

MOBILE CITY PLANNING COMMISSION MINUTES
MEETING OF MARCH 18, 2010 - 2:00 P.M.
AUDITORIUM, MOBILE GOVERNMENT PLAZA

Members Present

Terry Plauche, Chairman
William G. DeMouy, Jr.
Victoria L. Rivizzigno, Secretary
Stephen J. Davitt, Jr.
Nicholas H. Holmes, III
Mead Miller
Roosevelt Turner
John Vallas
James F. Watkins, III

Members Absent

Herb Jordan

Urban Development Staff Present

Richard L. Olsen,
Deputy Director of Planning
Bert Hoffman,
Planner II
Frank Palombo,
Planner II
Caldwell Whistler,
Planner I
David Daughenbaugh,
Urban Forestry Coordinator
Joanie Stiff-Love,
Secretary II

Others Present

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

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

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

APPROVAL OF MINUTES:

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

- Dec. 3, 2009;
- Dec. 17, 2009;
- Jan. 7, 2010;
- Jan. 21, 2010; and,
- Feb. 4, 2010.

The motion carried unanimously.

HOLDOVERS:

Case #SUB2009-00174 (Subdivision)

Thornecroft Subdivision

21 Hillwood Road

East side of Hillwood Road at the East terminus of Country Club Road

Number of Lots / Acres: 1 Lot/1.2± Acres

Engineer / Surveyor: C. Michael Arnold

Council District 5

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

The Chair stated the applicant was agreeable with the recommendations and asked if anyone wished to speak on the matter to do so at that time.

The following people spoke in favor of the matter:

- B.J. Lyons, 9 Hillwood Road, attorney for the Thornecrofts; and,
- Frank Dagley, Frank A. Dagley and Associates, engineer for the applicant.

They made the following points:

- A. this was the third time the application had been before the Commission;
- B. since the last meeting where the matter was heard, Frank Dagley, Frank Dagley and Associates, had prepared the drainage plan for the site and met with contractor and the City Engineering department twice, as well as met with them on-site, to review the drainage plan;
- C. presented the Commission with a hand out of several photos from the site illustrating the remediation measures that had been taken;
- D. regarding the alleged continuation of work after the City had issued a “Stop Work” order, it was noted that the work done was necessary to install the Curlex fabric, hay bales, and the erosion control, all put in place to protect the downstream property of Mrs. Hoffmann, the adjacent neighbor;
- E. expressed the opinion that some of the stormwater run off that Mrs. Hoffmann has complained about coming from the Thornecroft property was the result of work done by the City on the drainage on Hillwood Road; and,
- F. the plan has been “tweaked” several times and John Forrester, City Engineering Department, has been to the site to assure the City Ordinance has been met with regards to the drainage retention and wanted Mr. Forrester to comment on that for the record.

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Mr. Forrester spoke to the matter and said that according to the plan the applicant was in compliance with the City's Stormwater ordinance, but noted that the plans would not be public record until they have been approved.

Mr. Lawler asked if the plans had been approved.

Mr. Forrester stated they had not been approved. He added that a revised set of plans had been received that day and that based upon a cursory review they appear to be in-line with what his department considered would be acceptable plans, with only minor revisions needed.

Hearing no further support of the matter, the Chair opened the floor to opposition and Mrs. Frances Hoffmann, 5 Hillwood Road, Mobile, AL, spoke. She made the following points in opposition to the matter:

- A. expressed deep objections to last minute modifications of engineering requirements with the application, with that day's submission of same a prime example;
- B. the Engineering Department with all previous recommendations consistently required land disturbance permits, compliance with stormwater drainage ordinances, a detention plan, approval for future impervious structures, and, most importantly, required the existing drainage pattern and discharge volume would be maintained, not altered, nor increased in anyway to cause a negative impact on downgrade properties;
- C. just the past week, she had met with John Forrester, City Engineering, who assured her that he had met with the applicant and their applicant's contractor and the plans were being designed in accordance with the previously stated requirements by Engineering;
- D. concern that many of the previous requirements by Engineering have been dropped, as no land disturbance permit was mentioned in the current recommendations, the word volume regarding the volume of water has been omitted from the current recommendations, which meant the volume of water in the natural drainage area could be increased by the applicant;
- E. concern that the plans are still secret, however, she had been told that the discharge from the impervious structures that would be erected would be allowed to be connected to the natural drainage system and this had potential to allow a higher volume of water into the natural drainage;
- F. concern that the natural drainage area has been severely damaged by what has taken place;
- G. red clay from the site has intruded on her property, as well as the Stimpson and Inge properties;

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- H. the red clay soil mentioned before was added to the site in the natural drainage area which would do nothing but obstruct percolation and the red clay was added to raise the grade of the property in question;
- I. raising the grade had changed the pattern for runoff so that she was getting the drainage area in a larger area, eastward, jeopardizing her pool which had already been contaminated twice;
- J. there were four acres of land which had been contaminated by the red clay soil, and by allowing this continued contamination by the red clay soil and eliminating the previous requirements regarding the same, the City's Engineering Department now gave license to the applicant to harm downgrade properties so they hold the City and the Engineering Department responsible;
- K. concern that the Planning Commission had been most lenient with the applicant in allowing continued postponements at the harm of the neighbors;
- L. reminded the Commission that the applicant had conducted land disturbance without a valid permit, physically combined the two properties prior to obtaining subdivision approval from the Planning Commission;
- M. there has not been a full accounting of the land disturbance;
- N. as they have an attorney and an engineer who needed to look over the matter, it was requested that the matter be held over yet again;
- O. requested evidence that there was a flooding problem on her property prior to the development; and,
- P. requested that the damage done to her property be cleaned up by the applicant.

Mr. Davitt noted that Mrs. Hoffman was correct regarding the difference in the recommendations from the February 21, 2010, meeting, and that day's meeting and wanted clarification as to why.

Mr. Forrester responded by saying the note added for that day's meeting was more of a summary of all of the previous requirements. He reminded the Commission that compliance with the Stormwater Ordinance is the basis for every land disturbance application received by the Engineering Department and the purpose for the notes added for Planning Commission simply were to point out unusual facets of the property in question. He also stated that his department would not sign off on the plat without that plat showing a stormwater detention area with a note for maintenance so the pond would be the responsibility of the property owner. He added that simply because a specific issue was not spelled out again on the current application, if it was part of compliance with the ordinance, then it was still required.

