

MOBILE CITY PLANNING COMMISSION MINUTES
MEETING OF DECEMBER 19, 2002 - 2:00 P.M.
AUDITORIUM, MOBILE GOVERNMENT PLAZA

Members Present

Robert Frost, Chairman
Wendell Quimby, Vice Chairman
Victor McSwain, Secretary
Ann Deakle
Councilman Stephen Nodine
Terry Plauche
Dr. Victoria Rivizzigno
John Vallas
Dr. James Laier (S)

Members Absent

Norman Hill (S)

Staff Present

Laura J. Clarke, Director
Richard L. Olsen, Planner II
Margaret Pappas, Planner II
Angie Etheridge, Secretary III

Others Present

Wanda Cochran, Asst. City Attorney
David Daughenbaugh, Urban Forestry
Jennifer White, Traffic Engineering
Beverly Terry, City Engineering
Pat Stewart, County Engineering
Tim Ashley, Land Use Administration

Mr. Frost stated the number of members present constituted a quorum and called the meeting to order.

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

APPROVAL OF MINUTES:

A motion was made by Dr. Rivizzigno and seconded by Councilman Nodine to approve the minutes of the September 5 and September 19, 2002 meetings as submitted.

The motion carried unanimously.

HOLDOVERS:

Case #ZON2002-02294 (Rezoning)

Carpe Diem Coffee & Tea Company, Inc.

4072 Old Shell road (Northeast corner of Old Shell Road and Dilston Street).

A request for a change in zoning from B-2, Neighborhood Business, to B-2, Neighborhood Business, to amend the condition that development be limited to the accompanying Planned Unit Development was considered.

The plan illustrates the existing structure and parking.

For discussion, please see Case #ZON2002-02293 (Planned Unit Development) – to follow.

After discussion, a motion was made by Mr. Plauche and seconded by Councilman Nodine to recommend the approval of this change in zoning to the City Council subject to the following conditions:

- 1) subject to the executed parking agreement with Dr. Bodie for use of parking spaces across Dilston Lane;
- 2) provision of measures to prohibit parking in and along the Old Shell Road and Dilston Lane Rights-of-ways, to be coordinated with the Traffic Engineer and Urban Development Department;

- 3) the paved area adjacent to the accessory building to be used for employee parking only, and signed appropriately; and
- 4) provision of frontage trees along Old Shell Road, to be coordinated with the Urban Forester (to be installed after completion of the sidewalk project by the City of Mobile).

AND

Case #ZON2002-02293 (Planned Unit Development)

Carpe Diem Coffee & Tea Company, Inc.

4072 Old Shell Road (Northeast corner of Old Shell Road and Dilston Lane

A request for Planned Unit Development Approval to amend a previous approval to allow use of upstairs room for reservations only was considered.

The plan illustrates the existing structure and parking.

Richard Olsen stated that the staff had provided the Commission members with a packet recommending denial of this application. Since the packet was sent out, however, the staff had met with Mr. Rusling, the owner of Carpe Diem, and Mr. Anderson and discussed the main concerns the staff had in recommending denial. The primary reason was the parking in and along the right-of-way of Dilston Lane and Old Shell Road. Mr. Olsen said the staff had come up with some conditions that they felt would address the primary concern, and also in conjunction with the agreement that they had reached with Dr. Bodie for use of his parking lot, and felt with these conditions this could be an appropriate approval.

Doug Anderson, attorney for Carpe Diem, pointed out that this application was dealing with prior rezoning approved earlier in the year 2002. This application was asking for removal of the condition of the rezoning that the use of the upstairs facility be prohibited due to insufficient parking. Mr. Anderson said the owner had reached an agreement with the Bodie's for use of their parking area across Dilston Lane from the hours of 6:00 p.m. to 11:00 p.m. every night, and from 1:00 p.m. on Saturday and Sunday. Also, they had an agreement with Debra's on the other side for use of their parking area from 6:00 a.m. to 10:00 a.m., and from 5:00 p.m. to 10:00 p.m. Mr. Anderson noted the use of the upstairs would be by reservation only.

Mr. Frost asked if the staff had reviewed the parking agreement referred to by Mr. Anderson, and asked if there was a stated term.

Mr. Olsen said there was not a stated term, rather it was an annual agreement. He noted that the agreement included a provision that Mr. Rusling would make improvements to the parking lot and there would be a monthly fee required for the use of the parking lot. Mr. Olsen noted that the upstairs could no longer be used if the agreement were ended.

Mr. Anderson further stated that they were amazed at some accusations and allegations made at the last meeting that they were presently using the upstairs facility for various groups. He submitted a letter from Mr. Jim Dees from which he quoted the following: *"I was host of "Poetry in the Attic" at Carpe Diem Coffee and Tea. I put up fliers, got us listed on community bulletin boards, etc. We cancelled the readings in March 2002 after the owners told me they could no longer have events in the attic. Our free notice in Natural Awakenings magazine may have run for another month or two before I thought to cancel it. I am sorry if this caused any confusion."*

Mr. Anderson further stated that there was a specific reference at the last meeting about the Toastmasters group using the upstairs facility. He presented a letter signed by Nolan Mims, President of the Carpe Diem Toastmasters, from which he quoted the following: *"We have been meeting at Carpe Diem Coffeeshouse for several years and until March of this year, held our meetings upstairs. We were then told that because of zoning we had to meet downstairs and have done so ever since. I understand that someone accused our group of continuing to meet in the upstairs room. That is not true, as anyone who has been in the coffeeshouse from 7:00-8:00 p.m. on Tuesdays can attest."* Also on that issue, Mr. Anderson said he received a telephone call from George Mays, Assistant U.S.

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Attorney at the federal courthouse, who is a member of Toastmasters, who also confirmed what was set forth in Mr. Mims' letter.

Mr. Frost asked if there was anyone in opposition to or needing any information on this application.

Mr. Ernie Farnell, who was building a house at 4249 Stein Street and had lived in this area for about 35 years was present in opposition.

Mr. Frost noted that Mr. Farnell had sent a letter in this regard to the Planning Commission, a copy of which was provided to each member.

