

MOBILE CITY PLANNING COMMISSION MINUTES
MEETING OF OCTOBER 7, 2010 - 2:00 P.M.
AUDITORIUM, MOBILE GOVERNMENT PLAZA

Members Present

Terry Plauche, Chairman
William G. DeMouy, Jr.
Stephen J. Davitt, Jr.
Nicholas H. Holmes, III
Mead Miller
Roosevelt Turner
James F. Watkins, III

Members Absent

Victoria L. Rivizzigno, Secretary
Herb Jordan
John Vallas

Urban Development Staff Present

Richard L. Olsen,
Deputy Director of Planning
Bert Hoffman,
Planner II
Tony Felts,
Planner I
Joanie Stiff-Love,
Secretary II

Others Present

John Lawler,
Assistant City Attorney
John Forrester,
City Engineering
Jennifer White,
Traffic Engineering
Capt. James May,
Fire Department

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

Mr. Plauche stated the number of members present constituted a quorum and called the meeting to order, advising all attending of the policies and procedures pertaining to the Planning Commission.

APPROVAL OF MINUTES:

Mr. Plauche moved, with second by Mr. Turner, to approve the minutes from the following, regularly held, Planning Commission meetings:

- August 5, 2010
- August 19, 2010
- September 2, 2010
- September 16, 2010

The motion carried unanimously.

HOLDOVERS:

Case #SUB2010-00091 (Subdivision) (Holdover)

City/County Offices Subdivision

850 St Anthony Street & 272 North Broad Street

Northeast corner of St. Anthony Street and North Broad Street, extending to the Southeast corner of North Broad and Congress Street

Number of Lots / Acres: 2 Lots / 3.3± Acres

Engineer / Surveyor: McCrory & Williams Inc., Engineers Surveyors

Council District 2

(Also see **Case #ZON2010-02286 (Planned Unit Development) City of Mobile /**

Mobile County, below)

The Chair announced the application had been recommended for approval and stated the applicant was agreeable with the recommendations. He added if anyone wished to speak on the matter they should do so at that time.

Hearing no discussion or opposition, a motion was made by Mr. Watkins, with second by Mr. Davitt, to approve the above referenced matter, subject to the following conditions:

- 1) **compliance with Engineering comments: (*Show Minimum Finished Floor Elevation on each lot on Plat. Also show the FFE on the plat for the existing buildings. There is to be no fill placed within the limits of the flood plain without providing compensation. Must comply with all stormwater and flood control ordinances. Any work performed in the right-of-way will require a right-of-way permit.*)**
- 2) **depiction of the minimum building setback line for Lots 1 and 2 on the Final Plat;**
- 3) **placement of a note on the Final Plat stating Lot 1 is limited to the existing curb-cuts (one curb-cut onto North Broad Street, two curb-cuts onto Jefferson Street) and Lot 2 is limited to the existing curb-cuts (one curb-cut onto North Broad Street and one curb-cut to Jefferson Street), if any of the sites are redeveloped the size, location, and design of each curb-cut are to be approved by Traffic Engineering and conform to AASHTO standards;**
- 4) **placement of a note on the Final Plat/site plan stating that approval of all applicable federal, state, and local agencies for endangered, threatened, or otherwise protected species is required prior to the issuance of any permits or land disturbance activities; and,**
- 5) **provision of two (2) copies of the revised PUD site plan prior to the signing of the Final Plat.**

The motion carried unanimously.

Case #ZON2010-02286 (Planned Unit Development)

City of Mobile / Mobile County

850 St. Anthony Street

Northeast corner of St. Anthony Street and North Broad Street, extending to the Southeast corner of North Broad and Congress Street

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

Council District 2

(Also see **Case #SUB2010-00091 (Subdivision) City/County Offices Subdivision**, above)

Hearing no discussion or opposition, a motion was made by Mr. Watkins, with second by Mr. Davitt, to approve the above referenced matter, subject to the following conditions:

- 1) **compliance with Engineering comments: (*Show Minimum Finished Floor Elevation on each lot on Plat. Also show the FFE on the plat for the existing buildings. There is to be no fill placed within the limits of the flood plain without providing compensation. Must comply with all stormwater and flood control ordinances. Any work performed in the right-of-way will require a right-of-way permit.*)**
- 2) **depiction of the minimum building setback line for Lots 1 and 2 on the site plan;**
- 3) **placement of a note on the site plan stating Lot 1 is limited to the existing curb-cuts (one curb-cut onto North Broad Street, two curb-cuts onto Jefferson Street) and Lot 2 is limited to the existing curb-cuts (one curb-cut onto North Broad Street and one curb-cut to Jefferson Street), if any of the sites are redeveloped the size, location, and design of each curb-cut are to be approved by Traffic Engineering and conform to AASHTO standards;**
- 4) **placement of a note on the site plan stating that approval of all applicable federal, state, and local agencies for endangered, threatened, or otherwise protected species is required prior to the issuance of any permits or land disturbance activities;**
- 5) **depiction of a dumpster, screened from view and in compliance with Section 64-4.D.9. of the Zoning Ordinance, as well as with all other applicable regulations, or the provision of a note on the site plan stating that no dumpster will be provided;**
- 6) **provision of two (2) copies of the revised PUD site plan prior to the signing of the Final Plat; and,**
- 7) **full compliance with all other municipal codes and ordinances.**

The motion carried unanimously.

Case #ZON2010-01980 (Planned Unit Development) (Holdover)
Arc Terminal Holdings, LLC

1437 Cochrane Causeway

West side of Cochrane Causeway, 1000'± South of the South terminus of the Cochrane-Africatown Bridge

Planned Unit Development Approval to amend a previously approved Planned Unit Development to allow multiple buildings on a single building site to include two (2) additional storage tanks for a total of nine (9), office building with parking amenities and a four bay truck loading station

Council District 2

(Also see **Case #ZON2010-02257 (Planning Approval) Arc Terminal Holdings, LLC**, below)

The Chair announced the application had been recommended for approval. He added if anyone wished to speak on the matter they should do so at that time.

Casey Pipes, Helmsing, Leach, Herlong, Newman, and Rouse Law Firm, for the applicant, stated they were in agreement with the staff's recommendations but understood the matter was to be contested. He asked if they might be able to present their points in favor of the matter or could wait to respond to oppositions' remarks.

The Chair said that choice was the applicant's, to which Mr. Pipes stated they would make their points first and the following people then spoke on the matter:

- Representative Randy Davis, 6590 Thompson Lane, Daphne, AL, representing District 96 in the State House;
- John Didier, 23 Westridge Drive, Hampton, New Hampshire, ARC Terminals representative; and,
- Avalisha Fisher, Driven Engineering, for the applicant.

They made the following statements:

- A. noted that the former owner of the property had problems but there was excitement around the plans for the property by the current owner;
- B. noted that ARC Terminals was an independent terminal operator that maintained liquid storage facilities as a third party/independent operator of these type assets;
- C. ARC Terminals functioned very much like a liquid warehouse for the products they stored inasmuch as they did not market or sell the products stored in their facilities;
- D. noted that they were a very heavily regulated industry due to the nature of the products they stored;
- E. noted that the products stored at their facilities were determined by market demand and conditions;

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- F. noted that the site was zoned I-1 and in that classification, other than the 5 foot default setback, there were no required setbacks;
- G. noted that the issues raised regarding tank construction would be handled on an individual basis in conjunction with the Fire Department as it was dependant upon the commodity being stored within the tank in question;
- H. noted that the issues raised regarding the NFPA might not be applicable if nothing flammable is stored in the tanks;
- I. noted that such things as tank construction, fire suppression, etc., were dependant upon the type of material stored in the tank and inasmuch the applicant would have to come back to the Planning Commission for approval every time the materials stored in the tanks were changed; and,
- J. reminded the Commission that the proposed use was as a third party, liquid storage facility with the applicant neither owning nor distributing the material stored in the tanks.

The following people spoke in opposition to the matter:

- Doug Anderson, Burr and Foreman Law Firm, on behalf of GCAC, which owned the property located across the street from the property in question, as well as Argain, an adjacent property owner;
- Tommy Zieman, 5 Dauphin Street, Mobile, on behalf of Argain LLC, an adjacent property owner; and,
- Thomas Latham, Clark, Geer, and Latham Engineers, on behalf of GCAC and Argain.

