

MOBILE CITY PLANNING COMMISSION MINUTES
MEETING OF JULY 7, 2011 - 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
Herb Jordan
Mead Miller
Roosevelt Turner
John Vallas
James F. Watkins, III

Members Absent

Urban Development Staff Present

Richard L. Olsen,
Deputy Director of Planning
Frank Palombo,
Planner II
Gerard McCants,
Urban Forestry
Joanie Stiff-Love,
Secretary II

Others Present

John Lawler,
Assistant City Attorney
John Forrester,
City Engineering
Jennifer White,
Traffic Engineering
District Chief Billy Roach,
Fire-Rescue Department

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

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

HOLDOVERS:

Case #SUB2011-00053

Crichton Commerce Place Subdivision, Re-subdivision & Addition to

3232, 3240, 3300, 3374 and 3378 Moffett Road, and 3218 Crichton Street
(North side of Moffett Road, 430'± East of I-65 Service Road North and extending to the
Western terminus of Crichton Street)

Number of Lots / Acres: 3 Lots / 30.7± Acres

Engineer / Surveyor: Frank A. Dagley & Associates, Inc.

Council District 1

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.

Frank Dagley, Frank A. Dagley and Associates, spoke on behalf of the applicant and requested that the matter be withdrawn from that day's consideration.

The Chair recognized the applicant's request and announced the matter as withdrawn.

NEW SUBDIVISION APPLICATIONS:

Case #SUB2011-00061

Kroner's Mobile West Commercial Business Park Subdivision

Southwest corner of Three Notch Road and McDonald Road

Number of Lots / Acres: 15 Lots / 75.8± Acres

Engineer / Surveyor: Richard L. Patrick, PLS

County

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

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

- 1) **depiction of dedications along McDonald Road and Three Notch Road to provide 50-foot right-of-way from the centerline;**
- 2) **correction of the minimum building setback line to match the radius and shape of the lot lines;**
- 3) **depiction of the 50-foot minimum building setback line from all public right-of-ways;**
- 4) **the labeling of each lot with its size in square feet, or placement of a table on the plat with the same information;**
- 5) **either removal of the "Lot 15" or "Future Development" label;**
- 6) **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;**
- 7) **placement of a note on the Final Plat to comply with the City of Mobile stormwater and flood control ordinances: *(Must comply with the Mobile County Flood Damage Prevention Ordinance. Development shall be designed to comply with the stormwater detention and drainage facility requirements of the City of Mobile stormwater and flood control ordinances, and requiring submission of certification from a licensed engineer certifying that the design complies with the stormwater detention and drainage facility requirements of the City of Mobile stormwater***

- and flood control ordinances prior to the issuance of any permits.)*
- 8) approval of all applicable federal, state, and local agencies prior to the issuance of any permits or land disturbance activities;
 - 9) placement of a note on the Final Plat limiting Lots 1 & 2, Lots 3 & 4, Lots 5 & 6, Lot 9 & 10, Lots 11 & 12 to one shared curb-cut each to McDonald Road as depicted on the preliminary plat, with the size, design, and location of all curb-cuts to be approved by Mobile County Engineering and conform to AASHTO standards;
 - 10) placement of a note limiting Lots 7, 8, 13, and 14 to one curb-cut each to the proposed street stubs, with the size, design, and location of all curb-cuts to be approved by Mobile County Engineering and conform to AASHTO standards; and,
 - 11) placement of a note on the Final Plat stating that approval of all applicable federal, state, and local agencies is required for endangered, threatened or otherwise protected species, if any, prior to the issuance of any permits or land disturbance activities.

The motion carried unanimously.

NEW SIDEWALK WAIVER APPLICATIONS:

Case #ZON2011-01414

Joe Stevens with Advanced Disposal Services Gulf Coast, LLC

6225 Rangeline Road

(East side of Rangeline Road, 1400'± North of Old Rangeline Road)

Request to waive construction of a sidewalk along Rangeline Road.

Council District 4

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

Hearing no opposition or discussion, a motion was made by Mr. Vallas, with second by Mr. Turner, to approve the above request for a waiver of the sidewalk along Rangeline Road.

The motion carried unanimously.

Case #ZON2011-01445

Centerpointe Assembly of God

1375 West I-65 Service Road North

(West side of West I-65 Service Road North, 232'± North of Desirrah Drive South)

Request to waive construction of a sidewalk along a portion of West I-65 Service Road North.

Council District 1

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

Hearing no opposition or discussion, a motion was made by Mr. Vallas, with second by Mr. Turner, to approve the above request for a waiver of the sidewalk along West I-65 Service Road North.

The motion carried unanimously.

GROUP APPLICATIONS:

Case #SUB2011-00058 (Subdivision)

Oakleigh Place Subdivision, Re-subdivision of Lots 8 & 9

6359 & 6363 Oakleigh Way

(South side of Oakleigh Way, 430'± East of Hillcrest Road)

Number of Lots / Acres: 2 Lots / 1.7± Acre

Engineer / Surveyor: Preble –Risch LLC

Council District 6

(Also see **Case #ZON2011-01433 (Planned Unit Development) Oakleigh Place Subdivision, Re-subdivision of Lots 8 & 9**, below)

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

Hearing no opposition or discussion, a motion was made by Mr. Turner, with second by Dr. Rivizzigno, to waive Section V.D.3. of the Subdivision Regulations for Lot 8 and approve the above referenced matter, subject to the following conditions:

- 1) **depiction and labeling of the minimum building setback line to be at least 25-feet from all street frontages for all lots, or where the lot is a minimum of 60 feet in width for lots less than 60-foot wide at the street, as shown;**
- 2) **placement of a note on the site plan and plat stating that the maximum building site coverage per lot is 40%, the minimum side yard setback is 5 feet, and the minimum rear yard setback is 8 feet;**

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- 3) placement of a note on the site plan and plat stating that no structures are allowed within the drainage easement on Lot 8;
- 4) labeling of all common areas, if any, and placement of a note on the site plan and plat stating that maintenance of common areas is the responsibility of the property owners;
- 5) placement of a note on the site plan and plat that each lot is limited to one curb-cut, with the size, design, and location to be approved by Traffic Engineering and in compliance with AASHTO standards, as shown;
- 6) full compliance with Engineering comments: *(Must comply with all stormwater and flood control ordinances. Any increase in impervious area in excess of 4,000 square feet will require detention. Any work performed in the right-of-way will require a right-of-way permit.)*;
- 7) full compliance with Urban Forestry comments, and placement of the comments as a note on the site plan and plat: *(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).)*;
- 8) placement of a note on the site plan and plat stating that the site must be developed in compliance with all local, state, and federal regulations regarding endangered, threatened, or otherwise protected species prior to land disturbance or the issuance of permits;
- 9) provision of two (2) revised PUD site plans to the Planning Section of Urban Development prior to the signing of any Subdivision plat; and,
- 10) completion of the Subdivision process prior to any additional permitting activities.

