

**MOBILE CITY PLANNING COMMISSION MINUTES**  
**MEETING OF MARCH 1, 2007 - 2:00 P.M.**  
**AUDITORIUM, MOBILE GOVERNMENT PLAZA**

**Members Present**

Terry Plauche, Chairman  
Victoria L. Rivizzigno, Secretary  
Ann Deakle  
Nicholas Holmes, III  
Mead Miller  
John Vallas  
James Watkins, III

**Members Absent**

Clinton Johnson  
William DeMouy  
Roosevelt Turner

**Urban Development Staff Present**

Richard L. Olsen  
Deputy Director of Planning  
Bert Hoffman, Planner II  
Mae Sciple, Secretary II

**Others Present**

John Lawyer, Assistant City Attorney  
Bob Vogtner, City Engineering  
Jennifer White, Traffic 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.

**HOLDOVERS:**

**Case #SUB2006-00272**

**Creekwood Subdivision, Unit III**

South terminus of Ridgeline Drive.

27 Lots / 36.0± Acres

Don Coleman, Rester and Coleman Engineers, was present on behalf of the applicant and requested that this application be held over.

Mr. Olsen said Mr. Coleman spoke with him before the meeting and said that he was going to request a holdover. He told Mr. Coleman that it would have to be held over to the April 5<sup>th</sup> meeting.

After discussion a motion was made by Mr. Plauche and seconded by Mr. Miller to holdover this application to the April 5<sup>th</sup> meeting, at the applicant's request.

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The motion carried unanimously.

**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

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

Matt Orrell, with Polysurveying, was present on behalf of the applicant and requested that this application be held over to the April 5<sup>th</sup> meeting.

After discussion a motion was made by Mr. Plauche and seconded by Dr. Rivizzigno to holdover this application to the April 5<sup>th</sup> 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.

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

Matt Orrell, with Polysurveying, was present on behalf of the applicant and requested that this application be held over to the April 5<sup>th</sup> meeting.

After discussion a motion was made by Mr. Plauche and seconded by Dr. Rivizzigno to holdover this application to the April 5<sup>th</sup> meeting at the applicant's request.

The motion carried unanimously

**EXTENSIONS:**

**Case #SUB2006-00012 (Subdivision)**

**Breydon Square Subdivision**

South side of Old Shell Road, 270'± East of Wilroh Drive East.

15 Lots / 3.3± Acres

Mr. Plauche stated that this application was recommended for an extension of approval.

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

The motion carried unanimously.

**Case #ZON2006-00188 (Planned Unit Development)**

**Breydon Square Subdivision**

South side of Old Shell Road, 270'± East of Wilroh Drive East.

Planned Unit Development Approval to allow reduced lot widths, sizes, and setbacks in a single-family residential subdivision.

Mr. Plauche stated that this application was recommended for an extension of approval.

After discussion a motion was made by Mr. Plauche and seconded by Dr. Rivizzigno to grant a one-year extension of approval for the above referenced Planned Unit Development.

The motion carried unanimously.

**Case #SUB2002-00030 (Subdivision)**

**Hamilton Bridges Subdivision (formerly Terrell Estates Subdivision)**

South side of Airport Boulevard, 600'± East of the South terminus of Flave Pierce Road, extending to the West side of Lowry Road.

207 Lots / 75.0± Acres

Mr. Plauche stated that this application was recommended for an extension of approval.

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

The motion carried unanimously.

**Case #SUB2002-00151 (Subdivision)**

**Blackwell Oaks Subdivision**

South side of Blackwell Nursery Road South, ½ mile± West of Snow Road.

65 Lots / 23.0± Acres

Mr. Plauche stated that this application was recommended for an extension of approval.

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

The motion carried unanimously.

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**NEW SUBDIVISION APPLICATIONS:**

**Case #SUB2007-00029**

**Chen Subdivision**

162 Mobile Street, 2667 and 2663 Springhill Avenue  
(Northeast corner of Mobile Street and Springhill Avenue).  
1 Lot / 0.6± Acre

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

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

Jeanette Burroughs stated that she owned property at the corner of Spring Hill Avenue and Mobile Street, and just wanted to get some information on what was proposed for this site.

Mr. Olsen explained that currently there was a restaurant on the corner, and behind that a salon, which were metes and bounds parcels. The applicant was combining the two lots to make a single lot of record. He said Ms. Burroughs was notified because she was an adjacent property owner. The subdivision would not affect Ms. Burroughs' property.

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

- 1) the dedication of right-of-way sufficient to provide 50 feet from the centerline of Mobile Street; and**
- 2) placement of a note on the final plat stating that the development is allowed the existing curb cuts to Mobile Street and Springhill Avenue; however, if the site is redeveloped the size, location and design of any curb cuts must be approved by Traffic Engineering (and ALDOT if Springhill Avenue), and in conformance with AASHTO standards.**

The motion carried unanimously.

**Case #SUB2007-00031**

**Holladay Subdivision**

3316 Scenic Place  
(North side of Scenic Place at its West terminus).  
1 Lot / 0.8± Acre

Mr. Plauche stated that there was a typo at the end of recommended condition #2, in that after the word "Scenic Place" was actually where condition #3 started, and then where it showed #3 should actually be #4.

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The applicant was present and concurred with the staff recommendations.

There was no one present in opposition.

After discussion a motion was made by Mr. Watkins and seconded by Mr. Vallas to waive Section V.D.3 of the Subdivision Regulations and approve the above referenced subdivision subject to the following conditions:

- 1) dedication of sufficient right-of-way to provide a minimum of 25' from centerline of Scenic Place;**
- 2) revision of the plat to depict the 25-foot minimum building setback from Scenic Place;**
- 3) labeling of the lot with its size in square feet, or provision of a table on the plat with the same information; and**
- 4) placement of a note on the final plat stating that approvals from all applicable federal, state and local agencies shall be obtained prior to the issuance of permits.**

The motion carried unanimously.

**Case #SUB2007-00022**

**Law Estates Subdivision**

**North side of Fordham Road, ¼ mile+ West of Schillinger Road.**

**2 Lots / 6.1+ 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. Rivizzigno and seconded by Mr. Holmes to approved 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 are allowed one curb cut each to Fordham Road, with the size, design and location to be approved by County Engineering;**
- 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;**
- 3) provision of a certification letter from a licensed engineer to the Planning Section of Urban Development and the Mobile County Engineering Department, certifying that the stormwater detention and drainage facilities comply with the City of Mobile stormwater and flood control ordinances prior to the signing and recording of the final plat; and**

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- 4) **the correction of the 25-foot minimum building setback line for Lot 1 on the Final Plat.**

The motion carried unanimously.

**Case #SUB2007-00026**

**Tillman's Corner Medical Park Subdivision**

**5320 U.S. Highway 90 West**

**(Northwest corner of U.S. Highway 90 West and Dozier Lane).**

**2 Lots / 2.3+ 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. Holmes to approve the above referenced subdivision subject to the following conditions:

- 1) **placement of a note on the Final Plat stating that the size, location and design of all curb cuts to the service road are to be approved by the Mobile County Engineering Department and ALDOT;**
- 2) **placement of a note on the final plat stating that access to Dozier Lane is limited to one curb cut for each lot, size location and design to be approved by the Mobile County Engineering Department;**
- 3) **provision of a certification letter from a licensed engineer to the Planning Section of Urban Development and the Mobile County Engineering Department, certifying that the stormwater detention and drainage facilities comply with the City of Mobile stormwater and flood control ordinances, prior to the signing and recording of the final plat; and**
- 4) **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 #SUB2007-00027**

**Hancock Addition to Highland Park Subdivision**

**50 Holly Street South**

**(Southeast corner of Cedar Street and Holly Street South).**

**2 Lots / 0.4+ Acres**

Mr. Plauche stated that there was a change in the recommendations for this subdivision.

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Mr. Olsen explained that condition #1 was in error, and should read, “that Lot A be limited to the existing curb cut to Cedar”, and “Lot B be limited to one curb cut, size, location and design to be approved by Traffic Engineering”.

The applicant was present and concurred with the staff recommendations.

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

- 1) the placement of a note on the final plat stating that Lot A is limited to the existing curb cut to Cedar Street, and Lot B is limited to one curb cut, with the size, design and location to be approved by County Engineering;**
- 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;**
- 3) provision of a certification letter from a licensed engineer to the Planning Section of Urban Development and the Mobile County Engineering Department, certifying that the stormwater detention and drainage facilities comply with the City of Mobile stormwater and flood control ordinances prior to the signing and recording of the final plat; and**
- 4) the placement of the 25-foot minimum building setback lines on the Final Plat.**

The motion carried unanimously.