They made the following statements:

- A. noted that there were some significant problems where the site was not in compliance with the City's codes and that these were inherited by the current owners;
- B. in question were the three large tanks to be located along the south property line, two of which had already been constructed;
- C. based upon the size of the constructed tanks and due to the fact they also fell under the governance of both the International Fire Code and the NFPA, the setbacks for said tanks would be determined by the kind/type of material being stored in them;
- D. noted that 150 foot diameter tank required a minimum of setback of 75 feet regardless of what was stored within the tank, and based upon their calculations, the current tanks were setback 68 feet, and it was their position that the

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- applicant could not legally comply with the NFPA requirements as a result of that;
- E. no detailed survey had been submitted showing the necessary setbacks;
 - F. if the Planned Unit Development were to go forward, it was requested that the applicant be required to submit a certified survey showing the exact location of all current and proposed storage tanks;
 - G. if approved, the applicant would be required to indicate the types of products to be stored in the existing, as well as to be constructed, tanks;
 - H. if approved, the applicant would be required to indicate the type of construction and fire prevention protection associated with the tanks as required by the NFPA;
 - I. the Planned Unit Development was originally approved in 2008 and the tanks were not built at that time in compliance with that Planned Unit Development;
 - J. noted that letters of concern had been received by the staff voicing issues raised by adjacent property owners;
 - K. noted that Lightfoot Capital Partners, a New York investment company, bought the facility (which had previous owners) and after that purchase, convinced Regions Bank, one of the original lenders on the property, that the property was then worth “nickels and dimes on the dollar;”
 - L. expressed concern that the current tanks had been built too close to the property line of Argain, and were not built to the necessary structural requirements, including no blow off roofs or the fire suppression equipment necessary for the storage of petroleum fuel products;
 - M. noted that Lightfoot Capital Partners had contacted Argain in an effort to buy 100 feet of their adjacent property and stated that Lightfoot Capital Partners knew the tanks were too close to the property line;
 - N. noted that the current 7 foot discrepancy would only bring the setback to the minimum distance allowed, with 350 being the maximum, and expressed the opinion that the discrepancy was a major issue with the potential of being a major fire disaster if not handled properly;
 - O. noted that the two companies were not able to come to terms on the property so it was felt that this was ARC Terminals’ “Plan B” where the City would sanction a new tank in exactly the same position as the previous tank as well as sanction what appeared to be two currently illegal tanks;

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- P. expressed a professional engineer's opinion that, after reviewing the Planned Unit Development, the site plan was not specific enough to make a determination whether or not it complied other than to say it would be used for fuel; and,
- Q. noted that there were too many unknowns to be able to accurately and safely apply the NFPA.

In deliberation, Mr. Miller expressed his concern that the applicant did not know what was proposed to be stored in the tanks. He also noted that a lot of the issues should be covered by state and federal laws. He then asked Mr. Lawler his opinion on the matter.

Mr. Lawler made the following statements:

- expressed the opinion that though the applicant might not know the specific materials to be stored in the tanks, but felt it should be simple to know what type/class materials would be in the tanks in question;
- felt that more information was necessary for the safe operation of the facility;
- felt the property should be brought into compliance with the previously issued Planned Unit Development; and,
- agreed with the opposition's engineer that the Commission did not have enough information to make an accurate decision on the matter.

Regarding the use of adjacent setbacks, Mr. Holmes commented that he would not be allowed to utilize his neighbors' setbacks to fulfill requirements for his property and did not feel comfortable doing so in these circumstances.

Mr. Olsen stated that even if such were done in this case, which is not allowed, the setbacks would not reach the 75 feet necessary if flammable materials were stored in the proposed tanks.

Mr. Miller stated he wanted to encourage growth and development in the city and he also did not want to hinder the workings of the proposed business, however, he felt that for safety sake, the Commission should err on the side of caution.

Mr. Turner asked if there was a clear understanding of the process after they chose what product went in the tanks and noted it was his understanding that the applicant would not come back to the Commission but rather would go to the Fire Department for clearance.

Mr. Olsen stated that was correct and that they would only come back before the Commission if they made a physical change to the property or development. He reminded the members that the application had stated the usage as "bulk petroleum storage" which implied flammability which would necessarily fall under the direction of the Fire Department.

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Capt. James May, City of Mobile Fire Department, stated there were both federal and state regulators who watched these matters closely to assure the public's safety. He noted his department was aware of the setback issue, however, he stated that ARC Terminals had been very cooperative in working with the Fire Department and inasmuch his department had no problem with allowing the matter to go forward.

Mr. Davitt expressed his gratitude that ARC Terminals had come in and taken over an existing problem for the City. He also stated his feelings that it would be unfair to make them adhere to an agreement made by a prior owner. That being said, Mr. Davitt asked the Fire Department how the NFPA factored into their decision.

Capt. May stated the International Fire Code was the basis for the City's Fire Ordinance and that the NFPA was the guide for the International Fire Code. He, again, reminded the Commission that though the City of Mobile Fire Department exercised some form of control in this matter, that Fire agencies on the state and federal level had more enforcement power.

Mr. Davitt stated that as far as the existing tanks were concerned it would not be prudent to try and force the new owner to make the corrections that should have already been in place with regards to setbacks and the like. However, he felt that the tank proposed for construction should be made to meet the minimum setbacks of 75 feet.

Mr. Watkins asked for assurances that the new tank to be constructed would be monitored by another agency at either the state or federal level to assure its compliance with all safety regulations and that by approving the matter, the Commission was not providing the applicant with any authority as to what they could hold in those tanks.

Capt. May stated that was correct and if the applicant were to choose to store anything beyond the capabilities of the tanks, then they would be required to increase their fire protection, etc., and have the approval of a state or federal regulator.

Mr. Holmes asked if the third tank was partially built and was advised it had been. He expressed his feelings that would be a problem, even if it were only a pad.

Mr. Pipes advised that the third tank had been approved with the Planned Unit Development approved in 2008 and its foundation had already been built and to use the provision Mr. Davitt proposed would require taking out the current foundation.

Mr. DeMouy commented on the two existing tanks, saying that as long as the setback for the construction and the product was 75 feet that the applicant would like a waiver of the difference between the 68 feet which currently existed and the necessary 75 feet with the caveat that no construction or product that required more than a 75 feet setback could be placed there.

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Hearing no further discussion or opposition, a motion was made by Mr. Davitt, with second by Mr. Turner, to approve the above referenced matter, subject to the following conditions:

- 1) **compliance with Urban Forestry comments:** *(Property to be developed in compliance with state and local laws that pertain to tree preservation and protection on both city and private properties (State Act 61-929 and City Code Chapters 57 and 64), full compliance with frontage tree requirements of the Zoning Ordinance to be coordinated with Urban Forestry.);*
- 2) **compliance with Engineering comments:** *(Foundation for the proposed office building needs to comply with the requirements of FEMA 85 at a minimum. Engineer must certify that all proposed improvements are in compliance with the approved flood study for this site. Must comply with all stormwater and flood control ordinances. Any work performed in the right-of-way will require a right-of-way permit. Drainage from any new dumpster pads cannot discharge to storm sewer; must have connection to sanitary sewer.);*
- 3) **depiction of dumpster locations on the site plans to comply with Section 64-4.D.9 of the Zoning Ordinance or placement of a note on the site plans stating that dumpsters will be completely screened from view or placement of a note stating how garbage will be removed;**
- 4) **placement of a note on the site plan stating that approval of all applicable federal, state, and local agencies for endangered, threatened, or otherwise protected species is required prior to the issuance of any permits or land disturbance activities;**
- 5) **placement of a note on the site plan stating that approval of all applicable federal, state, and local environmental agencies for wetlands or floodplain issues is required prior to the issuance of any permits or land disturbance activities;**
- 6) **new tank to be constructed with a 75' setback from the South property line;**
- 7) **placement of a note on the site plan stating that any changes to the site plan will require new applications for Planning Approval and Planned Unit Development Approval prior to the issuance of any permits; and,**
- 8) **full compliance with all other municipal codes and ordinances, and the obtaining of the appropriate permits.**

The motion carried unanimously.