The motion carried unanimously.

Case #ZON2011-01433 (Planned Unit Development)

Oakleigh Place Subdivision, Re-subdivision of Lots 8 & 9

6359 & 6363 Oakleigh Way

(South side of Oakleigh Way, 430'± East of Hillcrest Road)

Planned Unit Development Approval to amend a previously approved Planned Unit Development to change the front lot line between lots 8 and 9 to allow a driveway for lot 8.

Council District 6

(Also see **Case #SUB2011-00058 (Subdivision) Oakleigh Place Subdivision, Re-subdivision of Lots 8 & 9**, above)

The Chair announced the application had been recommended for approval and stated the applicant was agreeable with the recommendations. He added if anyone wished to

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Speak on the matter they should do so at that time.

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

- 1) depiction and labeling of the minimum building setback line to be at least 25-feet from all street frontages for all lots, or where the lot is a minimum of 60 feet in width for lots less than 60-feet wide at the street, as shown;**
- 2) placement of a note on the site plan and plat stating that the maximum building site coverage per lot is 40%, the minimum side yard setback is 5 feet, and the minimum rear yard setback is 8 feet;**
- 3) placement of a note on the site plan and plat stating that no structures are allowed within the drainage easement on Lot 8;**
- 4) labeling of all common areas, if any, and placement of a note on the site plan and plat stating that maintenance of common areas is the responsibility of the property owners;**
- 5) placement of a note on the site plan and plat that each lot is limited to one curb-cut, with the size, design, and location to be approved by Traffic Engineering and in compliance with AASHTO standards, as shown;**
- 6) full compliance with Engineering comments: (*Must comply with all stormwater and flood control ordinances. Any increase in impervious area in excess of 4,000 square feet will require detention. Any work performed in the right-of-way will require a right-of-way permit.*);**
- 7) full compliance with Urban Forestry comments, and placement of the comments as a note on the site plan and plat: (*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).*);**
- 8) placement of a note on the site plan and plat stating that the site must be developed in compliance with all local, state, and federal regulations regarding endangered, threatened, or otherwise protected species prior to land disturbance or the issuance of permits;**
- 9) provision of two (2) revised PUD site plans to the Planning Section of Urban Development prior to the signing of the Subdivision plat;**
- 10) completion of the Subdivision process prior to any additional permitting activities; and,**
- 11) full compliance with all other municipal codes and ordinances.**

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The motion carried unanimously.

Case #SUB2011-00062 (Subdivision)

Grandview Apartments Subdivision

6151 Marina Drive

(East side of Marina Drive South at the mouth of Dog River)

Number of Lots / Acres: 2 Lots / 16.1± Acres

Engineer / Surveyor: Frank A. Dagley & Associates, Inc

Council District 4

(Also see **Case #ZON2011-01447 (Planned Unit Development) Grandview Apartments Subdivision**, and, **Case #ZON2011-01495 (Rezoning) Dog River**

Venture, LLC, below)

The Chair announced the matter was recommended for holdover and stated the applicant was agreeable with the recommendations, however, if there were those present who wished to speak to please do so at that time.

Hearing no opposition or discussion, a motion was made by Mr. Plauche, with second by Mr. DeMouy, to hold the above matter over until the August 4, 2011, meeting, with revisions and documentation due to the Planning Section by July 20, 2011, to address the following:

- 1) **submittal of written documentation from the County Engineer that Bay Road North either is or is not constructed to County Paved Road Standards;**
- 2) **revision of the plat to depict the 25-foot minimum building setback line along all street frontages; and,**
- 3) **depiction of existing right-of-way width for Dauphin Island Parkway / Marina Drive South.**

The motion carried unanimously.

Case #ZON2011-01447 (Planned Unit Development)

Grandview Apartments Subdivision

6151 Marina Drive

(East side of Marina Drive South at the mouth of Dog River)

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

Council District 4

(Also see **Case #SUB2011-00062 (Subdivision) Grandview Apartments Subdivision**, above, and, **Case #ZON2011-01495 (Rezoning) Dog River Venture, LLC**, below)

The Chair announced the matter was recommended for holdover and stated the applicant was agreeable with the recommendations, however, if there were those present who wished to speak to please do so at that time.

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Hearing no opposition or discussion, a motion was made by Mr. Plauche, with second by Mr. DeMouy, to hold the above matter over until the August 4, 2011, meeting, with revisions and documentation due to the Planning Section by July 20, 2011, to address the following:

- 1) **depiction of all improvements on the site including fences, parking space, and dumpster locations;**
- 2) **depiction of the front entrance gate and queuing spaces along Marina Drive South;**
- 3) **depiction of parking spaces and sizes;**
- 4) **depiction of parking calculations; and,**
- 5) **depiction of dumpster enclosures.**

The motion carried unanimously.

Case #ZON2011-01495 (Rezoning)
Dog River Venture, LLC

6151 Marina Drive

(East side of Marina Drive South at the mouth of Dog River)

Rezoning from R-1, Single-Family Residential District, to R-3, Multiple-Family District, to allow an apartment complex.

Council District 4

(Also see **Case #SUB2011-00062 (Subdivision) Grandview Apartments Subdivision**, and, **Case #ZON2011-01447 (Planned Unit Development) Grandview Apartments Subdivision**, above)

The Chair announced the matter was recommended for holdover and stated the applicant was agreeable with the recommendations, however, if there were those present who wished to speak to please do so at that time.

Hearing no opposition or discussion, a motion was made by Mr. Plauche, with second by Mr. DeMouy, to hold the above matter over until the August 4, 2011, meeting, so that the applicant could address the deficiencies in the Subdivision and Planned Unit Development applications.

The motion carried unanimously.

Case #ZON2011-01449 (Planned Unit Development)

Alter Scrap Processing

1 Hardwood Lane

(East side of Hardwood Lane (private street), 540' ± East of North Craft Highway)

Planned Unit Development Approval to amend a previously approved Planned Unit Development to allow multiple buildings on a single building site.