Mr. Davitt asked if all previous recommendations from the Engineering Department still stood as necessary requirements for approval to which Mr. Forrester replied yes.

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Mrs. Hoffmann stated she would be happy if the previous requirements were formally restated to the applicant in the form of written requirements for approval. She also stated that she still needed her engineer and attorney to inspect the plans when they have final approval.

Mr. Watkins asked Engineering what was the normal process for review when a subdivision application was presented to the staff for Planning Commission approval. He asked if it was at that time the final plan was presented for review by the Engineering Department.

Mr. Forrester said no and that usually the plan was very generic, but that final Engineering plans were not received until sometime after the approval of the subdivision.

Mr. Watkins noted that in almost every case he had seen before the Commission, part of the staff's recommendation for approval was the development being subject to compliance with the Stormwater Ordinance and compliance with Engineering requirements with respect to drainage and the City Ordinance, so he wondered what the difference was with this application.

Mr. Olsen stated that in this particular case, due to known problems, there were requirements that the plan be either completely approved or at least approved in concept prior to the Commission approving the subdivision and due to circumstances involved with this particular case, such became part of the recommendation.

Mr. Watkins asked where that put the application currently.

Mr. Olsen asked Mr. Forrester to confirm the fact that the Engineering Department was, in concept, in agreement with the plan but that there were a few issues that needed to be addressed.

Mr. Forrester said that was correct and that there were some details Engineering would like to discuss with Mr. Dagley prior to approval.

Mr. Olsen noted that the Engineering Department would not sign the plat for recording purposes until they had an approved drainage plan.

Mr. Watkins queried that during the period between the current date and the signed plat what would happen.

Mr. Olsen said there would be no permits issued or released.

Mr. Forrester added that if the subdivision were not approved, then the applicant could not proceed as the plan currently incorporated the rear parcel.

Mr. Lawler commented that as a practice the Planning Commission offered tentative approval, though it amounted to final approval as it did not come back. He noted the

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regulations noted two meetings and when he first began working with the Commission there were two meetings, with the final meeting allowing the applicant to come back before the Commission to prove that construction had been done according to the approve plan. He noted that this application had created a great deal of furor and that it had documented a very serious drainage issue in the area, with downgrade neighbors having suffered some damage as a result of the drainage issues. He reminded the Commission that property owners were responsible if something they created on their property negatively affected their neighbors, however, the Commission could not issue any orders requiring property owners to correct issues between themselves and their neighbors. He noted that a citation could be issued by Environmental Court regarding the negative impact or civil litigation against the offending land owner could be pursued by the negatively impacted neighbor. He stated that there was no firm information regarding what was planned, what was to be done, what would be approved by the Engineering Department. Mr. Lawler expressed his feelings that once the plan was approved by City Engineering, if Mrs. Hoffmann and/or her representatives were given the opportunity to review and comment on said plan, that act might go a long way in diffusing the situation as it currently sat.

Mr. Vallas asked if Mr. Lawler was suggesting that the applicant submit plans to the City Engineer, have the City Engineer review said plans, then give those plans to another engineer who had not designed the plan and then have the second engineer possibly debate with the City Engineer regarding approval of said plan, all at the applicant's expense of money and time. He then expressed his opinion that an action such as that would be crippling to the real estate industry.

Mr. Lawler stated this was his opinion and that based upon his knowledge of the situation and the individuals involved, he was simply trying to advise the Commission of what actions they might wish to take in an effort to prevent litigation on the matter.

Mr. Watkins noted his agreement with Mr. Lawler with regards to attempting to forestall possible litigation regarding the matter, however, in his position as a Commission member he had staff advising that the matter met the minimum requirements for a subdivision as well as Engineering advising that the plans have been presented and are in the same order as the vast majority of plans that come before them and are acted upon. Mr. Watkins went on to say he was not very sure of what was expected of the Commission at this point.

Mr. Holmes noted that there had been other occasions when individuals who were engineers and had stood before the Commission in opposition to applications and stated those plans would not work or could not be resolved.

Nick Amberger, Public Works Deputy Director, City Engineer, spoke in general to the Commission and made the following points:

- A. expressed his feelings that Dr. Thorneycraft had worked as closely and carefully as he could to preserve his neighbors' property;

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- B. noted that the past couple of months it had been extremely rainy in the Mobile area, which has created additional challenges to the site;
- C. noted the applicant did get off to a rough start regarding the permitting process but expressed his belief that the applicant was now aware of the importance of this process;
- D. belief that the drainage plan was approximately 99% in compliance with the requirements of the City's drainage ordinance, including drainage associated with impervious areas;
- E. noted it was very common to have a great deal of "back and forth" between the engineering Department and the site's engineer as problems surface during construction, right up to the time the final "as built" plans are submitted; and,
- F. noted that in this case, even if nothing at all were built on the site, that due to construction issues inherent to her house, Mrs. Hoffmann was still likely to encounter a water problem, specifically the basement or garage area which is at or below the elevation that water passed through.

Mr. Lyon responded by saying that it was his opinion that as with all professions, not all individuals would agree with a plan and that it was doubtful that any engineer hired by Mrs. Hoffmann would agree with a plan presented by his client's engineer. He added that in as much the applicant requested that the Commission make the approval conditional upon them meeting the stormwater ordinance and the other requirements that the City Engineering Department would insist upon.

In deliberation, Mr. Davitt expressed his opinion that the case had been very difficult and very trying for all parties. He noted that if the applicants met the minimum requirements as established in the City's regulations and ordinances, and City Engineering approved the plat, then he was in favor of approving the subdivision.

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

- 1) **placement of a note on the Final Plat stating that the lot is limited to the two existing curb-cuts to Hillwood Road, with the size, location, and design to be approved by Traffic Engineering and in conformance with AASHTO standards;**
- 2) **labeling of the lot with its size in square feet, or the provision of a table on the final plat with the same information;**
- 3) **the depiction on the Final Plat of the 25' minimum building setback line along Hillwood Road;**
- 4) **placement of a note on the plat stating: "*The site must be developed in compliance with all local, state, and federal regulations regarding endangered, threatened, or otherwise***

- protected species prior to the issuance of any permits or land disturbance activities”;*
- 5) *placement of a note on the plat stating: “Development of the site shall be designed to comply with the City of Mobile’s Stormwater Drainage Ordinance, shall not concentrate runoff to the adjacent property and shall restore the stormwater discharge to the pre-developed flow pattern and velocity. Must comply with all stormwater and flood control ordinances. Any work performed in the right-of-way will require a right-of-way permit”;* and,
 - 6) *compliance with City Engineering comments: (A site plan has been submitted to the City Engineering Department, and the applicant’s engineer is coordinating with the Engineering Department on revisions. The final site plan shall be designed to comply with the City of Mobile’s Stormwater Drainage Ordinance, shall not concentrate runoff to the adjacent property and shall restore the stormwater discharge to the pre-developed flow pattern and velocity. Must comply with all stormwater and flood control ordinances. Any work performed in the right-of-way will require a right-of-way permit.)*

The motion carried with only Dr. Rivizzigno voting in opposition.

