

MOBILE CITY PLANNING COMMISSION MINUTES
MEETING OF APRIL 1, 2004 - 2:00 P.M.
AUDITORIUM, MOBILE GOVERNMENT PLAZA

Members Present

Robert Frost, Chairman
Wendell Quimbly, Vice-Chair
Victor McSwain, Secretary
Nicholas Holmes
Clinton Johnson
James Laier (S)
Victoria L. Rivizzigno
Ann Deakle
John Vallas
Terry Plauche
Ernest Scott

Members Absent

John Vallas

Urban Development Staff Present

Laura J. Clarke, Director,
Urban Development Department
Richard L. Olsen, Planner II
Margaret Pappas, Planner II
Shayla Jones, Long Range Planning
Ron Jackson, Urban Forestry
Val Manuel, Secretary II

Others Present

Wanda Cochran, Assistant City Attorney
Jennifer White, Traffic Engineering
Pat Stewart, County Engineering
Beverly Terry, City Engineering

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

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

HOLDOVERS:

Case #SUB2004-00034 (Subdivision)

Oak Creek Subdivision

East side of Riviere du Chien Road, 850'± South of Lloyd Station Road.
62 Lots / 19.2± Acres

Don Rowe, Rowe Surveying and Engineering, stated that since the last meeting they had submitted a revised plat with lots averaging 7800 square feet in area. Mr. Rowe stated there was less on the revised plat. Mr. Rowe stated that he had met with surrounding resident and answered questions that were raised regarding runoff, detention, and the wetlands. He also said that the layout met the requirements of the Subdivision Regulations.

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Margaret Pappas stated that the revised plat actually had 62 lots as was no lot 51 shown. Ms. Pappas said the staff recommendation would still be for approval. The only change in the conditions would be denying access to the lots on the corners.

Eddie Upchurch, 3711 Riviere du Chien Road, was present in opposition. Mr. Upchurch stated he was president of the Riviere Du Chien Neighborhood Association, representing over 200 families that lived in the community. This area includes three communities – Lloyd's Station, the golf course, and Riviere Du Chien. Mr. Upchurch asked those from these communities to stand. He introduced Councilman Ben Brooks, Jim Bell, Richard Alexander and one other speaker to speak in this matter. Mr. Upchurch said they felt that the specific development would be inconsistent with their lifestyles in the community. He went on to say that developing the property as proposed would change why they moved to the area. There were families who had lived in the area for three generations. Over the last 15 years since he had lived there, Mr. Upchurch said there had been about 46 homes built. The current proposal, with 62 lots, and 1.5 cars per family, would put 100 cars in and out on a daily basis. Mr. Upchurch said they already have the railroad tracks to contend with, as well as water issues. He also said this is an area that was quiet and prided itself in taking care of nature and the land. The community watched for animals crossing the road in the neighborhood. There was one gentleman who mowed around the bridge at the interstate so it would look neat. The residents cared about their community.

Councilman Ben Brooks, District 4, stated that he was with the residents in their opposition to the proposed development. Mr. Brooks said he had talked with both sides on this issue and studied it in detail, but was unable to bridge the divide. Mr. Brooks stated that this actually involved two communities, Lloyd's Station and Riviere Du Chien. He asked residents of each community to stand. He noted that the Lloyd's Station community was a historic area with large lots going back many generations. Large lots were also the standard in Riviere Du Chien. The residents were opposed to developing this 17-acre parcel as it would jam in the maximum number of lots technically permitted under the Subdivision Regulations. Mr. Brooks felt that consideration should be given to things other than just meeting the minimum requirements. He asked the Commission to listen to the speakers in opposition and measure what they say by a standard of fairness and reasonableness. Mr. Brooks felt it was not be asking too much for the developer to make a little less money, cut down the number of lots, and go ahead with a good development that would make communities happy. As a representative of District 4, Mr. Brooks implored the Commission to reject the application based on his remarks and the remarks of the following speakers.

Councilman Clinton Johnson asked if lot size was one of Mr. Brooks' main concerns. Mr. Brooks replied that it was. Rev. Johnson also asked if there were any restrictive covenants in the area which would apply to this development.

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Mr. Brooks stated that Riviere du Chien did have restrictive covenants about minimum house size, minimum lot size, and no further resubdivision. He said that most of the lots for the proposed development barely met the minimum lot area of 7200 square feet.

Rev. Johnson asked about specific concerns relating to health and safety.

Mr. Brooks said one primary concern was the wetlands, as well as erosion problems, which they were trying to find some capital money to address.

Mr. Frost stated that he thought Rev. Johnson's question was concerning the fact that the lots complied with the minimum 7200 square foot standard and therefore, what discretion did the Commission have to approve or disapprove a subdivision that some felt was appropriate, but others felt inappropriate, if it meets the technical requirements of the Regulations? Mr. Frost asked Ms. Cochran what the Planning Commission should be looking for as they listen to the speakers so that if denied, the Commission can state reasons for the denial.

Wanda Cochran, Assistant City Attorney, replied that the Commission should look at the section of the State Code, which deals with their authority over subdivisions. Ms. Cochran noted that whenever you deny a request for a subdivision, the law is very clear that you must give a reason. The reason must be based on the Regulations. She said that frequently the Commission has had to base its decision on community character, which has clearly been held not a sufficient reason. Ms. Cochran said that was not to say the Commission does not have the power to adopt such regulations, they do, but so far, however, the Commission has not adopted Regulations that relate to community character. So to the extent that the Commission was to consider any factor that was not within the Regulations, it must be based on real and substantial reason connected to the City Code.

Mr. Brooks stated that Ms. Cochran was correct when she said you can not consider the community character alone as the sole reason for denial. The law states that even under their structure, the Commission could consider character in combination, with other factors, to see if the burden was met for denying the subdivision application. He said that was his intention here. Character is one consideration, but there are others that the speakers would address. In response to Rev. Johnson's question, Mr. Brooks said they were here to talk about where this particular property was located. It is in a wetland area, a flood zone, and the property backs up to the river. Mr. Brooks stated that drainage was a huge problem in the community, as evidenced by his constituents who routinely let him know about the erosion and drainage problems. He felt this development would put the maximum number of new roofs, driveways, roads, curbs and back yards that were paved, in the middle of an area that is largely a wetland. Mr. Brooks said the Commission would hear concerns about Riviere Du Chien being a two-lane road, which would be the only way in and out of a neighborhood with 63 houses. He also said lot sizes and the effect on property values would be addressed. Mr. Brooks said this community would meet the burden of showing to the Commission a series of reasons why this application should be denied.

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Rev. Johnson raised a question regarding the wetlands.

Richard Olsen stated that as far as wetlands were concerned, the City relies on the Corps of Engineers and the Alabama Department of Environmental Management to review the wetlands as delineated by the applicant's engineer. This will ensure that the development is not going to significantly impact those wetlands, and that it does comply with the Regulations. The City Engineering Department reviews plans for all development within the City to ensure that they comply with the City's drainage requirements. These factors are taken into consideration in the review of the application.

