

MOBILE CITY PLANNING COMMISSION MINUTES
MEETING OF SEPTEMBER 4, 2003 - 2:00 P.M.
AUDITORIUM, MOBILE GOVERNMENT PLAZA

Members Present

Robert Frost, Chairman
Terry Plauche, Vice-Chair
Victor McSwain, Secretary
Victoria L. Rivizzigno
Ann Deakle
John Vallas
Wendell Quimby
James Laier

Members Absent

Clinton Johnson
Norman Hill (S)

Staff Present

Richard L. Olsen, Planner II
Margaret Pappas, Planner II
Frank Palombo, Planner I
Jennifer Henley, Secretary II
Val Manuel, Secretary II

Others Present

Wanda Cochran, Assistant City Attorney
David Daughenbaugh, Urban Forestry
Jennifer White, Traffic Engineering
Pat Stewart, County Engineering
Beverly Terry, City Engineering

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.

HOLDOVER:

Case #SUB2003-00168

Park Place Subdivision

7861 Tanner Williams Road (South side of Tanner Williams Road, 420'± West of Schillinger Road North).

48 Lots / 12.6± Acres

The applicant was present and concurred with the staff recommendations.

There was no one present in opposition.

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

- (1) the dedication of sufficient right-of-way from the centerline of Tanner Williams Road;

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- (2) the placement of a note on the final plat stating that corner lots (Lots 1, 23, 24 and 43) are limited to one curb cut each, with the size, location and design to be approved by County Engineering;
- (3) the placement of a note on the final plat stating that the construction of the proposed streets should be constructed to County standards;
- (4) the placement of a note on the final plat stating that any lots which are developed commercially and adjoin residentially developed property must provide a buffer, in compliance with Section V.A.7. of the Subdivision Regulations;
- (5) the placement of a note on the final plat stating that maintenance of all common areas are the responsibility of the property owners; and
- (6) the placement of the 25-foot minimum building setback lines on the final plat.

The motion carried unanimously.

EXTENSIONS:

Case #ZON2001-01930

Ashland Park Subdivision (formerly Middleton Park Subdivision)

2175, 2177, and 2179 Old Shell Road (South side of Old Shell Road, 160'± East of Wisteria Avenue).

Planned Unit Development Approval for a private street residential subdivision.

Request for a one-year extension of previous approval.

AND

Case #SUB2001-00231

Ashland Park Subdivision (formerly Middleton Park Subdivision)

2175, 2177, and 2179 Old Shell Road (South side of old Shell Road, 160'± East of Wisteria Avenue).

4 Lots / 1.2± Acres

Request for a one-year extension of previous approval.

A motion was made by Dr. Rivizzigno and seconded by Ms. Deakle to grant a one-year extension of previous approval for these applications.

Mr. Vallas recused. The motion carried.

GROUP APPLICATIONS:

Case #ZON2003-01920

Accelerated Technology, Inc.

712 and 716 Oak Circle Drive East (West side of Oak Circle Drive East, 320'± North of Cottage Hill Service Road).

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The request for Planned Unit Development Approval to allow shared access between multiple building sites was considered.

The site plan illustrates the existing buildings, parking, trees, and concrete, along with the proposed Lot 1 and Lot 2.

(Also see Case #SUB2003-00186 - **Cottage Hill Executive Park Subdivision, Resubdivision of Lots 25, 26 and 27, Resubdivision of Lot 1** – Below)

Mr. Don Coleman of Rester and Coleman Engineers, Inc. was representing the applicant and concurred with the staff recommendations.

There was no one present in opposition.

A motion was made by Mr. McSwain and seconded by Dr. Rivizzigno to approve this plan subject to the following condition:

- (1) Preservation (removal to be authorized by Mobile Planning Commission) status be given to the Live Oaks that are on Lot 3 (a 69” Live Oak on the northwest corner, and an 80” Live Oak on the east side); all work on the above mentioned trees and all work within the drip line is to be coordinated with Urban Forestry.

The motion carried unanimously.

Case #SUB2003-00186

Cottage Hill Executive Park Subdivision, Resubdivision of Lots 25, 26 and 27, Resubdivision of Lot 1

712, 716 and 720 Oak Circle Drive East (West side of Oak Circle Drive East, 230’± North of Cottage Hill Service Road).