Mr. Farnell referred to his letter. He said once again there was nothing they could do at this stage about the fact that this property had been zoned B-2. He said what they had was a commercial operation going on in a residential neighborhood until about 11:00 to 11:30 at night. He said there was activity outside the coffeehouse and in the parking lot, with cars parked right next to residential areas which was a disturbance. Regarding the agreement with Dr. Bodie, he said there was no guarantee that the agreement would continue, and he felt it a little bit naïve to think that if that agreement were invalidated, the coffeehouse would not continue to operate. Mr. Farnell also complained about the smell of roasting coffee permeating the neighborhood. He said he vehemently disagreed with the current use. Also, he said he had a conversation with Reverend John Reeling, pastor of St. Paul's, who gave him permission to quote him as an individual that he was very concerned about the commercialization of this area so close to the church operation. Rev. Reeling said the commercialization had already been disruptive to their church operation.

Councilman Nodine thanked Mr. Farnell for his letter and said he took his concerns very seriously, along with others in that community. He said he was a little bit irritated by some of the comments last month. He stated that the City had about \$6.4 million of capital improvements underway in District 7 and he was deeply concerned about commercialization of other properties. He understood that traffic on Dilston Lane was a problem, which was why the owners of the property on both sides of Carpe Diem worked out an agreement on the parking. If they lost that agreement they would no longer have the use of the upstairs room. Regarding the smell of the coffee roasting, Mr. Nodine said that was one thing he could not do anything about. He wanted to let the residents know, however, that as an elected representative he had done everything he could to address these issues.

Connie O'Bryan, 4307 Dilston Place, was present in opposition. She said she had personally seen that Carpe Diem had not abided by the rules that were set out eight months ago by the Planning Commission. She said parking remained a problem and Carpe Diem was still burning coffee. Mrs. O'Bryan noted that in April of 2001 she had complained to the Action Center about this matter, and to date she had never received a response.

Mr. Frost reminded Mrs. O'Bryan that the issue at hand was the use of the second floor.

Mrs. O'Bryan stated that a condition of the rezoning was a limit of 17 parking spaces, whereas she said she witnessed every day more than 17 parked cars at Carpe Diem. Mrs. O'Bryan contended that by its actions the Planning Commission was saying they did not care about the health and safety of the area residents. She asked that the Commission carefully consider their vote today.

Mr. Frost pointed out in executive session that this application had initially been recommended for denial, but the staff changed their recommendation subject to the conditions the members had before them since parking arrangements had been negotiated with abutting property owners.

Dr. Rivizzigno asked if there was anything that could be done about the complaints of the smell of coffee roasting.

Laura Clarke stated that the City of Mobile did not have any regulatory function over noxious smells.

After discussion, a motion was made by Mr. Plauche and seconded Councilman Nodine to approve this plan subject to the following conditions:

- 1) subject to the executed parking agreement with Dr. Bodie for use of parking spaces across Dilston Lane;
- 2) provision of measures to prohibit parking in and along the Old Shell Road and Dilston Lane Rights-of-ways, to be coordinated with the Traffic Engineer and Urban Development Department;
- 3) the paved area adjacent to the accessory building to be used for employee parking only, and signed appropriately; and
- 4) provision of frontage trees along Old Shell Road, to be coordinated with the Urban Forester (to be installed after completion of the sidewalk project by the City of Mobile).

The motion carried unanimously.

Case #SUB2002-00269 (Subdivision)

Burgett-Riverview Subdivision

2279 Burgett Road (South side of Burgett Road at Riverview Avenue, continuing through to the West side of Riverview Avenue, 250'± South of Burgett Road).

3 Lots / 4.7± Acres

Richard Olsen noted that documentation had been received illustrating that the owner of the adjacent property was not willing to participate in the subdivision, and therefore the staff was recommending that the application be approved.

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

There was no one present in opposition.

A motion was made by Mr. McSwain and seconded by Mr. Vallas to approve this subdivision.

The motion carried unanimously.

GROUP APPLICATIONS:

Case #ZON2002-02580 (Rezoning)

McGowin Properties

Northeast corner of McVay Drive North and Halls Mill Road.

A request for a change in zoning from R-1, Single-Family Residential, to B-3, Community Business, for an insurance adjuster's office with warehouse space for training classrooms, and other unspecified uses, was considered.

For discussion, please see Case #SUB2002-00279 (Subdivision) – to follow.

A motion was made by Mr. Vallas and seconded by Dr. Rivizzigno to recommend the approval of this change in zoning to the City Council subject to the following conditions:

- 1) the dedication of any necessary right of way to provide 35-feet from the centerline of Halls Mill Road;
- 2) provision of a 20-foot minimum building setback line from Halls Mill Road (setback along Halls Mill to be measured from the dedication, not required at the terminus of Belvedere Drive South) and a 25-foot setback along McVay Drive;
- 3) the provision of a 10' vegetative buffer on Lot 1, a 15' vegetative buffer on Lot 2, and a 20' vegetative buffer on Lots 3-11;

- 4) provision of a 6' wooden privacy fence, to be uniform throughout the development as offered by the applicant, at the time each lot is developed;
- 5) prohibition of parking within the 10-foot buffer area;
- 6) all activities under the canopy of the 36" Live Oak tree located in the area of Lots 1 and 3 to be coordinated with the Urban Forester;
- 7) full compliance with the landscaping and tree planting requirements for each lot;
- 8) the overall site be limited to six curb cuts to McVay Drive, with the location and design to be approved by Traffic Engineering;
- 9) the submission and approval of Administrative PUD applications at the time each lot is developed (if adjacent lots with a shared curb cut are developed concurrently, only one application is required);
- 10) prohibition of commercial signage in the eastern portion of Lot 1 along Belvedere Circle West and Halls Mill Road;
- 11) denial of direct access to Belvedere Drive South; and
- 12) full compliance with all municipal codes and ordinances.

The motion carried unanimously.

AND

Case #SUB2002-00279 (Subdivision)

McGowin North Subdivision

Northeast corner of McVay Drive North and Halls Mill Road.