Jim Bell, stated he was a resident of 3102 Riviere du Chien Loop East for the last 17 years. Mr. Bell stated that they were here today because they had a deep abiding concern for what happened in the Riviere Du Chien and Lloyd's Station communities. He said they had a responsibility to each other and those who moved into this neighborhood to be good stewards of what God had placed in their hands. So far though, through two neighborhood meetings, two executive committee meetings, and numerous personal attempts, Mr. Bell said they were unable to get the developer to duly consider their concerns, or reduce the number of lots. Mr. Bell said they moved to this part of the City to get away from crowded living, to live on a golf course, a creek or river, or simply to be in the woods. They enjoy the wildlife. They want others who have similar dreams and desires to come live with them. He said their neighborhood consisted of modest family dwellings and spacious homes, from the golf course lots to the old family place, to the home on multiple acres. They chose to locate in these natural surroundings. Mr. Bell said they felt it would be environmentally insensitive, irresponsible and potentially criminal to approve a new development with 62-64 lots on 17 acres of woodlands and wetlands that have serious out-fall problems, causing runoff to nearly double according to the statistics their engineers provided. He said this development brings with it majors issues of density, safety and drainage, not to mention the already serious flooding of St. Andrew's Street, and the dangerous buildup of silt in the creeks and the river. Mr. Bell said the residents believed that the Planning Commission had a responsibility to help them build wisely, to develop neighborhoods that would blend with the delicate environment, and strengthen their communities. They want to be good stewards, but they could not do it, if the Commission doesn't help. Mr. Bell said they were not opposed to a new development or to new neighbors. They welcome builders and developers who will work to enrich the lives of those who purchase their homes, while standing side by side with the Riviere Du Chien and Lloyd's Station neighbors, to take good care of what they have been given. He asked that the Planning Commission work with them and others like them, to build communities, neighborhoods, and subdivisions. He also asked the Planning Commission to work with them to strengthen rather than endanger the quality of the environment, and deal sensibly with the issue of density and safety. Mr. Bell wanted to encourage ordinary people that their voices will be heard and that what they think will count. He said they know that the Commission's decisions were often directed by regulations, minimum standards, and economic expectations. The Commission is often asked to approve developments where excellence was never mentioned. Mr. Bell said asked the Commission to help them make a stand against a "do as little as required"

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attitude. He said they believed that the best interest of the community was the greater issue. They were here today because they believed that their concerns would be heard and the Commission would consider what is best, excellent, and right.

Rev. Johnson asked what took place at the neighborhood meeting with the developers.

Mr. Bell said the residents attempted to negotiate with the developer in regard to the number of lots, due to concerns about the amount of impervious area. They suggested, with the help of another contractor, those 45-47 lots, approximately 85 feet by 135 or 140 feet with fewer houses, would provide more pervious area to soak in water, and a larger retention pond, would be acceptable to the community. While there was conversation, Mr. Bell said there was no real attempt by the developer to accomplish these suggestions.

Richard Alexander stated that he lived at 3323 Riviere Du Chien Road and had lived in the community for 25 years. Mr. Alexander said he wanted to address three things that were within the purview of Commission decision: safety, density and conformity. As to safety, Mr. Alexander noted that there was only one way in and out of Riviere du Chien and that was Riviere Du Chien Road. This proposal called for 62 or 63 lots with 1.5 cars per lot, which would mean 100 cars coming out into Riviere Du Chien Road from the entry point. He said particular concern, was a curve in the road and he asked if a traffic light would be required to get in there. Regarding density, Mr. Alexander said the nearest subdivision that was approved by the Planning Commission was Riviere Du Chien Estates Subdivision, with a golf course and that there are restrictive covenants in that subdivision. Mr. Alexander also said they had a very active architectural review board which on numerous occasions had made certain that the property was being constructed and maintained in accordance with those restrictive covenants.

Mr. Frost interrupted to ask the staff if they were aware of the density and the size of the lots in the golf course.

Ms. Pappas replied that they did not have that information.

Mr. Alexander further stated that it was certainly more than 100 feet wide, and this was the highest density in the area. He asked what good was it that for the last 25 years the residents in the adjoining subdivision invested their time, effort, and community spirit to make certain their neighbors stay within reasonable bounds. Mr. Alexander said the residents deserved to know that the Planning Commission would not approve a subdivision right next door that is totally different. Regarding conformity, Mr. Alexander said Lloyd's Station was a historic area, which went back three and more generations and some of those residents were present today. One man has retired there; others have given their children a piece of the property. He stated if 60 or 63 foot lots were put in the area, this would not be in keeping with the character or the continuity of the area. Mr. Alexander asked that the Commission reject this subdivision.

Steve Greene stated that he resided at 3817 St. Andrews Drive. He thanked the Commission for the opportunity to express his concern about the proposed development.

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In referring to the name "Mobile Planning Commission", Mr. Greene said their purpose was to see that the overall plan does not just meet the minimum standards, but consider the community and the city as a whole. He addressed the issue of minimum standards. He said if minimum standards were the bottom line, there would be no Planning Commission, no forum, and no plan. The City's staff would simply check the boxes and approve the subdivisions, etc., with no thought to the outcome. Mr. Greene said simply checking boxes and moving forward did not guide the future of Mobile. He said their presence today was to voice their opinions on the proposed subdivision. Their main concern was the overall plan, which he looked at in several phases. Mr. Greene noted that this piece of property had wetlands and was a natural drain for their area. It was the final stage of filtration for the runoff from Interstate 10, Lloyd's Station Road, and about 60 acres of land. The proposed development was 2100 feet from Halls Mill Creek. The wetlands and drainage on this site and adjacent property served as a filter for the area removing oils, litter, and siltation before reaching Halls Mill Creek, Morris Creek and the Dog River Watershed. Mr. Greene asked that the developer consider the mitigation of these vital wetlands to meet the minimum standards by maximizing the number of lots for the development, or, that they consider making the lots larger to keep the wetlands and stay with the general theme of the Riviere Du Chien area of the larger lots. He further pointed out that during heavy rains, the culvert at the Linksman Golf Course, which backs up to St. Andrews Drive West, floods. The City has worked on the problem for years. The other outfall was on Riviere Du Chien Road 100 yards north of the CSX railway. There had been two washouts of the main roadway in the past six years. There also was a sinkhole that has appeared since the last rain. Mr. Greene said he attempted to negotiate with the developers to reduce the number of lots from 69 to 45, and agreed to purchase this development from them. He said the difference would be that you would have larger lots with less intrusion on the wetlands, sewer compaction, traffic, and it would be keeping with the consistency and the general atmosphere of the Riviere Du Chien area. The developers met with the members of the Riviere Du Chien community on March 24 to inform them that they were moving ahead with the 63 lots development. At that point Mr. Greene said he has lost trust with the developers to negotiate in good faith. He informed Pat Coffey, the next day, that he was no longer interested in doing business with them on this project. In closing, Mr. Greene asked the Planning Commission and their staff to look at a development that would be consistent with the surrounding area. Regarding the wetlands, he said the system that they have right now does not handle the drainage. He presented a photo of the entire watershed, the golf course and the rivers. Mr. Greene said he was not against development by any means and with 45 lots and a proper detention pond to protect the wetlands, and to keep the litter and siltation from moving any further, they would be in favor of that type of proposal. He asked that the Commission deny the subdivision as presented today.