Council District 2

(Also see **Case #ZON2011-01448 (Planning Approval) Alter Scrap Processing**, below)

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

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

- 1) **compliance with Engineering comments: (*The proposed buildings, bulkhead and fill will require a No Rise Certificate or an approved Flood Study. Must comply with all stormwater and flood control ordinances. There is to be no disturbance to any wetlands unless proper permitting is obtained from the Corps of Engineers and copies submitted to City of Mobile Engineering Department. Any work performed in the right of way will require a right of way permit in addition to any required land disturbance permit. Drainage from any dumpster pads cannot discharge to storm sewer; must have connection to sanitary sewer*);**
- 2) **illustration of the location of any dumpster or waste storage area on the site plan;**
- 3) **compliance with the buffering requirements of the Zoning Ordinance from residential uses, with in-fill plantings if the existing vegetation is not sufficient;**
- 4) **approval of all applicable federal, state, and local agencies prior to the issuance of any permits;**
- 5) **submission of a disposal plan for the unrecoverable waste associated with the automobile shredding process;**
- 6) **limitations of hours of shredding operations to between the hours of 6:00 AM. and 6:00 PM with maintenance activities allowed after 6:00 PM;**
- 7) **full compliance with all municipal codes and ordinances; and,**
- 8) **the submission of two (2) copies of the revised site plan illustrating all conditions for recommendation of approval.**

The motion carried unanimously.

Case #ZON2011-01448 (Planning Approval)

Alter Scrap Processing

1 Hardwood Lane

(East side of Hardwood Lane (private street), 540' ± East of North Craft Highway)

Planning Approval to amend a previously approved Planning Approval to allow the expansion of an existing scrap metal processing facility with automobile shredding in an I-2, Heavy Industry District.

Council District 2

(Also see **Case #ZON2011-01449 (Planned Unit Development) Alter Scrap Processing**, above)

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

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

- 1) **compliance with Engineering Comments:** *(The proposed buildings, bulkhead and fill will require a No Rise Certificate or an approved Flood Study. Must comply with all storm water and flood control ordinances. There is to be no disturbance to any wetlands unless proper permitting is obtained from the Corps of Engineers and copies submitted to City of Mobile Engineering Department. Any work performed in the right-of-way will require a right-of-way permit in addition to any required land disturbance permit. Drainage from any dumpster pads cannot discharge to storm sewer; must have connection to sanitary sewer);*
- 2) **illustration of the location of any dumpster or waste storage area on the site plan;**
- 3) **compliance with the buffering requirements of the Zoning Ordinance from residential uses, with in-fill plantings if the existing vegetation is not sufficient;**
- 4) **approval of all applicable federal, state and local agencies prior to the issuance of any permits,**
- 5) **submission of a disposal plan for the unrecoverable waste associated with the automobile shredding process;**
- 6) **limitations of hours of shredding operations to between the hours of 6:00 AM and 6:00 PM with maintenance activities allowed after 6:00 PM; and,**
- 7) **full compliance with all municipal codes and ordinances.**

The motion carried unanimously.

OTHER BUSINESS:

After deliberation and voting, the Chair opened the floor to hear legal comments regarding the Commission's approval of University Grande Subdivision, ZON#2010-0095. The Chair noted that the matter was not a hearing so there would be not vote or action taken by the Commission. Mr. Vallas offered to recuse himself, however, Mr. Lawler advised that was not necessary as there was nothing to vote on and Mr. Vallas was free to hear the opinions to be stated. At that time, the Chair recognized the Planning Commission's attorney, assistant City Attorney, John Lawler, who spoke on the validity of the original approval of University Grande Subdivision, ZON#2010-00955, in light of the approved amendment of ZON2011-00451 on June 16, 2011. Mr. Lawler went on to say the following:

Apologized for not attending the June 16, 2011, meeting, as he was out of town on business, however, stated he had sent comments about the application as requested by Ms. Rich (Councilperson for District 6) and advised the Commission about objections she had about the parking lot across the street was that parking across the street could be allowed, but at any rate, when he got back and after the matter was passed and approved, learned from Richard Olsen that there had been a request made by the developer to withdraw the amendment and was asked whether or not that was proper, whether or not that could be done, and his advise was it can not. We have a procedure where if you want to amend a PUD that's been previously approved, you make your application. An application was made in this case and it came up as one unit, the amended PUD, and it passed. Our practice has been, just like one of the applications that came up today, people have the right to withdraw any application they want to withdraw right up until there's a vote, once there's a vote, there's no backing away from it, and once there is an appeal-able decision, it's final as far as this body is concerned. This body has the power to pass on PUDs, subject to someone making an appeal within 15 days. Once we've made our order, it's beyond our jurisdiction to do anything to it. The same is true, in a similar situation, with the Board of Adjustment. The Board of Adjustment enters its order. The applicant or aggrieved parties have the right to appeal within 15 days, but the applicant doesn't come in after the vote's been taken and say "I've decided I don't want to do that." He can, just like the applicant in this case, if he doesn't want to proceed with what was approved on the 16th, there's nobody requiring that. Just like subdivision approval; you get a subdivision approved, it may be subject to a ton of conditions, condition that you do this, this, this, and this, always with the condition that you put in the infrastructure, but never the less, the approval that is given by the Planning Commission is final at that point. Now, the applicant doesn't have to proceed at that point, but it's final as far as this body is concerned. An amendment, and I think that's something this body needs to think about too, what does an amendment do? I went to