11 Lots / 16.0+ Acres

Jerry Byrd, 2609 Halls Mill Road, engineer for the developer, was present representing the applicant. Mr. Byrd stated that basically they agreed with the staff recommendations with the exception of conditions No. 2 and No. 3. He asked that condition No. 2 in both the zoning and subdivision be modified for a 20' building setback along Halls Mill Road rather than 25'. Also, Mr. Byrd said No. 3 in the zoning was not written exactly like it was presented. They were requesting three different size buffers: lot 1 – a 10' vegetative buffer; lot 2 – a 15' vegetative buffer; and lots 3-11 – a 20' vegetative buffer between their development and the adjacent subdivision. Also, at the time of the development of the lots, the applicant was offering a 6' screen fence to be built on the property line.

Margaret Pappas noted that the requested buffers were shown on the plat but were not part of the narrative and were overlooked.

Mr. Quimby raised concern due to a little piece of property that extended into the entrance of Belvedere Drive going back east. He raised concerns that the residents of Belvedere Park Subdivision would have to drive by a B-3 property to get into the subdivision, and the developer could also locate a sign on that property.

Mr. Byrd noted that the development was restricted against any driveway going into Belvedere Drive.

Ms. Pappas pointed out dedication, buffers and setbacks along Halls Mill Road and said that the area of concern would not be considered useable area.

Mrs. Imie McGinnis, 1013 W. Belvedere, was present and expressed concerns about the possibility of a big commercial sign being placed on that corner property, the provision of shrubbery or some kind of vegetative buffer, and she asked how binding the conditions noted on the plat were.

Mr. Olsen replied that any note or condition on the subdivision plat at such time it is recorded is binding on that property until such time a future application may come in and receive approval by the Planning Commission to resubdivide.

Mrs. McGinnis asked about the requirement for screen fencing where the subdivision adjoined residential to be provided at the time of construction. She asked that the fence

be of brick or concrete construction to obscure vision from their subdivision into the commercial area.

Mr. Frost stated that the privacy fence would probably be a wooden fence.

Mrs. McGinnis further asked about the possibility of putting the fence up all at one time so there would be some uniformity and it would be more attractive to the residents of the Belvedere Park Subdivision. She further expressed concern about the drainage, noting that the subject property currently drained into the back yards of the residents on West Belvedere and caused flooding. She contended that development of this property would only worsen the problem. Mrs. McGinnis presented photos showing flooding in the neighborhood and asked what was going to be done about the drainage.

Mr. Vallas responded with regard to Mrs. McGinnis' request that the developer erect the fence for the whole development at one time rather than as each lot was developed. Mr. Vallas felt that installing the fence at one time may require the clearing of more property to get the necessary equipment in, and this could worsen the drainage situation.

Mrs. McGinnis presented a petition signed by residents of Belvedere Park Subdivision asking that the applicant be required to build and maintain a buffer zone of at least 20 feet of undeveloped property between any commercial development and their homes.

Mr. Wyman Dupuis, 1012 Belvedere Circle, was present and expressed his concern about the noise factor and the drainage. He felt the development of this property would worsen the drainage situation and cause more flooding. Mr. Dupuis also asked what was meant by "unspecified" uses.

Mr. Frost explained that the development would be limited to uses that would be allowed in a B-3 district and asked Mr. Byrd if he cared to make a response.

Mr. Byrd stated that the developer had no objection to the restriction of the sign in the area adjacent to the house. He said this was the first time they had heard of a petition about a buffer zone. Mr. Byrd said they would like to install the fence at the time of construction. He pointed out that they were providing twice as much screening, and three times in some cases, as required by the ordinance with the 20' buffer and the screen fencing. Mr. Byrd said they could put restrictions that the same type of fence would be used, and it would go up as each lot was developed. The drainage would also be addressed with the development of each lot. He noted that there was a use proposed for Lot 3 – for an insurance adjuster's office.

Mr. Quimby asked if the developer would be opposed to a no build zone at the point where the commercial property was at the entrance of the subdivision.

Mr. Byrd stated that the owner of the lot next door had cleared off part of this land and used it to get into his back yard. Mr. Byrd said they offered no signs to the rear of the house and maybe even further. He said being able to utilize that area of land to possibly park two or three cars might be advantageous in the development of that lot.

Mr. Olsen noted that there was a 36" Live Oak situated at the line between lots 2 and 3 that was not shown on the plan, and the staff would like to add a condition that any work under the canopy of the tree be coordinated and approved by Urban Forestry.

In executive session, Mr. Olsen reminded the Commission members that the developer volunteered that there would not be a sign within the entrance area of the nub of Lot 1.

Ms. Clarke reminded the Commission members that Mr. Byrd volunteered adding a condition requiring the 6' privacy fence to be uniform throughout the development. She also reminded the members that a condition should be added that any work performed around or impacting the 36" Live Oak, under the canopy, was to be coordinated with Urban Forestry.

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

- 1) the dedication of any necessary right of way to provide 35-feet from the centerline of Halls Mill Road;
- 2) provision of a 20-foot minimum building setback line from Halls Mill Road (setback along Halls Mill to be measured from the dedication, not required at the terminus of Belvedere Drive South) and a 25-foot setback along McVay Drive;
- 3) the provision of a 10' vegetative buffer on Lot 1, a 15' vegetative buffer on Lot 2, and a 20' vegetative buffer on Lots 3-11;
- 4) provision of a 6' wooden privacy fence, to be uniform throughout the development as offered by the applicant, at the time each lot is developed;
- 5) prohibition of parking within the 10-foot buffer area;
- 6) all activities under the canopy of the 36" Live Oak tree located in the area of Lots 1 and 3 to be coordinated with the Urban Forester;
- 7) full compliance with the landscaping and tree planting requirements for each lot;
- 8) the overall site be limited to six curb cuts to McVay Drive, with the location and design to be approved by Traffic Engineering;
- 9) the submission and approval of Administrative PUD applications at the time each lot is developed (if adjacent lots with a shared curb cut are developed concurrently, only one application is required);
- 10) prohibition of commercial signage in the eastern portion of Lot 1 along Belvedere Circle West and Halls Mill Road;
- 11) denial of direct access to Belvedere Drive South; and
- 12) full compliance with all municipal codes and ordinances.

The motion carried unanimously.

NEW SUBDIVISION APPLICATIONS:

Case #SUB2002-00272

Baker Estates Subdivision

South side of Airport Boulevard, at the Southern terminus of Flave Pierce Road, 1.970'± East of Walter Smith Road.