Mr. Rowe stated that there was quite a bit of information on the technical side that he would like to straighten out. He said this was not a minimum lot subdivision; the lots were 7800 square feet with average dimensions of 60' x 130'. Regarding the wetlands, Mr. Rowe said the drainage system was designed so that no runoff from the lots would go into the wetlands. He said that at the community meeting, he explained to the residents that the developer had reserved a rather large area for detention and could hold back

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much more water than the City required. He also said the development could actually improve the flooding situation rather than putting water onto more properties. Mr. Rowe further noted that the property was not in a flood plain. The highest elevation of the property is 24 feet, and the lowest is 17 feet; the flood elevation on Dog River is 10. The problem, therefore, is not the flood plain, the problem is out-falls. The applicant plans to bring out-falls to this subdivision. Mr. Rowe felt the real concern for the opposition is the number of lots. He said the number of lots had been reduced almost 10 percent and that the real question is who decides how much the number of lots. Mr. Rowe pointed out a minimum lot subdivision approved about three years ago on Lloyd's Station Road.

Steve Yost, Yost Properties, 4055 Cottage Hill Road, stated that the roadway was straight in front of this development and not in the curve. This area down here was largely underdeveloped and it had been tending to develop more from a commercial standpoint and light industrial than anything else. They were offering were curb, gutter, sewer, a planned residential community. Regarding restrictive covenants in the adjoining subdivision, he said that was something agreed to when a person buys a piece of property within a development. Mr. Yost said they were not asking for a PUD to put patio homes in, but were simply asking for what the Commission had approved over and over again.

Vangelina Kordomenos, owner of the subject property, wanted to clarify a few things that had been said. First, she said this property did not back up to a river, and it was 19 acres, not 17. Regarding safety, she felt getting out on Riviere Du Chien Road was not the problem. She was more fearful for the people who lived on the other side of the railroad tracks. As to drainage, she noted that Mr. Rowe pointed out that this land was much higher than the surrounding land. They plan to have a retention pond, which Mr. Green had not provided, on his adjacent 19 acres. She had never seen one in the Riviere Du Chien subdivision. Ms. Kordomenos pointed out that some of the people lived on Riviere Du Chien Loop, which was quite a distance from the subject property. She and her husband rode around the area within two miles of the subject property and found houses of all sizes. Ms. Kordomenos further noted that this application had met all City guidelines and there was no appropriate reason to deny this request. She felt that one person who was still interested in purchasing this property engineered the large turnout. In closing, she felt that 62 families living in a nice subdivision would be wonderful. She also said they would be paying taxes.

In further comments, Mr. Brooks assured the Commission that the residents were not down here because their arms were twisted by one individual, but were here because they were concerned about the future of their community. Mr. Brooks said he had weighed and sifted the facts on both sides and had come to his conclusion as one person. The residents had come to their conclusion as members of our City and as current taxpayers of our City. He felt it was unreasonable to not consider the valid compromise, which these residents all around the property had suggested. In closing, Mr. Brooks said he wanted the Planning Commission to know just how heartfelt the concerns of all the residents were.

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In executive session Wanda Cochran stated that the Commission, among other things, was authorized to adopt Subdivision Regulations and make recommendations on zoning; to exercise that authority it had to be done through adopted rules. The particular rules at issue in the Oak Creek case involve the Subdivision Regulations and specific requirements were contained in pages 11-17 of the Subdivision Regulations, starting with general principles of subdivision design that the Commission had adopted. Ms. Cochran noted that the subdivision had to be in conformance with the zoning and all other laws. The regulations then get more and more specific down to lot size. The Commission has the authority to adopt regulations about community character, etc., but has not done so. In the absence of such regulations to guide them, Ms. Cochran said it would be very difficult to legally impose it on a case-by-case basis.

Mr. Frost asked if the Commission can take into consideration character, etc., in conjunction with other factors.

Ms. Cochran stated that was correct. If the Commission chose to deny the application, the denial must be based on some point in the Regulations.

Mr. McSwain asked how you would define what was too much density. The neighborhood said they had come up with 45 lots that they would accept. The Planning Commission has certain regulations that are pretty specific about what density is. It seemed that the Commission would have to come up with a number based on the amount of impervious system you created, or it's going to create this problem in an existing flood plain. He said he did not have any problem with this if they could put their finger on something like that.

Mr. Frost asked if it was the Commission's responsibility from a planning standpoint, or was it ADEM's purview, to decide whether they were going to permit a particular development because it's going to adversely affect the environment or the wetlands structure.

Mr. Olsen replied that the Regulations do allow you to consider natural features, such as watercourses and things of that nature. If a denial is based upon that, there would have to be evidence of a negative impact.

Mr. Frost asked how the Commission would know when it meets the Regulations, if a development was too much. This is what the neighbors were suggesting. He asked if they needed more input from ADEM on these decisions.

Mr. Olsen stated that the Regulations say that the engineer should do his part during the submission process and any opposition would provide that type of information also. The Commission in the past has relied very heavily on the Corps of Engineers and ADEM and their permitting process to determine whether or not the impact of the development is degrading to the wetlands.

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Mr. Frost noted that the Commission has ordinances to uphold which define the density as 7200 square feet, which the neighbors object to.

Mr. Olsen stated that the Subdivision Regulations have minimum lot size standards of 7200 square feet that alludes to density. The Zoning Ordinance, which the Subdivision Regulations refer back to being in compliance with, does have a density standard for R-1 development, which is 7200 square feet per lot.

Mr. Quimby commented that he felt the density was too high. He also said he felt there should be more input from ADEM or the Corps of Engineers in a matter like this.

Mr. Scott referenced Section V. of the Subdivision Regulations concerning land subject to flooding. He felt the Commission needed some outside input, maybe from ADEM.

Ms. Cochran noted that the engineer made a point that this land was not subject to flooding, and he talked about the elevation. She cited a section from the Regulations that says if the land to be subdivided is located in an area having poor drainage, or other physical impairment, or is subject to flooding as determined by the City or County Engineering Department, then you can approve. She said that the process contemplates that the staff will first be alerted to problems, and then to the extent it is not caught at that level, that it would be brought out at the hearing. She felt the question before the Commission, is do they have sufficient evidence to conclude that there is impairment on this particular subdivision regulation.

Councilman Johnson said he felt it was a valid argument and a sound rationale, the elements Ms. Cochran had given regarding public health and safety relating directly to traffic, with the potential increase of the number of cars using the same entrance and exit.

Ms. Cochran stated that the City's concern with the public health, safety and welfare is generally an expression of public policy, which is embodied in ordinances, laws, rules and regulations. It is generally not an ad hoc decision-making process. She said if it's not in the regulation or is not some violation of some standard that has been publicly announced and published, then it is very difficult to argue that the standard was not simply based on personal preference. The issue was not what you personally like and what you personally think is the right thing, but rather whether the application before you meet the criteria that is set out in the ordinance. Ms. Cochran said she was not suggesting that there was no debate here, but wanted to say whatever the Commission's decision is, it must be tied to the regulations.

Rev. Johnson asked if Ms. Cochran was saying that they were required to be very specific as related to the letter of the law. Therefore, if you suspect a potential flooding problem based upon current conditions, she was saying that you cannot use supposition of expected problems?

Ms. Cochran said they needed to have some evidence to support their conclusion.

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Rev. Johnson stated that when you are considering any type of development, asphalt or whatever, then you are creating water and runoff, which would be a different scenario than it would be under the current circumstances; so there's a potential of flooding under the developed state more than it is under a non developed state. This needed to be reconciled.