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the case law and case law defines an amendment as an amendment clarifies and makes more definite and supercedes the preceding law or ordinance. So, what happened when this body met back on June 16, and heard the amended PUD and passed it, that superceded the action that was taken back in 2010; it became *the* PUD. It's passed; there's no way to withdraw it. You ask the question what happens if the City Council, and maybe that's the purpose of all this, and I'm kind of surprised that the developer now decides he wants to withdraw the approval he received and seemed to be so in favor of on the 16th. I'm surprised they want to withdraw it and I suspect its, I don't know because I haven't talked to anybody on the Council, I don't know what their plans are, or how the vote would go, one way or the other, but it must be they suspect they may not win at that level and what happens at that level, what happens if that occurs. What happens is that I believe that's the end of it, cause the PUD was, the 2010 PUD was enveloped into the amendment, its passed by this body, its over, 2010 is over, but if someone should determine, or some court should determine that that's not correct and we do go back to the 2010 PUD, are we bound, is the City bound to allow that PUD to proceed? The request he got, Mr. Olsen was telling him, the developer wanted to get permits under the 2010 PUD while the appeal was pending, so the developer could get started on the project. Had they been able to do that (which was stopped based upon advise from Mr. Lawler that it should not occur) there would be no way to undo that work, as they would have obtained a vested right in the project. What do you do when something has been passed by the Planning Commission and we later learn that it was passed on erroneous information? Mr. Lawler had read the minutes from each one of the meetings where this was considered and the 2010 application didn't say anything about student apartments; didn't say anything about being rented by the bedroom, which brought up another question, "How many units do we have?" A unit in an apartment house is described as having sleeping arrangements, facilities, and a kitchen. Mr. Lawler assumed these would be where a kitchen is shared and each one of the bedrooms would have a separate rental/lease agreement, so how many units do we really have? Do we have 156, as suggested in 2010, or do we have 400 and something? How many units do we have? And then there's also the error with regards to how the parking is to be calculated and that comes from a misunderstanding I think, and I apologize for not having perhaps spoken to it at an earlier time with regards to what a PUD is. A PUD, in most cities, not ours, a PUD goes up as a separate zoning district; you start out with a separate, blank district, and we kind of bifurcated it. We let the Planning Commission do the PUD, the location of the houses, the number of parking spaces, whatever else is needed to make the unit work and meet the criteria in the PUD section and then we pass up separately all the ordinances that ought to go together, the issue of changing the zoning to accommodate whatever. That's what we have here. The zoning was recommended to change the zoning to accommodate the

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parking and the PUD was approved and has since, as I understand it, been appealed. Did that PUD in 2010, did we have sufficient information to make a judgment about whether or not the parking was sufficient. And you're not bound by the regulations as they relate to a lot by lot development. A PUD is like a blank slate and you do whatever works in the project and some times that means the streets are more narrow than what the Code or Ordinance otherwise provides. It means you might have more parking because of the needs of the project or it means you might have less because of the needs of the project. Sometimes the nursing home facilities, apartments, that kind of living, they don't need the parking because they don't have cars but in this case what we have is we have somebody coming in saying "Look, I can't control how many automobiles these children are going to have at this apartment house," so this is your one shot to solve that problem and based on a suggestion to you that if you didn't let him have it he was going to go back to the 2010, it was approved. Now I'm not here to try to disengage anybody from a vote for the thing and I'm not trying to get the Council to turn it back, I'm not trying to get anybody to do anything to what was passed, the application that was passed on the 16th, that PUD, that amended PUD, it pushed the envelope just about as far as it can be pushed and be called a real, viable PUD, but I'm not speaking against it, in fact, I said it was okay. It passed legal muster with me and the letter I wrote you, but I can tell you the 2010 PUD does not, does not meet legal muster. There are a couple of things, the parking is one of them, and we have some history in this, too. This is not the only one of these I've been involved with. Mr. Anderson and I were involved with a case out in Hillcrest, I think, and it was the same kind of unit, same kind of apartment complex, only in that case they had all the parking they said they needed, had to have, just like in this case, they said "had to have," just like this applicant is saying, "had to have 525 or so parking spaces," just like this amended PUD in this case provided and it was based on rental by the bedroom for students. When we come to parking, we don't go by what the Ordinance said, one and a half, or whatever it says for whatever district is involved, we go by what is necessary, what will make this work. Now, will one and a half make this work? No, because by the application for the amended PUD it's a glaring admission that they're about 200 something parking spaces too short and I can imagine that once the 2010 PUD is the one that's developed, if that's developed, you're going to have 200 people looking for a parking space every morning, driving around these small streets in the area and it will create a safety problem, it will create a nightmare. I think as the developer when he was hawking the amended PUD, it would create a parking nightmare. Now, you know, that can be solved; there can be fewer units, you know, if the developer doesn't want to do the one that was approved or its denied by the Council, if he wants to go ahead and develop the property just that part on Old Shell Road, he can come back with an application that has the proper number of parking spaces for the proper

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number of units. When I say this one, the amended PUD kind of pushed the envelope, you're supposed to have 700 square feet of open space for every unit and I did the math with the one that was approved and it looks to me like 3,396 square feet short. That's about half of a lot, I'd guess you'd say, of open space, but, nevertheless, it showed just how pushed this matter has been. Now, what is the law when we have what we have today; we have an amended PUD that's been approved on appeal and until such time as that's dealt with, there's not going to be any permits or anything granted. But, let's assume that someone somehow gets, makes an application for a permit to go under the 2010 PUD, what are the options the Planning Commission has. Well, the options are it can be denied. There are case numbers, you know, if you look at the zoning literature, I mean there are just tons of cases where such is the case and especially in a case like this, there hasn't been a spade of earth turned last time I drove out there over the weekend; hadn't been anything built, so we got a blank space and you know if we were dealing in a typical commercial transaction between business men, people say "ah, gotcha! You should've looked out for that yourself," but the same is not true when you deal with public bodies. Public bodies have the right to go back and correct mistakes and we have the opportunity to correct one here, if that presents itself. It hasn't. I don't know what the intention of the developer is in this case. The first indication I got from Mr. Olsen was that they were going to try to withdraw the amended PUD and then I got a copy of a letter that Mr. Anderson had sent to a number of folks where he said that was not the case, they weren't going to withdraw it, which kind of lead me to the thought that well, maybe they were going to try to get something started. Once you get something started, you get a vested right, and I thought, maybe that was the intention, I'm not sure, and I'm not sure what their intentions are now, but I think it's a serious matter and I'm not accusing them of doing anything. I don't know whether they knew for instance when they made the 2010 PUD, I don't know whether they knew that they, in fact, were going to rent by the bedroom or that they knew that they needed 500 and something parking spaces, I don't know that. I mean, I've been lead to believe and heard statements made that the lender required them to have that many spaces. Whether they knew that back in 2010, I don't know, but the fact is we know it now and we do know that the terms of the 2010 PUD, it was passed without sufficient information and it's something that should no go forward and if an application is made to proceed under that PUD at such time as that comes before me, I'm going to recommend to the City, to the Administration, and if someone should ask, if something should come before you, I'll recommend that you rescind it. This is not. I don't think that the public should be put into a position of not being able to do the right thing for a neighborhood or for the public just because something was passed with a lack of information. I read the minutes and Ms. Rivizzigno was asking, you know she asked Mr. Olsen, I think, why don't, y'all need to check more about what kind of