3 Lots / 1.2± Acres

(For discussion see Case #ZON2003-01920 - **Accelerated Technology, Inc.** – Above)

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

- (1) placement of a note on the final plat stating that Preservation (removal to be authorized by Mobile Planning Commission) status be is given to the Live Oaks that are on Lot 3 (a 69” Live Oak on the northwest corner, and an 80” Live Oak on the east side); all work on the above mentioned trees and all work within the drip line is to be coordinated with Urban Forestry.

The motion carried unanimously.

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Case #ZON2003-01918

O. A. Pesnell, Jr.

580'± North of the North terminus of Pesnell Court, adjacent to the West side of Inverness Subdivision, Unit Two.

The request for a change in zoning from R-1, Single-Family Residential, to R-3, Multi-Family Residential, for a retirement home was considered.

The plan illustrates the existing and proposed structures and parking.

(Also see Case #ZON2003-01919 - **Brookview at Brookside Subdivision** – Below; and Case #SUB2003-00183 - **Brookview at Brookside Subdivision** – Below)

Mr. O. A. Pesnell, Jr., applicant, was present and concurred with the staff recommendations.

Mr. Jacek Polski, a resident of 2136 Dorchester Drive adjacent to this property, expressed concern as to how the proposed development would impact his property. He asked about a buffer zone as required by the Subdivision Regulations, the preservation of trees, the burning of cut trees, and public access adjacent to his property.

Ms. Pappas stated that a 10-foot buffer strip was required, as well as a privacy fence.

Mr. Frost noted that this application would be held over until the October 2, 2003 meeting and the buffer would be addressed at that time.

Regarding trees, Mr. Daughenbaugh stated that the larger Live Oaks would be protected. Other trees on the site would not require permits and would not be protected at this point. Mr. Daughenbaugh said if the applicant wanted to develop the balance of the property, however, he could claim them for tree credits and those trees would be protected at that time.

Concerning the burning of trees, Ms. Pappas stated that this would be a permitting issue, and she advised Mr. Polski to contact the Fire Marshal's Office at the Bureau of Fire Prevention.

With regard to Mr. Polski's concern that a public road would be adjacent to his property, Ms. Pappas explained that right now the only road that was proposed was the existing cul-de-sac, Pesnell Court. The remaining roads were private circulation and access drives.

Mr. William A. Sisson, 2120 Dorchester Drive, expressed concern about the extra load this development would place on the sewer system. He was also concerned about the protection of the wetlands, and the probable adverse effect this multi-family development would have on the adjoining subdivision.

Mr. Frost commented that the issue of wetlands would fall under ADEM.

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Regarding the sewer concern, Ms. Pappas stated that the Mobile Area Water and Sewer System would have to certify capacity before the development could be connected to their system.

As to the possible adverse effect this development would have on the adjoining single-family subdivision, Mr. Frost stated that Mr. Sisson should bring this concern up at the October 2, 2003 meeting.

Mr. Pesnell explained that this would be a senior, independent living multi-family development, as well as an assisted living facility. Mr. Pesnell said they would comply with all governmental regulations. Regarding buffer concerns, Mr. Pesnell said there would be a 40-foot buffer between the development and the adjoining property, and he was also prepared to build a 6-foot privacy fence.

Mr. Frost inquired if they had already started clearing the site.

Mr. Pesnell said that they had been doing some hand clearing with chainsaws and bush hogs, but they had stopped.

A motion was made by Mr. Frost and seconded by Dr. Rivizzigno to holdover this application until the meeting of October 2, 2003, to allow the applicant to provide the following information:

- (1) the balance of the property from which the rezoning site is being taken;
- (2) contours and/or spot elevations as required by Section IV.A.2.b. of the Subdivision;
- (3) the location, width and purpose of existing and proposed easements as required by Section IV.A.2.g. of the Subdivision Regulations;
- (4) the location of water courses, marshes and other significant features as required by Section IV.A.2.i. of the Subdivision Regulations (this would include wetlands). This information must be submitted by September 15th to allow adequate time for review prior to the October 2nd meeting.

The motion carried unanimously.

Case #ZON2003-01919

Brookview at Brookside Subdivision

North terminus of Pesnell Court extending North to the West side of Inverness Subdivision, Unit Two.

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

The plan illustrates the existing and proposed structures and parking.