Ms. Cochran stated that you would reconcile the conflict with the Zoning Ordinance and engineering requirements.

She said under the standard ordinance cited by Rev. Johnson, every time you create an impervious surface you are degrading, and if that were the case, there would be no building allowed anywhere.

Mr. Frost pointed out that there was testimony that the detention and drainage system planned for this development would not cause that situation. The neighbors would perhaps disagree, but there was debate on that issue as well. Mr. Frost asked if Engineering cared to comment.

Beverly Terry, City Engineering Department, stated that the City Storm Water Ordinance requires that when people come in for a land disturbance permit they meet the Storm Water Ordinance, which provides for storm water detention. The site could not release more water, or in a concentrated effort, than it released prior to development. Ms. Terry noted that Mr. Rowe mentioned that they would provide outfalls. If a piece of property doesn't have proper outfall, then the developer must provide that outfall. So when they came in to submit their plans for a land disturbance permit, those properties would be looked at and evaluated by the Engineering Department. Ms. Terry also noted that this property would require a permit from the Alabama Department of Environmental Management, which would review the plan as well.

Rev. Johnson asked if this process should be completed prior to any approval by the Commission.

Ms. Terry replied that generally, there is tremendous cost associated with doing the design, the storm water calculations, the out-falls, and the detention plan. There are no building permits issued, nor land disturbance permits issued until everything are ironed out with Engineering and the developer.

Mr. Olsen pointed out that the Commission today was considering this subdivision for preliminary approval. The next step in the process would be for them to develop their engineering plans. These processes are all set out in the Regulations. Mr. Olsen said once those engineering plans are developed, they are presented to the Engineering Department for review. Once approved, the developer will submit the final plat for approval. To even initiate the engineering process, they need to have a preliminary, or conceptual approval, of the development. Mr. Olsen said that was the purpose of the hearing today.

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Mr. Holmes said regardless of whether there are 45 lots or 63 lots, the developer was going to have get approval from both ADEM and go through the City's Ordinance to control the drainage.

After discussion a motion was made by Mr. Scott and seconded by Mr. Holmes to approve this plan. Due to a lack of a majority of affirmative votes, the application was denied for the following reasons:

- 1) the concerns regarding flooding;
- 2) the impact it will have on the wetlands; and
- 3) the traffic and density is too high.

The motion carried unanimously.

EXTENSIONS:

Case #SUB2003-00049 (Subdivision)

Indian Commercial Park Subdivision, Phase II

East side of Schillinger Road, 300'± South of Zeigler Boulevard.

1 Lot / 1.0± Acre

Request for a one-year extension of previous approval.

A motion was made by Mr. Plauche and seconded by Mr. Quimby to approve a one-year extension of approval for the above referenced subdivision.

The motion carried unanimously.

Case #SUB2003-00045 (Subdivision)

Mertz Station Subdivision

West side of Halls Mill Road, extending from the South side of Fairway Drive to the North side of Pleasant Valley Road, adjacent to the East side of Fairview Subdivision.

2 Lots / 5.2± Acres

Request for a one-year extension of previous approval.

A motion was made by Mr. Plauche and seconded by Mr. Quimby to approve a one-year extension of approval for the above referenced subdivision.

The motion carried unanimously.

Case #SUB2001-00074 (Subdivision)

Rangeline Road Commercial and Industrial Park Subdivision, Revised Preliminary Plat for

East side of Rangeline Road, 880'± North of Old Rangeline Road, extending Northeastwardly to the West side of Old Rangeline Road, 770'± South of the West terminus of Riverview Pointe Drive.

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3 Lots / 32.0± Acres

Request for a one-year extension of previous approval.

A motion was made by Mr. Plauche and seconded by Mr. Quimby to approve a one-year extension of approval for the above referenced subdivision.

The motion carried unanimously.

GROUP APPLICATIONS:

Case #ZON2004-00688 (Planned Unit Development)

Mobile Landing Subdivision

North side of Eslava Street, extending from the CSX Railroad right-of-way to the Mobile River.

A Request for Planning Unit Development approval to allow shared access and shared parking between multiple building sites.

(Also see Case #SUB2004-00062 – Mobile Landing Subdivision – Below).

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

There was no one present in opposition.

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

- 1) full compliance with all municipal codes and ordinances (including coordination of tree plantings to the greatest degree possible with Urban Forestry).

The motion carried unanimously.

Mr. Plauche rescued from discussion and voting

Case #SUB2004-00062 (Subdivision)

Mobile Landing Subdivision

North side of Eslava Street, extending from the CSX Railroad right-of-way to the Mobile River.

2 Lots / 8.3± Acres

(For discussion see Case #ZON2004-00688 – Mobile Landing Subdivision (PUD) – Above.)

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

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There was no one present in opposition.

A motion was made by Dr, Rivizzigno and seconded by Mr. Quimby to approve the above referenced subdivision subject to the following conditions:

- 1) placement of a note on the final plat stating size, location and design of curb cuts to be approved by the Traffic Engineering Department.

The motion carried unanimously.

Mr. Plauche recused from discussion and voting

Case #ZON2004-00662 (Rezoning)

The Salvation Army (Arthur Smith III, Agent)

East side of Pine Street, 45'± South of Dauphin Street

A request for a change in zoning from R-1, Single-Family Residential, to B-2, Neighborhood Business, for administrative offices and a substance and alcohol abuse day clinic for an existing emergency shelter facility.

The plan illustrates the existing structures, along with the proposed structure and rezoning.

(Also see Case #ZON2004-00663 – The Salvation Army (Arthur Smith III, Agent) (PUD) – Below and Case #SUB2004-00052 – Salvation Army Subdivision – Below).

Arthur Smith, real estate broker and a member of the Salvation Army's Advisory Board, and Chairman of their Property Committee, was present on behalf of the applicant. Mr. Smith introduced several members of their Advisory Board as follows: Marl Cummings, Randy Delchamps, Bay Haas, John Lewis, Mike Marshall and Art Forwood. Mr. Smith stated that the reason for their subdivision application was to combine four metes and bounds parcels into one single lot. The rezoning was needed to expand the existing B-2 district, which encompasses half of the thrift store building, 45 feet southward along Pine Street. The lot behind it, which encompasses half of the thrift store building, is zoned R-1 as well as the parking lot for the thrift store. The rezoning to B-2 would bring all of their property into the same B-2 conformity. A PUD application was also been submitted, which would allow them to tear down the existing thrift store and erect on that site a 10,000 square foot building to house the administrative offices of the Salvation Army and its alcohol and substance abuse program. Mr. Smith noted that no one would be domiciled in that building. He stated that they were in agreement with the staff's recommendations and would be happy to answer any questions.

Mr. Frost stated that there had been a slight change to the recommendations on conditions and asked the staff to clarify it.

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Ms. Pappas stated that on the subdivision application the staff proposed a second condition that would require completion of the rezoning process. This way all of the property within the one lot would be zoned B-2 rather than having a split zoning situation.

Mr. Smith concurred with the additional condition.

There being no other speakers for the applicant, Mr. Frost asked for those opposed.

