdivision. The houses would be jammed up against one another. Although he did not know the price range of the proposed houses, Mr. Stephens said additional houses would bring additional children. He said he had a pool and already had a problem with children jumping the fences and using his pool when he was not at home, and the proposed subdivision would bring additional children into the neighborhood.

Mr. Olsen stated that in addition to the conditions required on the previous approval, the staff would like to add a requirement that the lot size be reflected on the plat for each lot, either on the lot or in a table. This was something the staff had started requesting, as it just makes it easier for the permitting process to verify site coverage.

Mr. Plauche said that zoning would not require any kind of fencing between residential and residential.

Mr. Olsen said that was correct.

Mr. McFadden said they agreed with the additional condition as stated by Mr. Olsen. He further stated that at the time of the previous approval they discussed some existing drainage issues due to the property being undeveloped. He pointed out that they had detention areas in the back southeast corner. He felt that, along with the road and drainage system being put in, should eliminate, or at least significantly reduce, Mr. Stephens' problem with runoff. Mr. McFadden said he recalled speaking to Mr. Stephens several years ago and explaining that in detail. With regard to the price of the proposed houses, Mr. McFadden said they would be in the \$150,000-\$160,000

range.

After discussion a motion was made by Mr. Watkins and seconded by Mr. DeMouy to approve the above referenced subdivision subject to the conditions set forth in the previous approval, as well as the following additional conditions:

- 1) **all common areas be indicated on the final plat with a note stating that the maintenance thereof is the responsibility of the property owners association; and**
- 2) **the size of each lot be shown either on the lot, or on a table on the plat.**

In further discussion Mr. Turner asked if the motion was to approve without the connection of the stub to Princess Helen Drive West.

Mr. Plauche said yes, the cul-de-sac would be allowed.

Mr. Miller asked if they should require some sort of vegetative buffer, since the street would back up to someone's back yard.

Mr. Olsen said that, generally, the staff does not recommend, nor does the Commission require, a buffer when a residential subdivision abuts a residential subdivision. The applicant, however, does show a fence on the plat.

There being no further discussion, Mr. Plauche called for the vote.

The motion carried unanimously.

Case #SUB2007-00020

Emerald Oaks Subdivision

West side of Demetropolis Road, 400'± North of Brookfield Drive North.

31 Lots / 12.5± Acres

Jerry Still, a resident of 5716 Marquee Court and developer of the proposed subdivision, stated that he had serious concerns about the potential problems that could result from the proposed tie-in with the subdivision to the west – Terrace Hills Subdivision – as recommended by the staff.. He felt increased traffic would affect both subdivisions. As a resident of the Regency Subdivision, Mr. Still noted the problem they have with cut-through traffic from Airport Boulevard to Grelot Road. The traffic count in Regency was an untold number that had nothing to do with the neighborhood or the residents themselves. Traffic was a major safety issue. The City had installed numerous traffic circles, traffic bumps, and stop signs as a means of deterring cut-through traffic, or to minimize the speed of the traffic, but none of those measures helped. Mr. Still pointed out that the proposed Emerald Oaks subdivision and the existing Terrace Hills Subdivision were positioned such that requiring a tie-in would result in increased traffic through this subdivision trying to get from Cottage Hill to Demetropolis, just to avoid the traffic backup at the intersection of both Cottage Hill and Demetropolis, and would

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be exposed to the same safety issues as Regency. He also pointed other similar problems at Edgefield Estates at the intersection of Hillcrest and Cottage Hill, and Dogwood Drive and Oakwood Road at the intersection of Airport and University. Mr. Still felt that it would stand to reason that future subdivisions near major intersections might get looked at a little differently so that these same kinds of situations might be avoided. Another issue of concern was illegal activities. He contended that the connection of subdivisions gives offenders an easy way out because they would not have to turn around in a cul-de-sac or back out. Mr. Still also noted the staff's comments about the impact this subdivision would have on Demetropolis Road, a Planned Major Street. The proposed subdivision of 30 lots could generate as many as 60 automobiles that may impact Demetropolis Road. The cut-through, however, could potentially bring that number up to about 200. Mr. Still asked that the City reconsider and allow Emerald Oaks Subdivision to be developed as submitted, rather than requiring a connection to the Terrace Hills Subdivision.