**Case #SUB2007-00028**

**Sunset Ranch Subdivision, VOA Addition to**

1400 Azalea Road

(West side of Azalea Road, 730'± North of Halls Mill Road).

1 Lot / 4.1± 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. Rivizzigno and seconded by Mr. Holmes to approve the above referenced subdivision subject to the following conditions:

- 1) the deletion of the temporary construction easements shown on Moore’s Creek;**
- 2) the area shown to be dedicated to the City should be revised to delete this text;**

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- 3) 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; and**
- 4) full compliance with all other municipal codes and ordinances.**

The motion carried unanimously.

**Case #SUB2007-00023**

**Braceland Subdivision**

1451 Harvey Hill Road

(West side of Harvey Hill Road, 105'± North of Howells Ferry Road, and extending to the North terminus of Harvey Hill Road).

3 Lots / 20.0± Acres

Mr. Plauche asked if the applicant was in agreement with the staff recommendations.

Nita Lancaster, applicant, stated that her father originally owned 40 acres, which was inherited by his children in 1979 when he passed away. She said it was his desire that the property to be divided into 20-acre sections. Twenty acres went to her sister, she was given 10 acres, and each of her two children were given five acres. Mrs. Lancaster said she was told that she had to create a subdivision in order to divide her property. She was not aware until she got to the meeting today that she would be required to dedicate right-of-way sufficient to provide 30 feet from the center of Harvey Hill Road. Mrs. Lancaster said that Harvey Hill Road was cut many years ago by Mobile County to get back to Mr. Hill's dairy. The road was cut straight through the pines. It was not on a line. She said her parents before her paid property tax on that property that is referred to as a prescriptive right-of-way. According to the staff report she would be required to provide 30 feet of right-of-way. She did not think the road was more than 15 feet wide, and she did not plan to give up 15 more feet. Mrs. Lancaster said that there was land on either side of her that was landlocked. It was owned by someone that now lives out of state, and they have never been down to tend to the property. It had never been maintained in any way. She said she and her husband take care of their property and trim the ditches back. They do not bother the County to maintain the road unless it gets bad, and then they ask them to come grade it and put some shells on it. Mrs. Lancaster felt that if they wanted a 30-foot right-of-way, they should put it on a line and not put it all on her. All she wanted to do was give her child her rightful piece of property so she could build a house. It had cost her \$1200 to have a plan drawn up.

Mr. Plauche asked if the staff had any comments.

Mr. Olsen said that the Subdivision Regulations require that to approve a subdivision, all lots must have frontage on a dedicated and maintained public right-of-way. Prescriptive right-of-way or prescriptive roadway is not dedicated. That was the reason the staff was requiring the dedication of 30 feet for Harvey Hill Road. If the

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property to the east on the other side of the roadway were to come in for subdivision, they would also be required to dedicate 30 feet. Mr. Olsen explained that the reason for a 60-foot right-of-way in this instance was because it was not a curb and gutter road. It was not improved to County standards as far as a paved road.

Mr. Plauche said he understood there would be one, 10-acre parcel and two, 5-acre parcels.

Mr. Olsen said that was correct. In the future, however, if someone wanted to resubdivide one of those properties, because of the substandard nature, as evidenced by the testimony of Mrs. Lancaster, allowing additional lots would not be appropriate and would not comply with the Subdivision Regulations.

Mr. Watkins asked Mr. Lawler if he understood correctly that property divided by a will approved in Probate Court was considered a legal lot of record.

Mr. Lawler said that was correct. Property divided in an estate by the Probate Court was not subject to the Subdivision Regulations.

Mr. Watkins asked Mrs. Lancaster if her father had a will that was probated.

Mrs. Lancaster said he did not. The will had been misplaced.

Mr. Orrell, with Polysurveying, was present representing Mrs. Lancaster's daughter. Mr. Orrell said that when they divided this land two years ago, Mrs. Lancaster was told that there would be no building permits issued unless they came before the Planning Commission because there was no will. Her daughter wanted to build a house on her property. Mrs. Lancaster did not understand why, because she was in the County and not the City, she had to come before the Planning Commission. Mr. Orrell said he was working with Mrs. Lancaster's daughter, and she was fine with the recommendations.

Mrs. Lancaster said that there were old plats that showed that Mr. Tyree Prentiss had a 30-foot right-of-way. There was an extra stake out there because from day one it had been stated that if there was a right-of-way ever opened, a 30-foot right-of-way, it would split his garage, which was no longer there. She thought, however, that there was a stake there indicating a 30-foot right-of-way off of Howells Ferry Road that would split it all the way down the other property and her property.

Mr. Orrell said that basically what they had was a prescriptive right-of-way that the County had maintained for 25 or 30 years. It was ditch bank to ditch bank, owned by the County. It was not the Lancaster's property. The County was asking for 30 feet from the center line of the road. Mr. Orrell said he had discussed this with Pat Stewart of the County Engineering Department, and this was typically what they do on every subdivision.

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Mr. Vallas asked Mr. Orrell if any consideration was given to possibly creating a flag-shaped lot.

Mr. Orrell said the problem was that the Lancaster's did not own the road. He explained that there was a prescriptive right-of-way that touches Howells Ferry Road. They did not own frontage on the road, so a flag-shaped lot would not be possible.

Mr. Stewart said the County had no actual deed of rights to Harvey Hill Road. They had surface rights. They would not sign any plat on any prescriptive right-of-way unless they get sufficient dedication.

Mrs. Lancaster asked if the Commission could waive the right-of-way requirement.

Mr. Vallas said they could do that, but then she would not be able to get a building permit because there would be no access to the lots.

Mr. Plauche said the Commission would discuss this further in deliberations session. He asked if there was anyone else who wished to speak in this matter.

True Nicholson, a resident of 2252 Ashland Place Avenue, said she did not own property adjoining this site, but a friend, Lori Kennedy, owned property at the end of Harvey Hill Road. Her property barely touches the road. Ms. Nicholson said she owned, with Ms. Kennedy, 10 acres to the east. Ms. Kennedy had lived at this location for 30 years and her only access was via Harvey Hill Road. She said it had been a source of contention because Mrs. Lancaster's property line was on the east side of the road. She did not think it had ever been dedicated to the County. She felt it should be dedicated, and the County needed to maintain it and grade it when necessary. Ms. Nicholson said that if Mrs. Lancaster did actually own east of the road like she said she does, then the parcel to the east was landlocked because they do not touch the road. She said she had come down and was shown a plat that she thought showed the 30 feet being from Mrs. Lancaster's east line over to 30 feet, which basically encompasses the whole road, and it did not start at the center line of Harvey Hill Road as shown on the plat today. She said if that was the case, if they went 30 feet they would still be going partly over to the other property owners land. That property, east of Mrs. Lancaster, does not come all the way out to Howells Ferry Road. Ms. Nicholson said she was not opposed to the subdivision, but felt the road issue was of extreme importance and asked for some clarification.

Mr. Olsen stated that based on the plat before the Commission, the 12-foot gravel drive, which was Harvey Hill Road, was entirely within the property in question. The dedication of 30 feet would include all of what was now the 12-foot Harvey Hill Road. If the property on the east side of the subject property came in for subdivision, they would have to dedicate additional right-of-way so that Harvey Hill at some point in time could be constructed fully to County standards.

Ms. Nicholson said that if Mrs. Lancaster's dedication started at the 30-foot point,

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they would at least actually touch the County road at that point. They could not develop on that, but they would actually at that point have access to a County road, which they currently did not have.

Mr. Olsen said that was correct, because that would become public right-of-way, and the entire west line would front the dedicated right-of-way.

Mrs. Lancaster concurred.

Mr. Watkins asked if the 12-foot right-of-way touched Mrs. Lancaster's property line the entire length of the 12-foot right-of-way.

Mr. Olsen said it ran at an angle, and estimated that approximately 1,000 feet at the very north end was right on the east property line. Based on the survey from Mr. Orrell, everything else was completely within the property in question.

Mr. Stewart said the County required dedication from the center line of the exiting road. There was no reason for the County to have to bear the expense of building up another roadbed when they already had a good start.

Ms. Nicholson asked if she understood that the County wanted the center line of Harvey Hill Road west 30 feet.

Mr. Plauche said it would be east and west. Whatever they own. It would be a 60-foot right-of-way when finished. The other property owner would also have to give 30 feet.

Mr. Orrell said he would suggest that Mrs. Lancaster dedicate a 30-foot strip off the east side of her property, then when the next owner comes in he would have to dedicate 30 feet off of his side. You would then have a 60-foot road, and Mrs. Lancaster would not be giving from the center of the road.