46 Lots / 22.0± Acres

Mr. Vallas recused himself from the discussion and vote with regard to this application.

The applicant was present and indicated he was agreeable with the recommendations of the staff.

Dalton Orr, 1251 Walter Smith, was present and stated that he was not necessarily in opposition to this development but had some suggestions. He pointed out that the proposed runway expansion of the airport was in a protected zone in which nothing could be built, and everything existing there now would have to be eliminated.

Mr. Frost commented that he thought the proposed runway expansion was in the No Fly Zone and did not necessarily mean one could not build there, but meant that people should be made aware of it because of noise.

Mr. Orr said he had spoken with Jennifer Fillingham of the Airport Authority the morning of December 19th who said this was a protected zone that crossed Airport Boulevard.

Margaret Pappas stated that the Runway Protection Zone (RPZ) would tip the northeast corner of the subject property. She noted the RPZ would have noise impacts for the balance of the property, which may make those structures eligible for additional noise protection, i.e. additional insulation, double-paned windows, etc. She noted that at such time the RPZ went into effect no structure could be built within that RPZ. With regard to existing structures, Ms. Pappas explained that as part of the condemnation process, all

structures within the RPZ would be acquired once the Airport Authority arrived at that phase and had funding allocated for the project. However, as far as the subject site was concerned, the RPZ only tipped the northeast corner of the property.

Mr. Orr asked if the developers would be responsible for building the houses to eliminate the noise.

Ms. Pappas said the legal counsel for the Airport Authority was present and she would allow him to field those questions.

Mr. Orr further asked if prospective buyers would be warned about the noise zones they were going to be living in.

Mr. Frost replied that the staff was requiring that the noise zone be shown on the plat.

Mr. Orr was also concerned about pollution, the wetlands, and how the increased traffic on Airport Boulevard would be handled. He suggested constructing a new alternate route to Baker High School without having to get on Airport Boulevard.

Mr. Frost noted that number 5 of the conditions required the developer to obtain all necessary federal, state and local approvals prior to issuance of any permits, which would include wetlands permits.

Mr. Olsen noted that although not required or recommended as a condition of approval, the applicant voluntarily offered to delineate a portion of the wetlands as a "No Cut Zone".

Don Williams, Williams Engineering, was present representing the applicant. Mr. Williams stated that the developer was aware of the Runway Protection Zone and planned to fully disclose that information. As Ms. Pappas noted, the RPZ did not appear to affect any of their residential lots. Regarding noise disclosure, Mr. Williams said they would make known what the decibel levels were. As far as traffic was concerned, he felt Airport Boulevard was the most appropriate location in the area to receive the traffic and the appropriate place to put their subdivision connection to. Also, Mr. Williams said they had no plans to affect Baker High School.

Mr. Frost asked the staff if a stub out could be made to Baker High School.

Mr. Olsen replied that the City did not have the authority to stub into school property without permission of the School Board.

With regard to the wetlands, Mr. Williams said the wetlands were completely out of the subdivision and he felt the wetlands would be respected.

Jay Watkins was present representing the Airport Authority. Mr. Watkins stated that when this property around Bates Field began to be developed, the Airport Authority wanted to bring to the attention of the staff the noise contours that had been approved by the FAA. Back in the '80's the FAA determined that Mobile, based on its growth and potential capacity of regional airports, was going to need a parallel runway both for noise abatement as well as, hopefully, potentially increased capacity in airline use. So in the late '80's the FAA obtained federal approval to begin acquisition of property in hopes of putting in a parallel runway. Mr. Watkins said this was a phased budgeting procedure and right now they were in phase 6 of an 8-phase acquisition project. However the acquisition project was currently stalled due to budget constraints, so they were unable to go forward until they received further budget allocations for land acquisition for this parallel runway. However, with the runway in the planning stages, the FAA prepares the noise abatement and noise delineation around the proposed site. When that noise delineation had been approved by the FAA it became the rule structure, so any buildings constructed within the particular noise zones around the proposed airport must be properly insulated for noise abatement, which would be the developer's or builder's responsibility.

Mr. Frost asked if there would be federal funding for insulation and noise abatement measures.

Mr. Watkins replied that federal money was available for anything existing prior to the adoption of the noise delineation. Mr. Watkins further pointed out the Runway Protection Zone, starting at what would be the south end of the proposed runway which would, if laid out in accordance with the proposal on the books right now, take in a small corner of the subject property right at Airport Boulevard. He emphasized that this was all on paper right now. There was no way they could, right now, say when, if, or where the RPZ would be laid out. It would not be laid out until the final survey pin was set at the center of the end of the runway.

Mr. Frost asked if the developer would be required to build these structures with the noise abatement features – the double paned windows, etc. if the proposed development were approved and the developer came in three months later to build this subdivision.

Mr. Watkins stated that they were dealing with two separate issues, noise contours and the Runway Protection Zone. The noise contours were originally approved back in the late '80's. A current amendment to that noise delineation was on the floor being debated because the Mobile Regional Airport had reduced the number of large jets, the 727's and higher, and resorted to more smaller regional jets which produced less noise, and as a result the noise contours were scaling in. So the current noise delineation was with respect to if the same flow of 727's were regularly coming into Mobile, so the contours were wider to take in a larger space, which had a larger impact on this proposed site.

Mr. Frost noted that the contours would affect virtually all this property, not just the northern tip.

Mr. Watkins said that was correct, as the noise contours now existed. However, the proposed noise contours based on the use of the regional jets involved much less of the subject property and moved the noise contours for the area needing to be buffered for insulation further north on the site. Mr. Watkins said there had been a number of studies done as far as placement of the runway and the runway could not go any further east, and must be no less than 3200' from the existing runway. It had to be parallel, so it could move west, north, and south, but it could not move east. Mr. Watkins said they had no idea about the timetable. He explained that even if the funding came through, the FAA could come back into Mobile and determine that the capacity was not there to justify the runway. He said he simply wanted to make the staff aware of the noise contours and proposals of the FAA and the Mobile Airport Authority that were on the table.

Regarding the questions posed to him earlier about disclosure, Mr. Frost asked if there were any federal guidelines that would require mandatory disclosures of this type of thing happening.