Case #SUB2009-00181 (Subdivision)

Somerby Subdivision, Corrected Plat, Re-subdivision of Lots 1 & 2 of a Re-subdivision of Lot 2, Re-subdivision of and Addition to Lot 1

Northeast corner of Somerby Drive and Somerby Lane (private street), and North side of Somerby Lane (private street) at its West terminus

Number of Lots / Acres: 3 Lots/16.4± Acres

Engineer / Surveyor: Rester and Coleman Engineers, Inc.

Council District 6

(Also see **Case #ZON2009-03024 (Planned Unit Development) Somerby Subdivision, Corrected Plat, Re-subdivision of Lots 1 & 2 of a Re-subdivision of Lot 2, Re-subdivision of and Addition to Lot 1**, below)

The Chair announced the application had been recommended for approval.

Don Coleman, Rester and Coleman Engineers, Inc., spoke on behalf of the applicant and stated they wished the subdivision application withdrawn.

The Chair announced the matter had been withdrawn per the applicant’s request and would not be heard.

Case #ZON2009-03024 (Planned Unit Development)

Somerby Subdivision, Corrected Plat, Re-subdivision of Lots 1 & 2 of a Re-subdivision of Lot 2, Re-subdivision of and Addition to Lot 1

Southwest corner of Somerby Lane (East) (private street) and Somerby Lane (North) (private street)

Planned Unit Development Approval to amend a previously approved Planned Unit Development to allow the expansion and addition to an existing domiciliary care facility Council District 6

(Also see **Case #SUB2009-00181 (Subdivision)**)

Somerby Subdivision, Corrected Plat, Re-subdivision of Lots 1 & 2 of a Re-subdivision of Lot 2, Re-subdivision of and Addition to Lot 1, above)

The Chair stated the applicant was agreeable with the recommendations and asked if anyone wished to speak on the matter to do so at that time.

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

- 1) **placement of a note on the Site Plan stating that approval of all applicable federal, state, and local agencies for endangered, threatened, or otherwise protected species is required prior to the issuance of any permits or land disturbance activities; and,**
- 2) **full compliance with all municipal codes and ordinances.**

The motion carried unanimously.

Case #SUB2010-00013

McMichael Family Division Subdivision

9885 & 9887 Scott Dairy Loop Road South

Southeast corner of Scott Dairy Loop Road South and Johnson Highway

Number of Lots / Acres: 3 Lots/9.8± Acres

Engineer / Surveyor: Polysurveying Engineering – Land Surveying County

The Chair stated the applicant was agreeable with the recommendations and asked if anyone wished to speak on the matter to do so at that time.

Hearing no opposition or discussion, a motion was made by Mr. Vallas, with second by Dr. Rivizzigno, to approve the matter, subject to the following conditions:

- 1) **retention of the 20-foot dedication along Scott Dairy Loop Road South;**
- 2) **retention of the 25-foot minimum building line for Lot 1 (exclusive of right-of-way dedication) along Scott Dairy Loop Road South;**

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- 3) retention of the 75-foot minimum building line from the western property line of the site for all Lots as depicted on the preliminary plat;
- 4) retention of the lot area size labeling in square feet as depicted on the preliminary plat;
- 5) placement of a note on the Final Plat limiting Lot 1 to the one existing curb-cut to Scott Dairy Loop Road South and limiting Lots 2 and 3 to one single shared curb-cut to Scott Dairy Loop Road South with the size, design, and location of the curb-cut to be approved by Mobile County Engineering;
- 6) placement of a note on the Final Plat stating that no further re-subdivision of Lots 2 and 3 is to occur until such time as all lots have adequate frontage onto a publicly maintained right-of-way;
- 7) placement of a note on the Final Plat denying Lot 1 access to Johnson Road (at such time as the roadway may be constructed);
- 8) placement of a note on the Final Plat limiting Lots 2 and 3 to one curb-cut each to Johnson Road (at such time as the roadway may be constructed), with the size, design, and location of the curb-cut to be approved by Mobile County Engineering;
- 9) placement of a note on the Final Plat stating that the development will be designed to comply with the stormwater detention and drainage facility requirements of the City of Mobile stormwater and flood control ordinances, and requiring submission of certification from a licensed engineer certifying that the design complies with the stormwater detention and drainage facility requirements of the City of Mobile stormwater and flood control ordinances prior to the issuance of any permits. Certification is to be submitted to the Planning Section of Urban Development and County Engineering;
- 10) placement of a note on the Final Plat stating that development of the site must be undertaken in compliance with all local, state, and federal regulations regarding endangered, threatened, or otherwise protected species, and,
- 11) placement of a note on the Final Plat stating that any lots which are developed commercially and adjoin residentially developed property must provide a buffer, in compliance with Section V.A.8. of the Subdivision Regulations.

The motion carried unanimously.

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EXTENSIONS:

Case #SUB2002-00153 (Subdivision)

Summit Subdivision

East terminus of O'Hara Drive, 650'± East of Twelve Oaks Drive

Number of Lots / Acres: 30 Lots/11.0± Acres

Engineer / Surveyor: Rester and Coleman Engineers, Inc.

County

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

Don Coleman, Rester and Coleman Engineers, Inc., spoke on behalf of the applicant and asked that the matter be extended for a short time as the plans have been completed, the survey has been completed, and the owner has been in discussion with individuals regarding building in the subdivision.

Hearing no opposition or further discussion, a motion was made by Mr. Davitt, with second by Mr. Vallas, to approve the requested extension for a maximum of six (6) months.

The motion carried unanimously.