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parking is required. I agree, we all ought to be more vigilant in our examination of the things that come before us but in the case of a Planned Unit Development or any development, there is an affirmative duty on the part of the developer to come in and tell exactly what is going to be done, what is going to be needed, how much parking is going to be needed, all the things you need to know to make an honest evaluation of the project. I'm not opposed to development. I'm not anti-development and for anybody to say that the City of Mobile and this body is anti-development, well, I tell you that's a step. We have done everything we can to promote people's ability to use their property and it's not reason why this property can not be used within the terms of the regulations and they can be used in a way so the public will not be damaged. Now the thing that was passed on the 16th, it'd be hard but I think it will work. I think it would work and the developer would have a good project, perhaps. Perhaps it would go, but we're not, you know, "because I can't have that, you're gonna get this," that's not the situation and that's not what has to be and if it comes before me on request for permits or it comes before me on request for anything, I'm going to recommend that those in authority deny them on that basis and again, I say, I regret that I was not here because I kind of got the feeling from reading the minutes that the suggestion had been made that if you didn't pass this they would automatically get the 2010. That's not the case and if I'd have been here, I'd have told you that then and I'd have also told you, if I'd had been asked, that I was going to suggest that the 2010 PUD be rescinded and that no permits be granted under it because it was done with a lack of information, simple as that."

Mr. Vallas stated he was a little concerned about the scrutiny as this was student housing and it may be rightfully so based upon other similar uses when discussing number of units as he looked at them as number of units, or number of doors is common in the real estate industry.

Mr. Lawler responded:

I'm not sure either. You know the Ordinance is not real clear. It says "dwelling, multiple family, the term includes apartment house," and then we have dwelling unit as "one or more rooms, one or more, in the same structure, connected together and constituting a separate, independent, housekeeping unit for residential occupancy, with facilities for sleeping and cooking." I haven't looked at the plans but I understand there are going to be three bedrooms and I assume they're going to be rented to three people, but the whole, three separate people under three separate rental agreements, I don't know that for a fact, I just know they're going to be rented by the bedroom. I know it's going to produce an awful lot of people and the developer says it's going to produce an awful lot of traffic and that's the reason why they came and asked for 250 more parking spaces. I mean the suggestion that that was done just because they wanted

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to provide a little extra parking, I mean, people don't spend several million dollars just for the fun of it, I don't think. It was done and suggested because it was needed. I mean, for instance, I'm not sure they would be willing to proceed under the 2010 PUD. I don't know what their intentions are. I'm just going to tell you what I'm going to recommend in case that develops.

Mr. Vallas stated he was concerned if the Commission went back and looked at similar uses, noting Gordon Oaks for instance, it might have one room but multiple senior citizens in there in multiple beds. He noted such a facility might not have a parking problem because those seniors may not drive but then how did the Commission distinguish between a Gordon Oaks type facility which was designed for senior citizens versus dormitories at South Alabama that have multiple students in one dormitory on campus, noting they may not need the cars because those students walk then.

Mr. Lawler responded:

What you do is, you look at the unit and you see how many parking spots its going to require. You look at what the use is going to be and you look at the requirements of the PUD Ordinance and then you fashion whatever is necessary based on that. You don't look to some arbitrary number, one and a half per apartment unit, you look at what is required for this particular thing. It is supposed to be a unique and creative way to use land, a creative way to have open space and to have all the things that are necessary. It is not a way to overdevelop a piece of property by crowding more apartments on to a lot with inadequate parking. That's not the purpose of the PUD.

Mr. Vallas asked Mr. Olsen if there were a difference in parking between a nursing home, apartments, and dormitories.

Mr. Lawler responded:

Right and you can under a PUD, you can include business and you can have business uses, you can have housing, you can have mixed uses, all of which would have mixed needs for parking, all which would have mixed needs for the way of arrangements. There's not, what I'm trying to say to you, there's not an absolute plan. There is a plan that comes to you and is demonstrated to you by the developer. This plan will work. It will provide adequate parking; this one doesn't, and just because it was approved. You know, ask yourself this, and I think I can speak for some of the members that have said something, if they had known in 2010 the extent of the needs, the 2010 PUD would have never passed because it was inadequate and I'm saying that since it was done without the information to make an honest and fair judgment, that I'm going to recommend that it not be allowed to be developed under that PUD.

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Mr. Watkins asked Mr. Lawler to discuss vested rights and at what point did rights become vested.

Mr. Lawler responded, "When you turn a spade of earth."

Mr. Watkins responded:

So if they've spent money on plans, if they've spent money on elevations, architectural expenses, those kind of things, you don't consider that a, its now a vested right, because my concern is this, you've got a plan that's been approved since 2010 and they've come in and asked for an amendment and what I understand you to say is if that amendment is denied by the City Council then they've got nothing. Is that what your position is?

Mr. Lawler responded, "In the case of, well I refer you to the case of Moore versus Pettus, 71 Southern Second Eight Fourteen, in which construction was actually begun and then it was determined that it had been improperly granted and it was revoked."

Mr. Watkins asked what was the reasoning for the improper grant.

Mr. Lawler responded, "The Board of Adjustment had improperly granted a variance and the Building Official had granted a permit to begin."

Mr. Watkins asked if it was because there wasn't enough parking, what was the rationale behind the improper grant, such as a technical issue.

Mr. Lawler responded, "I don't think it makes any difference if it was about parking or not but they were building a duplex apartment."

Mr. Vallas noted there they were improperly granted something, here its not necessarily being said that the Planning Commission has improperly granted anything.

Mr. Watkins noted that the whole thing troubled him in the sense that there was a developer out there who thinks he's got certain rights in the property and he's expended funds to do something and expressed that he thought of it in the terms that he lived in a historic district and if he went to the ARB to get approval to add on to his house and is told by them that he must paint the shutters green and then half way through he comes back before them and tells them he wants to paint them black and they won't grant that approval so his whole ARB approval would then be revoked."

Mr. Lawler responded:

A public body is not bound to allow something that is going create a danger. This is going to create a danger in my opinion and its going to

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create a danger in the opinion of a number of other people. It's going to create a danger and I think that can be remedied and I think that in this case especially since, I've not, I don't know the motivation of the developer in not telling us what he was going to do in the first place, but I think he bears some responsibility in that regard. I mean, he should have told us what he was going to do and had he told us, he'd have been denied.

Mr. Watkins stated he looked at this as an apartment building that had "x" number of bedrooms in it and whether it's rented to individuals or whether it's rented to a family with four kids, the population density doesn't change.