Councilman Thomas Sullivan, representing District 2 for the past 15 years, stated that he was opposed to this application for several reasons. He said the City of Mobile had spent millions of dollars trying to revitalize the downtown area. In District 2, in the downtown area alone, there are four service centers – the Salvation Army, Wings of Life, the Rescue Mission, and the homeless facility. All of these facilities are within five or six blocks of each other. Having worked with the homeless for over 20 years, Mr. Sullivan said it was virtually impossible to keep them within a structured program. Although he acknowledged the need for service centers, Mr. Sullivan felt they should not all be confined to the same general location, meaning in District 2. He suggested these service facilities be located in each district in the City. Expanding the Salvation Army as proposed, would mean more people visiting the site. Mr. Sullivan also expressed concern about property values. He felt this expansion would hurt the efforts being made to bring more residences and businesses downtown. Mr. Sullivan contended that no one would buy a piece of property next door to a service facility. Although the residents may not object to what is there now, they are objecting to any expansion. He felt they have tolerated more than their fair share of these types of facilities. Mr. Sullivan said they need to work together if they were going to create an atmosphere that was conducive to businesses and residents.

Buffy Donlon stated that she and her husband, Bob Donlon, resided at 960 Dauphin Street in the same block as the Salvation Army. They recently sold their house at 962 Dauphin Street, which they had owned for seven years. In addition, they owned Wintzell's Oyster House, which is in the 600 block of Dauphin Street. Ms. Donlon stated that she was saying this to emphasize that her interest, her money, and her heart were on Dauphin Street. As the owner of Wintzell's Oyster House, Ms. Donlon related some of the experiences they have occurred with people panhandling, and coming in and getting sick on the premises. She said this has happen continuously in the restaurant and at her home in her front yard. They also had a break-in several weeks ago and a large number of items were stolen. Ms. Donlon noted that Dauphin Street was the travel route between all of the facilities downtown. Many times about 4:30 in the afternoon, she sat on her front porch and witnessed people leaving the Salvation Army going to another facility. They were throwing food away and urinating on the light pole in her front yard. Ms. Donlon related that several years ago, she and Devereaux Bemis had met with Major Glen Fife, the previous major at the Salvation Army, to express their concern about the situation. Major Fife stated that the Salvation Army had outgrown its facility. Their clients do not live in the area and they needed to move. He said they needed to raise funds so they could sell their present location and move to another location. Ms. Donlon

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felt this was not just a community problem but a problem for the whole city. She said the City and County need to get together to solve this situation. She felt the City did not want to see businesses in the downtown leaving and tax revenues falling just as we are on the cusp of finally making it and becoming a world class city. Ms. Donlon urged the Commission to vote against any expansion of the Salvation Army at this location.

Mr. Scott asked Ms. Donlon if she objected to the services rendered by the Salvation Army which the expansion would be used for.

Ms. Donlon stated that she felt there is an absolute need for the Salvation Army. It was a wonderful tool for our community to have to address problems, but it had ruined their neighborhood and any expansion of services would certainly bring it down further.

David McIver stated that he had lived in his house since 1990, which was within 300 feet of the Salvation Army. Mr. McIver related problems he has had with people coming and going to the Salvation Army. He expressed concern for his safety and that of his wife, who works and comes home late at night. They had problems with people trespassing in their yards, on their porches, and stealing anything that was not bolted down. Mr. McIver said people case the houses and sometimes demand money from the residents. A resident of 8 North Pine Street, he said, he came home and caught someone burglarizing the house next door. He said he knew of four people who moved out because of these types of problems. He was concerned for the elderly people who live in the neighborhood. People also walk all over the lawns and he has to pick up beer bottles every morning. Mr. McIver said these problems had been ongoing ever since the Salvation Army moved there, and they do not need any more stress.

Allen Cleghorn, of 753 Dauphin Street, stated that he was born and raised in Mobile. He relocated here after his retirement from the Army. Mr. Cleghorn stated that one could not help but see an overwhelming concentration of non-profit services in a relatively small part of the City. He felt that a disproportionately small area geographically, and a small number of residents and business owners, were being asked to bear yet another part of a burden that rightfully should be distributed across every part of the City. Mr. Cleghorn felt there was a lack of planning and asked that the Commission to look at the entire spectrum of the opposition. He said the neighbors were not opposed to what the Salvation Army does. They were concerned with the overall long-term impact of this expansion on the City in regards to tourism, crime, cleanliness and historical development. Mr. Cleghorn asked that the Commission look at the total picture and the impact on the City as a whole and urged them to disapprove the proposed expansion of these facilities. He submitted a photograph which he said showed the consequences of some of the activities in the immediate area.

Mr. Scott stated that his concern was that if this application was denied, would it eliminate the transient problems and potential break-ins in the area? He noted there were three other service centers in the area besides the Salvation Army, and they were not placed there by design throughout the city, but simply in District 2.

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Mr. Cleghorn said he felt that the word Mr. Scott used that these areas were not planned was telling him that there need; to be better planning in the City so that things do not just kind of happen.

Mr. Frost asked all those in opposition to stand and thanked them for coming in support of their position in this matter. He also noted that the Commission members had received e-mails and correspondence from neighbors expressing their position. The Commission was also in receipt of a letter from Devereaux Bemis expressing the position of the Historic Development Commission.

Rev. Johnson noted that the Salvation Army was already there, and the concerns seemed to be on the potential exacerbation of a problem that currently existed. He asked if there had been any effort by the neighbors toward speaking with persons in authority at the Salvation Army, and with the police department or other entities to address the concerns of the neighbors, and if so, if they had been able to come up with any resolve relative to those concerns.

Corrina Stellitano related that about two weeks ago her car was burglarized and her belongings were found in the back yard of a small Salvation Army house. She, her boyfriend, and another neighbor went to talk to Major Waite about this problem. Ms. Stellitano said they had also communicated with law enforcement and had the police there three times in the last six months after robberies. Ms. Stellitano said they were also in constant contact with the City Action Center and the Historic Development Commission. Regarding the robbery at her home, Mrs. Stellitano said that after their talk with Major Waite they did come and put some plywood up, but couldn't do too much because they were in a historic district.

Mr. Frost asked Mr. Smith what exactly was the function of the substance abuse clinic? What would it entail and what would be the hours of operation?

Mr. Smith explained that the substance abuse clinic was presently located on Florida Street south of Dauphin Street. It allowed anyone to walk in off the street and go to them for alcohol or substance abuse counseling. He said payment was based on a sliding scale. If you can afford to pay, you pay. If you can't pay, the service will still be provided. Mr. Smith said there were approximately 40 people in the clinic now. They come in and are urine tested, individually counseled, and sometimes at night there are group sessions counseling.

Mr. Frost asked what are the hours of operation?

Mr. Smith stated that Mr. Hirschfeldt could answer that question better than he could.

Larry Hirschfeldt stated that he had been with the Salvation Army for 24 years. He wanted to clarify a few things. He said they called it intensive outpatient, and explained that half the building would be for administration and the other half was going to be intensive outpatient. Regarding concerns expressed about homeless people, Mr.

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Hirschfeldt said they were already doing this work on Florida Street and it was not about homeless at all. These people live and work in the community and have families. They were not moving any more homeless people in. These individuals reside in Mobile in all the districts, and the majority was from Mobile County. Mr. Hirschfeldt said they operate a day program from 8:30 a.m. to 12:00 noon, and an evening program from 5:30 p.m. to 9:00 p.m. Everyone then goes home. There is nothing no one there in between but staff.

Rev. Johnson asked if expansion of this service would in and of itself cause a large amount of people to come to the community to access that particular service.