NEW SUBDIVISION APPLICATIONS:

Case #SUB2010-00024

Mark Dickerson Subdivision

8445 March Road

East side of March Road at the South terminus of East Gulley Way

Number of Lots / Acres: 2 Lots/6.8± Acres

Engineer / Surveyor: Polysurveying Engineering-Land Surveying

County

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

Matt Orrell, Polysurveying of Mobile, spoke on behalf of the applicant and asked that the matter be held over to allow them time to work with staff regarding the reasons for denial.

Hearing no opposition or further discussion, a motion was made by Mr. Plauche, with second by Dr. Rivizzigno, to hold the matter over until the April 15, 2010, meeting, with the required information to be submitted by March 31, 2010.

The motion carried unanimously.

Case #SUB2010-00025

Autumndale Subdivision, Re-subdivision of Lot 34

Northeast corner of Elaine Drive and Sharon Drive

Number of Lots / Acres: 2 Lots/0.3± Acre

Engineer / Surveyor: Byrd Surveying, Inc.

Council District 1

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

Jerry Byrd, Byrd Surveying, Inc, spoke on behalf of the applicant and expressed his confusion as to why the matter was recommended for hold over as there was another subdivision before the Commission that day with virtually the same conditions and it was recommended for approval.

Mr. Olsen responded with his apology for the recommended hold over and stated the staff did recommend the matter for approval subject to the staff's recommendations.

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

- 1) **compliance with Engineering comments: “*Show the minimum FFE on the plat. Detention will be required, need to show the detention area(s) on plat. Place note on plat stating that maintenance of detention system to be the responsibility of the property owners. No building permits will be issued for either lot until a land disturbance permit addressing the detention has been submitted to and approved by City Engineering. Must comply with all stormwater and flood control ordinances. Any work performed in the right-of-way will require a right-of-way permit*”;**
- 2) **placement of a note on the plat stating that each lot is limited to one curb-cut with the size, location, and design to be approved by Traffic Engineering and conform to AASHTO standards;**
- 3) **placement of a note on the plat stating that approval of all applicable federal, state, and local environmental agencies for wetlands or floodplains issues is required prior to the issuance of any permits or land disturbance activities; and,**
- 4) **placement of a note on the plat stating that approval of all applicable federal, state, and local agencies for endangered, threatened, or otherwise protected species is required prior to the issuance of any permits or land disturbance activities.**

The motion carried unanimously.

Case #SUB2010-00029

James Thomas Barnes Subdivision, Revised Re-subdivision of

7425 Old Shell Road

Southeast corner of Old Shell Road and Fairview Street East

Number of Lots / Acres: 2 Lots/3.4± Acres

Engineer / Surveyor: Byrd Surveying, Inc.

County

The Chair stated the applicant was agreeable with the recommendations and asked if anyone wished to speak on the matter to do so at that time.

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

- 1) **placement of a note on the Final Plat stating that Lot A is limited to one curb-cut, and Lot B is limited to two curb-cuts to Old Shell Road, with the size, location, and design of all curb-cuts to be approved by County Engineering and conform to AASHTO standards;**
- 2) **placement of a note on the Final Plat stating that Lot B is denied access to Fairview Street East until such time it is improved to County standards. Upon improvement to County standards, Lot B is limited to one curb-cut to Fairview Street East, with the size, location, and design to be approved by County Engineering;**
- 3) **illustration of the 25' minimum building setback line along Old Shell Road and Fairview Street East;**
- 4) **labeling of the lots with their sizes in square feet and acres, or the furnishing of a table on the Final Plat providing the same information;**
- 5) **placement of a note on the Final Plat stating that any lots which are developed commercially and adjoin residentially developed property must provide a buffer, in compliance with Section V.A.8. of the Subdivision Regulations;**
- 6) **placement of a note on the final plat/site plan stating that approval of all applicable federal, state, and local agencies for endangered, threatened, or otherwise protected species is required prior to the issuance of any permits or land disturbance activities; and,**
- 7) **placement of a note on the Final Plat stating that the development will be designed to comply with the stormwater detention and drainage facility requirements of the City of Mobile stormwater and flood control ordinances, and requiring submission of certification from a licensed engineer certifying that the design complies with the stormwater detention and drainage facility requirements of the City of**

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Mobile stormwater and flood control ordinances prior to the issuance of any permits. Certification is to be submitted to the Planning Section of Urban Development and County Engineering.

The motion carried unanimously.

Case #SUB2010-00023

Barbara Slaughter Family Subdivision

6250 and 8151 Anthony Drive South, and 6250 Anthony Drive West
West side of Anthony Drive West at the West terminus of Anthony Drive South
Number of Lots / Acres: 4 Lots/3.2± Acres
Engineer / Surveyor: Polysurveying Engineering-Land Surveying
County

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

Matt Orrell, Polysurveying of Mobile, spoke on behalf of the applicant and requested the matter be held over to allow them time to work with staff regarding the reasons for denial.

Hearing no opposition or further discussion, a motion was made by Mr. Plauche, with second by Dr. Rivizzigno, to hold the matter over until the April 15, 2010, meeting, with the required information to be submitted by March 31, 2010.

The motion carried unanimously.

NEW SIDEWALK WAIVER APPLICATIONS:

Case #ZON2010-00474

EBM Midtown Investments

2607 & 2609 Cameron Street
South side of Cameron Street, 155'± West of Alexander Street
Request to waive construction of a sidewalk along Cameron Street.
Council District 1

The Chair stated the applicant was agreeable with the recommendations and asked if anyone wished to speak on the matter to do so at that time.

Hearing no opposition or discussion, a motion was made by Mr. Vallas, with second by Mr. DeMouy, to approve the sidewalk waiver request along that portion of Cameron Street, starting approximately 155 feet west of Alexander Street, and continuing west approximately 200 feet.

The motion carried unanimously.

GROUP APPLICATIONS:

Case #SUB2010-00027 (Subdivision)

Labrador Run Subdivision, Addition to Phase One

North side of Labrador Trail at the North terminus of Labrador Trail East

Number of Lots / Acres: 1 Lot/1.0± Acre

Engineer / Surveyor: Rester and Coleman Engineers, Inc.

County

(Also see **Case #ZON2010-00471 (Vacation Request) Labrador Run Subdivision, Phase One, Lot 1**, below)

The Chair stated the applicant was agreeable with the recommendations and asked if anyone wished to speak on the matter to do so at that time.