Mr. Miller noted he could not disagree with Mr. Watkins more. He noted the Commission approved 156 unit apartment building and then it turns into a 500 unit. He expressed he understood it was a technicality of law or the ordinance or whatever but somehow the Commission needed a system that there would be a difference in something rented by the bedroom as opposed to the unit because otherwise the Commission would not be discussing it.

Mr. Vallas noted that if he rented a two bedroom apartment, signed a lease for the same, and then subleased the other bedroom to a buddy that had a wife, then did he have a two bedroom unit or what.

Mr. Miller understood that completely and it was a can of worms that care needed to be taken with, as obviously a roommate could have four cars.

Mr. Lawler interrupted and stated, "Y'all are missing the point. The point is there were going to be over 500 cars trying to find a parking space, that's the point, regardless of how many units we call it."

Mr. Watkins asked how that had changed from the plan that was submitted.

Mr. Lawler stated, "Because the 2010 PUD was only on Old Shell Road and only has a little over 300 parking spaces, so we're going to have 200 short and I assume they are going to be looking for a space."

Mr. Watkins asked based on what was the apartment complex going to be 200 parking spaces short.

Mr. Lawler stated, "Based on the application for the amendment that they just had to have an additional 200 parking spaces."

Mr. Watkins stated he was talking about the 2010 approval was for this apartment complex with this number of rooms, this number of doors, and it met the requirements of the Ordinance at that time of 1.5 parking spaces per unit.

Mr. Lawler stated, "I'm telling you, 1.5 is the wrong standard, but regardless."

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Mr. Watkins interrupted and asked what was the right standard.

Mr. Olsen stated the Zoning Ordinance for multi-family residential required 1.5 parking space per dwelling unit.

Mr. Watkins asked what part of that did the Planning Commission miss.

Mr. Lawler stated, "The part you missed was this was a PUD and not a typical development, lot by lot."

Mr. Watkins responded, "But if this had not been a PUD, if this had been an apartment complex in an R-3 zone, what would the parking requirement have been?"

Mr. Lawler stated, "It would have been 1.5 and also it would have been on one lot, one building on one lot, and it probably would have been adequate."

Mr. Watkins stated, "But we're talking about parking here and when you say it would have been adequate had it not been for the fact it's a PUD, what are you basing that adequacy on?"

Mr. Lawler responded:

I'm basing it on the fact that the developer himself has come in and said "I must have 200 and something, 250 more parking spaces. I'm basing it on the fact that the one that I tried about a month and a half, two months ago, they had to have 500 and something parking spaces for a unit just like this one, about 150 units, same thing, had to have it.

Mr. Watkins noted he understood what Mr. Lawler was saying but continued with, "but listen to what I'm saying, this apartment complex, if it were in a R-3 zone, it would require 1.5 parking spaces per unit."

Mr. Lawler responded, "Right, and you could only put one building on a lot and that changes the whole configuration."

Mr. Watkins responded, "I understand but we're talking about parking here and the number of doors has not changed and the number of units has not changed, so what changes the parking?"

Mr. Lawler responded, "It changes because you have more than one building on the lot. It changes because you have a lot more people there. It changes because you have a lot more need for parking."

Mr. Watkins asked, "How are you having more people there? It's the same number of bedrooms."

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Mr. Lawler responded, "Obviously you would approve it, Jay. I don't agree with you and my advise is going to be different."

Mr. Watkins responded, "I'm trying, what you're saying is you're going to remove, you're saying that to deny that 2010 because we made an error or we weren't told something, and I'm just trying to understand what we weren't told and what error we made."

Mr. Lawler asked, "Well, were you told that there were going to be that many people and that need for parking?"

Mr. Watkins responded, "I was told there was going to be an apartment unit with this designation number of beds, number of rooms, and that the Ordinance requires this number of parking spaces for this number of rooms."

Mr. Lawler responded, "You knew that it was going to be student parking and they would be that short in parking spaces?"

Mr. Watkins answered, "You keep saying "short of parking spaces." It meets the Ordinance."

Mr. Lawler stated, "No it doesn't meet the Ordinance."

Mr. Watkins asked, "What does the Ordinance say?"

Mr. Lawler continued, "It doesn't meet the PUD section, does not meet the PUD section."

Mr. Watkins asked, "What does the PUD section require?"

Mr. Lawler stated:

It doesn't make any requirement for it, just as it doesn't make a requirement for the width of the streets. It allows the developer to develop a plan that fits and meets the needs of the unit. It becomes in every city other than, Mobile does it a little differently, in Orange Beach, for instance, a PUD is a separate zoning district and it's more or less that here, we just don't do it quite that way, we don't do it quite like others do. It's a separate zoning district. You make up the rules to meet the project. This project does not meet the needs. The 2010 PUD doesn't meet the needs and we didn't know that.

Mr. Vallas asked if staff had reviewed "The Grove" project to see if it was any different, based on number of units and parking.

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Mr. Olsen stated that had not been done because basically “The Grove” project was a University of South Alabama project located on the University of South Alabama campus which made them exempt from City of Mobile zoning, which meant the City had no information or control over that project. He added there was obviously a good bit of confusion, difference of opinion on the matter within the Commission but it was his understanding that what was to be brought up that afternoon under “Other Business” was basically that the approved, amended PUD of June 16, 2011, was the PUD that stood for the property in question. He noted there was a pending appeal before the City Council. They would hear said appeal and they would make a determination regarding the matter. He noted there had been a lot of discussion regarding what may have been known at the 2010 submission but since that had been amended to some degree, in his opinion, that 2010 knowledge might be a little bit moot because the Commission was aware of what the parking proposal was with the amendment, which he felt addressed that matter. He noted that the staff had begun researching how other cities handled parking for apartments, multi-family developments and noting no one had found a case where there had been a differentiation in student housing. He did note that many cities now did have a different type parking ratio than the City of Mobile, with those being based on the number of bedrooms and the staff would be looking to amend the Ordinance in that area and would present that to the Commission in the not to distant future to avoid this type of issue.

In response, the Chair recognized Doug Anderson, Burr and Foreman Law Firm, who spoke on behalf of the developer, The Davis Companies. Mr. Anderson made the following remarks:

This project has a lot of history and as y’all know this is my first time to appear before y’all on behalf of the developer. The notice we received about this meeting was a June 27, 2011, letter from Mr. Olsen and referenced a legal opinion by Mr. Lawler. The second paragraph says, “The opinion also states that since the 2010 application packet did not reference student apartments and rental by the bedroom with a need for extra parking, the information provided did not fully describe the development and thus the approval should be rescinded by the Planning Commission. Therefore, we are placing this on the July 7, 2011, agenda under “Other Business” for the Planning Commission to discuss and consider.”