Since the staff had recommended the holdover of this application until the meeting of March 15th, Mr. Plauche asked if the staff would have any conditions if the Commission chose to act on this subdivision today.

Mr. Olsen said he did not have anything prepared, but would work on it and have something ready shortly. He suggested the Commission go on to the next application and come back to this later.

Mr. Turner asked if the major reason for the holdover was to revise the plat to show a connection to the subdivision to the west.

Mr. Olsen said there was also a concern about the buildable area on a couple of the lots because of the easement that cuts through the property; although he was just handed a drawing showing the footprints that would allow for those lots to be developed. There were also several other concerns for recommending the holdover, and he did not have conditions prepared before the meeting.

(After hearing the other applications on the agenda, Mr. Plauche asked Mr. Olsen if he had prepared the conditions on Emerald Oaks.)

Mr. Olsen said he had prepared the conditions, should the Commission chose to act on this subdivision today, which he read.

Asked if he was in agreement with the conditions read by Mr. Olsen, Mr. Still said he was.

After discussion a motion was made by Mr. Miller and seconded by Mr. Turner to approve the above referenced subdivision subject to the following conditions as stated by Mr. Olsen:

- 1) placement of a note on the final plat stating that lots adjacent to**

- Demetropolis Road shall be denied direct access to Demetropolis Road;**
- 2) placement of a note on the final plat stating that maintenance of all common areas shall be the responsibility of the property owners;**
 - 3) provision of a radius at the intersection of Demetropolis Road and the proposed street to be approved by Traffic Engineering;**
 - 4) all roads in the subdivision be constructed to City standards and dedicated to the City of Mobile;**
 - 5) placement of a note on the final plat stating that Lots 1, 7, 11, 17 & 30 are limited to one curb cut each; and**
 - 6) labeling of each lot with square footage, or provision of the same information in a table on the final plat.**

The motion carried unanimously.

Case #SUB2007-00016

Torrington Place Subdivision

9737 and 9891 Nursery Road

Southeast corner of Nursery Road and Snow Road North

54 Lots / 18.5+ acres

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

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

- 1) verification of the right-of-way width for Nursery Road, and correction of the plat if necessary;**
- 2) the dedication of right-of-way sufficient to provide 50-feet from the centerline of Snow Road, as depicted on the preliminary plat;**
- 3) the renaming of "parcel A" to "Lot 54;"**
- 4) placement of a note on the final plat stating that all lots and the main detention area, with the exception of lot 54, are denied direct access to Nursery Road and Snow Road North, that lot 54 is limited to one curb cut onto Snow Road North and one curb-cut onto Nursery Road, and that the size, design and location of all curb-cuts are to be approved by the Mobile County Engineering Department;**
- 5) labeling of all common areas, including the detention basins, and the placement of a note on the final plat stating that maintenance of the common areas is the responsibility of the subdivision's property owners;**
- 6) provision of a letter from licensed engineer certifying compliance with the City of Mobile's stormwater and flood control ordinances to the Planning Section of Urban Development prior to the signing of the plat;**
- 7) revision of the plat to label each lot in square feet, or provision of a table on the plat depicting the same information; and**
- 8) placement of a note on the final plat stating that a buffer, in compliance**

with Section V.A.7. of the Subdivision Regulations, shall be provided where the commercial properties adjoin residential property.

The motion carried unanimously.

Case #SUB2007-00021

Silver Pines Subdivision

South side of Silver Pine Road, ¼ mile West of Schillinger Road North.

153 Lots / 39.4± Acres

Mr. Plauche announced that this subdivision was recommended for holdover to the March 15th meeting, however, if anyone was present in this matter and wished to speak, they could do so now.