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(For discussion see Case #ZON2003-01918 - **O. A. Pesnell, Jr.** – Above; also see Case #SUB2003-00183 - **Brookview at Brookside Subdivision** – Below)

A motion was made by Mr. Frost and seconded by Dr. Rivizzigno to holdover this application until the meeting of October 2, 2003, to allow the applicant to provide the following information:

- (1) the balance of the property from which the rezoning site is being taken;
- (2) contours and/or spot elevations as required by Section IV.A.2.b. of the Subdivision;
- (3) the location, width and purpose of existing and proposed easements as required by Section IV.A.2.g. of the Subdivision Regulations;
- (4) the location of water courses, marshes and other significant features as required by Section IV.A.2.i. of the Subdivision Regulations (this would include wetlands). This information must be submitted by September 15th to allow adequate to for review prior to the October 2nd meeting.

The motion carried unanimously.

Case #SUB2003-00183
Brookview at Brookside Subdivision

North terminus of Pesnell Court extending North to the West side of Inverness Subdivision, Unit Two.

1 Lot / 6.5± Acres

(For discussion see Case #ZON2003-01918 - **O. A. Pesnell, Jr.** – Above; also see Case #ZON2003-01919 - **Brookview at Brookside Subdivision** – Above)

A motion was made by Mr. Frost and seconded by Dr. Rivizzigno to holdover this application until the meeting of October 2, 2003, to allow the applicant to provide the following information:

- (1) the balance of the property from which the rezoning site is being taken;
- (2) contours and/or spot elevations as required by Section IV.A.2.b. of the Subdivision;
- (3) the location, width and purpose of existing and proposed easements as required by Section IV.A.2.g. of the Subdivision Regulations;
- (4) the location of water courses, marshes and other significant features as required by Section IV.A.2.i. of the Subdivision Regulations (this would include wetlands). This information must be submitted by September 15th to allow adequate to for review prior to the October 2nd meeting.

The motion carried unanimously.

Case #ZON2003-01915
Merrill P. Thomas

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5825 and 5827 Old Shell Road (South side of Old Shell Road, 200'± East of Allen Drive).

The request for a change in zoning from R-1, Single-Family Residential, to B-2, Neighborhood Business, for retail shops, a restaurant, and/or professional offices was considered.

The plan illustrates the proposed buildings, drive, and parking.

(Also see Case #ZON2003-01916 - **University Square Subdivision** – Below; and Case #SUB2003-00181 - **University Square Subdivision** – Below)

Mr. Merrill Thomas of 500 Hayfield Place, applicant and developer of this site, was present. Mr. Thomas said he would like to request a variance from the staff's recommendation No. 3 on the PUD and No. 1 on the subdivision, both relating to parking for the restaurant site. He said their intent was to build a retail development in front of this property and create a cross easement access agreement that would run with the property in favor of Lot 3, to provide access to Old Shell Road. They hoped to have a restaurant or high traffic uses on the front half of the property and on the rear lot they would anticipate office uses. Mr. Thomas said they showed the parking at 8 ½ spaces per 1,000, which was very important to the development. He realized the number was somewhat high, but it was a minimum for a lot of restaurants. He felt eliminating those 9 spaces would be detrimental to the development.

Mr. Olsen stated that in the Private Road Regulations there was nothing that specifically or expressly prohibited parking in a private drive right-of-way. The staff's concern was backing out into the main and only traffic flow there. He said the staff would have no problem at all with cars backing into the private drive right-of-way itself. The concern was with what the future development of Lot 3 would be.

Mr. Vallas asked about access to the West side of this property.

Mr. Olsen stated that at that point, with the plan that was submitted, there was not a proposed access to Lot 3 from that western half. The only access was to the central drive.

Mr. Thomas stated that he would not have a problem creating a new access. He said they had no plans for development of this area of the property in the near future.

Mr. Olsen noted that condition No. 3 of the staff recommendation referred to the tree on Lot 2, whereas it should actually have referred to Lot 3.

Mr. Daughenbaugh commented that there were some large trees on the site that were decaying and could be removed. However, the 30" Live Oak should be given preservation status, and all work done under the drip line of the tree was to be coordinated with Urban Forestry.

Mr. Thomas said that he had no problem leaving any of the trees along the border.

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

- (1) completion of the accompanying subdivision;
- (2) compliance with the accompanying PUD;
- (3) size, location and design of curb cuts to be approved by the Traffic Engineering Department; and
- (4) full compliance with all municipal codes and ordinances.

Mr. McSwain inquired if the motion was to eliminate the requirement to remove the head-in parking spaces.

Ms. Deakle said this was correct.

The question was called. The motion carried unanimously.

Case #ZON2003-01916
University Square Subdivision

South side of Old Shell Road, 200'± East of Allen Drive, extending to the Southern terminus of Jaguar Drive [private street], 210'± West of Long Street.