Mr. Lawler’s opinion that he sent to the City, after he pretty much stated in the first page and a half what he represented to y’all today, the last sentence of it says, “It is my suggestion that this matter be brought before the PC on the July 7, 2011, meeting with a recommendation that approval of the PUD in its 2010 form be rescinded.” So, I came here today prepared to argue that y’all did not have the legal authority to rescind the 2010 application or approval, excuse me. Now, I understand, y’all aren’t going to be voting and I’m not sure what I’m doing here or what I need to say. Mr. Lawler stated he’s not trying to say you should approve or not approve the project, he did a darn good job of arguing and stating my

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client is a liar and withheld, suppressed information from y'all in 2010 and I certainly don't appreciate that.

I'm not sure where to begin. Jay (Watkins), to answer your question that you were trying to get Mr. Lawler to answer about the Moore case, it's a 1953 case from the county of Montgomery, city of Montgomery, excuse me. The Board of Adjustment approved a variance, conditioned upon the property owner getting the approval of three neighbors. The property owner was unable, within 30 days, to get the approval of the three neighbors. The very next month, he went back to the Board of Adjustment and they had only three people vote. Their Ordinance required four votes of approval, so what was reversed or rescinded in that case was not something based on misinformation or lack of parking spaces. It was because the approval itself was not legal because only three people voted for it, not four as required by their amendment. I don't think that analysis in that case, and I read the case yesterday, I just don't think it can be compared to this case at all.

As far as what my client's intentions are and why did they ask to withdraw the application, y'all approved the amended PUD on June 16, 2011. I was not at that meeting. I was not at any of the meetings that have been held over the last two or three months on this application, however, I was able to obtain from the Land Use Offices this week, minutes of all those meetings, so I have reviewed them extensively trying to catch up and find out exactly what was represented to y'all and what concerns y'all had.

June 17, 2011, the day after y'all approved the amended PUD, Rick Olsen sent my client a letter, "As you are aware, the Planning Commission approved the amended PUD. This approval amended the previously approved PUD, therefore, any permits issued under the previously approved PUD are no longer valid. Those cases (and he lists the Permit numbers) have been frozen and "Stop Work" orders are in the process of being issued." At that point in time and on June 16, 2011, when my client was down here seeking the approval of the amended PUD, whether y'all approved it or not, they were starting work the very next week. Based on the 2010 PUD that y'all approved, they had obtained their building permits, and I think it was Jay (Waktins) mentioned "vesting" or maybe Vicki (Rivizzigno) mentioned "vesting", when does somebody "vest?" Well, based on the 2010 approval, my client obtained building permits, paid about \$58,000.00 to this City for building permits, and in total, spent, as of today, \$611,000.00 in engineering, architecture, whatever else it takes to build an apartment complex. Entered into construction contracts, they were ready to start work last week, no matter what happened on June 16, 2011. So, when they got that letter saying "Sorry, you're permits are frozen," that's when they hired me to help them with the analysis of what their legal rights were. They realized that, at that point in time, "well, we might consider withdrawing our permits because the PUD has been appealed to the Council. Zoning of the lot across the street has to be approved by Council which we all know that the City Council person for

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that District has already come before y'all many times and expressed her displeasure with this development. So you can figure out what the odds are of me winning at City Council. So, knowing that, knowing that they could not proceed that day with the construction and realizing that the chances of winning at Council were pretty slim, they were thinking "Well, what if we just withdraw the permits and proceed under, I'm sorry, withdraw our application for the amended PUD and let's just proceed under the permits we have." So that is why the idea of withdrawal came up. For the first time, when Rick (Olsen) informed us that our permits were frozen and then subsequently learned from the City Attorney that not only were the permits going to be frozen that the 2010 approval was going to be rescinded. That's how we got to where we are today. Going back to the amendment, after the 2010 approval, my client entered into a joint venture agreement with a particular company out of Florida. That particular partner in the joint venture looked at this and said "You know, this is a 75 year ground lease. We're going to have this project for 75 years, we might as well try and get additional parking while we can. Let's go ahead and try and get it now." Never have we admitted and we certainly don't admit today that parking is insufficient, and I'll get to the standard of parking in a minute. So, that's when they started looking into this amended PUD to get more spaces for long term use, 75 year ground lease with the Delaney family. That joint venture partner ended up not doing the deal. The partner they have with them now looked at it and said, "we don't need that parking, we're sufficient with what we have now. We meet the Ordinance, but you've already got this application in process, so let's go forward with it, but whether or not we get it, we're still in the deal." It has nothing to do with financing. There is no financing contingency related to this parking. The only thing financing has to do with it, is if we're going to build a parking lot, to borrow money on a parking lot, you need to do it when you do the overall project. If we go build according to the 2010 PUD and then three years, five years, 15 years from now we decide we want that additional parking, pretty hard to go get a \$500,000.00 loan just for a parking lot. So they wanted to get it all together to make the financing work, to make it easier, because getting it down the road, difficult.

Whether we get the PUD, the amendment approved or not, we're moving forward, we want to move forward, if the City doesn't yank our permits out from under us.

All this is legal argument and I hate wasting your time going through legal arguments. Y'all don't have the authority to make any of these decisions. It's up to the City Attorney, City Administration, but he threw a lot out here on the table and a lot of it's wrong and I feel obligated and I saw the Chairman looking at his watch, I'm sorry, but he threw a lot out on the table and I feel like I need to respond.