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

- 1) **depiction of the lot size in square feet, or provision of a table on the Final Plat with the same information;**
- 2) **placement of a note on the Final Plat limiting the lot to one curb-cut, with the size, design, and location of the curb-cut to be approved by Mobile County Engineering;**
- 3) **placement of a note on the Final Plat stating that the development will be designed to comply with the stormwater detention and drainage facility requirements of the City of Mobile stormwater and flood control ordinances, and requiring submission of certification from a licensed engineer certifying that the design complies with the stormwater detention and drainage facility requirements of the City of Mobile stormwater and flood control ordinances prior to the issuance of any permits. Certification is to be submitted to the Planning Section of Urban Development and County Engineering;**
- 4) **placement of a note on the Final Plat stating that development of the site must be undertaken in compliance with all local, state, and federal regulations regarding endangered, threatened, or otherwise protected species, and,**
- 5) **placement of a note on the Final Plat stating that any lots which are developed commercially and adjoin residentially developed property must provide a buffer, in compliance with Section V.A.8. of the Subdivision Regulations.**

The motion carried unanimously.

Case #ZON2010-00471 (Vacation Request)
Labrador Run Subdivision, Phase One, Lot 1

9050 Labrador Trail

North side of Labrador Trail at the North terminus of Labrador Trail East

Vacation Request to allow 7.5' of a 15' drainage easement to be vacated

County

(Also see **Case #SUB2010-00027 (Subdivision) Labrador Run Subdivision, Addition to Phase One,** above)

The Chair stated the applicant was agreeable with the recommendations and asked if anyone wished to speak on the matter to do so at that time.

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

- 1) **correction of the legal description;**
- 2) **platting of a 7.5-foot drainage easement along the western property line of Lot 1, Labrador Run Subdivision, Phase One, Addition to as shown on the preliminary plat; and,**
- 3) **completion of the Subdivision process for Lot 1, Labrador Run Subdivision, Phase One, Addition to.**

The motion carried unanimously.

Case #SUB2010-00022 (Subdivision)
Oakland Avenue Subdivision, Cornell Addition

22 Oakland Avenue

North side of Oakland Avenue, 430' ± East of Marston Lane, extending to the South side of Bexley Lane, 100' ± East of Charleston Court

Number of Lots / Acres: 4 Lots/1.2± Acre

Engineer / Surveyor: Rester and Coleman Engineers, Inc.

Council District 7

(Also see **Case #ZON2010-00440 (Planned Unit Development) Oakland Avenue Subdivision, Cornell Addition,** below)

The Chair stated the applicant was agreeable with the recommendations and asked if anyone wished to speak on the matter to do so at that time.

Don Coleman, Rester and Coleman Engineers, Inc., spoke on behalf of the applicant and requested the matter be held over so that the applicant could address the drainage situation with the City, as they had recommended one thing previously and recommended something different with this application.

Hearing no opposition or further discussion, a motion was made by Mr. Plauche, with second by Dr. Rivizzigno, to hold the matter over until April 1, 2010, meeting, with the

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required information to be submitted by March 31, 2010.

The motion carried unanimously.

Case #ZON2010-00440 (Planned Unit Development)

Oakland Avenue Subdivision, Cornell Addition

22 Oakland Avenue

(orth side of Oakland Avenue, 430' ± East of Marston Lane, extending to the South side of Bexley Lane, 100' ± East of Charleston Court

Planned Unit Development Approval to amend a previously approved Planned Unit Development to allow reduced lot sizes and reduced setbacks in an R-1, Single-Family Residential District

Council District 7

(Also see **Case #SUB2010-00022 (Subdivision) Oakland Avenue Subdivision, Cornell Addition**, above)

The Chair stated the applicant was agreeable with the recommendations and asked if anyone wished to speak on the matter to do so at that time.

Don Coleman, Rester and Coleman Engineers, Inc., spoke on behalf of the applicant and requested the matter be held over so that the applicant could address a drainage issue.

Hearing no opposition or further discussion, a motion was made by Mr. Plauche, with second by Dr. Rivizzigno, to hold the matter over until April 1, 2010, meeting, with the required information to be submitted by March 31, 2010.

The motion carried unanimously.

Case #SUB2010-00026 (Subdivision)

Congress Street Subdivision, Re-subdivision of

254 Congress Street

North side of Congress Street, 60' ± West of North Joachim Street, extending to the West side of North Joachim Street, 78' ± North of Congress Street

Number of Lots / Acres: 4 Lots/0.2± Acre

Engineer / Surveyor: Byrd Surveying, Inc.

Council District 2

(Also see **Case #ZON2010-00468 (Planned Unit Development) Congress Street Subdivision, Re-subdivision of**, below)

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

The following people spoke in favor of the development:

- Etsie Foreman, the applicant; and,
- Ben Cummings, Cummings Architecture, for the applicant.

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They made the following points in favor of approving the development:

- A. the applicant really only desired to change the development from being known as condos to being known as town houses;
- B. the current economic market has made it very difficult to purchase real estate;
- C. the word “condo” has developed a very negative connotation and mortgage lenders seem to prefer townhouses currently;
- D. the original subdivision was approved and the re-subdivision before the Commission that day was to create individual lots to go with each unit, thereby making them easier to have mortgages written for them, as the individual unit owners would be able to own the ground underneath their unit;
- E. it is believed that this is an innovative project and any concerns the City might have could be addressed within the property owners’ covenants and restrictions;
- F. noted that per the International Residential Fire Code, the two hour fire separation rating on the walls separating the units met the requirements for town homes;
- G. regarding lot size, noted that the applications before the Commission that day included a Planned Unit Development application and that the purpose of a PUD was to encourage innovative and diversified design in building form and site development and it was felt the proposed development would do so;
- H. the town house development, though not common today, was a historic development common to urban living; and,
- I. noted that the Planning Commission had approved a similar development on Dauphin Street in 2005.

Mr. Vallas asked for an explanation of the difference between condo and townhouse.

Mr. Olsen stated there was not a very real difference, however, with this particular development, the lot sizes would be smaller and substandard in size with regards to the Subdivision Regulations or Zoning Ordinance, it was not part of an overall, comprehensive development such as those found at Longleaf, and at the time it was submitted, there was no information regarding the development’s ability to comply with building code.

Mr. Davitt noted that apartment homes, condos, and town homes were handled differently. He wondered if building inspections on condos were done differently than on a development labeled as town homes.

Mr. Olsen stated he could not answer that question with any certainty.