The request for Planned Unit Development Approval to allow multiple buildings on a single building site and shared access and shared parking between multiple building sites was considered.

The plan illustrates the proposed buildings, drive, and parking.

(For discussion see Case #ZON2003-01915 - **Merrill P. Thomas** – Above; also see Case #SUB2003-00181 - **University Square Subdivision** – Below)

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

- (1) completion of the rezoning and subdivision processes;
- (2) size, location and design of curb cuts to be approved by the Traffic Engineering Department, unused existing curb cuts to be closed – including installation of landscaping and curbing;
- (3) the 30' Live Oak on the northwest side of Lot 3 be given preservation status, all work done under the drip line of the tree is to be coordinated with Urban Forestry. Removal of tree, if and when necessary, to be authorized by Mobile Planning Commission; and
- (4) full compliance with all municipal codes and ordinances, including but not landscaping and tree plantings and the provision of sidewalks.

The motion carried unanimously.

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Case #SUB2003-00181

University Square Subdivision

South side of Old Shell Road, 200'± East of Allen Drive, extending to the Southern terminus of Jaguar Drive [private street], 210'± West of Long Street.

3 Lots / 4.4± Acres

(For discussion see Case #ZON2003-01915 - **Merrill P. Thomas** – Above; also see Case #ZON2003-01916 - **University Square Subdivision** – Above)

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

- (1) placement of a note on the final plat stating that size, location and design of curb cuts to be approved by the Traffic Engineering Department, unused existing curb cuts to be closed – including installation of landscaping and curbing; and
- (2) placement of a note on the final plat stating that the 30" Live Oak on the northwest side of Lot 3 be given preservation status, all work done under the drip line of the tree is to be coordinated with Urban Forestry. Removal of tree, if and when necessary, to be authorized by Mobile Planning Commission.

The motion carried unanimously.

Case #ZON2003-01917

Ward Properties, Inc.

5955 Airport Boulevard (South side of Airport Boulevard, extending from Linlen Avenue to Pinemont Avenue).

The request for a change in zoning from B-2, Business and R-1, Single-Family Residential, to B-2, Neighborhood Business, for the expansion of existing furniture store was considered.

The plan illustrates the existing building and parking, along with the proposed additions and parking.

(Also see Case #SUB2003-00182 - **Marks Furniture Resubdivision Subdivision** – Below)

Mr. Bestor Ward, president of Ward Properties, was present as the agent for Mark's Furniture, owner of the property. Mr. Ward stated that they had been at this location for 12 years and now wanted to expand their business to accommodate the new mandated La-Z-Boy Store format.

There was no one present in opposition.

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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) full compliance with the landscaping and tree planting requirements of the Ordinance for the overall site;
- (2) that permit(s) be obtained from Urban Forestry to trim or remove trees on the existing developed site as outlined in the Urban Forestry Comments;
- (3) provision of a buffer in compliance with Section IV.D.1., where the site adjoins residential properties to the South;
- (4) that the rear entrance be signed and marked as one-way as denoted in the Traffic Engineering Comments; and
- (5) full compliance with all municipal codes and ordinances.

The motion carried unanimously.

Case #SUB2003-00182

Marks Furniture Resubdivision Subdivision

5955 Airport Boulevard (South side of Airport Boulevard, extending from Linlen Avenue to Pinemont Avenue).

3 Lots / 1.5± Acres

(For discussion see Case #ZON2003-01917 - **Ward Properties, Inc.** – Above)

A motion was made by Mr. Vallas and seconded by Dr. Rivizzigno to waive Section V.D.2. (minimum lot width) of the Subdivision Regulations, and approve this subdivision subject to the following condition:

- (1) that all structure(s) on Lots 2 and 3 comply with the setback requirements of the Zoning Ordinance prior to the recording of the final plat.

The motion carried unanimously.

NEW ZONING APPLICATION:

Case #ZON2003-01857

Jacqueline D. Burrell

2717 McKinney Street (South side of McKinney Street, 50'± West of McLemore Street).

The request for a change in zoning from B-3, Community Business, to R-1, Single-Family Residential, to allow construction of a single-family residence was considered.

The site plan illustrates the existing fencing, concrete, and setbacks.

Ms. Jacqueline Burrell, owner and applicant, stated that she would like to rezone the property and build a home there so she could be within walking distance of her business.

There was no one present in opposition.

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

- (1) full compliance with all municipal codes and ordinances.

The motion carried unanimously.