As far as the 2010 application, he states. I'm sorry, John, I don't mean to say "he states," I'm not trying to point fingers. The City has taken the

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position that my client withheld information, that we were legally obligated to tell the Commission that this was student housing that required more parking spaces than a regular R-3 development. Show me in this Zoning Ordinance book, whether it's is under R-3 or the PUD, where student housing is referenced, where there's a separate classification or category for student housing. You won't find it. It's not there. The City is trying to, through this entire process, the way we, this road we're going down in the last week, they're trying to create a student housing classification at the expense of my client. Rick just told you that the City is looking into doing that within the next six months they are going to have something to you. Well, obviously they realize it's needed, but it's not there yet, and the only requirement that my client has in a R-3 application, and Jay (Watkins) was hitting on it when he was asking Mr. Lawler questions, in this Ordinance, R-3 requires 1.5 spaces. City Attorney has said that's an arbitrary number. That surprises me that the City Attorney is stating that your own Ordinance is arbitrary. Never have I heard (pause) what was told to you a few minutes ago that on a PUD that you don't go by the Ordinance, you go by what will work. I was appointed to the Planning Commission in 1993 or 1994 and ever since then I've either been on the Planning Commission or been before y'all and I've never, ever heard that said by anyone with the City that on a PUD you don't go by the Ordinance. The staff recommendation in 2008 when this application was first approved, in 2010, and then in every staff report for this application that has come before y'all in the last three to four months, every one of them said the parking meets the City requirements, 1.5. We exceed that. Have y'all ever, in your tenure on the Planning Commission, ever in a PUD been asked to make a subjective analysis of how many parking spaces you think should go in an apartment complex? I have no idea. John (Vallas) might because he develops. Jay (Watkins) might; he represents developers. I'm not sure anyone else here would know that. You have to rely on a standard and our standard is setting in the Zoning Ordinance for R-3. It doesn't say R-3 for elderly people. It doesn't say R-3 for families of a husband and wife and kids. It doesn't say R-3 for students. It's R-3. We've been going under that for years and for the City, now, to say "Oh that number's arbitrary and that's not what we rely on." (pause) I'm speechless. (pause) I'm not speechless, how about that. I don't know what else to say on that issue, how about that. I'm at a loss for words on that issue, maybe that's better said.

The City has stated that, in its in the legal memo, and it was said again today. I'm not going there. I'm not going to go there.

I'm sorry. I'm just having to look through all my notes that were stated to you. I'll just say this in closing. In 2010, my client supplied y'all every bit of information he was legally entitled to do and was obligated to do. When you look at the difference between a family unit or a student housing unit, and I think one of y'all mentioned it, it's the same number of bedrooms. Whether they rent it out by the bedroom or by the apartment

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unit, it is the same number of tenants, the same number of bedrooms. They are not going to have any more or less because they are renting it by the bedroom. The only reason they are renting it by the bedroom, and as a parent of college kids, when I have to sign and guarantee a lease, I have to guarantee that entire apartment, guarantee somebody other than my daughter living in that apartment or rental house. By doing it this way, the parent only guarantees the financial obligations of that one person. They are going to have the same number of cars there whether they rent by the apartment or by the bedroom. It's just a way to make it easier for the parents, but we did not withhold any information. You look at the application for a PUD, Zoning, Subdivision, that's on the City of Mobile website; there's not place on there that says "What's the tenant mix," "What kind of tenants are you going to have in this R-3 development?" We did not lie. We did not withhold information and the legal argument that the PUD, the original PUD is terminate, just goes away by the amended PUD, this is the first time I've ever heard of it. I'm going to have to do a lot of research. I'm going to have to talk to a lot of engineers and surveyors in the City that have done work before y'all, but I do not know of any case where this has been enforced, implied, brought up, discussed. I know all the PUDs I've been involved with, when we did an amendment, the original PUD stayed in place and we were just adding something to it. Now, I'm sure there are going to be some Supreme Court cases from other jurisdictions, under other Ordinances, that the City might be able to find that supports their position but under our Ordinance, I don't think it's applicable. I just think it's wrong. I think my client is vested, spending over \$600,000.00 out of their pocket, entering into contracts with several contractors ready to go until these permits were frozen. I'll sit down and shut up and I do apologize for wandering around, meandering around but a lot was thrown out today and it's the first time I've heard most of it and it really disturbs me that the City appears to be bending over backwards to tell this developer that they're not welcome in Mobile. I'll be glad to answer any questions and I thank you for your time.

Mr. Roosevelt noted from Mr. Anderson's statements, the developer did intend to rent by the bedroom and expressed his concern over whether that same knowledge had been available when the 2010 PUD was presented.

Mr. Anderson assured the Commission that information was not available and it was not their intention when the 2010 PUD was presented for approval

Mr. Vallas asked for clarification on the developer's intention as to whether it was to be student housing or whether to rent by the bedroom.

Mr. Anderson clarified that when the 2010 PUD was presented it was not the developer's intention to rent by the bedroom but it was always to be student housing.

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Mr. Davitt asked if the developer now wanted to build under the parameters of the 2010 PUD and the Commission allegedly now knew that would not provide sufficient parking for the students, regardless of whether they rent it one unit, one bedroom, what would the developer do about the unintended over flow if the complex's parking lot is full. He noted the developer currently had an approved PUD with 250 additional parking spaces across the street from the actual apartment complex and asked what the developer planned to do to compensate the residents down from that additional parking.

Mr. Anderson stated as he had just gotten involved in the matter, he had not had the opportunity to discuss that issue with his client and apologized for not being able to adequately answer Mr. Davitt's question, however, he stated it was his client's position that parking was sufficient, that it met the Code and R-3 standards as defined by the Zoning Ordinance. He also quoted the previously mentioned legal mention and opinion as "The filing of an amendment to the PUD to increase parking by 252 more spaces on a separate parcel of property on West Drive is a clear admission that the on site parking originally proposed on Old Shell was inadequate." He noted that his client disagreed with that, stating that just because they were seeking more did not mean that what they had was insufficient. He reminded the Commission they met the Code and they believed that in 2010 and today that the parking is sufficient for the apartment complex as originally approved, but he had no idea what would be done if and when there might be an over flow in parking.

Mr. Davitt noted he was interested in knowing what they planned on doing in that event.

The Chair restated the discussion was not a hearing and there would be not vote or action taken by the Commission and he had only opened the floor for the legal remarks of the two attorneys who spoke and not open for general discussion from the public. He also noted for the record that Mr. Vallas had offered to recuse himself from the discussion but that Mr. Lawler had advised there would be no need for the gentleman to do so as he would only be listening to remarks.

The Chair asked if there was any further business and Mr. Olsen noted the need for a business meeting. Mr. Olsen offered the option of holding said meeting on either August 11, 2011, or August 25, 2011. The Commission chose to meet on August 25, 2011, at 2 in the afternoon. Mr. Olsen let the Commissioners know that he would try to have the meeting in the City's Pre-Council Meeting Room and would confirm the details of the meeting with the Commissioners by email as soon as possible.

Hearing no further business, the meeting was adjourned.

APPROVED: November 17, 2011

/s/ Dr. Victoria Rivizzigno, Secretary

/s/ Terry Plauche, Chairman

jsl