Mrs. Lancaster agreed.

Mr. Stewart said the County could live with that subject to any drainage easement that may be needed, which would be determined at the time the plat is submitted.

In deliberations session a motion was made by Mr. Miller to approve the above referenced subdivision subject to the dedication of sufficient right-of-way to provide 30 feet from the east property line.

In further discussion Mr. Stewart asked if, at the time the lot catty-corner from this site on the corner of Howells Ferry Road came in, they required the dedication from the center line, or did they just take 30 feet from it period. If it was from the center line, it would throw the center line of the road off.

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Mr. Olsen said he recalled that they just required dedication of 30 feet, because it would have done the same thing to them. It would have left property on the other side of the road.

Mr. Stewart said there were also drainage problems at this location, and Mrs. Lancaster had not been at all cooperative with the County in this regard. The County would need some drainage easement dedicated to them, which they would determine when the plat is brought in.

Mr. Miller amended his motion, seconded by Mr. Vallas, to approve the above referenced subdivision subject to the following conditions:

- 1) dedication of sufficient right-of-way to provide 30 feet from the East property line;**
- 2) the placement of a note on the Final Plat stating that no further resubdivision until Harvey Hill Road is constructed to County standards;**
- 3) provision of a certification letter from a licensed engineer to the Planning Section of Urban Development, certifying that the stormwater detention and drainage facilities comply with the City of Mobile stormwater and flood control ordinances, prior to the signing and recording of the final plat;**
- 4) labeling of all lots with size in square feet, or provision of a table with the lot size information on the plat;**
- 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;**
- 6) the placement of the 25-foot minimum building setback line on the Final Plat; and**
- 7) the provision of drainage easements as necessary, to be determined by County Engineering.**

In further discussion Mr. Holmes asked if the easement should be developed before the signing of the final plat.

Mr. Stewart said the easement would have to be shown on the final plat.

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

The motion carried unanimously.

**Case #SUB2007-00024**  
**Coffman Estates Subdivision**  
6915 Dauphin Island Parkway

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(East side of Dauphin Island Parkway, 390' + North of Hammock Road).  
3 Lots / 5.0+ Acres

Jerry Byrd, Byrd Surveying Company, was present on behalf of the applicant. Mr. Byrd asked for clarification of condition #1 of the staff recommendations.

Mr. Olsen said it should be a 35-foot setback from Dauphin Island Parkway, because the right-of-way at that point was only 30 feet.

Mr. Byrd said that was fine.

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

- 1) **the provision of a 35' setback along Dauphin Island Parkway (75 feet from the centerline of Dauphin Island Parkway), in accordance with Section V.D.9.;**
- 2) **provision of a certification letter from a licensed engineer to the Planning Section of Urban Development, certifying that the stormwater detention and drainage facilities comply with the City of Mobile stormwater and flood control ordinances, prior to the issuance of any permits;**
- 3) **labeling of all lots with size in square feet, or provision of a table with the lot size information on the plat;**
- 4) **placement of a note on the Final Plat stating that any lots which are developed commercially and adjoin residentially developed property must provide a buffer, in compliance with Section V.A.7. of the Subdivision Regulations; and**
- 5) **the correct placement of the 25-foot minimum building setback line for Lot 3 on the Final Plat.**

The motion carried unanimously.

**NEW SIDEWALK WAIVER APPLICATIONS:**

**Case #ZON2007-00213**

**Palisades Apartments (M. Don Williams, Agent)**

151 Foreman Road

(East side of Foreman Road at the East terminus of Reichleiu Drive).

Request to waive construction of a sidewalk along Foreman Road.

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

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

The motion carried unanimously.

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**Case #ZON2007-00214**

**Tony Cooper (M. Don Williams, Agent)**

900 Hillcrest Road

(Northwest corner of Hillcrest Road and Timbers Drive).

Request to waive construction of a sidewalk along Hillcrest Road and Timbers Drive.

Mr. Plauche announced that this application was recommended for holdover to the meeting of April 5<sup>th</sup>, but if anyone would like to speak in this matter they could do so at this time.

No one came forward to speak.

After discussion a motion was made by Mr. Plauche and seconded by Mr. Miller to holdover this request until the April 5<sup>th</sup> meeting, with any additional information to be submitted no later than March 12<sup>th</sup>.

The motion carried unanimously.

**NEW PLANNED UNIT DEVELOPMENT APPLICATIONS:**

**Case #ZON2007-00398**

**Paul Persons**

4474 Halls Mill Road

(North side of Halls Mill Road, 4/10 mile± West of the North terminus of Riviere du Chien Road).

Planned Unit Development Approval for multiple buildings on a single building site.

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

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

- 1) the provision of a protection buffer along the West side property line in compliance with Section 64-4.D. of the Subdivision Regulations if the adjacent property is developed as Single-Family residential; and**
- 2) full compliance with all municipal codes and ordinances.**

The motion carried unanimously.

**Case #ZON2007-00408**

**American Tennis Courts**

West side of Bolton's Branch Drive, 620'± South of Halls Mill Road.

Planned Unit Development Approval to allow an office/warehouse building, above-ground fuel tanks, and four containerized storage units on a single building site.

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

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

- 1) compliance with all conditions of the original approval (December 7, 2006), with the exception of conditions 1 (approval by Board of Zoning Adjustment), 4 (no above ground fuel tanks), and 5 (no heavy equipment);**
- 2) the above ground fuel tanks be in full compliance with NFPA requirements and Mobile City Code requirements, to be reviewed and approved by Mobile Fire Department; and**
- 3) full compliance with all municipal codes and ordinances.**

The motion carried unanimously.

**Case #ZON2007-00410**

**Clearbrook, LLC**

4071 Halls Mill Road, 1521 and 1525 Azalea Road

East side of Azalea Road, 300'± South of Halls Mill Road.

Planned Unit Development Approval to allow an office building, light manufacturing building, equipment storage, vehicle storage, guard house, and model unit displays on a single building site, to be developed in phases.

Mr. Plauche recused from discussion and voting in this matter. Mr. Watkins chaired the meeting for the hearing of this application.

Mr. Watkins stated that this application was recommended for holdover until the April 5<sup>th</sup> meeting, but if anyone wished to speak in this matter, they could do so now.

Bruce Knodel, architect for the owner, concurred with the recommendation for holdover.

After discussion a motion was made by Dr. Rivizzigno and seconded by Mr. Miller to holdover this plan until the April 5th meeting to allow the applicant to address the following:

- 1) Provide information regarding building sizes (square footage is needed for parking calculations);**
- 2) provide numbers of employees for the warehousing/light manufacturing buildings (also needed for parking calculations);**
- 3) Provide dimensions for buildings, parking stalls, aisles, drives and internal circulation road for tractor trailers;**
- 4) illustrate dumpster location, access and screening on site plan;**
- 5) illustrate buffer fence adjacent to all residentially zoned property; and**

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**6) illustrate existing curb cuts that are not to be used as being removed.**

The motion carried unanimously.

**NEW ZONING APPLICATIONS:**

**Case #ZON2007-00324**

**M.Y.M.S. Inc.**

(Northwest corner of Dauphin Island Parkway and Webb Avenue).

Rezoning from B-1, Buffer Business District to B-2, Neighborhood Business District, to allow a multi-tenant retail shopping center.

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

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

Griffin Shreves stated that he was a resident of 2404 Octavia Drive and attended the Fulton Heights United Methodist Church, which was located on Dauphin Island Parkway 100 feet from the subject property. Mr. Griffin said he opposed this change in zoning, as it would allow unacceptable use of the area to include bars and night clubs. The neighborhood was opposed to it, as well as the church. Mr. Griffin said the children in the neighborhood used the church playground and they did not need to be subjected to people who were drinking and driving in this area. He said the members of the Martin Place Community Action Group were opposed to this application, but could not be present because they had to work. If this rezoning was approved, Mr. Griffin said that all efforts should be made to make sure the traffic would not be allowed to come onto Webb Avenue. He contended that if this property were rezoned, the church would become a parking lot for the lounge. He said the site was not large enough for anything else. He noted a dollar store a block away, and a grocery store within of block of this area. Mr. Griffin also noted an existing drainage problem in this area, causing the church parking lot to flood after a heavy rain. He contended that to remove more grassed area would increase the amount of water that flowed through the church property. He requested that some type of retaining pond be designed for whatever project was built on this land. Mr. Griffin asked that the Commission deny this request for rezoning.

Mr. Vallas asked Mr. Griffin if he was opposed to any retail zoning if it was not used for a lounge or alcohol sales.