Mr. Smith replied that they would be tearing down the thrift store, which has four employees, and an average of 108 customers a day. The thrift store would be replaced by this substance abuse and alcohol abuse program. It now has 10 employees and averages 26 clients per day. He concluded there would be a 200 percent reduction in the number of people coming to the property.

Rev. Johnson asked how the elimination of the 108 customers a day would negate the problem of people trespassing in people's yard, on their porches, and littering of all kinds of debris.

Mr. Smith stated that it would not negate it. He said if this was a problem, or if there was not a problem, this building would either address it or not address it.

Rev. Johnson asked if any complaints had been lodged to the Salvation Army and its personnel to ask for assistance in the reduction or alleviation of the problem.

Major David Waite stated that the Salvation Army was about giving hope to people. Regarding Ms. Stellatino's comments, he said they were able to enclose a piece of property because they wanted to secure it. He said they had not had anyone in the community come to them with a specific complaint where he had not tried to address it.

Mr. Frost asked if there had been any complaints at the Florida Street location where the substance abuse clinic was currently located.

Major Waite replied that to his knowledge, they had had no complaints at the counseling center. He further stated that they only house 20 or 25 people an evening who are homeless. Everybody who stays on their property is secured for the night. Major Waite said he would welcome to meet any of the neighbors at any time and try to resolve any complaints they may have.

Mr. Frost stated that the neighbors would say that there are people who hang around the area at night, people who had a meal and left the facility and aren't staying the night. He felt the neighbors would say that it was an attraction to the transient people who were hanging around the neighborhood that may or may not be staying at the Salvation Army's facility, but they were in the area.

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Rev. Johnson stated that he was wrestling on the one hand with those who avail themselves to meet the needs of others, and on the other hand with a circumstance shared by residents regarding what might be fear on their part for their own safety and the safety of their families. If in fact, persons who are frequenting this facility are creating the problem, then it stands to reason at least that expansion of the services might draw more people to access their services and exacerbate the problem.

Major Waite emphasized that they were not expanding their services, but they were building a 10,000 square foot building to house the administrative offices and their counseling services. He said they would have 28 people a day coming into a program, whereas now they have 108 coming into the thrift store. This would reduce the amount of traffic on the street. It would not eliminate it as there are a number of services they provide for people who are not only homeless; they would therefore not anticipate any more persons than they currently have.

Rev. Johnson asked Major Waite if he had spoken to the neighbors about this matter.

Major Waite stated that a year ago he searched out the neighbors who were most resistant and met with them personally. He then met with the head of the Historic Development Commission and the Old Dauphin Way District and showed them their plans. Major Waite said they had been very open with everyone about what their plans were and what they wanted to accomplish for a long time.

Regarding the treatment facility on Florida Street, Mr. Frost asked how many of the clients were volunteers and how many were those who went through court order.

Major Waite estimated that 15 percent may have been ordered through the judge. The rest were walk-ins. Major Waite said that even of those 15 percent, they have options. They could choose to go wherever they wanted.

Mr. Frost asked what was wrong with the Florida Street location now.

Major Waite said say that to facility was adequate, but that would be stretching it. They want to provide a much better environment for those who they serve and for the staff that serve them. They feel like individuals that may be in a lower income deserve the best treatment environment that anybody else can get. That would be their goal. It would also be a cost savings, as they do lease the facility.

Mr. Frost asked if he understood they were housing 28-30 people at the present facility.

Major Waite replied that they have a day program and an evening program. That was an average number of individuals they would see over the course of a day. But they were not housing anyone overnight.

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Mr. Frost clarified that he meant to ask, how many people were they housing overnight in the existing facility on Dauphin Street?

Major Waite replied that on any given night they might have 100 individuals. He emphasized that the Salvation Army was there and they were not going anywhere. He further stated that 90 percent of this conversation today had been about the services they were already providing, and that was not what the applications were about.

Mr. Quimby said they were just questioning how many were going to be added to this facility.

Major Waite replied that they were not adding any. It was an outpatient program.

Referring to the staff recommendations, Mr. Smith noted that one of the conditions of approval was that they not increase their bed space in the present building, and they did not plan to do so.

Mr. Quimby said he understood they were not going to increase the bed space, but asked how many more people would be treated there. How many did they have at the facility now?

Major Waite replied that there were none at the alcohol and substance abuse center, as they do not house them there. They were now treating about 40 there.

Mr. Frost said he understood there were 60.

Major Waite said that would be a fair estimate.

Mr. Quimby asked if he understood correctly that on any given day they would have 100 people staying overnight, and another 60 or so coming and going two or three days a week for treatment.

Major Waite replied that was correct, but noted that the residential use was there. The intensive outpatient program, which was relocating, had an average of 30 persons. They would treat them in either a day program or the evening program.

Mr. Frost stated that he would allow Mr. Smith a short period of time to sum up his comments since he was interrupted.

Mr. Smith stated that the Salvation Army's building was dedicated April 24, 1978. The tax assessor's records show that 85 percent of the properties within 300 feet of the Salvation Army had been sold since the Army located there with its programs. He said they had the right to be there, and the right to expand their programs. He said every speaker today moved into the neighborhood knowing what the Army was doing.

In executive session Mr. Frost opened the floor for a motion or further discussion.

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Rev. Johnson stated that on the one hand he was led to believe that this was an expansion of the Salvation Army's services that would bring more people into the neighborhood, which was already being adversely impacted by people who had access to those services. Rev. Johnson said that what has been said, however, seems to indicate that there is no such possibility in light of what they are able to do. On the other hand, there is a question of zoning, as this would be a further encroachment on the sanctity of the residential neighborhood along Pine Street. This had not been brought up, but Rev. Johnson said it appeared that their focus had to be on something along these lines in terms of a letter of law regarding their action as a Planning Commission. Rev. Johnson said he was at a loss as to what the real issue was here.

Mr. Frost stated that obviously the Salvation Army contends that they are already non-conforming B-2. They did not feel traffic would be a concern since there are 100 persons a day coming to the thrift store, and new use would reduce it down to about 60. The neighbors however view this as an expansion of a program as opposed to simply an expansion of a facility. Assuming they wouldn't have a problem with the administrative office part of it, they do seem to be opposed to the substance abuse part as they contend it would bring undesirable people into the area. The Salvation Army contends that these are not undesirable people, but people who live and work throughout the community. Mr. Frost noted that the staff recommended approval as they are of the opinion that this would complete the B-2 zoning for the site. Being that it is non-conforming now, it's their position that to bring the site into full compliance with B-2 would not be inappropriate.

Ms. Pappas stated that was correct, and also that it does appear to be commercial on a comprehensive plan, the general land use component thereof, so it would be in line with that plan as well.

On the discussion of the sharing of the burden of services throughout the City, Mr. Frost said he felt that while that may be good in theory, it was not practical in all cases. Mr. Frost said he agreed with Rev. Johnson's comments earlier. He felt a lot of the neighbor's complaints could not be addressed today, as they dealt with issues that have been going on for a long time. But the Commission has to make a decision under the ordinance whether or not to allow them to expand and further encroach into the neighborhood. Mr. Frost noted that the Historic Development Commission felt it could be inappropriate.