John Avent, 27154 Pollard Road, was present on behalf of the applicant. Mr. Avent said he was with Engineering Development Services and they concurred with the conditions as recommended by the staff. He also noted that the staff pointed out that there was a note on the plat indicating that a portion of the site was neither a lot nor a common area, but was simply noted as “dirt drive currently in use by others”. Mr. Avent said they wanted to make sure the staff and the Commission understood that they would not restrict that use. It was their understanding that that dirt drive had been there for some 60 years, and by rights of the land they probably already owned it, even though their deed covers the area in question. Mr. Avent asked that when they re-plat the stubouts, which was required by the staff, should they simply exclude the driveway area out of the subdivision, or should they deed it over to the adjacent property owners. He said the only way the adjacent owner could get to their house was through the corner of this property, and they did not want to restrict their access.

John Lawler, Assistant City Attorney, said he did not think they should exclude it, but should just include it on their plat, indicating what it is a prescriptive right-of-way.

Mr. Avent agreed. He also noted that they had a detention pond that was basically draining 17.8 acres directly to the west across that drive.

Mr. Plauche asked if anyone else wished to speak in this matter.

Ty Irby, of Ty Irby Realty, 15512 Schillinger Road, stated that he was present with his client, Mrs. Betty Kamphuis. Mrs. Kamphuis resides at 8151 Silver Pine Road, which would be the southwest corner of Silver Pine and the prescriptive road, or dirt drive. He said she was not opposed to the subdivision, but had two concerns: (1) the drainage; and (2) the driveway. Mrs. Kamphuis had used that drive for approximately 60 years. Mr. Irby said they realized the applicant was acknowledging that, but wanted to know how the Commission recommended dealing with that. Regarding the drainage, he said the subject property drained through her yard and comes down from the corner north of her house and down the west side of her house, and she was concerned about increased drainage. She was aware that there would be a detention pond, but wanted to make sure

she was not going to have a water problem in the future from that additional runoff.

Regarding the drainage, Mr. Olsen said that a note would be required on the plat stating that the applicant must provide documentation that the drainage facilities comply with City of Mobile stormwater ordinances prior to the signing and recording of the final plat.

Mr. Ibry said they understood it would have to be approved by City Engineering. He said he would get with the applicant and Mr. Olsen about the prescriptive easement.

Levon Turner, a resident of 1911 Granato Drive, said his home adjoined the bottom right corner of the proposed subdivision. Mr. Turner noted that they already had serious drainage problems. His driveway was washed out, and his neighbor's driveway had just been repaired. He also pointed out that the house at 1901 Granato had been flooded with 18-24 inches of water four times since that pond had been built. Mr. Turner was concerned that with additional drainage, they would really have problems.

Mr. Plauche said the application would be heldover to the March 15th meeting, but suggested that Mr. Turner get with the engineer and let him explain their proposals for drainage.

After discussion a motion was made by Mr. Plauche and seconded by Mr. DeMouy to holdover this application until the March 15th meeting to allow the applicant to revise the plan and illustrate the following:

- 1) **revision of the dedication along Silver Pine Road to reflect 20' from centerline;**
- 2) **resolution of issues relating to the "DIRT DRIVE CURRENTLY IN USE BY OTHERS"(to be labeled as "prescriptive right-of-way");**
- 3) **provision of street stubs to the East and West;**
- 4) **labeling of the islands as common areas; and**
- 5) **illustration of proposed phasing of the subdivision.**

The motion carried unanimously.

NEW SIDEWALK WAIVER APPLICATIONS:

Case #ZON2007-00193

Blankenship Enterprises

951 Yeager Court

(Northeast corner of Brossett Street and Yeager Court).

Request to waive construction of a sidewalk along Yeager Court.

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

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

The motion carried unanimously.

GROUP APPLICATIONS:

Case #SUB2007-00013 (Subdivision)

Old Shell-Sage Subdivision

3000 and 3006 Old Shell Road

(North Side of Old Shell Road, between North Sage Avenue and Columbia Street and extending Northward to the Illinois Central Railroad right-of-way).

2 Lots / 2.6± Acres

(Also see **Case #ZON2007-00187 (Rezoning) Marianna Mobil, LLC**
3000 and 3006 Old Shell Road – below).