Case #ZON2010-02257 (Planning Approval)

Arc Terminal Holdings, LLC

1437 Cochrane Causeway

West side of Cochrane Causeway, 1000'± South of the South terminus of the Cochrane-Africatown Bridge

Planning Approval to allow the operation of a bulk petroleum terminal in an I-2, Heavy-Industry District

Council District 2

(Also see **Case #ZON2010-01980 (Planned Unit Development) Arc Terminal Holdings, LLC**, above)

Hearing no further discussion or opposition, a motion was made by Mr. Davitt, with second by Mr. Turner, to approve the above referenced matter, subject to the following conditions:

- 1) **compliance with Urban Forestry comments:** *(Property to be developed in compliance with state and local laws that pertain to tree preservation and protection on both city and private properties (State Act 61-929 and City Code Chapters 57 and 64), full compliance with frontage tree requirements of the Zoning Ordinance to be coordinated with Urban Forestry);*
- 2) **compliance with Engineering comments:** *(Foundation for the proposed office building needs to comply with the requirements of FEMA 85 at a minimum. Engineer must certify that all proposed improvements are in compliance with the approved flood study for this site. Must comply with all stormwater and flood control ordinances. Any work performed in the right-of-way will require a right-of-way permit. Drainage from any new dumpster pads cannot discharge to storm sewer; must have connection to sanitary sewer.);*
- 3) **depiction of dumpster locations on the site plans to comply with Section 64-4.D.9 of the Zoning Ordinance or placement of a note on the site plans stating that dumpsters will be completely screened from view or placement of a note stating how garbage will be removed;**
- 4) **placement of a note on the site plan stating that approval of all applicable federal, state, and local agencies for endangered, threatened, or otherwise protected species is required prior to the issuance of any permits or land disturbance activities;**
- 5) **placement of a note on the site plan stating that approval of all applicable federal, state, and local environmental agencies for wetlands or floodplain issues is required prior to the issuance of any permits or land disturbance activities;**
- 6) **placement of a note on the site plan stating that any changes to the site plan will require new applications for Planning**

- Approval and Planned Unit Development Approval prior to the issuance of any permits; and,**
7) **full compliance with all other municipal codes and ordinances, and the obtaining of the appropriate permits.**

The motion carried unanimously.

EXTENSIONS:

Case #SUB2008-00212 (Subdivision)

Colonial Hills Subdivision, Unit 6

North terminus of Colonial Crossing, extending to the South side of Airport Boulevard, 220'± East of Snow Road South

Number of Lots / Acres: 23 Lots / 20.9± Acres

Engineer / Surveyor: Austin Engineering Company Inc.

County

The Chair announced the application had been recommended for approval and stated the applicant was agreeable with the recommendations. He added if anyone wished to speak on the matter they should do so at that time.

Hearing no opposition or discussion, a motion was made by Mr. Plauche, with second by Mr. Watkins, to approve the above referenced request for extension.

The motion carried unanimously.

Case #SUB2009-00131 (Subdivision)

Woodland Glen Subdivision

Eastern terminus of Meadow Drive North, extending to the Northern terminus of Meadow Heights Drive, the Northern terminus of Meadow Run Drive, and the Northern terminus of Meadow Dale Drive and Meadow Green Court, extending to the Western terminus of Augustine Drive

Number of Lots / Acres: 275 Lots / 86.3± Acres

Engineer / Surveyor: Rester and Coleman Engineers, Inc.

County

The Chair announced the application had been recommended for approval and stated the applicant was agreeable with the recommendations. He added if anyone wished to speak on the matter they should do so at that time.

Hearing no opposition or discussion, a motion was made by Mr. Plauche, with second by Mr. Watkins, to approve the above referenced request for extension.

The motion carried unanimously.

Case #ZON2009-02084 (Planned Unit Development)
St. Luke's Upper School Subdivision

1400 South University Boulevard
South side of University Boulevard, 490'± East of Grelot Road
Planned Unit Development Approval to amend a previously approved Planned Unit Development to allow multiple buildings on a single building site and to allow the addition of new baseball, softball, and football fields, all associated backstops and dugouts for new fields, moveable bleachers and a new ground maintenance storage building
Council District 6

The Chair announced the application had been recommended for approval and stated the applicant was agreeable with the recommendations. He added if anyone wished to speak on the matter they should do so at that time.

Hearing no opposition or discussion, a motion was made by Mr. Plauche, with second by Mr. Watkins, to approve the above referenced request for extension.

The motion carried unanimously.

Case #SUB2001-00177 (Subdivision)
Bellingrath Road Country Club Estates Subdivision, Addition to

East terminus of Country Club Boulevard and extending through to the Southwest corner of Old Military Road and Section Line Road
Number of Lots / Acres: 569 Lots / 243.0± Acres
Engineer / Surveyor: Rester and Coleman Engineers, Inc.
County

The Chair announced the application had been recommended for approval and stated the applicant was agreeable with the recommendations. He added if anyone wished to speak on the matter they should do so at that time.

Hearing no opposition or further discussion, a motion was made by Mr. Plauche, with second by Mr. Watkins, to approve the above referenced request for extension, subject to the following conditions:

- 1) revision of the plat to indicate a 120' right-of-way diameter on all closed-end streets not yet recorded or under construction; and,**
- 2) new FEMA flood map information to be reflected on the final plat.**

The applicant was also advised that this would be the final extension unless new units were recorded.

The motion carried unanimously.

NEW SUBDIVISION APPLICATIONS:

Case #SUB2010-00102

Kennedy Villa Subdivision

1205 Glennon Avenue & 1200, 1202 and 1204 Basil Street

Southwest corner of Glennon Avenue and Clay Street extending to the Northwest corner of Basil Street and Clay Street

Number of Lots / Acres: 1 Lot / 1.0 Acre

Engineer / Surveyor: Byrd Surveying, Inc.

Council District 2

The Chair announced the application had been recommended for approval.

Jerry Byrd, Byrd Surveying Inc., spoke on behalf of the applicant. He stated they had no problem with the recommendations with the exception of the number of curb-cuts to be allowed on Glennon Avenue, noting that there were two existing drive-ways on Glennon Avenue and the applicant desired to maintain those.

Mr. Olsen stated the staff had no problem with that request.

Hearing no opposition or further discussion, a motion was made by Mr. Davitt, with second by Mr. Turner, to approve the above referenced matter, subject to the following conditions:

- 1) **revision of the plat to illustrate a 30' minimum building setback line along Glennon Avenue;**
- 2) **revision of the plat to illustrate a 25' minimum building setback line along Clay Street and Basil Street;**
- 3) **dedication to provide a 25' corner radius at the intersection of Glennon Avenue and Clay Street;**
- 4) **dedication to provide a 25' corner radius at the intersection of Clay Street and Basil Street;**
- 5) **placement of a note on the final plat stating that the lot is limited to the existing curb-cuts to Glennon Avenue and one curb-cut to Basil Street, with the size, location, and design of each curb-cut to be approved by Traffic Engineering and conform to AASHTO standards;**
- 6) **revision of the plat to label the lot with its size in both square feet and acres, or the furnishing of a table on the final plat providing the same information;**
- 7) **placement of a note on the plat stating that approval of all applicable federal, state, and local agencies is required for endangered, threatened, or otherwise protected species, prior to the issuance of any permits or land disturbance activities;**
and,

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- 8) compliance with and dedications as required by the Engineering comments: *(Need to provide a 25' radius at the intersections of Clay Street at Glennon Avenue and Basil St and Glennon Avenue. Must comply with all stormwater and flood control ordinances. Any work performed in the right-of-way will require a right-of-way permit).*

The motion carried unanimously.

Case #SUB2010-00108
Waffle House Subdivision

1851 Government Street

Southwest corner of Government Street and Ellis Avenue

Number of Lots / Acres: 1 Lot / 0.6± Acre

Engineer / Surveyor: Hatch Mott Macdonald Florida, LLC

Council District 3

The Chair announced the application had been recommended for approval.