Mr. Shreves said he was not opposed to any business that would not sell alcohol on the premises.

Mr. Vallas said the existing building looked to be about 12,000 square feet, and he did not see it being used for a lounge.

Mr. Olsen pointed out that, based on the site plan, there was a 9,000 square foot

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building on the site. For it to be used for a lounge or even a restaurant, it would require 90 parking spaces. At 9,000 square feet, for retail use, 30 parking spaces would be required. He thought there were 31 or 32 spaces. As far as meeting the requirements for any type on on-premise consumption of alcohol, Mr. Olsen said it would not meet the standards of the Zoning Ordinance and therefore would not be approved.

Mr. Vallas noted that the site would be denied access to Webb Avenue, and it appeared that it would not meet the requirements for a restaurant or lounge.

Mr. Shreves said he was also concerned that if the property was rezoned to B-2, down the road the owner of the property could buy the property next door and could build any size lounge they wanted on that corner, and they would use the church parking lot to park. He pointed out that there was a gas station across the street from this site, and people would buy liquor and then come over to the church and sit on the ground and drink it and throw the bottles down. Mr. Shreves asked that the Commission consider the impact this would have on this residential neighborhood, and especially the children.

Mr. Watkins asked if the owner of the subject property acquired the adjacent property and wanted to build a building across both property lines, would they have to come back to the Commission.

Mr. Olsen said they would first have to apply for a subdivision. He pointed out on the map that the property immediately adjacent to the north was currently zoned B-2; however, it was not large enough to provide the required parking that would be necessary for this site to become a lounge. The property adjacent to the north of that was currently zoned B-1. If they were to acquire that property, they would have to come back to the Commission to have the property rezoned and resubdivided to include it in the property. Going back to the parking issue, Mr. Olsen noted that the fact that the 30 or 32 spaces for the 9,000-square foot building occupied the entire width of that property, it would be very difficult to get another 60-plus parking spaces on those two small properties to the north. He felt that would be very difficult to accomplish. Mr. Olsen offered one consideration, although he did not know if the applicant would be amendable to it, or if it would satisfy all of the uses proposed for the retail center, but one consideration would be to rezone the property to LB-2. LB-2 would not allow a lounge, but it would allow possibly a restaurant that served wine with food.

Mr. Plauche asked if the Commission had the authority to limit the use in a certain zoning classification.

Mr. Olsen said if the owner provided voluntary use restrictions, those could be made a part of the rezoning amendment. The staff did not encourage that, however, because for one thing it was an enforcement nightmare.

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Mr. Vallas felt it was clear that nothing the Commission did today would allow a lounge on this site. That would require the applicant to come back before the Commission at least once, and then they would have to go to the City Council for the rezoning and a liquor license.

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

Thad Chesser, pastor of the Fulton Heights United Methodist Church for 11 years, complained about a drain pipe that comes off of the subject property and drains into Webb Avenue. He felt that was part of their drainage problem. The pipe had been covered with roofing shingles, and every once in awhile somebody tries to exit that property onto Webb Avenue where that drain is located and has to call a wrecker to come get them out of that hole. Pastor Chester said he understood that there would be four individual businesses on the site, and asked what kind of businesses they would be. He questioned the need to change the zoning from B-1 to B-2, as they way he read the ordinance, they could do most anything in B-1 that they could in B-2, other than have a lounge or a restaurant that sold alcoholic beverages.

Mr. Olsen explained that B-1 zoning was primarily professional offices, although it does allow some retail. The site in question was proposed for a multi-tenant retail development. He was not sure how many retail tenants there would be, and it really depended on the applicant or the developer and how they finish out the space. With regard to the square footage and parking ratio, Mr. Olsen said that any type of food or beverage establishment is considered at a ratio of one parking space per 100 feet of gross floor area, which was why that would require 90 parking spaces. For retail uses, the ratio was one parking space per 300 square feet of gross floor area. That was the reason the 30 spaces would be allowable for a retail development, and since this plan only provides 30-31 spaces, the entire development would have to be retail.

Mr. Plauche asked if that retail could sell alcohol at that same ratio if it was zoned B-2.

Mr. Olsen said it would only be allowed if it was off-premise, and that would have to be approved by the City Council.

Mr. Plauche asked Mr. Olsen to explain "off-premise".

Mr. Olsen said "off-premise" meant that it could not be consumed on the property on which it was purchased.

Pastor Chesser contended they could purchase the alcohol and walk across the street to the church and throw it in the church yard. He also expressed concern that the building would come right up to the edge of the property on Webb Avenue, and asked if there would be some kind of buffer required. Presently there were some trees on the property that helped to buffer some things from the parking lot.

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Mr. Plauche said the Code requires that when a commercial property is adjacent to residential property, either a vegetative buffer or a 6-foot fence be required.

Mr. Vallas said that they probably had not done their engineering yet, but it appeared that the area south of the building was proposed for detention, and it was set back well north of Webb Avenue.

Mr. Olsen said that was correct. Because the site was zoned commercially and the church was located on residentially zoned property, there would have to be a buffer of a hedge or fence set back five feet from the from the property line where the parking lot is located to screen it from the church. That was a requirement of the Zoning Ordinance.

Regarding drainage concerns, Mr. Olsen said the site will have to meet the requirements of the City stormwater drainage ordinance, which means that water is not going to be able to leave the property any faster post-development than it does pre-development. The applicant would be required to provide some type of detention facility on the site, and then it would go into a City drainage structure.

Pastor Chester said he hoped whatever drainage structure they required would work better than what they have now, because every time it rains their parking lot floods. The ditch overflows and water flows down Webb Avenue and through the church property. The City only comes out about twice a year to clean the ditch.

Mr. Vallas commented that the problem may actually be due to inadequate drainage of the church site, and may not be coming from the adjoining property.

There being no further questions from the Commission, Mr. Plauche asked if the applicant would like to respond.

Mr. Byrd said if it could be done, the applicant would agree to a voluntary use restriction against any alcoholic beverages being sold on this property.

Mr. Olsen said that could be done, if the Commission chose to accept it. It would require that the applicant complete the form for the voluntary use restriction and have it notarized and submitted as soon as possible so the staff could calculate the legal ad fees, because it would have to be included in the legal ad in their packet to the City Council for appropriate advertising.

In deliberations session Mr. Miller asked if it was necessary to add the provision offered by Mr. Byrd.

Mr. Olsen said it was strictly up to the Commission whether to accept it or not.

After discussion a motion was made by Mr. Miller and seconded by Mr. Vallas to recommend this change in zoning to the City Council subject to the following

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conditions:

- 1) dedication of sufficient right-of-way to provide 50' from centerline of Dauphin Island Parkway, if necessary;**
- 2) dedication of sufficient right-of-way for a radius at the intersection of Dauphin Island Parkway and Webb Avenue, to be determined by City Engineering;**
- 3) the site be limited to one curb cut to Dauphin Island Parkway, size, location and design to be approved by Traffic Engineering and ALDOT;**
- 4) submission, approval and completion of the subdivision process;**
- 5) provision of a 6' privacy fence along the rear property line;**
- 6) subject to voluntary conditions and use restrictions offered by the applicant; and**
- 7) full compliance with all municipal codes and ordinances.**

In further discussion Ms. Deakle asked if the voluntary use restriction would be handled administratively.

Mr. Olsen said the staff would attach the voluntary use restriction to the packet to be advertised.

Mr. Watkins asked if they needed to discuss the parking lot buffer, or would that also be handled administratively.

Mr. Olsen said that was an automatic requirement of the Zoning Ordinance.

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

The motion carried unanimously.

**GROUP APPLICATIONS:**

**Case #SUB2007-00006 (Subdivision)**

**Hillcrest Commons Subdivision, Phase Two**

Southeast corner of Chandler Street and Rosedale Avenue (Prescriptive right-of-way to be vacated).

1 Lot / 1.1± Acres

Mr. Plauche announced that this application was recommended for holdover to the meeting of April 5<sup>th</sup>, but 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 Dr. Rivizzigno

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to holdover this application until the April 5th meeting so that the following revisions to the application can be provided to the Planning Section of Urban Development by March 12th:

- 1) **inclusion of Lots 1 and 2 of Block 80 of the Pinehurst Subdivision within the proposed one-lot subdivision and rezoning application; and**
- 2) **revision of the plat to reflect the dedication of sufficient right-of-way to provide 25 feet from the centerline of Chandler Street.**

The motion carried unanimously.

**Case #ZON2007-00057 (Rezoning)**

**Hillcrest Commons, Inc.**

Southeast corner of Chandler Street and Rosedale Avenue (Prescriptive right-of-way to be vacated).