Mr. Watkins was not aware of any guidelines in place at this time requiring disclosures of this nature. He noted that the FAA noise contours plans had been of public record and on the books since the late '80's. He iterated that since no activity thus far would impact anyone and since the plans were not concrete, there was really no necessity to issue any warnings at this time. Mr. Watkins said if funding and FAA approval was granted for this project to move forward, the Airport Authority would be required to condemn any impacted property.

A motion was made by Dr. Laier and seconded by Ms. Deakle to approve this subdivision subject to the following conditions:

- 1) placement of a note on the final plat stating that Lot 46 is limited to one curb cut to the proposed street and one curb cut to Airport Boulevard, size, location and design to be approved by County Engineering;
- 2) provision of buffering where any commercial lots abut residential lots, in compliance with Section V.A.7 of the Subdivision Regulations;
- 3) provision of traffic calming devices, number, location and design to be approved by the County Engineering Department;

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- 4) the portion of the site affected by the flight path of the new parallel runway for the Mobile Airport Authority should be delineated and a note placed on the final plat stating the potential impact; and
- 5) developer to obtain all necessary federal, state and local approvals prior to the issuance of any permits.

Mr. Vallas recused; the motion carried.

Case #SUB2002-00278

Julian Gewin Subdivision

East side of Schillinger Road, 500'± South of Moffett Road, extending through to the South side of Moffett Road, 550'± East of Schillinger Road.

5 Lots / 3.1± Acres

The applicant was present and indicated he was in agreement with the staff recommendations.

There was no one present in opposition.

A motion was made by Ms. Deakle and seconded by Dr. Rivizzigno to approve this subdivision subject to the following conditions:

- 1) the provision of a 75' setback from the centerline (which includes the required minimum building setback of 25'), of Moffett Road;
- 2) the dedication of sufficient right-of-way to provide 50-feet from the centerline of Schillinger Road;
- 3) the placement of a note on the final plat stating that Lots 1-4 be limited to the existing curb cuts to Schillinger Road and/or Moffett Road, with the size, location and design to be approved by County Engineering;
- 4) the placement of a note on the final plat stating that Lot 5 be limited to one curb cut to Schillinger Road, with the size, location and design to be approved by County Engineering; and
- 5) the placement of a note on the final plat stating that if any lot is developed commercially and adjoins residentially developed property, a buffer in accordance with Section V.A.7 of the Subdivision Regulations, shall be provided.

The motion carried unanimously.

Case #SUB2002-00275

Hamilton Oaks Park Subdivision, Resubdivision of

North side of Jeff Hamilton Road, 4/10 mile± East of Repoll Road.

2 Lots / 9.6± Acres

The applicant was present and indicated he was agreeable with the recommendations of the staff.

There was no one present in opposition to this application.

A motion was made by Ms. Deakle and seconded by Mr. Vallas to waive Section V.D.3 of the Subdivision Regulations and approve this subdivision subject to the following conditions:

- 1) the placement of a note on the final plat stating that no habitable structures will be allowed on Lot 2;
- 2) the placement of a note on the final plat stating that any lot 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) denial of access to the private road way easement at the Western portion of the site; and

- 4) the placement of a twenty-five foot minimum building setback line on the final plat.

The motion carried unanimously.

Case #SUB2002-00276

Harmony Ridge Subdivision

Northeast corner of Snow Road and Nursery Road.

126 Lots / 57.4± Acres

Mr. Frost stated that the applicant was present and indicated that he was agreeable with the recommendations of the staff.

Mr. Joe Kinney, 3740 Snow Road, whose property was adjacent to the proposed subdivision, was present in opposition. Mr. Kinney inquired about plans for sewage disposal for this area.

Margaret Pappas explained that this proposed development would have a modified sand filtered treatment system. The facility would be on the eastern portion of the site, and each lot would have a septic tank where they would pump to the treatment facility. There would be no field lines.

Mr. Kinney said the sewage treatment facility would be adjacent to his home and felt it would devalue his property. With the size of the subdivision he felt there would be sewage disposal problems. Mr. Kinney operated a nursery in this agricultural area and had complied with all applicable USDA, federal, state and ADEM laws, and he would expect anyone moving next to him to abide by the laws. He suggested locating the sewage treatment facility between the commercial lots and the residential lots. Further, Mr. Kinney expressed concern about traffic on Nursery Road because it was a heavy nursery production area. He also wanted to be sure he was going to be able to continue his business without neighbors complaining about him spraying his plants at 5:00 a.m. or putting out fire ant bait. Mr. Kinney said he had a lot invested in his business and he planned to expand it further.

Mr. Frost asked Pat Stewart with the county engineering office to comment on the proposed sewage treatment facility.

Mr. Stewart explained the proposed sewage treatment process.

Mr. Frost noted that the developer would have to meet the Board of Health and County regulations in regard to the sewage treatment facility.

Councilman Nodine understood the proposed sewage treatment facility was state-of-the-art and was being used extensively throughout Alabama. ADEM and all regulatory agencies had approved the sewage treatment plan. Mr. Nodine explained the treatment process.

Mr. Stewart noted that when these systems were under the roadways and taken over by public utilities for maintenance, the public utility companies actually assumed ownership.

Mr. Kinney asked that this application be held over a few weeks to give the Planning Commission an opportunity to become more familiar with this proposed method of sewage disposal.

Mr. Jerry Lowery, 3400 Roberts Lane, part owner of Blackwell's Nursery, was present in opposition. Blackwell's Nursery bordered on the north side of the subject property. He was concerned about drainage, as the property in question was a natural runoff for water. He felt this development would create additional problems with the sewage system. Also, if they had to build this land up to put in this development they would be putting water off on other people. Mr. Lowery noted that the proposed development was right in the middle of an agricultural area with Blackwell's Nursery on the north side, Mr. Kinney on the south side, and Tom Dodd Nursery, one of the largest in Alabama, on the east side.

He reported that airplanes sprayed over this area and they put out fire ant bait and that kind of thing. He felt a residential area in their midst would create nothing but problems for them and for the landowners.