Joe Hoffman, Vice President of Real Estate, Waffle House, Inc., 5986 Financial Drive, Norcross, GA, spoke on behalf of the applicant. He stated they were in agreement with the recommendations with the exception of Condition 5, which called for the removal of the existing curb-cut onto Ellis Avenue. He noted the following:

- A. this was the second appearance before the Planning Commission Waffle House had made regarding this property and a stipulation regarding access to Ellis Avenue was part of that subdivision approval along with the applicant getting approval from Alabama Department of Transportation regarding curb-cut approval from the site to Government Street;
- B. it was noted that the approval for access to Ellis Avenue was necessitated by Alabama Department of Transportation's requirement to limit curb-cuts along Government Street;
- C. noted that one of the current curb-cuts was in close proximity to Ellis Avenue;
- D. noted that the Alabama Department of Transportation was requiring that the applicant provide a "right in, right out" curb-cut on Government Street and a full access curb-cut on Ellis Avenue, as their concern was the amount of traffic on Government Street;
- E. noted that Alabama Department of Transportation had also expressed concern regarding the eastern most curb-cut being so closely located to Ellis Avenue that it might cause some type of traffic congestion with people coming in and

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out on Ellis Avenue as well using the eastern most curb-cut on Government Street for the same;

- F. noted that the applicant was taking the former Sonic Drive-in location, which had operated with access to Ellis Avenue;
- G. noted that Sonic Drive-ins averaged approximately one million dollars a year in sales, where Waffle House locations averaged approximately half of that amount, which would significantly lower traffic at that site;
- H. noted that Sonic Drive-ins averaged about 2-3 delivery trucks to their sites per week, where as Waffle House locations typically had one delivery truck to their site a week and that truck usually came during their second shift, which was typically their slowest business time;
- I. noted an email from Alabama Department of Transportation which stated that they would allow one "right in, right out" driveway on U.S. 90 (Government Street) and one full access driveway on Ellis Avenue with final approval base on submitted drawings and permit applications; and,
- J. noted a letter from Butch Ladner, City of Mobile Traffic Engineering Department, which stated that when Waffle House re-submitted their subdivision application that they would approve one full access curb-cut on Ellis Avenue and one curb-cut on Government Street and that the City of Mobile Traffic Engineering Department would have no objections to the Ellis Avenue curb-cut remaining as it was.

Hearing no opposition or further discussion, a motion was made by Mr. Watkins, with second by Mr. Miller, to waive Section V.D.9. along the Ellis Avenue frontage only, and approve the above referenced matter, subject to the following conditions:

- 1) **modification of the name of the subdivision to comply with Section V.A.9. of the Subdivision Regulations;**
- 2) **retention of the 25-foot minimum building setback line along Government Street and the 20-foot minimum building line along Ellis Avenue on the Final Plat;**
- 3) **retention of the lot area size labeling, in square feet, on the Final Plat;**
- 4) **placement of a note on the Final Plat stating that the lot is limited to right in/right out curb cuts to Government Street (as required by ALDOT), with the size, design, and exact location to be approved by Traffic Engineering and ALDOT and conform to AASHTO standards;**
- 5) **placement of a note on the Final Plat stating that the lot is limited to one curb cut to Ellis Avenue, with the size, design,**

- and exact location to be approved by Traffic Engineering; and,
- 6) placement of a note on the Final Plat stating that development of the site must be undertaken in compliance with all local, state, and federal regulations regarding endangered, threatened, or otherwise protected species.

The motion carried unanimously.

Case #SUB2010-00100

Hamblin & Bowen Subdivision

7600 Bellingrath Road

West side of Bellingrath Road, 145'± South of Jeanette Avenue, extending to the CSX Railroad Right-of- Way

Number of Lots / Acres: 2 Lots / 117.0± Acres

Engineer / Surveyor: Polysurveying Engineering – Land Surveying County

The Chair announced the application had been recommended for approval and stated the applicant was agreeable with the recommendations. He added if anyone wished to speak on the matter they should do so at that time.

Hearing no opposition or discussion, a motion was made by Mr. Turner, with second by Mr. Davitt, to waive Sections V.D.1., V.D.2, and V.D.3., and approve the above referenced matter, subject to the following conditions:

- 1) placement of a note on the Final Plat stating that there shall be no future re-subdivision of either lot until additional frontage on a public right-of-way is provided;
- 2) dedication sufficient to provide 50 feet from the centerline of Bellingrath Road;
- 3) depiction of the 25-foot minimum building setback line along all right-of-way frontages, with the 25-foot minimum building setback line for Lot 1 being depicted outside the flagpole portion of the lot, where the lot meets minimum frontage requirements;
- 4) labeling of the lot area size, in square feet, or provision of a table on the Final Plat with the same information, with changes as necessary due to dedications;
- 5) placement of a note on the Final Plat limiting each lot to one curb-cut each to Bellingrath Road, with the size, design, and location of all curb-cuts to be approved by Mobile County Engineering and conform to AASHTO standards;
- 6) placement of a note on the Final Plat stating that the development will be designed to comply with the stormwater detention and drainage facility requirements of the City of Mobile stormwater and flood control ordinances, and

- requiring submission of certification from a licensed engineer certifying that the design complies with the stormwater detention and drainage facility requirements of the City of Mobile stormwater and flood control ordinances prior to the issuance of any permits. Certification is to be submitted to the Planning Section of Urban Development and County Engineering;
- 7) placement of a note on the Final Plat stating that the approval of all applicable federal, state, and local agencies would be required prior to the issuance of any permits or land disturbance activities;
 - 8) placement of a note on the Final Plat stating that development of the site must be undertaken in compliance with all local, state, and federal regulations regarding endangered, threatened, or otherwise protected species; and,
 - 9) 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.8 of the Subdivision Regulations.

The motion carried unanimously.

Case #SUB2010-00105

Crutchfield Estates Subdivision, Re-subdivision of Lot 2

10403 Tanner Williams Road

South side of Tanner Williams Road, 1300'± East of Eliza Jordan Road North

Number of Lots / Acres: 2 Lots / 2.0± Acres

Engineer / Surveyor: Rowe Surveying & Engineering Co., Inc.

County

The Chair announced the application had been recommended for approval and stated the applicant was agreeable with the recommendations. He added if anyone wished to speak on the matter they should do so at that time.

Hearing no opposition or discussion, a motion was made by Mr. Turner, with second by Mr. Davitt, to waive Section V.D.1. and approve the above referenced matter, subject to the following conditions:

- 1) **dedication of sufficient right-of-way to provide 50' from the centerline of Tanner Williams Road;**
- 2) **illustration of the 25' minimum building setback line as measured from any required dedication;**
- 3) **placement of a note on the final plat stating that each lot is limited to one curb-cut to Tanner Williams Road, with the size, location, and design to be approved by County Engineering and comply with AASHTO standards;**

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- 4) placement of a note on the final plat stating that no future subdivision will be allowed for Lot B until additional frontage on a paved public street is provided;
- 5) placement of a note on the plat stating that approval of all applicable federal, state, and local agencies is required for endangered, threatened, or otherwise protected species, if any, prior to the issuance of any permits or land disturbance activities;
- 6) placement of a note on the final plat stating that any lots developed commercially and adjoin residentially developed property shall provide a buffer in compliance with Section V.A.8 of the Subdivision Regulations; and,
- 7) placement of a note on the final plat stating development must comply with the Mobile County Flood Damage Prevention Ordinance. Development shall be designed to comply with the stormwater detention and drainage facility requirements of the City of Mobile stormwater and flood control ordinances, and requiring submission of certification from a licensed engineer certifying that the design complies with the stormwater detention and drainage facility requirements of the City of Mobile stormwater and flood control ordinances prior to the issuance of any permits. New public roads shall be constructed and paved to standards for County Maintenance, and accepted by Mobile County, while new private roads shall be constructed and paved to minimum County or Subdivision Regulation standards, whichever are greater.

The motion carried unanimously.

Case #SUB2010-00109

Zeigler Corners Subdivision, Phase Two

800 Schillinger Road North

East side of Schillinger Road North, 795'± North of Zeigler Boulevard, extending to the North side of Zeigler Boulevard, 625'± East of Schillinger Road North

Number of Lots / Acres: 2 Lots / 26.8± Acres

Engineer / Surveyor: Wattier Surveying, Inc.

County

The Chair announced the application had been recommended for approval and stated the applicant was agreeable with the recommendations. He added if anyone wished to speak on the matter they should do so at that time.