Jerry Byrd, Byrd Surveying Company, was present along with Ron Williams, the applicant. Mr. Byrd said they were in agreement with the staff recommendations except for the recommendation of B-2 zoning on the front portion of property only (Lot A). Mr. Byrd said he was unaware at the time he drew up the plans that the applicant planned to build mini-warehouses on that back site. They planned proper lighting to be directed away from the residential on Columbia Street. Had he known of this beforehand, he could have drawn it on the plat. He also noted that in December 2005 this site was presented by someone else and it was recommended for approval of the whole site as B-2. The applicant today was requesting rezoning of both Lots A and B to B-2.

Mr. Olsen pointed out that mini-storage facilities require Planning Approval in a B-2 district, and if there were multiple buildings it would also require PUD approval. He said the reason the staff recommended maintaining the R-1 zoning on that rear portion was because all of the properties across Columbia Street, and the only property that would be across the street from that rear portion on Sage Avenue, were not only zoned R-1, single-family residential, but they were developed with viable R-1, single-family residential properties. The only access that would be available to that rear lot would be a curb cut to either Sage or Columbia directly in front of those residential properties. Regarding Mr. Byrd's reference to a previous application for this site, Mr. Olsen said that Nassar Gymnastics previously proposed a new gymnastics/swim club on this site. It was proposed to be accessed solely from Old Shell Road, and there were major buffer requirements that were placed on their approval to protect that particular development from the residential properties across Columbia and Sage Avenue. He said if the reason being given for the entire site at this point was for a mini-storage facility, then it may be more appropriate that this application be held over and the applicant submit those other applications so the Commission could review how those rear lots would access Sage or Columbia.

Mr. Plauche said that even if it were allowed on this site, they would still have to come back for PUD and Planning Approval on the back lot for the mini-storage.

Mr. Olsen said that was correct.

Mr. Byrd asked that if they were to agree to the recommendation as it was now, R-1 on the back and B-2 on the front, how long would they have to wait to come back to ask for B-2 on the rear, or B-1, whatever.

Mr. Lawler said they would not have to wait any time at all.

Mr. Olsen said that was correct, because it was not recommended for denial. The application was being amended at the Planning Commission meeting, so there would not be the six-month waiting period. Before coming back, Mr. Olsen suggested that the applicant take under major consideration the access to the rear property.

Mr. Byrd agreed.

Mr. Plauche asked if Mr. Byrd was okay with the staff recommendations.

Mr. Byrd said he was.

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

- 1) the completion of the rezoning process prior to the issuance of any permits;**
- 2) the dedication of sufficient right-of-way to provide 25 feet from the centerline of Columbia Street;**
- 3) the dedication of appropriate radii at the intersections, to be determined by City Engineering and Traffic Engineering;**
- 4) the depiction of the 25-foot building setback, measured from property lines after dedication;**
- 5) the placement of a note on the final plat stating that Lot A is denied direct access to Columbia Street, and is limited to one curb cut each to Sage Avenue and Old Shell Road, and that Lot B is denied access to Columbia Street and limited to one curb cut to Sage Avenue; and**
- 6) the placement of a note on the final plat stating that, where the site is adjacent to, or faces residentially developed property, a buffer must be provided, per Section V.A.7 of the Subdivision Regulations.**

The motion carried unanimously.

Case #ZON2007-00187 (Rezoning)

Marianna Mobil, LLC

3000 and 3006 Old Shell Road

(North Side of Old Shell Road, between North Sage Avenue and Columbia Street and

extending Northward to the Illinois Central Railroad right-of-way). Rezoning from R-1, Single-Family Residential District, B-2, Neighborhood Business District, and B-3, Community Business District, to B-2, Neighborhood Business District, to allow a convenience store with gas pumps.

(For discussion see **Case #SUB2007-00013 (Subdivision) -Old Shell-Sage Subdivision - 3000 and 3006 Old Shell Road** – above.)

After discussion a motion was made by Mr. Watkins and seconded by Mr. DeMouy to recommend to the City Council a change in zoning to B-2 for the front portion (Lot A) of the site only subject to the following conditions:

- 1) the dedication of sufficient right-of-way to provide 25 feet from the centerline of Columbia Street;
- 2) the dedication of appropriate radii at the intersections, to be determined by City Engineering and Traffic Engineering;
- 3) the provision and maintenance of a buffer where the site is adjacent to, or faces residentially zoned property;
- 4) the denial of direct access to Columbia Street, and limitation of the site to one curb cut each to Sage Avenue and Old Shell Road, size, location and design to be approved by Traffic Engineering; and
- 5) full compliance with all municipal codes and ordinances.