Mr. Quimby stated that without a doubt, the Salvation Army provides a needed service in the City. The neighbors are aware of what goes on and have tolerated it for years. It has not been all bad. The Salvation Army does keep its facility up. He felt, however, that the residents had shouldered a disproportionate amount of the burden in this community for their services. Although the Salvation Army said this was no expansion, he contended it was an expansion, as they were moving other services there. He felt the location had about all the expansion it could take.

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After discussion a motion was made by Mr. Quimby and seconded by Mr. McSwain to recommend denial of this change in zoning.

The motion carried unanimously.

Case #ZON2004-00663 (Planned Unit Development)

The Salvation Army (Arthur Smith III, Agent)

1009 Dauphin Street (South side of Dauphin Street, 150'± West of Common Street, extending to the Southeast corner of Dauphin Street and Pine Street, and extending to the North side of Caroline Avenue, 120'± East of Pine Street).

A request for Planned Unit Development to allow multiple buildings on a single building site.

The plan illustrates the existing structures, along with the proposed structure and rezoning.

(Also see Case #ZON2004-00662 – The Salvation Army (Arthur Smith III, Agent) (Rezoning – Above and Case #SUB2004-00052 - Salvation Army Subdivision – Below).

After discussion a motion was made by Mr. Quimby and seconded by Mr. McSwain to deny this plan.

The motion carried unanimously.

Case #SUB2004-00052 (Subdivision)

Salvation Army Subdivision

1009 Dauphin Street (South side of Dauphin Street, 150'± West of Common Street, extending to the Southeast corner of Dauphin Street and Pine Street, and extending to the North side of Caroline Avenue, 120'± East of Pine Street).

1 Lot / 2.7± Acres

(For discussion see Case #ZON2001-00662– The Salvation Army (Arthur Smith III, Agent) (Rezoning) – Above and Case #ZON2004-00663 – The Salvation Army (Arthur Smith III, Agent) (PUD) – Above).

After discussion a motion was made by Mr. Quimby and seconded by Mr. McSwain to deny the above referenced subdivision for the following reason.

- 1) the subdivision would create a split-zoned lot.

The motion carried unanimously.

Case #ZON2004-00664 (Planned Unit Development)

Windham Place Subdivision

East side of Wildwood Avenue, 300'± South of Airport Boulevard.

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A request for Planned Unit Development approval reduced side yard setbacks in a single-family residential subdivision.

The site plan illustrates the proposed subdivision and setbacks along with the previously dedicated right-of-way and the road ending.

(Also see Case #SUB2004-00051 – Windham Place Subdivision – Below).

Jerry Byrd, Byrd Surveying Company, was present on behalf of the applicant. He noted that the PUD was recommended for denial with minimum side yards of 5 feet. Mr. Byrd said the houses they wanted to build on these lots would require 7-foot side yard setbacks.

Mr. Frost asked why Lot C couldn't be reduced in size to allow Lots A and B more room to provide the adequate side yard.

Mr. Byrd stated that the owner of the property had agreed to sell two 66.3' wide lots. He acknowledged that it could be reduced if he wanted to sell more than that. Mr. Byrd went on to say that the staff report mentions that it should be a part of a larger development. Mr. Byrd noted that this was in Pinehurst, with three or four hundred acres of 50 wide lots that have a total side yard of probably 14 or 15-feet. This condition was a pre-existing prior to the City taking in the Pinehurst Subdivision. For this application the side yard would be in the 6-foot range, so they can adjust the request from a 5-foot to a 7-foot setback. This would be only 1 foot less than what is required as a minimum side yard on one side. Mr. Byrd said that just prior to the meeting, he had submitted a letter to the staff from the owner of the two lots to the south stating that he had no problem with 7-foot side yards.

Mr. Frost asked the staff if the recommendation would be the same if it was an increased to 7 feet as opposed to 5 feet.

Mr. Olsen replied that the staff's position would remain the same. He explained that the intent of the PUD section of the Ordinance was not necessarily to allow a development of this size simply to have reduced setbacks; it is for a much larger scale development than just a three lot subdivision where only two of the lots have reduced setbacks. Mr. Olsen further explained that a normal setback on a lot of this size was a minimum of 8 feet, with a total of the two side yards equaling 20 feet. In this case, what the applicant proposed would be 7 feet on either side for a total of 14 feet. Mr. Byrd referenced the other lots in Pinehurst that are on the average of 50 feet wide, which was correct. He noted that the minimum side yard setback on a 50-foot wide lot is 7.1 feet with a total of the two being 16.6 feet. The setbacks proposed are actually less than what are required for a 50-foot lot.

In executive session Mr. Frost asked if one foot made that much difference. Could the Commission approve what they want without severely causing unfortunate precedent?

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Mr. Olsen commented that one of the concerns was that it could set a precedent. Another concern was that even with it only being one foot, the total of the two side yards does not meet the minimum requirements. He suggested the applicant go before the Board of Adjustment for a variance, if there's something that's unique about these properties.

After discussion a motion was made by Dr. Rivizzigno and seconded by Mr. Quimby to deny this plan.

The motion carried unanimously.

Case #SUB2004-00051 (Subdivision)

Windham Place Subdivision

East side of Wildwood Avenue, 165'± South of Airport Boulevard.

3 Lots / 0.7± Acre

(For discussion see Case #ZON2004-00664 – Windham Place Subdivision (PUD) – Above).

After discussion a motion was made by Dr. Rivizzigno and seconded by Mr. Quimby it was decided to approve the above referenced subdivision.

The motion carried unanimously.

NEW PLANNING APPROVAL APPLICATION:

Case #ZON2004-00818

City of Mobile (Playhouse in the Park)

4823 Museum Drive (South side of Museum Drive, adjacent to the East side of the U.S. Navy and Marine Corps Reserve Training Center).

A request for Planning Approval to allow a scenic design storage facility at an existing theater in a City-owned park.

The plan illustrates the existing and proposed facilities.

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

There was no one present in opposition.

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

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

The motion carried unanimously.

NEW SUBDIVISION APPLICANTIONS:

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Case #SUB2004-00054

Armour Park Subdivision, Unit Two, Resubdivision of Lots 1 & 2

1150 East I-65 Service Road North (East side of East I-65 Service Road North, 350'± South of Armour Avenue.

1 Lot / 1.5± Acres

Don Coleman, Rester and Coleman Engineers, was present on behalf of the applicant and requested they be allowed to have two driveways, as there are two driveways existing now. The owners would like to have one way in and one way out for the trucks, so they will not have to back into the service road.

There was no one present in opposition.

In executive session Ms. Pappas commented that based on the frontage, the staff would typically recommend only one curb cut. A second curb cut, however, would keep them from having to back out into the right-of-way.

After discussion a motion was made by Mr. Laier and seconded by Ms. Deakle to approve the above referenced subdivision subject to the following condition:

- 1) the placement of a note on the final plat stating that the site is limited to two curb cuts to the Service Road, with the size, location and design to be approved by Traffic Engineering.

The motion carried unanimously.

Case #SUB2004-00056

Burton Subdivision

3305 and 3309 Old Shell Road (South side of Old Shell Road, 30'± East of the East I-65 Service Road North).

1 Lot / 2.0± Acres

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

There was no one present in opposition.

A motion was made by Dr. Rivizzigno and seconded by Mr. Scott to approve the above referenced subdivision subject to the following conditions:

- 1) the placement of a note on the final plat stating that the site is limited to two curb cuts to Old Shell Road, with the size, location and design to be approved by Traffic Engineering; and
- 2) the placement of the 25-foot minimum building setback line on the final plat.