Mr. William Parkes, representing Speaks and Associates, engineer for the developer, addressed the sewage issue. He explained that since there was not a public sewer available in the area they had two options: (1) put a septic tank on every lot, which would require an initial inspection by the Health Department, but then there would be no regulation; or (2) obtain permits through ADEM, which the applicant was in the process of doing, and the systems would be monitored regularly by ADEM to make sure the regulations were met, and the public utility would be in charge of it. Mr. Parkes noted several locations where they had installed such a system.

Mr. Frost noted that the Planning Commission would not have any control over the comment about residential coming to an agricultural area and all of a sudden they receive complaints and are unable to operate their businesses appropriately.

Ms. Clarke noted that there were no land use controls in the county.

A motion was made by Dr. Laier and seconded by Mr. Vallas to approve this subdivision subject to the following conditions:

- 1) the placement of a note on the final plat which states that Lots 1-9, Commercial Unit, are limited to five curb cuts total, with the location and design to be approved by County Engineering;
- 2) placement of notes on the final plat which state that that Lots 1 and 38, Unit 1, are denied direct access to Snow Road; Lots 1, 16-18, Unit Two; Lots 1, 2 and 27, Unit Three; and Lot 26, Unit Four; are denied direct access to Nursery Road; and
- 3) placement of a note on the final plat which states that a buffer, in compliance with Section V.A.7 will be provided where the commercial unit adjoins residential property.

The motion carried unanimously.

Case #SUB2002-00282

Hunter's Cove Subdivision

North side of Theodore Dawes Road at the North terminus of Leytham Drive, extending North to West termini of Cheyenne Street and Hooper Street, and East to the South termini of Huron Road and Mackenzie Drive.

373 Lots / 135.0+ Acres

John Avent, Engineering Development Services, LLC, was present representing the applicant. Mr. Avent agreed with the staff as far as all the comments with the exception of Condition 6 requiring a second entrance to Theodore Dawes Road. The applicant would like to accommodate two entrances to Theodore-Dawes Road, but could not do that because their main entrance was located on Theodore-Dawes Road on top of a hill with adequate site distance to the west and to the east. If an entrance were installed down to the west of the main entrance, they would not have adequate site distance. In lieu of putting in another entrance, they proposed to construct a deceleration lane for the westbound traffic to enter into the subdivision, and also probably a left turn lane for the eastbound traffic to enter the subdivision. Mr. Avent also noted that the main entrance itself would be a four-lane boulevard and could probably handle some stacking during peak demands.

Mr. Frost asked for the staff's comments.

Mr. Olsen stated that the proposal would be acceptable.

Tommy Miller, 8370 Theodore-Dawes Road, who owned about 2,000 feet adjacent to the subject property, was present in opposition. He felt the water treatment plant as proposed would be located in the lowest possible place they could put it. He said drainage was already a problem, with water running over onto his property. He pointed out several

inadequate ditches along Theodore-Dawes Road. He said an 18' culvert was the only thing that would obstruct water from going straight into Fowl River. Mr. Miller owned a 6-acre lake, which he provided photos of, and said the dam had collapsed due to Tropical Storm Isadore, and he was waiting for good weather so it could be repaired. He showed several pictures of the way this land sloped from the Hunter's Cove Subdivision and his property. Mr. Miller also asked that a fence be erected along the property line. He complained about dogs from the adjoining subdivision killing his goats and was concerned they would have even more animals roaming the neighborhood with this proposed development.

Heather Cieutat, 5168 MacKenzie Drive, was present in opposition. Ms. Cieutat expressed concern about the safety of the many children who lived on MacKenzie Drive with the increased traffic from the proposed development. She noted a bus picked up one handicapped child on the street every morning. She said her main concern was where the street opened up on Hooper Street and Huron Road.

Mr. Frost asked the staff if any consideration had been given to traffic calming devices.

Mrs. Pappas replied in the negative, but said the Commission may make the requirement of traffic calming devices a condition of approval.

Ms. Cieutat also expressed a desire for lights to be installed at the end of her street, a dead-end, with a wooded area behind her house. In addition, she was concerned about flooding on the north part of MacKenzie Drive, and the effect the proposed development would have on her power and water pressure.

Mr. Frost assured Ms. Cieutat that the power and water utilities would make sure their needs were met.

Ms. Pappas noted that the same type of septic waste treatment facility was proposed for this development as was proposed for Harmony Ridge, discussed earlier. She said she had spoken with Matt Perryman at the Mobile Area Water and Sewer Service who stated that minimum size lots would be required for hookup for this type facility.

Terrie Lanier, 5032 Huron Road, was present in opposition. Ms. Lanier had a list of her concerns as well as the concerns of several other residents. Ms. Lanier reported concerns of whether a percolation test was completed, the results and who ran it; extra demands on the volunteer fire department; the safety of children in the neighborhood due to increased traffic; the possibility of the developer building something other than what was approved today, including trailers; whether runoff would go into the retaining pond behind her house; whether the common area or green space remained wooded; and whether there would be any type buffer or privacy fence between Hunter's Cove subdivision and the adjoining property.

Mr. Frost explained to Mrs. Lanier that the staff was not aware of a percolation test, as that was not something the Planning Commission would normally address. As for fire department coverage, the Commission's concern was to make sure there was adequate access and room for emergency vehicles to get in. Regarding traffic concerns, traffic calming devices could be considered. As to noise concerns, the Commission tried to make sure there was nothing unreasonable imposed on the neighbors, however noise from machinery used for construction may be an inconvenience.

Ms. Clarke explained to Ms. Lanier that the Planning Commission would not have any authority to bring the noise factors into consideration since there was no zoning in the County. By being bound and limited only to the enforcement of the Subdivision Regulations within the County jurisdiction, the Commission could not address matters of use.

Billy Hopper, 4938 MacKenzie Drive, was present in opposition. Mr. Hopper was concerned about the impact of this proposed development on his property value. He was concerned about the type houses to be built and the density. He noted that Meadow Lake School was already overcrowded. Traffic was also a concern.

Ms. Pappas noted that there was no access to the common area shown on the plat and a 25' minimum access was required.