The motion carried unanimously.

Case #SUB2007-00017 (Subdivision)

Lone Oak Subdivision

911 Dauphin Street

(Southeast corner of Lebaron Street and Dauphin Street, extending South to Conti Street).

1 Lot / 2.4± Acres

Mr. Watkins recused from discussion and voting in this matter.

(Also see **Case #ZON2007-00191 (Planning Approval) - Lone Oak Properties, LLC - 911 Dauphin Street**; and **Case #ZON2007-00192 (Planned Unit Development) - Lone Oak Properties, LLC - 911 Dauphin Street** – below).

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

Mr. Miller commented that he felt this was a good idea, but he wanted to make sure it did not turn into something else. He noted that the staff recommended a condition that the use of the site for housing shall be limited to documented university students working / interning at the Riverview and Battle House Hotels.

Mr. Olsen stated that the property was currently zoned B-1, which would allow apartments by right, but with the dormitory that was proposed, there were also some building code issues that will limit the number of students that they can have in the dormitory.

Ellis Weiss, a resident of 9257 Gayfer Road Extension, Fairhope, Alabama, asked if he understood correctly that this involved the existing old building on the site, plus a new large building.

Mr. Olsen said that both buildings were existing. There was no new construction proposed on this site.

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

- 1) **revision of the plat to show the minimum building setback line adjusted to reflect a future right-of-way width of Dauphin Street of 50 feet, as measured from the centerline, per Section V.D.9. of the Subdivision Regulations;**
- 2) **placement of a note on the plat stating that the site is limited to one curb cut onto Dauphin Street and one curb-cut onto Conti Street, with the size, design and location to be approved by Traffic Engineering and to comply, if possible, with AASHTO standards;**
- 3) **placement of a note on the plat stating the following: *“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). Preservation status is to be given to the 80” Live Oak Tree located on the North side of Lot 1 and the 60” Live Oak Tree located on the West side of Lot 1. 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.”;***
and
- 4) **full compliance with all other municipal codes and ordinances.**

The motion carried unanimously.

Case #ZON2007-00191 (Planning Approval)

Lone Oak Properties, LLC

911 Dauphin Street

(Southeast corner of Lebaron Street and Dauphin Street, extending South to Conti Street).

Planning Approval to allow a dormitory facility for international students conducting internships at the Riverview and Battle House Hotels in a B-1, Buffer Business District.

Mr. Watkins recused from discussion and voting in this matter.

(For discussion see **Case #SUB2007-00017 (Subdivision) Lone Oak Subdivision - 911 Dauphin Street** – above; also see **Case #ZON2007-00192 (Planned Unit Development) Lone Oak Properties, LLC - 911 Dauphin Street** – below).

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

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

- 1) use of the site for housing shall be limited to documented university students working / interning at the Riverview and Battle House Hotels;
- 2) revision of the site plan to additionally depict a 6-foot high wooden privacy fence where the site abuts residential uses to the Southwest;
- 3) revision of the site plan to depict sidewalks on the site and linking to existing sidewalks along Dauphin and Conti Streets;
- 4) revision of the site plan to depict any dumpster storage facility, in compliance with Section 64-4.D.9. of the Zoning Ordinance;
- 5) placement of a note on the site plan stating that on-site lighting must fully comply with Sections 64-4.A.2. and 64-6.A.3.c. of the Zoning Ordinance;
- 6) placement of a note on the site plan / plat stating that the site is limited to one curb-cut onto Dauphin Street and one curb-cut onto Conti Street, with the size, design and location to be approved by Traffic Engineering and to comply, if possible, with AASHTO standards;
- 7) placement of a note on the site plan stating the following: *“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). Preservation status is to be given to the 80” Live Oak Tree located on the North side of Lot 1 and the 60” LivOak Tree located on the West side of Lot 1. 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.”*
- 8) completion of any approvals required from the Architectural Review Board for building renovations and site improvements;
- 9) provision of a revised site plan to the Planning Section of Urban Development prior to the signing of the final subdivision plat;
- 10) completion of the Subdivision process; and
- 11) full compliance with all other municipal codes and ordinances.