Rezoning from R-1, Single-Family Residential District and B-2, Neighborhood Business District, to B-2, Neighborhood Business District, to allow a parking lot.

Mr. Plauche announced that this application was recommended for holdover to the meeting of April 5<sup>th</sup>, but 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 Dr. Rivizzigno to holdover this application to the April 5<sup>th</sup> meeting so that the following revisions to the application can be provided to the Planning Section of Urban Development by March 12<sup>th</sup>:

- 1) **inclusion of Lots 1 and 2 of Block 80 of the Pinehurst Subdivision within the proposed one-lot subdivision and rezoning application; and**
- 2) **modification of the rezoning application to request B-1 instead of B-2.**

The motion carried unanimously.

**Case #ZON2007-00405 (Planned Unit Development)**

**Hillcrest Commons, Inc.**

Southeast corner of Chandler Street and Rosedale Avenue (Prescriptive right-of-way to be vacated).

Planned Unit Development Approval to amend a previously approved Planned Unit Development to allow multiple buildings on a single building site, and shared access and parking between multiple building sites.

Mr. Plauche announced that this application was recommended for holdover to the meeting of April 5<sup>th</sup>, but if anyone was present and wished to speak, they could do so

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now.

No one came forward to speak.

After discussion a motion was made by Mr. Plauche and seconded by Dr. Rivizzigno to holdover this application to the April 5<sup>th</sup> meeting so that the following revisions to the application can be provided to the Planning Section of Urban Development by March 12<sup>th</sup>:

- 1) **revision of the legal description on the site plan and application so that it reflects the existing lots created by the recorded plat for Hillcrest Commons Subdivision;**
- 2) **revision of the site plan to show provision of a protection buffer on the East side of the property adjacent to the proposed parking area, in compliance with Section 64-4.D. of the Zoning Ordinance, to include a 6-foot high privacy fence (except within the street setback area) and a 10-foot wide vegetative buffer;**
- 3) **revision of the site plan to reflect the requested dedication of right-of-way along Chandler Street, and the provision of a sidewalk along Chandler Street;**
- 4) **depiction of the required screening of the parking area from adjacent residential uses, even if across the street, in conformance with section 64-6.A.3.i. of the Zoning Ordinance;**
- 5) **placement of a note on the site plan stating that provision of required parking lot lighting will be in conformance with Section 64-6.A.3.c. of the Zoning Ordinance, to ensure that lighting does not shine onto adjacent residential uses or into traffic (recommended use of shielded or full cut-off fixtures, and control of lighting so that they do not operate after the business is closed for the day);**
- 6) **revision of the site plan to depict an additional point of access between the parking areas on Lots 1 and 2 of the Hillcrest Commons Subdivision, per the original PUD conditions approved in 2005; and**
- 7) **labeling of all common areas, dumpster locations, outbuildings, generators, etc.**

The motion carried unanimously.

**Case #SUB2007-00032 (Subdivision)**

**The Woodlands at the Preserve Subdivision, Resubdivision of Lot 59**

3545 Rue Royal

(East side of Rue Royal, 800' ± North of Rue Preserve).

1 Lot / 0.1 ± Acre

Don Williams, Williams Engineering, was present on behalf of the applicant. Mr. Williams noted that the staff had recommended tentative approval; however, the adjoining property owner who would be most affect by this subdivision had expressed

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some concerns, and therefore they requested a two-week holdover to allow them to meet with the gentleman in this matter.

After discussion a motion was made by Mr. Plauche and seconded by Dr. Rivizzigno to holdover this application until the March 15<sup>th</sup> meeting, at the applicant's request.

The motion carried unanimously.

**Case #ZON2007-00425 (Planned Unit Development)  
The Woodlands at the Preserve Subdivision, Resubdivision of Lot 59**

3545 Rue Royal

(East side of Rue Royal, 800' ± North of Rue Preserve).

Planned Unit Development Approval to amend a previously approved Planned Unit Development to allow reduced side yard setbacks.

Don Williams, Williams Engineering, was present on behalf of the applicant. Mr. Williams noted that the staff had recommended tentative approval; however, the adjoining property owner who would be most affect by this subdivision had expressed some concerns, and therefore they requested a two-week holdover to allow them to meet with the gentleman in this matter.

After discussion a motion was made by Mr. Plauche and seconded by Dr. Rivizzigno to holdover this application until the March 15<sup>th</sup> meeting, at the applicant's request.

The motion carried unanimously.

**Case #SUB2007-00033 (Subdivision)  
The Woodlands at the Preserve Subdivision, Resubdivision of Lot 34**

3532 Rue Royal

(West side of Rue Royal, 945' ± North of Rue Preserve).

1 Lot / 0.1 ± Acre

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

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

- 1) submission of a revised copy of the site plan for the PUD file, prior to signing the final plat.**

The motion carried unanimously.

**Case #ZON2007-00426 (Planned Unit Development)  
The Woodlands at the Preserve Subdivision, Resubdivision of Lot 34**

3532 Rue Royal

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(West side of Rue Royal, 945' ± North of Rue Preserve).  
Planned Unit Development Approval to amend a previously approved Planned Unit Development to allow reduced front yard setbacks.

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

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

- 1) revision of the site plan to illustrate the amendment of the front yard setback for Lot 34; and**
- 2) compliance with all municipal codes and ordinances.**

The motion carried unanimously.

**Case #SUB2007-00030 (Subdivision)  
Heron Lakes Subdivision, Phase 1, Lot 80, Resubdivision of**

4106 Yellow Heron Lane

(West side of Yellow Heron Lane, 125'+ South of Heron Lakes Circle).

1 Lot / 0.3+ Acre

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

(Also see **Case #ZON2007-00409 (Planned Unit Development) - Heron Lakes Subdivision, Phase 1, Lot 80, Resubdivision of** – below.)

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

- 1) submission of documentation that the existing storm water facilities are adequate to handle the increased site coverage (including all previously approved increases), to be approved by City Engineering Department prior to signing of the final plat.**

The motion carried unanimously.

**Case #ZON2007-00409 (Planned Unit Development)  
Heron Lakes Subdivision, Phase 1, Lot 80, Resubdivision of**

4106 Yellow Heron Lane

(West side of Yellow Heron Lane, 125'+ South of Heron Lakes Circle).

Planned Unit Development Approval to amend a previously approved Planned Unit Development to allow reduced rear yard setbacks and increased site coverage.

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

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recommendations.

(Also see **Case #SUB2007-00030 (Subdivision) - Heron Lakes Subdivision, Phase 1, Lot 80, Resubdivision of** – above.)

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

- 1) submission of documentation that the existing storm water facilities are adequate to handle the increased site coverage (including all previously approved increases), to be approved by City Engineering Department prior to signing of the final plat.**

The motion carried unanimously.

**Case #SUB2007-00025 (Subdivision)  
West Airport Boulevard Center Subdivision**

6575 Airport Boulevard

(South side of Airport Boulevard, 675' + East of Providence Hospital Drive).

3 Lots / 19.8+ Acres

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

(Also see **Case #ZON2007-00402 (Planned Unit Development) – West Airport Boulevard Center Subdivision**; and **Case #ZON2007-00401 (Rezoning) – Greeno Properties North II, Ltd.** – below.)

Jerry O'Brien, with J. L. O'Brien Associates Real Estate, was present representing the applicant. Also present was their consulting engineer, Mark McGraw, with Kimberly-Horn of Atlanta; their traffic engineer, Andrew Outwhiler with Kimberly-Horn of Atlanta, as well as their land use counsel. Mike Glenn, with BRR Architects of Kansas City, would be present shortly, as his plane had been delayed. Mr. O'Brien reminded the Commission that the subject property was rezoned back in 2005 for a different project. It was presented by a different developer, and at that time the project consisted of approximately 265,000 square feet, with over 1,000 parking spaces. The proposed project at present consisted of approximately 121,000 square feet, with approximately half the parking. In addition, the buffering involved with this site plan far exceeded what was previously provided under the previously approved PUD and rezoning. Mr. O'Brien noted that in most cases they had at least 30 feet of undisturbed buffer in all directions towards their adjoining neighbors. The landscaping plan on this project was extensive. They were saving two, 60-inch live oak trees, as well as numerous other trees on the site. In addition, they left an undisturbed buffer of 20-25 feet along the property line bordering the apartments to the east, in addition to a fence. They had also provided detention at the rear of the site, which makes the rear of the store approximately 200 feet from their southern property owner. There was also a 60-inch live oak on the south side of the detention pond that

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would be preserved, as well as an undisturbed buffer of approximately 20 feet. Mr. O'Brien said they would be happy to answer any questions any members of the Commission may have, and they appreciated their consideration for what they thought was a very worthwhile project.