Hearing no opposition or discussion, a motion was made by Mr. Turner, with second by Mr. Davitt, to approve the above referenced matter, subject to the following conditions:

- 1) revision of the labeling of the lot size area to show the size in

- square feet, on the Final Plat;
- 2) retention of the depiction of the 25-foot minimum building line;
 - 3) placement of a note on the Final Plat limiting Lot 1 to two curb cuts to Schillinger Road North and Lot 2 to one curb cut to Zeigler Boulevard, with the size, design, and exact location of all curb cuts to be approved by County Engineering and conform to AASHTO standards;
 - 4) dedication sufficient to provide 50 feet from the centerline of both Schillinger Road North and Zeigler Boulevard;
 - 5) placement of a note on the Final Plat stating that the development will be designed to comply with the storm water detention and drainage facility requirements of the City of Mobile storm water and flood control ordinances, and requiring submission of certification from a licensed engineer certifying that the design complies with the storm water detention and drainage facility requirements of the City of Mobile storm water and flood control ordinances prior to the issuance of any permits. Certification is to be submitted to the Planning Section of Urban Development and County Engineering;
 - 6) placement of a note on the Final Plat stating that development of the site must be undertaken in compliance with all local, state and Federal regulations regarding endangered, threatened or otherwise protected species;
 - 7) placement of a note on the Final Plat stating that the approval of all applicable federal, state and local agencies is required prior to the issuance of any permits or land disturbance activities; and,
 - 8) 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.8. of the Subdivision Regulations.

The motion carried unanimously.

Case #SUB2010-00103

Del Ray Place Subdivision, Second Unit

2719 Moot Avenue

South side of Moot Avenue, 485'± West of McRae Avenue

Number of Lots / Acres: 4 Lots / 7.5± Acres

Engineer / Surveyor: Byrd Surveying, Inc.

Council District 4

The Chair announced the application had been recommended for hold over and that if anyone wished to speak on the mater, they should do so at that time.

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Jerry Byrd, Byrd Surveying, spoke on behalf of the applicant and made the following points in favor of approving the matter that day:

- A. noted that the applicant had two persons currently considering the purchase of Lot 1, which already had a house located on it; and,
- B. asked if it was possible to consider the application as it applied only to Lot 1 that day, with the remainder of the property to be noted as “future development” with the applicant re-applying the balance of the property to be subdivided at a later date.

Hearing no opposition or further discussion, a motion was made by Mr. Watkins, with second by Mr. Davitt, to modify the application and approve it as a one lot subdivision, with the remaining property to be shown as future development, subject to the following conditions:

- 1) **placement of a note on the final plat stating that Lot 1 is limited to one curb cut, size, location and design to be approved by Traffic Engineering;**
- 2) **placement of a note on the Final Plat stating that approval of all applicable federal, state, and local agencies for endangered, threatened, or otherwise protected species is required prior to the issuance of any permits or land disturbance activities;**
- 3) **placement of a note on the Final Plat stating that the approval of all applicable federal, state and local agencies is required prior to the issuance of any permits or land disturbance activities;**
- 4) **labeling of the lot size in square feet; and,**
- 5) **illustration of the required 25’ setback line.**

The motion carried unanimously.

NEW PLANNED UNIT DEVELOPMENT APPLICATIONS:

Case #ZON2010-02276

Roland Francis Properties

5799 Southland Drive

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

Planned Unit Development Approval to amend a previously approved Planned Unit Development to allow eight apartment buildings (182 units), pool, club house, bay (6) garages, trash compactor, and mailbox kiosk on a single building site

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The Chair announced the application had been recommended for approval and advised the Commission members that there was a packet of information regarding the matter located at their respective places.

Doug Anderson, Burr and Foreman Law Firm, spoke as representative for the developer. He stated they were in agreement with the staff's recommendations and reminded the Commission that the matter was a previously approved Planned Unit Development from earlier in the year. He noted that there were some neighbors who had filed an appeal of that approval in Circuit Court on the basis of notification and other issues. He stated that the Circuit Court had stated that there had not been proper notice given in the last application, which was the sole reason the applicant was back before the Commission that day.

Don Beebe of The Atchison Law Firm, 3030 Knollwood Drive, Mobile, AL, with his personal residence being 3488 Rue Royal, Mobile, AL, spoke in opposition to the matter. He made the following points:

- A. noted that he had been before the Commission when the matter was originally heard in the spring and had also appealed the Commission's approval to City Council, where that approval had been modified;
- B. requested that the City Council approval, including the language used in that approval, be used if the Commission saw fit to approve the matter at this time;
- C. reviewed the duties of the Planning Commission as outlined in the Mobile Municipal Code as related to Planned Unit Development approval, quoting the Code as saying, "no PUD shall be approved unless the Planning Commission determines, upon advise of the appropriate authorities, that water, sanitary and drainage facilities, access streets, and fire protection are adequate to meet the demands of the PUD;"
- D. noted that he had deposed six different people regarding this matter, had tried the case, which had provided him with sworn testimony in two separate venues, where the Planning, the Urban Development, Traffic Engineering, and Engineering Departments all agreed that Knollwood Drive was an access street and that it was not adequate to meet the demands of the Planned Unit Development before them that day;
- E. noted that it was recommended for approval, however, part of that approval meant the Certificate of Occupancy would be held until such time as the improvements needed were done;
- F. noted that due diligence by the developers would have shown that the proposed development did not have

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- adequate access via Knollwood Drive; and,
- G. expressed the opinion that the proposal to allow the construction of the apartment complex to proceed while the intersection and super elevated curb improvements were being done on Knollwood Drive would create a much more serious safety hazard.

Mr. Anderson responded to Mr. Beebe's comments as follows:

- A. expressed the feeling that the comments alluded to all previously approved applications as being done so illegally because of an interpretation that those could not be done conditionally; and,
- B. noted that the ordinance did not state that the Commission could not conditionally approve a matter, but rather stated that the Commission must satisfy itself as to the safety, health, and welfare of the community with regards to the impact of the proposed development.

In deliberation, Mr. Turner asked Mr. Lawler's opinion on the matter.

Mr. Lawler made the following points:

- A. noted that the Commission had a long history of granting conditional approval of projects as long as the Commission was convinced that the necessary infrastructure was adequate;
- B. also, close reading of the regulations did not show a requirement that the necessary infrastructure be in place prior to the Commission granting approval of a project; and,
- C. noted the Court gave great weight to the Commission's interpretation of its own regulations.

Mr. Olsen commented that the procedure, as he knew it since coming to work for the City, was when the Traffic Engineer or City Engineer made a recommendation for a condition they were, in fact, saying that the matter (i.e. drainage, access) would be adequate once the provisions recommended were put in place.

Mr. Holmes stated that much of the drainage improvements needed in a case such as this would not be done prior to construction but during, and as a result of, said construction.

Mr. Davitt reminded the Commission that he had been reluctant on this project from the very beginning, especially with regards to the traffic issues and he was not sure that he could support the project.

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Mr. Miller expressed his agreement with Mr. Davitt's sentiments and asked what traffic control measures were going to be required.

Ms. White, Traffic Engineering Department, noted that a deceleration lane and a left turn lane into Southland, as well as additional intersection work at that location to allow a right-left turn lane out were being required. She added that Engineering had been working with the applicant regarding the correction of a super elevation issue in the curve located in the area along Knollwood Drive.

Mr. Turner noted that the Traffic Impact Study was done in 2008 and wondered if an updated study had been done.

Ms. White stated that traffic volumes would not change significantly in a two year period to warrant such.

Hearing no further opposition or discussion, a motion was made by Mr. Turner, with second by Mr. Holmes, to approve the above referenced matter, subject to the following conditions:

- 1) **placement of a note on the Final Plat stating that approval of all applicable federal, state, and local agencies for endangered, threatened, or otherwise protected species is required prior to the issuance of any permits or land disturbance activities;**
- 2) **provision of and approval of a revised PUD site plan to the Planning Section of Urban Development prior to the signing of the Subdivision plat;**
- 3) **compliance with Traffic Impact Study Requirements as stated in the 2008 approval:**
 - A. *developer will be responsible for intersection improvements at Knollwood Drive and Southland Drive;*
 - B. *the developer must also re-stripe a dedicated left turn for southbound traffic as well as the recommended northbound left turn lane;*
 - C. *detailed plans for improvements must be approved by Urban Development, Engineering and Traffic Engineering;*
- 4) **compliance with Engineering Comments: *(Must comply with all stormwater and flood control ordinances. Any work performed in the right-of-way will require a right-of-way permit. Drainage from any new dumpster pads cannot discharge to storm sewer; must have connection to sanitary sewer. Intersection improvements at Knollwood Drive and Southland Drive as well as roadway improvements along Knollwood Drive are required and are to be coordinated with and approved by City Engineering. Completion of the approved improvements is required prior to issuance of any Certificates of Occupancy***

- (CO)); and,
5) full compliance with all municipal codes and ordinances.