NEW PLANNED UNIT DEVELOPMENT APPLICATIONS:

Case #ZON2003-01912

Greene & Phillips Subdivision

30, 50 and 52 North Florida Street (East side of North Florida Street, 400'± South of Old Shell Road).

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

The plan illustrates the existing building, along with the proposed building and parking.

The applicant was present and concurred with the staff recommendations.

There was no one present in opposition.

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

- (1) Elimination of four parking spaces, two on the Northeast and two on the Northwest to accommodate critical root zone of an existing 40" oak on the North property line;
- (2) All parking surfaces under the drip line of the tree to be of an alternative parking surface;
- (3) All work to be coordinated with Urban Forestry; and
- (4) full compliance with all municipal codes and ordinances.

The motion carried unanimously.

Case #ZON2003-01924

Heron Lakes Subdivision, Phase Two, Corrected Plat, Lot 117

South side of Blue Heron Ridge, 320'± West of its East terminus.

The request for Planned Unit Development Approval to amend a previously approved Planned Unit Development to allow 40% maximum site coverage in a single-family residential subdivision was considered.

The plan illustrates the proposed structure, setbacks and easements.

The applicant was present and concurred with the staff recommendations.

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There was no one present in opposition.

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

- (1) compliance with all conditions of the original PUD approval.

The motion carried unanimously.

Case #ZON2003-01911

Magnolia Heights Subdivision

West side of Moffett Road, 371'± South of Powell Drive.

The request for Planned Unit Development Approval to allow reduced setbacks in a single-family residential subdivision was considered.

The plan illustrates the proposed lots, setbacks and easements.

The applicant was present and concurred with the staff recommendations.

There was no one present in opposition.

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

- (1) the provision of a 20-foot setback along Moffett Road for Lots 1 and 47;
and
- (2) full compliance with all municipal codes and ordinances.

The motion carried unanimously.

NEW SUBDIVISION APPLICATIONS:

Case #SUB2003-00177

A.C.S. Subdivision

520 Houston Street (Northwest corner of Houston Street and the Illinois Central Gulf Railroad right-of-way).

1 Lot / 0.3± Acre

Ms. Pappas stated that the balance of this property was cut off by the railroad over 50 years ago, so it would not have to be included. The staff recommended approval with the condition that the site be limited to one curb cut to Houston Street, as this portion of Houston Street is on the Major Street Plan.

Mr. Matt Orrell of Polysurveying Engineering - Land Surveying was representing the applicant and concurred with the staff recommendations.

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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 Lot 1 is limited to one curb cut to Houston Street, with the location, size, and design to be approved by Traffic Engineering, should be required.

The motion carried unanimously.

Case #SUB2003-00176

Butler Addition to Turmac Drive Subdivision

North side of Turmac Drive, 820'± West of Dykes Road.

2 Lots / 3.9± Acres

The applicant was present and concurred with the staff recommendations.

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 conditions:

- (1) the placement of a note on the final plat stating that Lots A and B are limited to one curb cut each to Turmac Drive, with the size, location and design to be approved by County Engineering; and
- (2) the placement of a note on the final plat stating that any lots which are developed commercially and adjoin residentially developed property must provide a buffer, in compliance with Section V.A.7. of the Subdivision Regulations.

The motion carried unanimously.

Case #SUB2003-00180

Charleston Place Subdivision

208 and 212 East I-65 Service Road North (East side of East I-65 Service Road North, 200'± North of Old Shell Road).

2 Lots / 2.0± Acres

Mr. Frank Dagley of Frank A. Dagley & Associates, Inc. was representing the applicant and concurred with the staff recommendations.

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 conditions:

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- (1) the placement of a note on the final plat stating that Lot 2 is limited to one curb cut to the Service Road, with the location, size, and design to be approved by Traffic Engineering;
- (2) the placement of a note on the final plat stating that Lot 1 is allowed to maintain the existing curb cut, but redevelopment of the site will require curb cuts to be approved by Traffic Engineering; and
- (3) the placement of the 25 foot minimum setback lines the final plat.

The motion carried unanimously.

Case #SUB2003-00185

Dawes Lake Estates Subdivision, Third Addition, Resubdivision of Lots 24 and 25

South side of Oak Meadow Lane, 140'± West of Pembridge Court.

1 Lot / 1.1± Acres

Mr. Don Coleman of Rester and Coleman Engineers, Inc. was representing the applicant and concurred with the staff recommendations.