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Mr. Watkins noted the difference in condos and town houses as that with a condo, the property owner simply owned the air inside the unit, whereas with a town house, the property owner owned the ground the unit was built on, the walls, the roof, and any other tangible property involved with the unit. He added that mortgage lenders seemed more willing to make loans when there was more tangible collateral involved. Mr. Watkins then noted his concern that he was not sure how far into construction the units were and whether adequate building inspections could be done at that time.

Mr. Olsen expressed those were staff's concerns as well. Mr. Olsen then suggested, that due to the questions that had arisen at the meeting, if the Commission were leaning toward approving the matter that a hold over might best serve the project so that answers to those questions could be obtained.

Mr. Davitt noted that the area was currently zoned R-B, residential business, and asked if town houses, based upon zoning, could be built in that location.

Mr. Olsen stated town homes were allowed in R-B zoning, but also noted that R-B zoning did allow for commercial use. He added that should the Commission be leaning toward approving the matter that there be a condition limiting the site to residential use.

Mr. Watkins thanked Mr. Cummings for his assessment of the structures and their compliance with code, however, he expressed his desire that a City official also inspect the site and report back to the Commission their finds. He also queried Mr. Cummings if the units were town homes, would they still require the common area or could that common area be divided in such as way and added to the individual units, thereby increasing the overall lot sizes.

Hearing no opposition or further discussion, a motion was made by Mr. Davitt, with second by Mr. Vallas, to hold the matter over until the April 1, 2010, meeting, to allow for the investigation of Building and Fire Code compliance for Townhouse versus Condominium classification.

The motion carried unanimously.

Case #ZON2010-00468 (Planned Unit Development)

Congress Street Subdivision, Re-subdivision of

254 Congress Street

North side of Congress Street, 60' ± West of North Joachim Street, extending to the

West side of North Joachim Street, 78' ± North of Congress Street

Planned Unit Development Approval to amend a previously approved Planned Unit Development to allow shared access and parking between multiple building sites.

Council District 2

(Also see **Case #SUB2010-00026 (Subdivision) Congress Street Subdivision, Re-subdivision of**, above)

Hearing no opposition or further discussion, a motion was made by Mr. Davitt, with

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second by Mr. Vallas, to hold the matter over until the April 1, 2010, meeting, to allow for the investigation of Building and Fire Code compliance for Townhouse versus Condominium classification.

The motion carried unanimously.

Case #ZON2010-00470 (Planned Unit Development)

St Paul's Episcopal School

161 Dogwood Lane

Area bounded by Old Shell Road, Dogwood Lane, Loyola Lane, Myrtlewood Lane, [vacated], South Avenue, Spring Hill College, and Provident Lane

Planned Unit Development Approval to amend a previously approved Master Plan for an existing school in an R-1, Single Family Residential District, to allow the construction of a new press box addition, track/field house, covered football practice facility, visitors' restroom facility, camera towers, and sponsor billboards

Council District 7

(Also see **Case #ZON2010-00469 (Planning Approval) St Paul's Episcopal School**, below)

The Chair stated the applicant was agreeable with the recommendations and asked if anyone wished to speak on the matter to do so at that time.

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

- 1) provision of a revised Campus Master Plan with any future application proposing new facilities not depicted on the Master Plan that was approved at the June 15, 2006, meeting of the Planning Commission;**
- 2) submission of individual applications for each project (other than those involved in this amended application), providing detailed information with regard to the numbers of classrooms involved, number of parking spaces provided, and detailed information on the location of proposed improvements;**
- 3) compliance with Urban Forestry comments: *(Property to be developed in compliance with state and local laws that pertain to tree preservation and protection on both city and private properties (State Act 61-929 and City Code Chapters 57 and 64). The Mobile Planning Commission on January 8, 2004, required the entire St. Paul's campus to comply with the tree planning requirements of the Zoning Ordinance. Urban Forestry requests an updated campus landscape plan showing the required trees);***
- 4) compliance with City Engineering comments: *(The applicant shall provide detention for all impervious areas added to the site since 1984. If an existing detention facility is to be utilized, then the engineer shall certify that the existing detention facilities are***

properly functioning and has adequate capacity to capture and detain storm drainage from the site. Need to locate and indicate on the plans the existing storm drainage structures coming from the unopened right-of-way of Myrtlewood Lane. Must comply with all stormwater and flood control ordinances. Any work performed in the right-of-way will require a right-of-way permit); and,

- 5) full compliance with all municipal codes and ordinances.

The motion carried unanimously.

Case #ZON2010-00469 (Planning Approval)

St Paul's Episcopal School

161 Dogwood Lane

(Area bounded by Old Shell Road, Dogwood Lane, Loyola Lane, Myrtlewood Lane, [vacated], South Avenue, Spring Hill College, and Provident Lane).

Planning Approval to allow the construction of a new press box addition, track/field house, covered football practice facility, visitors' restroom facility, camera towers, and sponsor billboards at an existing school in an R-1, Single-Family Residential District.

Council District 7

(Also see **Case #ZON2010-00470 (Planned Unit Development) St Paul's Episcopal School**, above)

The Chair stated the applicant was agreeable with the recommendations and asked if anyone wished to speak on the matter to do so at that time.

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

- 1) **provision of a revised Campus Master Plan with any future application proposing new facilities not depicted on the Master Plan that was approved at the June 15, 2006, meeting of the Planning Commission;**
- 2) **submission of individual applications for each project (other than those involved in this amended application), providing detailed information with regard to the numbers of classrooms involved, number of parking spaces provided, and detailed information on the location of proposed improvements;**
- 3) **compliance with Urban Forestry comments: (*Property to be developed in compliance with state and local laws that pertain to tree preservation and protection on both city and private properties (State Act 61-929 and City Code Chapters 57 and 64). The Mobile Planning Commission on January 8, 2004, required the entire St. Paul's campus to comply with the tree planning requirements of the Zoning Ordinance. Urban Forestry requests an updated campus landscape plan showing the required trees*);**

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- 4) **compliance with City Engineering comments:** *(The applicant shall provide detention for all impervious areas added to the site since 1984. If an existing detention facility is to be utilized, then the engineer shall certify that the existing detention facilities are properly functioning and has adequate capacity to capture and detain storm drainage from the site. Need to locate and indicate on the plans the existing storm drainage structures coming from the unopened right-of-way of Myrtlewood Lane. Must comply with all stormwater and flood control ordinances. Any work performed in the right-of-way will require a right-of-way permit); and,*
- 5) **full compliance with all municipal codes and ordinances.**

The motion carried unanimously.