Mr. Avent addressed the concerns about the wastewater treatment plant being located in a low-lying area. He said their preliminary report showed the area being outside the flood zone. He reported that the percolation tests for the treatment plant had not been conducted yet, but all the soils information from the Conservation Service soils map indicated it was great soil. As far as easements in the rear of the lots, Mr. Avent noted that, with the exception of a few lots, the lots had common areas with large green belt areas. He said clearing would be limited to the greatest extent possible, but they were bound to drainage laws and such for storm water retention. Mr. Avent explained that this was a 372-lot PUD with a mixed use, and the developers had intentions of creating a highly restricted neighborhood. He said there would be four villages with a patio home garden area, and larger lots would be estate lots around a green space, and then there would be medium size lots with conventional houses. The homes would be of brick and mortar type construction. Mr. Avent said they were trying to create a village that would not knock out any price range. The houses would range from about \$77,000 - \$160,000.

Ms. Pappas noted that there was over 14 acres of useable common open space in this proposed development, excluding detention and streets.

Mr. Avent understood the concerns raised about traffic and had no objection to putting in traffic calming devices.

Dr. Rivizzigno commented on the density, comparing the proposed development with Lafayette Square. She felt the proposed development could work with limited access.

A motion was made by Mr. Vallas and seconded by Dr. Laier to waive Section V.D.2 of the Subdivision Regulations and approve this subdivision subject to the following conditions:

- 1) dedication of the necessary right-of-way to provide 50-feet from the centerline of Theodore Dawes Road, a planned major street;
- 2) placement of a note on the final plat stating that direct access to Dawes Road is denied for Lots 1-4 of the 90-foot wide lots, and Lot 1 of the 40-foot wide lots;
- 3) that the lots in 40-foot wide lot unit be shifted to provide a minimum of 5,000 square feet per lot;
- 4) placement of a note on the final plat stating that the maintenance of all common areas shall be the responsibility of the property owners;
- 5) that the two tot-lots located within the cul de sacs in the 40-foot wide lot unit be identified and used as green space;
- 6) construction of a deceleration lane and left turn lane for east bound traffic on Theodore Dawes Road;
- 7) provision of traffic calming devices as offered by the applicant, to be coordinated with and approved by the County Engineering and Urban Development Departments; and
- 8) the provision of a minimum of 25-feet of access to the large common area to the North.

Mr. Plauche was opposed; the motion carried.

Case #SUB2002-00281

Jefferson Federal Addition to Montlimar Subdivision, Resubdivision of Lot 1, Resubdivision of Lots 1 and 2

3687 Airport Boulevard (Southeast corner of Airport Boulevard and Montlimar Drive).

1 Lot / 1.6± Acres

Mr. Vallas recused himself from the discussion and vote with regard to this application.

The applicant was present and indicated he was agreeable to the recommendations of the staff.

There was no one present in opposition.

A motion was made by Dr. Rivizzigno and seconded by Ms. Deakle to approve this subdivision subject to the following condition:

- 1) the placement of a note on the final plat stating that the development is limited to one curb cut to the Airport Boulevard Service Road and one curb cut to Montlimar Drive, with the size, location and design to be approved by Traffic Engineering.

Mr. Vallas recused; the motion carried.

Case #SUB2002-00283

LDS Subdivision

Southeast corner of Theodore Dawes Road and Kanode Road (prescriptive right-of-way).
3 Lots / 11.5+ Acres

The applicant was present and indicated he was agreeable to the recommendations of the staff.

There was no one present in opposition.

A motion was made by Ms. Deakle and seconded by Mr. Vallas to approve this subdivision subject to the following conditions:

- 1) the dedication of sufficient right-of-way to provide 30-feet from the centerline of traveled roadway for Kanode Road;
- 2) the dedication of a 25-foot radius at the intersection of Kanode Road and Theodore Dawes Road;
- 3) the placement of a note on the final plat stating that Lot 1 is limited to two curb cuts to Theodore Dawes Road, with the size, location and design to be approved by County Engineering and is denied direct access to Kanode Road;
- 4) the placement of a note on the final plat stating that Lot 2 is limited to one curb cut to Theodore Dawes Road with the size, location and design to be approved by County Engineering;
- 5) the placement of a note on the final plat stating that Lot 3 is limited to two curb cuts to Theodore Dawes Road with the size, location and design to be approved by County Engineering;
- 6) the property labeled as future development be included on the final plat and labeled as such;
- 7) the placement of a note on the final plat stating that if any property is developed commercially and adjoins residential property, a buffer in compliance with Section V.A.7 of the Subdivision Regulations, will be provided; and
- 8) the placement of the twenty-five foot setback line on the final plat.

The motion carried unanimously.

Case #SUB2002-00277

Remington Estates Subdivision, Unit Four

East terminus of Haley Drive.
25 Lots / 25.4+ Acres

There was no one present representing this application.

Mr. Ronnie Mitchell, 3718 Seleste Drive, was present and expressed concern about the drainage, noting that there was a 35-40 foot drop on Haley Drive, and erosion was a bad problem. He pointed out wetlands just behind his house.

Mr. Frost explained that the developer would be required to obtain all necessary federal, state and local approvals prior to the issuance of any permits. Mr. Frost suggested Mr. Mitchell might want to speak with ADEM concerning the impact on the wetlands.

In later discussion Ms. Deakle asked if anyone had examined the large swale, or 40-foot drop, as described by Mr. Mitchell.

Mr. Olsen had reviewed the topo and noted there was a considerable drop, but he was not certain if it was actually 40 feet.

Mr. Frost also expressed concern about the 40-foot drop and suggested the Commission may want to hold over this application to allow the staff an opportunity to contact the engineer and the applicant in regard to this matter since the applicant was not present.

With the applicant not being present and the staff having to contact him, Mr. Olsen felt it would be advisable to hold the application over to the January 23rd meeting.

A motion was made by Mr. Frost and seconded by Ms. Deakle to hold over this request to the January 23, 2003 meeting for the following reason:

- 1) the applicant was not present to respond to particular concerns presented with regard to drainage measures and wetlands on the site.

The motion carried unanimously.

Case #SUB2002-00280
Stonecreek Subdivision

South side of Old Pascagoula Road, 160'± West of Woodchase Boulevard.
4 Lots / 1.2± Acres

The applicant was present and indicated he was agreeable with the recommendations of the staff.

There was no one present in opposition.