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 conditions:

- (1) the placement of a note on the final plat stating that Lot 1 is limited to one curb cut to Oak Meadow Lane, with the size, location and design to be approved by County Engineering; and
- (2) the placement of a note on the final plat stating that any lots which are developed commercially and adjoin residentially developed property must provide a buffer, in compliance with Section V.A.7. of the Subdivision Regulations.

The motion carried unanimously.

Case #SUB2003-00178

Glen Acres Subdivision, Block K, Resubdivision of Lot 10

8675 Taber Drive (South side of Taber Drive at the South terminus of Carol Street, extending to the North side of Zeigler Boulevard, 360'± East of Tanner Williams Road).

2 Lots / 3.0± Acres

Mr. Jerry Byrd of Byrd Surveying, Inc. was representing the applicant and concurred with the staff recommendations.

There was no one present in opposition.

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

- (1) the placement of a note on the final plat stating that Lot 10-B is limited to two curb cuts to Zeigler Boulevard with the size, location, and design to be approved by County Engineering;
- (2) the placement of a note on the final plat stating that if any property is developed commercially and adjoins residential property will provide a buffer in compliance with Section V.A.7., of the Subdivision Regulations; and
- (3) the placement of the 25-foot minimum building setback line on the final plat.

The motion carried unanimously.

Case #SUB2003-00179

Midtown Congregation of Jehovah's Witnesses Subdivision

804 Farnell Lane (West side of Farnell Lane, 148'± North of Pleasant Valley Road, extending West to the East terminus of Angus Drive and Kendale Drive).

1 Lot / 4.2± Acres

Mr. E. Russell March, 712 Barksdale Drive West, was present as counsel for the Midtown Congregation, which plans to build a church at this location. He noted the staff recommendation that an illustration of the proposed major road be left on the plat. Mr. March said their concern was that this would constitute a dedication of that road without proper condemnation proceedings. The statute that provides for statutory dedication provides that, when the plat is recorded, the process intended for any street, alleyway, common or other public uses as shown in such plat or map shall be held in trust for the uses or purposes intended as set forth on such plat or map. Mr. March said if they put a notation in there for this major road, particularly with any kind of dimensions or particular description of it, it would amount to dedication. That would be a taking of this property and it would prohibit the current owner and the future owner from the use of it without proper compensation.

Mr. Frost asked if he understood correctly that the staff was not requiring a dedication, but just wanted the roadway and setback shown on the plat.

Mr. Olsen replied that this was correct. It would strictly be for illustrative purposes only. He said there was no intent that this would constitute a dedication. A note on the plat indicating that it was not being dedicated but strictly being illustrated would be fine.

Mr. Frost asked Mr. March if a note on the plat would satisfy his client to indicate that the intention to dedicate was not there.

Mr. March said that would be acceptable. Their concern, however, was the 25-foot setback, which had dimensions ascribed to it, and that would ultimately be construed as a statutory dedication.

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Mr. Olsen noted that the 25-foot setback was an automatic requirement of the Zoning Ordinance, which states that there shall be a 25-foot setback from all Major Street right-of-way. Also, with regard to this particular site, it was to be developed with a church. It has already been before the Commission for Planning Approval, which is site plan specific. Mr. Olsen said all of the development was well south of the future Major Street, as well as the setback from it. He further noted that the owner would have use of the right-of-way, but they could not build anything in it. It could be used for parking, a playground, or anything of that nature. It just could not have a structure in it.

Mr. Ernie Farnell stated that he was executor of the estate that owned the subject property. Mr. Farnell stated that three years ago he spent a good bit of money with another law firm to establish the fact that there was no requirement that this property be dedicated. There was no requirement that any restrictions be put on development of the property. He said the Planning Commission's counsel at that time agreed. Mr. Farnell did not have any problem showing the extent of the future right-of-way as it had been shown on previous plats, but he wanted it to be clearly delineated that it was for illustrative purposes only.

In discussion, Mr. McSwain asked if they could do away with the setback.

Mr. Olsen replied that the setback was an automatic requirement of the Zoning Ordinance. It was good to have it on the plan so future buyers would be aware of it.

Mr. Frost asked if the Commission had the power to waive the setback requirement.

Mr. Olsen replied that this would not be waiving the setback. He explained that the Subdivision Regulations require a setback from street rights-of-way. In this particular instance there is not a right-of-way there; it is a future right-of-way. The Zoning Ordinance automatically requires that, whether it's shown on the plat or not. So if they came in for a permit to build within that 25-foot setback they would not be allowed to do so because of the Zoning Ordinance requirement.