Case #SUB2010-00028 (Subdivision)

Snowden Place Subdivision

6106 Cottage Hill Road

North side of Cottage Hill Road, 110'± East of Christopher Drive

Number of Lots / Acres: 52 Lots/13.3± Acres

Engineer / Surveyor: Rester and Coleman Engineers, Inc.

Council District 6

(Also see **Case #ZON2010-00472 (Planned Unit Development) Snowden Place Subdivision**, below)

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

The Chair announced the application had been recommended for approval.

Reid Cummings, 2316 Knollwood Drive, the developer, stated the recommendations had been reviewed and they were in agreement with all of them with the exception of condition 6 on the Planned Unit Development application regarding the sidewalk. He made the following points against requiring the sidewalk:

- A. they were first before the Commission on March 15, 2007, with a mixed use development, comprised of 15 single family lots and 35 town homes;
- B. in November of 2007, they came back before the Commission to change the layout of the development but without changing the number of units;
- C. in March 2009, due to changes in the financial market, they came back before the Commission with a Planned Unit Development that consisted of 57 single family lots, most of which had building pad footprints of less than 40 feet;
- D. since that time, it has been decided that it might make more economic sense to expand the range of selection for floor plans and

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- the 40 foot wide minimum footprint was more conducive to that;
- E. the decision to go with the larger foot print, though not effecting the street size, did effect the yard size and it was the developer's desire to not reduce the yard any more than necessary and requiring the sidewalk would take footage from the front yards;
 - F. presented copies of the minutes from the previous meetings which reflected the conditions for approval, none of which required a sidewalk in the area; and,
 - G. the lots will have zero lot lines but the plan calls for walking trails through out the site and it is hoped that those would be allowed to stand in place of the sidewalk requirement.

Mr. Watkins asked why the sidewalk condition was listed with this approval but not in previous approvals.

Mr. Olsen stated sidewalks had been included in the previous reports and it was believed they were intended to have been listed in the conditions, however, the staff would have no problems if the Commission chose to remove it from the conditions of approval.

Mr. Holmes asked if the street in question was a private street.

Mr. Olsen stated it was a private street which is why the sidewalk was recommended for only one side.

In deliberation, Mr. Miller asked why the Commission was so willing to give up the opportunity to have sidewalks installed.

Mr. Olsen stated that the Subdivision Regulations do not require sidewalks on private street, though they are required on public streets by the Regulations.

Mr. Miller stated his opinion that they should be required regardless of whether the street is private or public.

Mr. Vallas asked for confirmation that the community in question was a gated community. He noted that as a gated community, it would not be as pedestrian friendly for those individuals living outside of it.

Dr. Rivizzigno stated that the residents of the gated community might enjoy walkable streets.

Mr. Vallas noted they could either walk in the common area, or as the community was gated, it enjoyed low traffic volumes so the neighbors could walk on the street or on the proposed walking trails.

Hearing no opposition or discussion, a motion was made by Mr. Vallas, with second by Mr. DeMouy, to approve the matter, subject to the following conditions:

- 1) **compliance with Engineering Comments:** *(Must comply with all storm water and flood control ordinances. Any work performed in the right-of-way will require a right-of-way permit);*
- 2) **compliance with Urban Forestry comments** *(Property to be developed in compliance with state and local laws that pertain to tree preservation and protection on both city and private properties (State Act 61-929 and City Code Chapters 57 and 64). Preservation status granted for all 50” and larger trees. All work under the canopies is to be permitted and coordinated with Urban Forestry, removal to be permitted by Urban Forestry only in the case of disease or impending danger. Exact curb-cut locations and location of the proposed street should also be coordinated with Urban Forestry to ensure that no trees 50” and larger are effected.);*
- 3) **compliance with Section VIII.E.2.c. through Section VIII.E.2.k. of the Subdivision Regulations, including the provision of notes on the plat, covenants, and certification letter from a licensed engineer;**
- 4) **placement of a note on the plat and site plan stating that the gate must remain operational and in use as a condition of the continuation of private street status;**
- 5) **keeping of the note on the Final Plat regarding maintenance of all common areas by property owners;**
- 6) **placement of a note on the plat stating that each lot is limited to one (1) curb-cut onto the private street and denied direct access to Cottage Hill Road, and that the overall site is limited to two (2) access points as shown, with the location, size, and design to be approved by Traffic Engineering and comply with AASHTO standards;**
- 7) **depiction of the 40-foot setback line from Cottage Hill Road, and the 15-foot setback line along the private street;**
- 8) **placement of a note on the Final Plat stating that each lot is limited to the site coverage depicted on the table on the plat, and will apply to the sum of all structures on each lot;**
- 9) **placement of a note on the Final Plat stating that approval of all applicable federal, state, and local agencies for endangered, threatened, or otherwise protected species is required prior to the issuance of any permits or land disturbance activities; and, provision of and approval of a revised PUD site plan to the Planning Section of Urban Development prior to the signing of the Final Plat.**

The motion carried with Mr. Miller and Dr. Rivizzigno voting in opposition.

Case #ZON2010-00472 (Planned Unit Development)

Snowden Place Subdivision

6106 Cottage Hill Road

North side of Cottage Hill Road, 110' ± East of Christopher Drive

Planned Unit Development Approval to amend a previously approved Planned Unit Development to allow a single-family residential subdivision with lots less than 60' wide, reduced building setbacks and increased site coverage, and a private 40' right-of-way street

Council District 6

(Also see Case #SUB2010-00028 (Subdivision) **Snowden Place Subdivision**, above)

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

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

- 1) **completion of the Subdivision process;**
- 2) **compliance with Engineering Comments: (*Must comply with all stormwater and flood control ordinances. Any work performed in the right-of-way will require a right-of-way permit*);**
- 3) **compliance with Urban Forestry comments (*Property to be developed in compliance with state and local laws that pertain to tree preservation and protection on both city and private properties (State Act 61-929 and City Code Chapters 57 and 64). Preservation status granted for all 50" and larger trees. All work under the canopies is to be permitted and coordinated with Urban Forestry, removal to be permitted by Urban Forestry only in the case of disease or impending danger. Exact curb-cut locations and location of the proposed street should also be coordinated with Urban Forestry to ensure that no trees 50" and larger are effected.*);**
- 4) **provision of the eleven proposed frontage trees along Cottage Hill Road, to be coordinated with Urban Forestry;**
- 5) **provision of a 6' high wooden privacy fence where the site adjoins existing R-1 zoned properties (East, North and West);**
- 6) **placement of a note on the site plan stating that each lot is limited to one (1) curb-cut onto the private street and denied direct access to Cottage Hill Road, and that the overall site is limited to two (2) access points as shown, with the location, size, and design to be approved by Traffic Engineering and comply with AASHTO standards;**
- 7) **compliance with Section VIII.E.2.c. through Section VIII.E.2.k. of the Subdivision Regulations, including the provision of notes on the site plan (as shown), covenants, and certification letters from a licensed engineer;**
- 8) **placement of a note on the site plan stating that the gate must**