The motion carried unanimously.

Case #ZON2007-00192 (Planned Unit Development)
Lone Oak Properties, LLC
911 Dauphin Street

(Southeast corner of Lebaron Street and Dauphin Street, extending South to Conti Street).

Planned Unit Development Approval to allow 2 buildings on a single building site.

Mr. Watkins recused from discussion and voting in this matter.

(For discussion see **Case #SUB2007-00017 (Subdivision) - Lone Oak Subdivision 911 Dauphin Street** - above; also see **Case #ZON2007-00191 (Planning Approval) Lone Oak Properties, LLC - 911 Dauphin Street** – above.)

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

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

- 1) use of the site for housing shall be limited to documented university students working / interning at the Riverview and Battle House Hotels;
- 2) revision of the site plan to additionally depict a 6-foot high wooden privacy fence where the site abuts residential uses to the Southwest;
- 3) revision of the site plan to depict sidewalks on the site and linking to existing sidewalks along Dauphin and Conti Streets;
- 4) revision of the site plan to depict any dumpster storage facility, in compliance with Section 64-4.D.9. of the Zoning Ordinance;
- 5) placement of a note on the site plan stating that on-site lighting must fully comply with Sections 64-4.A.2. and 64-6.A.3.c. of the Zoning Ordinance;
- 6) placement of a note on the site plan / plat stating that the site is limited to one curb cut onto Dauphin Street and one curb-cut onto Conti Street, with the size, design and location to be approved by Traffic Engineering and to comply, if possible, with AASHTO standards;
- 7) placement of a note on the site plan stating the following: *“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). Preservation status is to be given to the 80” Live Oak Tree located on the North side of Lot 1 and the 60” Live Oak Tree located on the West side of Lot 1. 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.”*
- 8) completion of any approvals required from the Architectural Review Board for building renovations and site improvements;
- 9) provision of a revised site plan to the Planning Section of Urban Development prior to the signing of the final subdivision plat;
- 10) completion of the Subdivision process; and
- 11) full compliance with all other municipal codes and ordinances.

The motion carried unanimously.

Case #SUB2007-00019 (Subdivision)

Elmore Subdivision

3222 Spring Hill Avenue

(North side of Spring Hill Avenue, 280'± West of Western Drive).

1 Lot / 1.8± Acres

(Also see **Case #ZON2007-00194 (Planned Unit Development) - Elmore Family Properties - 3222 Spring Hill Avenue** – below).

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

After discussion a motion was made by Mr. Miller and seconded by Mr. Turner to 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 three curb-cuts to Spring Hill Avenue, with any changes to the size, design and location of the curb-cuts to be approved by Traffic Engineering, and conform to AASHTO standards;**
- 2) the placement of the 25-foot minimum building setbacks on the Final Plat; and**
- 3) provision of a revised PUD site plan to the Planning Section of Urban Development, prior to the signing and recording of the final plat.**

The motion carried unanimously.

Case #ZON2007-00194 (Planned Unit Development)

Elmore Family Properties

3222 Spring Hill Avenue

(North side of Spring Hill Avenue, 280'± West of Western Drive).

Planned Unit Development Approval to allow 2 buildings on a single building site.

(Also see **Case #SUB2007-00019 (Subdivision) - Elmore Subdivision 3222 Spring Hill Avenue** – above.)

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

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

- 1) revision of the site plan to depict compliance, with the tree and landscaping requirements of the Zoning Ordinance, to be coordinated with Urban Forestry;**

- 2) depiction of any dumpster or waste container storage location on the site plan;
- 3) approval of Traffic Engineering regarding the size, design, and location of any reduction of the existing curb-cuts onto Spring Hill Avenue;
- 4) completion of the Subdivision process; and
- 5) full compliance with all municipal codes and ordinances.

The motion carried unanimously.

OTHER BUSINESS:

There being no further business, the meeting was adjourned.

APPROVED: May 3, 2007

Victoria Rivizzigno, Secretary

Terry Plauche, Chairman

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