Ms. Cochran noted that this was also true of any other property owner in this vicinity. If any of the owners of the single-family residences that were adjacent to this property came in and wanted to put a structure within that setback area, the building permit would be denied. She said this was a burden that was shared generally by all the property owners as part of the Zoning Ordinance.

Mr. Frost felt there was a difference when talking about right-of-way that may never be built.

Ms. Cochran said the whole point of zoning if it is done pursuant to a master plan, is that it imposes burdens to be shared by everyone generally. If the problem is that this is a road that's not going to be developed and doesn't need to be on the Master Plan, then

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perhaps the Master Plan needs to be revised to remove the road. She said to grant exceptions would just be putting holes in the Master Plan.

Mr. McSwain inquired about what was done in the matter involving Congress/Donald Street.

Mr. Olsen said that there was a portion of right-of-way that had been acquired for the Major Street, but because of known problems with the Major Street route, and knowing that the Major Street would not be built, an offer was made to the City for an individual to acquire the property. This was why that corridor was removed from the Major Street Plan.

Mr. Frost inquired if Mr. Olsen were saying that even if they took off the condition requiring the setback, it would still be required anyway?

Mr. Olsen said this was correct. It was a requirement of the Zoning Ordinance. If the condition were removed, it would simply not be shown on the map.

Mr. McSwain asked if the 100-foot right-of-way was anywhere near where the future right-of-way was going to be.

Mr. Olsen explained that to some degree it was, because there was a definite 100-foot right-of-way on the property to the west, and then to the east, in approximately this area, there had been some right-of-way acquired, so there would be a line connecting those two.

Mr. Vallas inquired if they could apply for a vacation of the right-of-way.

Mr. Olsen said that technically there was not a right-of-way on the property, so there was nothing to vacate. He suggested that after the staff finished reviewing the City's Comprehensive Plan, that they would move on to the Major Street Plan.

Dr. Laier was unsure how they could mandate the 25' setback.

Mr. Frost said that it was a way for the City to plan for the future and so they would not have to pay as much for the condemnation of property.

Ms. Cochran pointed out that whatever the Commission decided today, the setback would be required.

Dr. Laier asked if he understood that if they went to build tomorrow they could not build within the 25 feet, or were they saying that when the right-of-way comes in they could not build within the 25 feet.

Mr. Olsen quoted the Zoning Ordinance as follows: "Front yard depth, and in the case of a corner building site side yard width, shall be measured from the future street right-of-

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way line of a Major Street established on the Major Street Plan.” He said this referred to the future right-of-way.

Dr. Laier questioned requiring a setback for a street that was never going to be built.

Mr. Frost said they could not say the road would never be built. They were saying that it was on the Comprehensive Plan as shown to be constructed. It’s not known if it would ever be constructed. Mr. Frost suggested the Commission might want to approve it with a notation that it’s being shown for illustrative purposes and not dedication and leave it at that.

Mr. Olsen suggested that a note be required on the plat saying something to the effect that this property may be affected by a Major Street as shown on the Major Street Plan, and therefore setbacks from the Major Street may apply. He said this would put everyone on notice, and it says “may” because if the street were ever taken off the Major Street Plan there would not have to be a revision to the plat.

Mr. Frost also felt that it should be stated that the Major Street was shown for illustrative purposes and was not intended to be dedicated.

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

- (1) that the final plat illustrate the future right-of-way of the Cottage Hill Road/Fairway Drive major street with a note stating that this area is for illustrative purposes only, and is not intended for dedication purposes; and
- (2) the placement of a note on the final plat stating that this property may be affected by a Major Street as shown on the Major Street Plan and therefore setbacks from that Major Street may apply.

The motion carried unanimously.

Case #SUB2003-00188

Ram’s Head Addition to Tillman’s Corner Subdivision, Unit Two

West side of U.S. Highway 90 Service Road, extending to the South and East sides of Willis Road.

3 Lots / 7.6± Acres

Mr. Don Coleman of Rester and Coleman Engineers, Inc. was representing the applicant and concurred with the staff recommendations.

There was no one present in opposition.