The motion carried with Mr. Davitt and Mr. Miller voting in opposition.

GROUP APPLICATIONS:

Case #SUB2010-00111 (Subdivision)

Primo Commercial Park Subdivision, Re-subdivision of Lots 7 & 8

5459 Able Court

Southeast corner of Able Court and Cottage Hill Road

Number of Lots / Acres: 1 Lot / 1.3± Acre

Engineer / Surveyor: Byrd Surveying, Inc.

Council District 4

(Also see **Case #ZON2010-02273 (Planned Unit Development) Primo Commercial Park Subdivision, Re-subdivision of Lots 7 & 8**, and, **Case #ZON2010-02272 (Sidewalk Waiver) The Learning Tree**, below)

The Chair announced the Subdivision and Planned Unit Development applications had been recommended for approval, but that the Sidewalk Waiver application had been recommended for denial. He added that if anyone wished to speak on the matter they should do so at that time.

Ben Cummings, Cummings Architecture, spoke for the applicant, stating they were in agreement with the recommendations for the Subdivision and Planned Unit Development. He offered the following points in favor of the Sidewalk Waiver:

- A. noted his client, The Learning Tree, simply wanted to add additional classrooms to the facility they purchased the previous year;
- B. in the design process, it was discovered that the property was two lots, which required being subdivided into one, and that there were multiple storage buildings on site which necessitated the Planned Unit Development approval;
- C. noted that while it was true there was no engineering reason against installing the sidewalk, the area had little pedestrian traffic and the proposed sidewalk would not connect to any other sidewalk, making it a sidewalk to no where;
- D. noted that making The Learning Tree construct the sidewalk was a hardship to that organization as their property is unusually shaped, noting that they have 568 linear feet of road frontage for a lot that is not that big overall;
- E. spoke with a contractor regarding the potential cost of construction said sidewalk and had been advised it would cost between \$12,000 to \$13,000; and,

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- F. noted that The Learning Tree provided services for children with autism and noted that programs like this constantly struggled financially and that the money spent on constructing a “sidewalk to nowhere” would be better spent on services for the children.

Mr. Turner asked Mr. Olsen if sidewalks were requested along both Able Court and Cottage Hill Road or just along Cottage Hill Road.

Mr. Olsen responded that the applicant was requesting that any sidewalk requirements be waived. He noted that the sidewalk should be built on Able Court as that was where the organization had road frontage as well as a small portion of sidewalk was needed along Cottage Hill Road.

Hearing no further opposition or discussion, a motion was made by Mr. Watkins, with second by Mr. Turner, to approve the above referenced matter, subject to the following conditions:

- 1) **revision of the plat to label the right-of-way width of Cottage Hill Road;**
- 2) **placement of a note on the plat stating that the lot is limited to the two existing curb-cuts onto Able Court, and that direct access to Cottage Hill Road is denied;**
- 3) **full compliance with the Traffic Engineering comments: (*Driveway number, size, location, and design to be approved by Traffic Engineering and conform to AASHTO standards*);**
- 4) **full compliance with Engineering comments: (*Show Minimum Finished Floor Elevation on each lot on Plat. Also show the FFE on the plat for the existing buildings. There is to be no fill placed within the limits of the flood plain without providing compensation. Must comply with all storm water and flood control ordinances. Any work performed in the right of way will require a right of way permit*);**
- 5) **full compliance with Urban Forestry comments: (*Property to be developed in compliance with state and local laws that pertain to tree preservation and protection on both city and private properties (State Act 61-929 and City Code Chapters 57 and 64)*);**
- 6) **labeling of the lot size in square feet;**
- 7) **placement of a note on the plat stating that approval of all applicable federal, state, and local agencies is required for endangered, threatened, or otherwise protected species, prior to the issuance of any permits or land disturbance activities;**
- 8) **placement of a note on the plat stating that development must comply with all applicable federal, state, and local regulations relating to floodplain development; and,**
- 9) **provision of a revised PUD site plan to the Planning Section of**

Urban Development prior to the signing of the final plat or the obtaining of permits.

The motion carried unanimously.

Case #ZON2010-02273 (Planned Unit Development)

Primo Commercial Park Subdivision, Re-subdivision of Lots 7 & 8

5459 Able Court

Southeast corner of Able Court and Cottage Hill Road

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

Council District 4

(Also see Case #SUB2010-00111 (Subdivision) **Primo Commercial Park**

Subdivision, Re-subdivision of Lots 7 & 8, above, and, Case #ZON2010-02272

(Sidewalk Waiver) **The Learning Tree**, below)

Hearing no further opposition or discussion, a motion was made by Mr. Watkins, with second by Mr. Turner, to approve the above referenced matter, subject to the following conditions:

- 1) **revision of the site plan to depict the relocation of two of the existing storage sheds to meet all minimum setback requirements and to be outside of any drainage/utility easements, and the obtaining of building permits for all three sheds at the time of permitting for the building addition;**
- 2) **revision of the site plan to depict the existing play areas;**
- 3) **revision of the site plan and plat to label the right-of-way width of Cottage Hill Road;;**
- 4) **revision of the site plan to depict all parking spaces (and review to ensure compliance with the requirements of the Americans with Disabilities Act);**
- 5) **revision of the site plan to depict any existing or proposed dumpsters;**
- 6) **placement of a note on the site plan and plat stating that the lot is limited to the two existing curb-cuts onto Able Court, and that direct access to Cottage Hill Road is denied;**
- 7) **the obtaining of a permit at the time of permitting for the building addition for the wooden privacy fence that was placed on the property;**
- 8) **full compliance with the Traffic Engineering comments: (*Driveway number, size, location, and design to be approved by Traffic Engineering and conform to AASHTO standards*);**
- 9) **full compliance with Engineering comments: (*Show Minimum Finished Floor Elevation on each lot on Plat. Also show the FFE on the plat for the existing buildings. There is to be no fill placed within the limits of the flood plain without providing*)**

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- compensation. Must comply with all stormwater and flood control ordinances. Any work performed in the right-of-way will require a right-of-way permit);*
- 10) full compliance with Urban Forestry comments: *(Property to be developed in compliance with state and local laws that pertain to tree preservation and protection on both city and private properties (State Act 61-929 and City Code Chapters 57 and 64));*
 - 11) labeling of the lot size in square feet;
 - 12) provision of a revised PUD site plan to the Planning Section of Urban Development prior to the signing of the final plat or the obtaining of permits; and,
 - 13) full compliance with all municipal codes and ordinances.

The motion carried unanimously.

Case #ZON2010-02272 (Sidewalk Waiver)

The Learning Tree

5459 Able Court

Southeast corner of Able Court and Cottage Hill Road

Request to waive construction of a sidewalk along Able Court and Cottage Hill Road

Council District 4

(Also see **Case #SUB2010-00111 (Subdivision) Primo Commercial Park Subdivision, Re-subdivision of Lots 7 & 8**, and, **Case #ZON2010-02273 (Planned Unit Development) Primo Commercial Park Subdivision, Re-subdivision of Lots 7 & 8**, above)

In deliberation, Mr. Turner asked if there were a compromise that could be reached and only require construction of the sidewalk along Cottage Hill Road. He also offered his sympathies with regards to the construction cost and its effect on the child care center.

Mr. Olsen stated the center had less than 20 feet of frontage along Cottage Hill Road, which was negligible in the overall scheme of things.

Mr. Turner asked what sidewalks were in place along Able Court.

Mr. Olsen stated there was sidewalk located across the street.

Mr. Miller stated that he could not see how the City could say no to a sidewalk, especially in those places where children were involved. He also noted his feelings that the Commission could not continue to waive sidewalks simply based on the argument that there was no sidewalk near the proposed sidewalk.

Mr. Davitt asked the Commission's feelings regarding requiring the sidewalk be built on the west side along Able Court up to Cottage Hill Road.

Mr. Miller noted he would be comfortable with a reduction in the overall footage of the

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sidewalk, but not the complete removal of it.

Mr. Holmes reminded the Commission that the children serviced by this daycare center were not those who would generally use a sidewalk.

Hearing no further opposition or discussion, a motion was made by Mr. Holmes, with second by Mr. Miller, to grant a partial sidewalk waiver for the section of frontage along Able Court from the first curb-cut to the cul-de-sac.