Mr. Plauche asked if there were any questions by Commission members.

There being no questions from the Commission, Mr. Plauche asked if anyone else wished to speak in favor of this project.

No one came forward to speak.

Mr. Plauche asked if there were any speakers in opposition.

Betina Prager, a resident of 6504 Airport Boulevard, stated that she lived directly across the street from this proposed project. Ms. Prager said that from the beginning in 2005, she was never notified of this project. Her property was within 300 feet. She said there were also others who should have been notified who did not receive notification. Ms. Prager stated that there was already a very serious situation with traffic on Airport Boulevard. There had been three wrecks within the stretch from Hillcrest Road to Cody Road within the past week, and there had been two children who were hit by cars cutting through the Willowbrook Subdivision, and this was without Wal Mart or any project across the street, or any new traffic lights that were being proposed. Ms. Prager indicated that Mr. Metzger, the City Traffic Engineer, said that the north/south expansion of Hillcrest Road, which runs east and west, was going to alleviate the congestion on Airport Boulevard. She contended that cars would take a short cut through Huntleigh Woods and Willowbrook. The residents feared a rise in crime in the area, and also the devaluation of their property. She said Wal Mart had provided information that said that property values had gone up wherever they put one of their stores in Mobile, but she said they had never put one next door to a hospital or in the heart of a residential area. Ms. Prager also stated that one section of the Zoning Ordinance required a 25-foot buffer on the front of the property, and in another place it stated that a 10-foot buffer was required. She asked that that be clarified. She said the residents would love to have a 25-foot buffer, because they were already surrounded by small retail shops and they got a lot of trash and garbage in their yards. They also get shoplifters cutting through their subdivision. Mr. Prager said that a website called "crime at Wal Mart" indicated that almost a million incidences of crime occurred at various Wal Marts in the year 2005. This included car-jackings, vandalism, rapes, murders, kidnapping, as well as shoplifting. Mr. Prager said the residents were asking for what was originally proposed to them (in 2005), and which they did not object to. They wanted someone who would be a good neighbor. She asked the Commission to do their job – and do what was right.

Frasier Christy stated that their partnership owned the 40 acres that runs immediately south of the subject property. Mr. Christy said he did not know if they were notified in the original zoning two years ago, as he had never seen a notification. He said he

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only learned of it several months ago when it was approved and then called off by the City Council. Mr. Christy said he had been a practicing engineer for 40 years. He was a city engineer for four or five municipalities in Jefferson County, Alabama, and there were a couple of things that bugged him about this project. One was regarding a lake on their property, which he spoke to Mr. Vogtner about that morning. He related that a number of years ago his aunt, who was currently 86 years old and lives in the house on this property, was driving her tractor and a pipe that the City of Mobile put through the property caved in and almost killed her. He said the pipe was corrugated metal, which should not be placed in an area that could be accessed by a tractor. The City rebuilt the pond, re-routed some storm drainage and did some things, and in the process of the re-routing they agreed to be responsible for that pond. So the pond was not only his, but to some degree belonged to the City of Mobile. Mr. Christy said his first concern was one of drainage. He said if this project was built and the water was not detained properly through their property, they would either flood the lake and break the dam and cause a problem downstream, or, if they took away the water too much, they would dry up the lake. He said there had to be a very sound balance of the situation with the water that comes to that lake. Mr. Christy said he had read the City's detention ordinance and contended it would not do it. He said he would be glad to work with the developers and maybe come up with a way that they could do it, but the City was going to have an issue with the lake downstream just as they do.

Mr. Christy further stated that he thought the ordinance said that when a piece of property is rezoned, and failure to act on that rezoning does not occur within a year, the property reverts back to R-1, not B-3 or whatever. He said this was the case in the municipalities that he worked for, and suggested the City look at the way they advertise, because it was not necessarily what was shown on the picture. He also expressed concern about his two 87-year old aunts who live on that adjoining property. Noise was a concern. They already had issues with the apartments next door with shootings and robberies. He would like his aunts' last few years to be a little more pleasant than he was afraid was going to happen. Mr. Christy said he was available for any questions.

Mr. Olsen noted that there was not a requirement in the City of Mobile's Zoning Ordinance that a rezoning automatically revert back to its previous zoning if action is not taken on the project within one year. The Planning Commission could place such a condition on a zoning, but that was not done in this particular case.

Mr. Christy said he was told by the City Council that was the reason they were back here today was because there was no action taken within one year of the rezoning, and they had to go back through the process to meet the zoning requirements.

Mr. Plauche said it had to go back through the process to re-do the Planned Unit Development requirements, although they were re-doing the entire project.

David Underhill, a resident of 107 S. Catherine Street, said he lived in midtown and did not have the same concerns that the people living in the immediate vicinity of this

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project had regarding traffic and runoff and such. He had other concerns. He stated that here and elsewhere Wal Mart already takes in a very large part of the budget for retail purchases of a very large portion of typical households. The arrival of a new Wal Mart tends to drive into extinction existing businesses nearby that provide similar goods and services. In Mobile, and elsewhere, he felt Wal Mart exhibited an appetite for monopoly. Mr. Underhill asked the Commission if it was part of their duty to attend to the public interest, and, if not, why not? Further, he asked if Wal Mart's evident quest for monopoly was in the public interest, and, if not, why not?

Mr. Plauche stated that the Planning Commission looks toward the public interest in administering the Zoning Ordinance and the other land use ordinances of the City of Mobile. The Commission does not have any jurisdiction to talk about economic ordinances or anything else.

Mr. Underhill asked if zoning authority didn't give leeway to somebody seeking monopoly if the Commission grants them the right to proceed.

Mr. Plauche stated that was not something the Planning Commission had any authority over. He said what Mr. Underhill called a monopoly might not be what he would call a monopoly.

Mr. Underhill asked if the Commission was prohibited by law from taking that into consideration.

Mr. Plauche asked John Lawler, counsel for the Planning Commission, to address Mr. Underhill's question.

Mr. Lawler stated that Mr. Underhill's question was a question of fact that the Planning Commission was not in a position to consider, just like they do not consider restrictive covenants. He said it takes a court to decide whether or not there is a monopoly. Although Wal Mart was certainly present in a lot of places, whether there were a monopoly or not was a matter of opinion. He said one could hold that opinion without it being supported "legally" like you would have an antitrust case or something like that, but he did not see this body having that as something it could consider. The matter before the Commission was a Planned Unit Development, with a commercial enterprise. The question was - does it fit into this community in this area? Is it appropriate to be zoned in that way when they were taking typical standards for rezoning? The fact that Airport Boulevard was a very busy commercial street from one end to the other was one thing to consider. Also, there are some residential properties across the street from the site. How to balance that was a question that Planning Commissions and City Councils faced. People have a right to use their property and a right to develop it, and whether or not this Planned Unit Development and this zoning level should be allowed was something that was discretionary to some extent with the Commission. It was not an "absolute" one way or the other. In considering subdivision matters, if the plan meets the minimum requirements, the Commission does not have as much discretion, but in zoning matters cities have more

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discretion, and this was one of those situations. Mr. Lawler said in his opinion, the property was currently zoned B-3. It was zoned B-3 at another time. The application before the Commission today was to rezone the property to B-3 with a Planned Unit Development. The fact that it was zoned at a high level before, as previously described with a lot more parking spaces than this plan proposed, was a fact. The Commission was not bound by it, but it was certainly a precedent to be considered. But as far as the question of whether or not the Planning Commission has the authority to consider the PUD and zoning applications before them, Mr. Lawler said they certainly did. It was up to them to determine whether or not, in their sound judgment, the project should go, or whether this was an inappropriate use.

Mr. Underhill asked whether anybody could cite any federal or state statute or local ordinance that prohibits the Planning Commission from taking monopolistic tendencies into account when making its decision about zoning issues.

Mr. Plauche replied that, again, monopolistic tendencies were not anything the Commission had any way to rule on. The Commission makes a recommendation on rezoning. The City Council will make the final decision. Mr. Plauche said that any kind of interstate trust, or any kind of business type of thing, was not in their purview.

Mr. Underhill said he had not heard Mr. Plauche or anybody else cite any law or rule that prohibits the Commission from taking monopolistic tendencies into account when making their decisions.

Mr. Lawler stated that he had been doing this kind of work for about 20 years, and he had never seen a case in any jurisdiction, Alabama or otherwise, where there had been a consideration of whether or not the Commission should allow zoning because one of the occupants of the property in a commercial enterprise might be accused of being monopolistic.