A motion was made by Mr. Plauche and seconded by Dr. Rivizzigno to approve this subdivision subject to the following conditions:

- 1) the placement of a note on the final plat stating that if any property is developed commercially and adjoins residential property, a buffer in compliance with Section V.A.7. of the Subdivision Regulations will be provided; and
- 2) the developer obtain any necessary federal, state, and local environmental approvals prior to development.

The motion carried unanimously.

OTHER BUSINESS:

Vote regarding the proposed L-B, Limited Business, Zoning Classification

Mr. Frost reported there was some confusion with regard to a subcommittee recommendation concerning the proposed L-B, Limited Business, zoning classification. Mr. Frost noted that presented before the Commission members were apparently some edits to the previous recommendation and he requested that the subcommittee explain.

Mr. Quimby explained that after hearing comments from several citizens, the staff, and the three members of the subcommittee, a list was prepared of activities that possibly should not be allowed in the proposed L-B, Limited Business, classification. Mr. Quimby felt businesses with drive-up windows, stores producing noise, and manufacturing should not be permitted.

Mr. Olsen explained to the Commission members that there were actually two copies of L-B before them; one was entitled subcommittee recommendations, and another one that was the original staff proposal.

Ms. Clarke noted that the public hearing to allow comments from the public was held November 21, 2002 and a sub-committee was appointed to address issues raised at the public hearing. Appointed to the sub-committee were Mr. McSwain, Mr. Vallas and Mr. Quimby. She understood that after a subcommittee meeting held on Dec 5 2002 two of the three subcommittee members felt there was not adequate reason to substantiate changes to the original plan submitted by the staff. She noted that the proposed L-B classification was strongly encouraged by the City Council.

Dr. Rivizzigno motioned to approve the original proposed L-B zoning classification as submitted by the staff.

Mr. Quimby noted that the purpose of the L-B was to take out some of these heavy uses out of B-2 to a softer classification. Mr. Quimby objected to the big box situations and drive up window situations. He noted that opposition arose to alcohol sales, and he did not feel there was a drugstore in town that did not sell alcohol. Mr. Quimby realized the staff had worked on the proposal, the Commission had the right to vote on it, and the members had the discretion to remove or add uses; however, his idea was that in order to solve the issue at hand the Commission should not leave it all B-2.

Mr. Vallas had some of the same concerns as Mr. Quimby. After the subcommittee addressed the big box issue, it was understood that establishments such as Lowe's and Home Depot were considered and should be construed as home improvement centers, as opposed to hardware stores. Mr. Vallas felt hardware stores such as the neighborhood Blue Bird Hardware, Carwie Hardware, provided a service to the neighborhood and were not offensive uses to the neighborhood.

Ms. Deakle commended the staff for their efforts with regard to the L-B zoning classification. She saw the new classification as a cure to many problems the Commission had regularly encountered. Ms. Deakle felt the proposal was well planned and she strongly favored it.

Mr. Nodine also understood Mr. Quimby's concerns, but expressed that the City Council had been looking for a happy medium. Mr. Nodine commended the staff for the most extraordinary process concerning zoning and rezoning he had experienced in his life. Mr. Nodine felt this new classification allowed the Planning Commission and City Council an opportunity to also ease the neighborhood mindset to not allow big box businesses in the middle of residential neighborhoods.

Dr. Laier favored the L-B zone and felt it was a valuable experience. He was personally very impressed with Mr. Quimby's recommendation, however, he realized the general consensus accepted the original form submitted by the staff.

Mr. McSwain felt the new classification would have likely already been enacted if the Commission had been more properly informed of what the intent of the L-B classification was.

Dr. Rivizzigno liked the idea of the businesses meeting the needs of the surrounding residential neighborhood. She noted that a good number of the businesses listed would not survive if they simply depended on clientele from the surrounding neighborhood, and that was one reason such uses would be located on thoroughfares to bring in business from other areas. She felt the preamble was really more businesses for neighborhoods.

Mr. Frost pointed out to Dr. Rivizzigno that the locational guidelines for L-B districts were to be the same as for B-2. He interpreted this to mean the Commission would simply have the L-B option, but the standards of B-2 applied (i.e., if a drug store were included on the list, the applicant must still meet the requirements of B-2 as far as a consideration for L-B). He explained the new L-B classification was an effort to allow

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B-2 uses, but eliminated various offensive uses. He felt the new classification allowed the Commission the option to allow what they considered was an appropriate B-2 use in a district without the opportunity of the use be converted to something more offensive that would not be appropriate if and when the business approved initially closed. While Mr. Frost agreed with Dr. Rivizzigno that perhaps the uses listed were conducive to a neighborhood, he explained that when L-B applications appeared before the Commission, all the same considerations of B-2 would be presented and evaluated.

Ms. Clarke confirmed that the locational requirements for property to be rezoned to L-B would be virtually exact with those of B-2; and there would be no attempts to slip in an approval for an L-B classification on property in the middle of a neighborhood, or at any inappropriate location. Ms. Clarke agreed that probably all of the zoning districts within the Zoning Ordinance had preambles to them when they were written in the 1960's. Ms. Clarke further reported that the staff had agreed to begin a very comprehensive analysis of the Zoning Ordinance, which was a very time-consuming enormous assignment. Ms. Clarke explained that this project would include a review of policies and practices in place in other cities under the Planning Advisory Service. The staff's goal was to determine if there were possibly changes that could be made to the Zoning Ordinance to better suit development needs (the neighborhoods, the political, as well as the planning decisions, relating to zoning and land use). She felt the staff was committed to this effort to help eliminate confusion or misunderstandings.

Mr. Olsen pointed out that there was a major overhaul to the Chart of Permitted Uses and some sections of the text in 1991.

Ms. Clarke noted that the inclusion of the Tree Ordinance and Sign Ordinance within the Zoning Ordinance also produced the need for a comprehensive overview.

A motion was made by Dr. Rivizzigno and seconded by Mr. Nodine to approve the L-B, Limited Business, zoning classification as recommended by the staff.

Mr. Quimby was opposed; the motion carried.

There being no further business, the meeting was adjourned.

APPROVED: March 20, 2003

/s/ Victor McSwain, Secretary

/s/ Robert Frost, Chairman

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