The motion carried unanimously.

The Commission denied the request for the remainder of the frontages (a sidewalk will be required for the remainder).

Case #SUB2010-00106 (Subdivision)

Theodore Knights of Columbus Subdivision

5800 Swedetown Road North

North side of Swedetown Road North, 300'± West of U. S. Highway 90 West

Number of Lots / Acres: 2 Lots / 10.0± Acres

Engineer / Surveyor: Polysurveying Engineering – Land Surveying

Council District 4

(Also see **Case #ZON2010-02307 (Rezoning) John Swan**, below)

The Chair announced the application had been recommended for approval.

Matt Orrell, Polysurveying of Mobile, spoke on behalf of the applicant and requested the matter be held over until the November 4, 2010, meeting. He noted that he had spoken with Councilperson John Williams regarding the matter and that Mr. Williams had advised him that some of his constituents had expressed concern over the rezoning matter.

Hearing no opposition or discussion, a motion was made by Mr. Plauche, with second by Mr. DeMouy, to hold the matter over until the November 4, 2010, meeting, per the applicant's request.

The motion carried unanimously.

Case #ZON2010-02307 (Rezoning)

John Swan

5800 Swedetown Road North

North side of Swedetown Road North, 300'± West of U. S. Highway 90 West

Rezoning from R-1, Single-Family Residential District, and B-3, Community Business District, to B-3, Community Business District, to eliminate split zoning

Council District 4

(Also see **Case #SUB2010-00106 (Subdivision) Theodore Knights of Columbus Subdivision**, above)

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Hearing no opposition or discussion, a motion was made by Mr. Plauche, with second by Mr. DeMouy, to hold the matter over until the November 4, 2010, meeting, per the applicant's request.

The motion carried unanimously.

Case #SUB2010-00110 (Subdivision)

Ashland Place UMC Subdivision 2

5, 7 and 15 Wisteria Avenue and 2315 Old Shell Road

Southwest corner of Old Shell Road and Wisteria Avenue, extending to the North side of Dauphin Street, 160'+ West of Wisteria Avenue

Number of Lots / Acres: 2 Lots / 4.3± Acres

Engineer / Surveyor: Wattier Surveying, Inc.

Council District 1

(Also see **Case #ZON2010-02270 (Planned Unit Development) Ashland Place UMC Subdivision 2**, and, **Case #ZON2010-02271 (Planning Approval) Ashland Place UMC Subdivision 2**, below)

Mr. Watkins recused himself from discussion and voting on the matter.

The Chair announced the application had been recommended for approval.

Don Bowden, 1657 Springhill Avenue, Bowden Architecture, stated they were fine with the recommendations, however, questioned the fence requirement. He stated that adjacent neighbors, Paul and Ann Jernigan, had requested that the church not build a fence along their property line as they had a very large Ligustrum hedge in that area.

Mr. Olsen noted that Condition 2 of the Planned Unit Development stated that the proposed fence was not to impact the existing hedge.

Mr. Holmes asked if simply stating the fence was not to impact the existing hedge was adequate in this situation.

Mr. Hoffman noted that the Jernigans had submitted a letter with the previous application specifically requesting that no fence be required at all along their hedge which was the reason that verbiage had been included.

Mr. Olsen stated the staff would have no problem with clarifying the language so that the Jernigans' lot was specifically exempt from the buffer requirement.

In deliberation, Mr. Miller noted his displeasure over the church's handling earlier in the year of the older house situation and the fact those were demolished prior to the date allowed.

Hearing no opposition or discussion, a motion was made by Mr. Miller, with second by

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Mr. Turner, to approve the above referenced matter, subject to the following conditions:

- 1) **placement of a note on the final plat stating that Lot 1 is limited to the curb-cuts depicted on approved PUD and Planning Approval site plans;**
- 2) **placement of a note on the final plat stating that Lots 2 and 3 are limited to the existing single curb-cut each, with any changes to the size, design and location of the curb-cuts to be approved by Traffic Engineering and to comply with AASHTO standards, if modified;**
- 3) **submission of a revised Planning Approval and Planned Unit Development site plan (1 of each) prior to the signing of the final plat; and,**
- 4) **recording of the final plat prior to the obtaining of the necessary permits to build any new required buffer fences, and prior to any application for Land Disturbance permits to remove the driveway on Lot 1.**

The motion carried unanimously.

Case #ZON2010-02270 (Planned Unit Development)

Ashland Place UMC Subdivision 2

5, 7 and 15 Wisteria Avenue and 2315 Old Shell Road

Southwest corner of Old Shell Road and Wisteria Avenue, extending to the North side of Dauphin Street, 160'+ West of Wisteria Avenue

Planned Unit Development Approval to amend a previously approved Planned Unit Development Approval to modify property boundaries

Council District 1

(Also see **Case #SUB2010-00110 (Subdivision) Ashland Place UMC Subdivision 2**

Case #ZON2010-02271 (Planning Approval), above, and, Ashland Place UMC Subdivision 2, below)

Mr. Watkins recused himself from discussion and voting on the matter.

Hearing no opposition or discussion, a motion was made by Mr. Miller, with second by Mr. Turner, to approve the above referenced matter, subject to the following conditions:

- 1) **revision of the site plan to depict compliance with the tree and landscaping requirements of Section 64-4.E. of the Zoning Ordinance, including depiction of the full width of existing tree canopies that overhang street frontage areas, and provision of information regarding total landscape area and required front landscape area;**
- 2) **depiction and provision of a 6-foot high wooden privacy fence along all boundaries where the site abuts adjacent residences (with the exception of Lot 2), except within the minimum**

- building setback along Wisteria Avenue and Old Shell Road, where the fence shall only be 3-feet in height, and the obtaining of permits to build any required new sections of fence;
- 3) depiction of the tree buffering between the detention facility and the residential properties to the South, as part of compliance with condition # 1;
 - 4) revision of the site plan to show correct dimensions and bearings for all boundary segments;
 - 5) application and receipt of a Land Disturbance permit, after the recording of the final plat, for the removal of the driveway paving, to include the submission of a new tree and landscape plan for the site; and,
 - 6) provision of a revised Planned Unit Development site plan prior to the signing of the final plat.

The motion carried unanimously.

Case #ZON2010-02271 (Planning Approval)

Ashland Place UMC Subdivision 2

5, 7 and 15 Wisteria Avenue and 2315 Old Shell Road

Southwest corner of Old Shell Road and Wisteria Avenue, extending to the North side of Dauphin Street, 160'+ West of Wisteria Avenue

Planning Approval to amend a previously approved Planning Approval to modify property boundaries at an existing church school in an R-1, Single-Family Residential District

Council District 1

Case #SUB2010-00110 (Subdivision) Ashland Place UMC Subdivision 2, and, Case #ZON2010-02270 (Planned Unit Development) Ashland Place UMC Subdivision 2, above)

Mr. Watkins recused himself from discussion and voting on the matter.

Hearing no opposition or discussion, a motion was made by Mr. Miller, with second by Mr. Turner, to approve the above referenced matter, subject to the following conditions:

- 1) revision of the site plan to depict compliance with the tree and landscaping requirements of Section 64-4.E. of the Zoning Ordinance, including depiction of the full width of existing tree canopies that overhang street frontage areas, and provision of information regarding total landscape area and required front landscape area;
- 2) depiction and provision of a 6-foot high wooden privacy fence along all boundaries where the site abuts adjacent residences (with the exception of Lot 2), except within the minimum building setback along Wisteria Avenue and Old Shell Road, where the fence shall only be 3-feet in height, and the obtaining

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- of permits to build any required new sections of fence;
- 3) depiction of the tree buffering between the detention facility and the residential properties to the South, as part of compliance with condition # 1;
 - 4) revision of the site plan to show correct dimensions and bearings for all boundary segments;
 - 5) application and receipt of a Land Disturbance permit, after the recording of the final plat, for the removal of the driveway paving, to include the submission of a new tree and landscape plan for the site;
 - 6) no future use of residential structure on Old Shell Road without new Planning Approval, and any future non single-family residential use subject to full compliance with all applicable Building and Fire Codes; and,
 - 7) provision of a revised Planning Approval site plan prior to the signing of the final plat.

The motion carried unanimously.