- remain operational and in use as a condition of the continuation of private street status (as shown);
- 9) revision of the site plan to indicate if the existing wall along Cottage Hill Road is to remain;
 - 10) if the existing wall along Cottage Hill Road is to remain and if it is to be modified near the primary entrance from the service road stub, approval of the revised wall design for traffic visibility issues by Traffic Engineering would be required prior to the submittal of a revised site plan to Planning;
 - 11) placement of a note on the site plan stating that individual private garbage service will be provided;
 - 12) depiction of the 40-foot setback line from Cottage Hill Road, and the 15-foot setback line along the private street;
 - 13) inclusion of a note on the site plan stating that each lot is limited to the site coverage depicted on the table on the site plan, and will apply to the sum of all structures on each lot;
 - 14) placement of a note on the revised site plan stating that approval of all applicable federal, state, and local agencies for endangered, threatened, or otherwise protected species is required prior to the issuance of any permits or land disturbance activities;
 - 15) provision of and approval of a revised PUD site plan to the Planning Section of Urban Development prior to the signing of the Subdivision plat; and,
 - 16) full compliance with all other municipal codes and ordinances.

The motion carried with Mr. Mille and Dr. Rivizzigno voting in opposition.

OTHER BUSINESS:

Case #SUB2009-00179

Bit and Spur Woods Subdivision, Re-subdivision of Lot 3

4609 Bit and Spur Road

(South side of Bit and Spur Road, 150' ± West of the South terminus of Hawthorne Place).

Mr. Olsen advised that the Commission would hear opposition to the above referenced matter that had been heard and approved previously. He added that there were hand outs for the Commission to review to better assist them in understanding the matter.

Mr. Lawler advised the Commission that an attorney for Dr. Michael Kleinmann, an adjacent neighbor, stated that his client had not been properly notified regarding the application for subdivision of the above referenced property. Mr. Lawler indicated that the attorney had advised him that it was his intent to file suit regarding this matter if the Commission did not set aside the tentative approval of said subdivision due to improper

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notification. Mr. Lawler advised the Commission that it would be in their best interest to set aside that decision to allow for the proper notification as required.

The Chair noted that the floor was open for public discussion of the matter and if there were those present who wished to speak on the subject to do so at that time.

Jerry Byrd, Byrd Surveying Inc., spoke on behalf of the applicant and made the following points in opposition to setting aside the tentative approval on said application:

- A. noted that the current tax map did not show Dr. Kleinmann, the neighbor claiming not to have received proper notification, as touching, thereby eliminating him as an adjacent neighbor;
- B. noted that when the subdivision application was heard January 7, 2010, no neighbors came in opposition to the matter, and it was approved subject to Board of Zoning Adjustment approval regarding the side yard setback variance;
- C. due to the need for the variance, all property owners within 300 feet were given proper notification of the matter, and neither Dr. Kleinmann nor others located on Jordan Lane and Rochester Road attended that public hearing;
- D. by virtue of the tax map, Dr. Kleinmann does not fit the description of an adjacent land owner as defined by State of Alabama law and/or the Mobile City Subdivision application;
- E. regarding the Phenix City, Alabama, case cited, Phenix City ordinance has specific verbiage requiring that all adjacent land owners be notified with regards to subdivision, however, the City of Mobile does not have specific verbiage regarding the notification of adjacent land owners and relies sole on the specifications listed by the Alabama State Code, which simply calls for owners as shown on tax records; and,
- F. in as much as his client had utilized the tax map, as required by the verbage for proper notification, and said map did not show Dr. Kleinmann as requiring proper notification, it was felt that the applicant had fulfilled the requirements for proper notification and should not be penalized in any way, including the setting aside of the tentative approval for the reasons stated by opposition.

Mr. Hoffmann stated that the information handed out by the City of Mobile showed that on the 1963 survey for the Bit and Spur Road Subdivision, it went 32 feet north of the center of Section 22 and then on the second page it showed that the subdivision in the Country Club went 6 north of Section 22 before touching Lot 6, which resulted in a 26 foot overlap between Lot 6 of the Country Club and Lot 3 on Bit and Spur Road.

Robert Matthews, Lyons, Pipes and Cook Law Firm, spoke on behalf of his client, Dr. Michael Kleinmann, and made the following points in favor of setting aside the tentative approval on said application:

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- A. offered that the notice statute, if read carefully, does not state that you rely on the tax map, instead it states that an applicant must provide notice to adjoining property owners and that can be addressed that according to the tax assessor's records; and,
- B. with regards to flag shaped lots, the City's regulations state that evidence must be submitted that the lot has no reasonable use and that there is an extreme hardship associated with it unless it is flag shaped and noted that no evidence was submitted to that effect.

Mr. Vallas asked why the Commission was being asked to consider setting aside the decision.

Mr. Lawler advised the Commission was being asked to set aside its previous decision based upon lack of proper notification of all adjacent property owners.

Mr. Turner asked if it was certain that the property in question was indeed adjacent to the applicant's property.

Mr. Olsen responded that based upon the recorded plats of both subdivisions, there was roughly 26 feet that abutted one another. He also noted the assessment map did not reflect that information even though the recorded plats did.

Mr. Waktins asked how to protect applicants from this point forward if they were not able to rely on the tax plat.

Mr. Olsen noted that there was a provision on the application that stated that all property ownership information provided for notification must be verified through Probate Court, which would have included the recorded plat.

Hearing no further opposition or discussion, a motion was made by Dr. Rivizzigno, with second by Mr. Miller, to set aside the tentative approval of January 7, 2010, for the above referenced matter due to improper notification. The applicant was advised to submit a new list of names, labels, and postage fees required to schedule a rehearing.

The motion carried unanimously.

Hearing no further business, the meeting was adjourned.

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APPROVED: April 15, 2010

Dr. Victoria Rivizzigno, Secretary

Terry Plauche, Chairman

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