Mr. Underhill asked that the Commission make this an instructive test case.

As previously stated, Mr. Plauche said that was for a court to decide.

Mr. Plauche said he could take one more speaker in opposition.

Bess Rich, a resident of 625 Cumberland Road East, Mobile, said her subdivision was in a neighborhood off of Airport Boulevard not too far from the subject property. Ms. Rich stated that in 2005 there was a rezoning on this site from R-1 to B-3. It asked for a PUD of retail sales and office buildings, and that is what was advertised prior to a public hearing before the City Council. Ms. Rich compared this case to another case that was ultimately decided by the court system. Ms. Rich said that that rezoning was limited to the PUD as shown to the City Council at the time. When the developer got ready to move forward on the project, she said another type of entity was proposed for the B-2 – a restaurant. The application approved was for retail sales. This was highly objected in the community and there was a lawsuit, although the Council, with one

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objection, did agree to that change in the PUD. The case went to district court, and it was ruled that the City was invalid in its zoning because it did not advertise the zoning appropriately. The City proceeded to still issue building permits and the building was constructed. Ms. Rich said the City then decided to seek an injunction from that ruling and went to the Alabama Supreme Court to get out from underneath that advertising scenario, but they were in turn ruled against. She submitted a copy of the Supreme Court ruling, which stated that the ordinance is invalid inasmuch as proper notice was not given as required by the Code of 1975, 11-52-77 and 78. District Court had ruled that Mobile failed to properly advertise such ordinance prior to the enactment and compliance with those laws.

Ms. Rich said the law said the proposed ordinance shall be published in full, which is what happened with the ordinance that changed this property from R-1 to B-3, where it said it was limited to the PUD at the time – retail sales, office parks, four-lot subdivision – which was approved in 2005. The law says that no such Ordinance shall become effective until or after a public hearing in relation thereof which the parties of interest shall know that they have an opportunity to be heard. According to the Supreme Court ruling, Ms. Rich said that notice that does not warn of the nature of the proposed amendment is no notice. Changing the PUD was changing the use and character. Ms. Rich urged the Commission to look at the State law, and the Alabama Supreme Court's decision. She said retail sales and an office park, which got them the B-3, was not a super Wal Mart with two out-parcels. It was totally different, and people should have an opportunity to come down and legitimately have a chance to affect the changes they need in order to absorb this impact.

Mr. Plauche asked if the Commission members had any further questions.

Mr. Watkins asked Mr. Olsen what kind of notice was put out in this case.

Mr. Olsen said the notices that were mailed out indicated the request as was listed on the agenda – rezoning from B-3 with conditions to B-3 without conditions.

Mr. Watkins asked Mr. Lawler his opinion on what the opposition spoke of in terms of notices.

Mr. Lawler stated that the problem that arose when this matter came before the Commission on the amended PUD, was apparently there was discussion about whether or not the zoning was tied to that particular PUD and could not be amended. He said there was a difference of opinion about that. The applicant, faced with that, withdrew the application to amend the PUD, and chose instead to come back to the Planning Commission and ask for a rezoning, PUD, and resubdivision, which is what is before the Commission today, and for which proper notice had been given.

Mr. Watkins asked if he understood correctly that the subject property was rezoned to B-3 in 2005, subject to the then PUD that was approved with the rezoning.

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Mr. Lawler said that was correct.

Mr. Watkins said as it stood now, the subject property was zoned B-3, if that same PUD was used.

Mr. Lawler said that was correct, if the same PUD were used. But the question also was, that the PUD had perhaps expired.

Mr. Watkins said he wanted to make sure he understood that the notice that went out said that the current zoning was B-3, and that the applicant was seeking to change the PUD, and so as a result that rezoning would have to be re-done based on the fact that the PUD that it was tied to was now being changed.

Mr. Lawler said Mr. Watkins was correct. He said in his opinion, proper notice had been given on what was before the Commission today. In the past, the property was rezoned to B-3 with specific conditions, and it was tied to those conditions. You could say, therefore, that this was an application to do away with that. Mr. Lawler said he was familiar with what had occurred on a number of occasions over the years, without all the emotion that goes with an application such as this, where there have been conditions placed on zoning, and then as circumstances change people have come back and made an application for rezoning with different conditions, or to remove the conditions. He said this was not unusual at all.

Mr. Plauche asked Mr. O'Brien if he would like to respond.

In regard to the case referenced by Ms. Rich, Mr. O'Brien noted that that was purely an advertising/notice issue, and had nothing to do with the merits of what they were talking about today. Secondly, Mr. O'Brien said that this case before the Commission today was not about Wal Mart. It was about the entitlement for a piece of property that this same Planning Commission had previously rezoned, and previously approved as a PUD that was more than twice as intense as the plan before the Commission today. He pointed out that when the previous applicant made the application he was not even required or asked to disclose who his tenants were, which was often the case in the retail development business. Mr. O'Brien said if he was trying to procure a site for a particular tenant, he may not want his competitors to know who his tenant was. He said that in most cases that was not even disclosed at the level they were at today. Mr. O'Brien said that in an effort to be a good corporate citizen and in an effort to be communicative, they had had meetings with the neighborhoods, at the request of two of the City Council members. They had disclosed a plan and had a rendering of what they proposed to build. He said they had gone above and beyond what was required in order to come before this Commission and first see the entitlement from a zoning perspective, to then go spend the monies that it takes to develop the entire plan they were talking about. With regard to drainage, Mr. O'Brien said they still had some work to do, but at this point they were not willing to go spend the additional money to complete a drainage plan until they have the entitlements in place to know that they can build a store. As to crime, Mr.

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O'Brien said there had been several studies done that show that Wal Mart was no more of a generator of crime than Target or K-Mart or any mall or anybody else on a per capita basis, and those studies were available. As to traffic, he said they hired a traffic consultant who did a complete traffic study. Mr. O'Brien said they met with Mr. Metzger, Traffic Engineer for the City of Mobile, and were asked to do some things above and beyond what their traffic study called for, which was the synchronization of traffic signals from Cody Road back to the east all the way to Hillcrest Road. They had voluntarily agreed to that, and had also agreed to some other traffic improvements that were asked of them, which were not indicated by their traffic study. Mr. O'Brien further noted that they had reduced the intensity of this project. They had reduced the pervious area of the project tremendously over what it was before. Candidly, Mr. O'Brien said he wanted to make one simple point: this was not about Wal Mart. This was about a rezoning, a PUD application and a subdivision application that was much, much less intense than what had been previously approved by this same Commission. Again, Mr. O'Brien respectfully requested that the Commission approve these applications.

Mr. Plauche asked if there were any questions by the Commission members.

Mr. Miller noted that at the last meeting the applicant had agreed to the conditions just mentioned, and they basically agreed on substantially the same design of the building that was shown. He asked if the applicant agreed to all the previous conditions placed on the previous approvals being required on this approval.

Mr. O'Brien said they agreed to those conditions at that time, and they were not backing up from those conditions, but, again, they felt those conditions should be handled just like they would be with any other prospective retailer locating in the City. They should be handled administratively through the staff. He said they did not plan any changes. The bait-and-switch argument was totally irrelevant to this situation. He noted that they were not even involved in the property at the time the previous approval took place.

Mr. Plauche said he was not speaking of bait-and-switch on that. They were mentioning the design of the building, etc. It was a rather upscale design.

Mr. O'Brien said that was correct, and they had no problem if the Commission wanted to attach that as a condition. Personally, however, he did not feel it was appropriate, nor did their land use counsel.

Mr. Watkins asked what their current front setback was, and what effect that might have on the residents living across the street.

Regarding a comment made by Ms. Prager that there was a 25-foot buffer requirement on the front of the site, Mr. O'Brien said that was incorrect. There was a code requirement for a 25-foot building setback, which was shown on their plan. He said they did not know how the two out-parcels would ultimately be developed. That

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would be something that would come in at some other point in time.

Mr. Watkins asked Bob Vogtner, City Engineer, what his understanding was of the situation currently of the pond on the property behind the subject property, and whether the City had some potential liability there, as Mr. Christy mentioned.

Mr. Vogtner said all of that took place back in the 1970's and there was court litigation involved, and he had not had a chance to review it.

Mr. Watkins asked if he understood correctly that this project would be just like any other project within the City, which would be that their water and their detention had to maintain the flow off that property at basically the same capacity as leaving the property currently.

Mr. Vogtner said that was true, but they would also have to look at the outfall, as they typically do, to make sure that there was no drastic effects downstream that was directly related to this project. He said there had been no construction plans submitted on the project, and until they had seen a set of plans he did not feel they could comment either on drainage or what was to be done. He said they had a schematic of the layout, and that was all that had been submitted.