Case #SUB2010-00104 (Subdivision)
The College Business Park Subdivision

121 West I-65 Service Road North

West side of West I-65 Service Road North, 205'± North of College Lane South

Number of Lots / Acres: 6 Lots / 10.3± Acres

Engineer / Surveyor: Clark, Geer, Latham & Associates, Inc.

Council District 7

(Also see **Case #ZON2010-02266 (Rezoning) Spring Hill College**, below)

The Chair announced the matter had been recommended for holdover, however, if there were those present who wished to speak to please do so at that time.

Mr. Olsen addressed the Commission prior to the applicant's address to them advising the Commission that the staff had met with the applicant prior to the meeting and that they had provided additional information regarding justification for rezoning. He added that the staff had prepared conditions for approval for that application.

Greg Saad, Saad Realty Group, 3601 Springhill Business Park, spoke as the representative for Springhill College, and made the following points for the matter:

- A. noted the recommendations referred to Lots 2-5, when in reality it was Lots 2, 3, 5, and 6;
- B. noted that Springhill College had owned the property for a great many years and it had been placed on the market for the purpose of generating prospects that would "fit" within the area;
- C. noted that Lot 1 was under contract and that Lot 4 would

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soon be under contract; and,

- D. Asked that the subdivision and zoning matters be approved that day so that they could proceed with the remaining due diligence for Lots 1 and 4 which would allow the applicant to close on those parcels and build the road.

Mr. Olsen asked the applicant if they were interested in reducing the depths of Lots 1 and 4 to 300 feet as opposed to the 350 feet currently show on that plat.

Mr. Saad stated only Lots 3 and 4 would be reduced to 300 feet and that only Lots 2 and 3 would be denied access to the service road.

Leigh Buffkin, 61 South Bishop Lane, stated she was representing the residents of the Zimlich-Werkland neighborhood, and she made the following points in opposition to the matter:

- A. noted the residents were of the understanding that Springhill College would like to have the property rezoned from B-1 to B-3;
- B. understood the College was taking a liberal, open minded attitude towards the potential occupants of the property, however, the residents of the neighborhood could not do so and felt the zoning change would have a significant negative impact on the area residents;
- C. noted that though the property to the north of this property had been zoned B-3, its structures reflected softer, B-1 applications;
- D. noted a large number of residential properties in the area and voiced the concern that permitting B-3 zoning of this parcel would allow the construction of buildings that would distract from the essence of the community;
- E. noted the types of businesses allowed under B-3 zoning which gave them the most concern were adult entertainment, automotive and truck leasing, a bar, nightclub, or tavern, distribution, bingo parlor, broadcasting station with tower, carnival or circus, communication tower, check cashing agency, convenience store, firearms sales, hotel, motel, liquor store, mobile home sales, recreational vehicles sales, repossession service, restaurant with drive up window, and a sewer and septic tank cleaning service; and,
- F. asked that the request for rezoning to B-3 be denied as it appears their intent was not to put these type businesses in those locations so it was felt that it would be better to have the property zoned for something less offensive such as B-1 or B-2.

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Mr. Saad stated his personal office building was located in the general vicinity of the property in question and that he did not want a number of the businesses outlined by opposition to be his neighbors either. He also reminded the Commission that the property owner was Springhill College, who had been extremely careful regarding the uses going in on sites surrounding the College. He added the primary purpose of putting B-3 in that space was due to the fact that it was adjacent to B-3 currently. He also noted that Springhill College had previously put in place restrictions to many of the more offensive usages under the B-3 classification.

Mr. Olsen stated the use restriction was voluntary on the part of the property owner. He also noted that adult entertainment could not be located on the site due to the very specific spacing requirements regarding adult entertainment as listed in the Zoning Ordinance.

Mr. Miller stated that the Commission was quite serious about their zoning recommendations and though he noted the College as being a responsible applicant, the Commission was not in the habit of changing zoning on a property without having been given substantial reason to do so.

Mr. Saad responded by noting that their justification for rezoning was availability of sites and that from Dauphin Street to Old Shell Road, there was basically only one site fronting the I-65 Service Road with B-3 zoning which allowed for both financial centers and hotels.

In deliberation, Mr. Miller repeated his continued displeasure at applicant's attempting to have their matters legislated at Commission meetings which did not allow the staff the appropriate amount of time to sufficiently review any new information.

Hearing no opposition or discussion, a motion was made by Mr. Miller, with second by Mr. Davitt, to approve the above referenced matter, subject to the following conditions:

- 1) **the placement of a note on the Final Plat limiting the First Phase (Lots 1 and 4) one curb cut each to I-65 Service Road (size, location, and design to be approved by ALDOT and Traffic Engineering in conformance to AASHTO standards);**
- 2) **the placement of a note on the Final Plat stating the submission of and compliance with recommendations of an approved Traffic Impact Study prior to approval of any construction permits for Lots 2,3,5 and 6;**
- 3) **placement of a note on the final plat stating lots 2 and 3 are denied curb cuts to I-65 Service Road;**
- 4) **full compliance with the Traffic Engineering comment (Driveway number, size, location, and design to be approved by ALDOT and Traffic Engineering in conformance to AASHTO standards);**

- 5) full compliance with Engineering comments (Need to provide a drainage easement for the existing 36" storm drain, the width of the easement to be approved by the City Engineer. Must comply with all storm water and flood control ordinances. Any work performed in the right of way will require a right of way permit.);
- 6) full compliance with Urban Forestry comments (Property to be developed in compliance with state and local laws that pertain to tree preservation and protection on both city and private properties (State Act 61-929 and City Code Chapters 57 and 64));
- 7) labeling of the lot size in square feet; and,
- 8) full compliance with all municipal codes and ordinances.

The motion carried unanimously.

Case #ZON2010-02266 (Rezoning)

Spring Hill College

121 West I-65 Service Road North

West side of West I-65 Service Road North, 205'± North of College Lane South

Rezoning from B-1, Buffer Business District, to B-3, Community Business District, to allow a development with offices, retail, restaurants and hotels

Council District 7

(Also see **Case #SUB2010-00104 (Subdivision) The College Business Park Subdivision**, above)

Hearing no further opposition or discussion, a motion was made by Mr. Miller, with second by Mr. Davitt, to recommend the approval of this change in zoning to the City Council, subject to the following conditions:

- 1) the submission of a Traffic Impact Study prior to approval of any construction permits for Lots 2,3,5 and 6, and compliance with recommendations during construction of the proposed street;
- 2) full compliance with the Traffic Engineering comment (Driveway number, size, location, and design to be approved by ALDOT and Traffic Engineering in conformance to AASHTO standards);
- 3) construction and acceptance of the proposed street by the Engineering Department prior to any development of Lots 2,3,5 and 6;
- 4) full compliance with Engineering comments (Need to provide a drainage easement for the existing 36" storm drain, the width of the easement to be approved by the City Engineer. Must comply with all storm water and flood control ordinances. Any work performed in the right of way will require a right of

- way permit);
- 5) full compliance with Urban Forestry comments (Property to be developed in compliance with state and local laws that pertain to tree preservation and protection on both city and private properties (State Act 61-929 and City Code Chapters 57 and 64)); and,
 - 6) full compliance with all municipal codes and ordinances.

The motion carried unanimously.

OTHER BUSINESS:

Mr. Olsen advised the Commission that a request had been made for clarification of the verbiage of a condition involving Shiloh Missionary Baptist Church, at which point, Mr. Turner recused himself from discussion and voting on the matter.

The condition referred to was regarding the allowance of a Land Disturbance permit for Shiloh Missionary Baptist Church since all paperwork had been submitted to the City Council for the required vacation and they own property on both sides of the alley.

Mr. Olsen went on to note there was a 15 foot alley that went through the property and that one of the conditions of approval had stated that no permits would be issued until the vacation of said alley was complete. He stated that the church had run into some issues where one or two of the utilities had lost the paperwork sent to them requesting the vacation as well as other delays. He advised the Commission that the church now had the full packet into the City Council and that it had been on the past Tuesday's agenda under "the Call for the Public Hearing" for the vacation. Mr. Olsen reminded the members that the church owned the property located on both sides of the alley. He ended by saying the church wanted clarification that the condition referenced would not exclude them from a land disturbance permit.

The Commission agreed by acclamation to allow such.

Hearing no further business, the meeting was adjourned.

APPROVED: November 18, 2010

Dr. Victoria Rivizzigno, Secretary

Terry Plauche, Chairman

jsl