A motion was made by Dr. Rivizzigno and seconded by Dr. Laier to waive Section V.D.3, of the Subdivision Regulations and approve this subdivision subject to the following conditions:

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- (1) the placement of a note on the final plat stating that Lot 1 is limited to one curb to U.S. Highway 90 Service Road with the size, location, and design to be approved by County Engineering and denied direct access to Willis Road;
- (2) the placement of a note on the final plat stating that Lot 2 is limited to two curb cuts to Willis Road with the size, location, and design to be approved by County Engineering;
- (3) the placement of a note on the final plat stating that Lot 3 is limited to one curb cut to U.S. Highway 90 Service Road and one curb cut to Willis Road with the size, location, and design to be approved by County Engineering; and
- (4) the placement of a note on the final plat stating that if any property is developed commercially and adjoins residential property will provide a buffer in compliance with Section V.A.7. of the Subdivision Regulations.

The motion carried unanimously.

Case #SUB2003-00184

Sue Moseley Place Subdivision

1569 Dauphin Street (Southeast corner of Dauphin Street and Macy Place).

2 Lots / 1.3± Acres

Mr. William A. Moseley, applicant, was present and stated that there were several points he wanted to make regarding the staff's recommendations. He stated that his property was one lot, described by metes and bounds, and not two lots as indicated by the staff. Mr. Moseley said the tax records for some reason showed two lots, but the title had never been divided. Another point was that there was not a structure sitting on the south property line as shown by the staff. Mr. Moseley also stated that he did not agree with the staff's recommendation that only one curb cut, the existing curb cut to Dauphin Street, be allowed to Lot 1. He pointed out that the proposed lot would be approximately 235 feet deep along Macy Place, which was three or four times the size of all the other lots there. He contended that traffic on Dauphin Street could be enhanced by having traffic enter on Dauphin Street and exit onto Macy Place. He did not feel this would interfere with traffic and suggested that the Traffic Engineering Department determine if any proposed curb cuts would be a traffic problem. Further, regarding the staff's recommendation that the structure on the south side of his property, Lot 2, be demolished because it was on the lot line, Mr. Moseley said it was not on the lot line and it was an occupied residence.

Mr. Olsen stated that the survey that was submitted did not show the structures. Those structures were based on the aerial photo GIS system, and may in fact be off several feet. He said if it did in fact meet setbacks, it was not an issue.

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Mr. Moseley felt it would not meet an 8 or 10-foot setback, and said the structure had been there since the 1920's or 1930's, probably before there was a setback requirement. He had a copy of an old survey showing the exact location of the building.

Ms. Cochran noted that this site was in the Old Dauphin Way Historic District.

Mr. Vallas asked if the staff's recommendation on the single curb cut was relating to the curb cut on Dauphin Street, or was the intent not to give one to Macy Place.

Mr. Olsen said the main thrust was one curb cut to Dauphin Street. He pointed out that typically on corner lots only one curb cut was recommended. In this instance, however, he said a curb cut to Dauphin Street and a curb cut to Macy Place to be approved by Traffic Engineering would be an acceptable modification to that condition. With regard to the structure on the lot line, Mr. Olsen said that based on the survey presented, they could remove that condition and it would not be an issue.

In discussion, Ms. Pappas indicated that the Urban Forestry conditions were inadvertently left out of the recommendations and would need to be included if this were approved.

Mr. Frost was concerned that the applicant had not been aware of the Urban Forestry conditions. However, he felt that if there was a problem, they could put this matter back on the agenda for the next meeting.

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

- (1) the provision of a 75-foot setback (which includes the required minimum building setback of 25-feet), from the centerline of Dauphin Street;
- (2) the placement of a note on the final plat stating that Lot 1 is limited to the existing curb cut, to Dauphin Street and one curb cut to Macy Place, size, location and design to be approved by Traffic Engineering; and
- (3) 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). All trees 30" and larger be given protection. They consist of Pecan, Magnolia and Live Oak. All work under the drip line of the tree is to be coordinated with Urban Forestry. Removal of these trees will require approval from the Mobile Planning Commission.

The motion carried unanimously.

Case #SUB2003-00187

Wynnfield Subdivision, Resubdivision of Lot 40, Unit Two, and Lot 51, Unit Three

3206 Wynnfield Drive West (Southwest corner of Wynnfield Drive West and Wynnridge Drive).

2 Lots / 0.9± Acre

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Mr. Don Coleman of Rester and Coleman Engineers, Inc. was representing the applicant and concurred with the staff recommendation for approval.

There was no one present in opposition.

A motion was made by Dr. Rivizzigno and seconded by Dr. Laier to approve this subdivision.

The motion carried unanimously.

There being no further business, the meeting was adjourned.

APPROVED: December 4, 2003

/s/ Victor McSwain, Secretary

/s/ Robert Frost, Chairman

/jh and ms