Dr. Rivizzigno asked Mr. Olsen if there was a sign put on the property when the application was made for the rezoning of the site.

Mr. Olsen said that a 24" by 36" red sign was posted on the property, which could have been seen by anyone driving or walking by, and he would assume that anyone living across the street could have seen it.

In deliberations session Mr. Miller commented that he felt concerns about monopoly were interesting, but were not in the Commission's purview. He said that obviously if this property was currently zoned R-1, he would have a little different view. But legal counsel and staff agreed that the property was B-3, then that changed his view.

Mr. Lawler said not only that, but it also bordered B-3 zoning. He said looking at the map and the photographs, it did not appear to him that it looked very residential.

Mr. Miller said his only point was that if it was not a zoning up from "R" to "B", then he would feel differently.

Mr. Lawler said he believed that the property was zoned B-3 right now, but regardless of that, you cannot erase the fact that it was previously considered and, even if you assumed that it somehow reverted back to R-1, you cannot erase the fact that at one time, not too long ago, it was zoned B-3, with a PUD.

After discussion a motion was made by Mr. Miller to approve the above referenced subdivision.

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Mr. Holmes seconded the motion.

In further discussion Mr. Watkins pointed out that when this site was previously approved, he was somewhat comforted by the additional requirement that the building that was going to be built there would have to comply with the site plan, or at least the elevation that was shown to the neighbors and at various other meetings. Although this was a different application, he understood the applicant to say that if the Commission wanted to include such a condition in this approval, they would have no problem with that. He felt it was important to include such a condition, not holding them to the absolute inth degree of elevation, but in the general scheme of what they put in front of the neighbors.

Mr. Olsen said he thought the wording of that condition was that the structure be built substantially in compliance with the elevation as presented. He noted that there was also a condition about the traffic synchronization as agreed to with Traffic Engineering. Those conditions would be most appropriate on the PUD.

Mr. Watkins said he felt it was important, and he wanted to verify again with Mr. Lawler, that proper notice was given that this was a rezoning request. It was being brought back by the applicant because the existing zoning had certain conditions on it and they wanted to reduce those conditions, or change the PUD that was attached to that zoning.

Mr. Lawler said Mr. Watkins was correct.

Mr. Miller said perhaps he needed to withdraw his motion. He understood that the applicant had agreed substantially to the same conditions that were placed on the previous applications, including the synchronization of traffic signals and that the building would be substantially as presented to the Commission and the neighbors.

Mr. O'Brien asked if he could address the Commission.

Mr. Plauche allowed him to speak.

Mr. O'Brien said he had no problem with those conditions being applied to the PUD. The issue, however, was that the developer did not presently own the subject property. They had a contractual interest in the property. They had to get the property owner's permission to come back to go through this rezoning today. Mr. O'Brien said if they placed conditions on the rezoning, the property owner would then be impeded. He said they had no problem with the condition that the building be built substantially in accordance with the elevation, which they had subsequently furnished. They were concerned about the obligation of the applicant regarding the condition on the synchronization of the signals, which was not required by their traffic study. Mr. O'Brien said they did voluntarily agree to run the fiber optic cable for the synchronization, as opposed to actually synchronizing the signals, which would

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require the City Traffic Department to do some additional signal work.

Mr. O'Brien said he had one other issue he would like to address.

Mr. Plauche interrupted, saying that he wanted to make sure this was not a secondary way for Mr. O'Brien to make a case without the opposition being present.

Mr. Lawler said Mr. Plauche was correct. It was not appropriate for the applicant to address the Commission and get another discussion started after the public hearing portion of the meeting had been closed. He said the Commission should make its decision based on what was said in the public hearing session, and not on anything that was said by the applicant at this point.

Mr. Plauche called for a motion.

Mr. Miller said he would like to phrase a motion in such a way that protects the existing landowner should Wal Mart decide not to build.

Mr. Watkins noted that the PUD was site-plan-specific, and if Wal Mart walked away from this, unless that landowner was going to build in the exact same footprint, whoever took that property would have to come back before the Commission for approval of a new PUD.

Mr. Olsen said that was not necessarily so. The rezoning was not limited to this particular PUD, so the property would be rezoned to B-3 subject to the conditions that were recommended on the rezoning, which were: (1) the completion of the subdivision process because this is a metes and bounds parcel; (2) that preservation status be given to the two oak trees; (3) that any changes to Airport Boulevard are subject to final approval by Traffic Engineering; and (4) full compliance with all municipal codes and ordinances. Mr. Olsen said if this did not occur and a developer came in and proposed a single building on the property, that was a legal lot of record, which the subdivision would have to come back to the Commission if this one were not recorded, then they could develop the site with that single building. If they proposed multiple buildings, however, they would be required to file another PUD application.

In further discussion it was asked if conditions could be attached just to the PUD and not the rezoning.

Mr. Lawler pointed out that the PUD would expire in 18 months.

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

- 1) placement of a note on the final plat stating that the development is limited to a maximum of two access points to Airport Boulevard, size, location and design to be approved by the Traffic**

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- Engineering Department;**
- 2) placement of a note on the final plat stating Lots 2 & 3 are denied direct access to Airport Boulevard; and**
  - 3) placement of a note on the final plat stating that Preservation status is to be given to the 60” Live Oak tree located on the North side of Lot 1 and the 60” Live Oak tree located on the South side of Lot 1. 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. All Live Oak trees 24” DBH and larger require permits from Urban Forestry prior to pruning or removal.**

The motion carried unanimously.

**Case #ZON2007-00402 (Planned Unit Development)**

**West Airport Boulevard Center Subdivision**

6575 Airport Boulevard

(South side of Airport Boulevard, 675’+ East of Providence Hospital Drive).

Planned Unit Development Approval to allow shared access between three building sites.

(For discussion see **Case #SUB2007-00025 (Subdivision) - West Airport Boulevard Center Subdivision** – above; also see **Case #ZON2007-00401 (Rezoning) - Greeno Properties North II, Ltd.** – below.)

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

- 1) completion of the subdivision process prior to the issuance of any permits;**
- 2) preservation status is to be given to the 60” Live Oak tree located on the North side of Lot 1 and the 60” Live Oak tree located on the South side of Lot 1. 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. All Live Oak trees 24” DBH and larger require permits from Urban Forestry prior to pruning or removal;**
- 3) any changes to Airport Boulevard are subject to final approval by Traffic Engineering;**
- 4) that the final building will be substantially the same as presented to the Planning Commission and the public in terms of size, style and design;**
- 5) installation of fiber optic cables from Hillcrest to Cody Road, to be completed prior to the issuance of any Certificates of Occupancy;**
- 6) any intersection improvement (including signalization) and median modifications be completed prior to issuance of a CO;**

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**and**

- 7) full compliance with all municipal codes and ordinances.**

The motion carried unanimously.

**Case #ZON2007-00401 (Rezoning)**

**Greeno Properties North II, Ltd.**

6575 Airport Boulevard

(South side of Airport Boulevard, 675' ± East of Providence Hospital Drive).

Rezoning from B-3, Community Business District (with conditions) to B-3, Community Business District, to allow a retail shopping center.

(For discussion see **Case #SUB2007-00025 (Subdivision) - West Airport Boulevard Center Subdivision** – above; also see **Case #ZON2007-00402 (Planned Unit Development) - Case #ZON2007-00402 (Planned Unit Development) - West Airport Boulevard Center Subdivision** - above.)

After discussion a motion was made by Mr. Miller and seconded by Mr. Watkins to recommend this change in zoning to the City Council subject to the following conditions:

- 1) completion of the subdivision process prior to the issuance of any permits;**
- 2) preservation status is to be given to the 60" Live Oak tree located on the North side of Lot 1 and the 60" Live Oak tree located on the South side of Lot 1. 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. All Live Oak trees 24" DBH and larger require permits from Urban Forestry prior to pruning or removal;**
- 3) any changes to Airport Boulevard are subject to final approval by Traffic Engineering; and**
- 4) full compliance with all municipal codes and ordinances.**

The motion carried unanimously.

**OTHER BUSINESS:**

Mr. Olsen said that the Commission needed to schedule a business meeting. The options were March 7<sup>th</sup> or March 22<sup>nd</sup>.

After discussion it was decided to schedule the meeting for March 22<sup>nd</sup> at 2:00 p.m. in the City Council conference room.

There being no further business, the meeting was adjourned.

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**APPROVED:** June 7, 2007

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Victoria Rivizzigno, Secretary

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Terry Plauche, Chairman

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