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The motion carried unanimously.

Case #SUB2004-00047

Collins Subdivision, First Addition

West side of U.S. Highway 90 West, at the West terminus of Kooiman Road.

23 Lots / 12.9± Acres

Matt Orrell, Polysurveying asked that in lieu of dedication of right-of-way on Highway 90, they be allowed to provide an additional setback. The applicant would not have a drive from those lots to Highway 90, so they have asked to have an additional setback in lieu of dedication. This would allow them to be able to use the additional property. Mr. Orrell said they were not aware of any plans to widen Highway 90 at this time. If they dedicated that property they could not use it at all.

Mr. Frost asked what would have been the actual dedication there.

Mr. Orrell replied that it would be 35 feet. He said it would be a 20-foot setback from there. He noted that this was done on a subdivision just south of the side two years ago.

Mr. Olsen asked if the subdivision he referred to had the same number of lots.

Mr. Orrell replied that it had five lots.

Ms. Pappas stated that typically on a subdivision of this size, given that there is new street construction, the number of lots, and based on surrounding development, it would most likely be a commercial or a light industrial development. She stated the staff would stick with the recommendation of providing the dedication.

Mr. McSwain asked if dedication would be along lots 1 and 23.

Mr. Orrell replied that that was correct, because lot 15 actually fronts Willis Road, which was more like a service road.

Mr. McSwain inquired if the dedication or the setbacks would render lot 1 unbuildable.

Mr. Orrell said they could adjust lot sizes to increase lot 1 some, but they would not have total use of that property with a setback.

Ms. Pappas stated that at its narrowest point, as proposed, lot 1 was 100 feet wide. However, as Mr. Orrell said, when they prepared the final plat, they may have to adjust the lot lines a little bit to make one lot smaller and one a little larger. She said that was typical of the administrative process.

There was no one present in opposition.

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After discussion a motion was made by Dr. Rivizzigno and seconded by Ms. Deakle to approve the above referenced subdivision subject to the following conditions:

- 1) provision of adequate setback along US Highway 90 to provide 25-feet from future major street right-of-way;
- 2) the placement of a note on the final plat stating the Lots 1, 15 and 23 are denied direct access to US Highway 90 and Willis Road;
- 3) the placement of notes on the final plat labeling the common area and stating that the maintenance of the common area is the responsibility of the property owners;
- 4) the placement of a note on the final plat stating any lots which are developed commercially, and adjoin residentially developed property must provide a buffer, in compliance with Section V.A.7. of the Subdivision Regulations; and
- 5) the placement of the 25-foot minimum building setback line on the final plat.

The motion carried unanimously.

Case #SUB2004-00061

Gear & Axle of Mobile Subdivision

East side of Bellingrath Road, 4/10 mile \pm North of Laurendine Road.

1 Lot / 2.9 \pm Acres

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

There was no one present in opposition.

A motion was made by Dr. Rivizzigno and seconded by Mr. Scott to approve the above referenced subdivision subject to the following conditions:

- 1) the dedication of sufficient right-of-way to provide 50-feet from the centerline of Bellingrath Road;
- 2) the placement of a note on the final plat stating that the site is limited to one curb cut to Bellingrath Road, with the size, location and design to be approved by County Engineering; and
- 3) the placement of a note on the final plat stating that any lots which are developed commercially and adjoin residentially developed property must provide a buffer, in compliance with Section V.A.7. of the Subdivision Regulations.

The motion carried unanimously.

Case #SUB2004-00049

Hamilton Creek Acres Subdivision

North side of Hamilton Creek Drive, 300' \pm East of Creek Bend Court.

4 Lots / 36.6 \pm Acres

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

There was no one present in opposition.

After discussion a motion was made by Dr. Rivizzigno and seconded by Mr. Scott to approve the above referenced subdivision subject to the following conditions:

- 1) the placement of a note on the final plat stating that any lots which are developed commercially and adjoin residentially developed property must provide a buffer, in compliance with Section V.A.7. of the Subdivision Regulations; and
- 2) the approval of all applicable federal, state and local agencies prior to the issuance of any permits.

The motion carried unanimously.

Case #SUB2004-00057

Hollon Place II Subdivision

Southeast corner of Cotton Street and Fisher Street.

1 Lot / 0.5 \pm Acre

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

There was no one present in opposition.

A motion was made by Dr. Rivizzigno and seconded by Mr. Scott to approve the above referenced subdivision subject to the following conditions:

- 1) the placement of a note on the final plat stating that the site is limited to one curb cut to Cotton Street, with the size, location and design to be approved by Traffic Engineering;
- 2) the placement of a note on the final plat stating that direct access to Fisher Street is denied; and
- 3) the placement of the 25-foot minimum building setback line on the final plat.

The motion carried unanimously.

Case #SUB2004-00048

Kensington Place Subdivision, First Addition

North side of Moffett Road, 150' \pm West of Kensington Place, extending to the West termini of Tunbridge Wells Drive North and Tunbridge Wells Drive South.

18 Lots / 11.0 \pm Acres

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

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There was no one present in opposition.

A motion was made by Dr. Rivizzigno and seconded by Mr. Scott to approve the above referenced subdivision subject to the following conditions:

- 1) the dedication of necessary right-of-way to provide 50-feet from the centerline of Moffett Road;
- 2) placement of a note on the final plat stating that Lots 9-12 are denied access to Moffett Road;
- 3) the placement of a note on the final plat stating that the maintenance of the island as common area is the responsibility of the property owners association;
- 4) placement of a note on the final plat stating that any lots that are developed commercially and adjoin residentially developed will provide a buffer, in compliance with Section V.A.7. of the Subdivision Regulations; and
- 5) the construction and dedication of the proposed street to county standards.

The motion carried unanimously.

Case #SUB2004-00059

Key Street Commercial Park Subdivision

1268, 1300, 1304 and 1306 West I-65 Service Road South (West side of West I-65 Service Road South, 90'± South of Key Street, extending to the South side of Key Street, 390'± West of West I-65 Service Road South).

4 Lots / 3.4± Acres

Don Rowe, Rowe Surveying and Engineering, was present on behalf of the applicant. He said he had talked to Ms. Pappas regarding the condition requiring that lots 1 and 4 be allowed only one curb cut to the service road. Mr. Rowe explained that those were existing buildings with existing parking lots, fronting on the service road. He would like to ask that they be allowed to leave it as is, unless there is an expansion of over 50 percent of the building. At such time, they would have to bring the site into full compliance. Mr. Rowe said they could agree to that. Right now they want to leave their parking lots the way they exist.

Ms. Pappas stated that the staff was agreeable to allowing the existing curb cuts to remain. At such time they do make substantial improvements, the curb cut issue would have to be addressed by Traffic Engineering.

There was no one present in opposition.

After discussion a motion was made by Mr. McSwain and seconded by Dr. Rivizzigno to approve the above referenced subdivision subject to the following conditions:

- 1) the placement of a note on the final plat stating that Lots 1 and 4 are allowed to maintain existing curb cuts until improvement of fifty percent or more of square

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- foot are permitted, and Lots 2 and 3 are limited to one curb cut each to Key Street, with the location, size, and design to be approved by Traffic Engineering; and
- 2) the placement of the 25-foot minimum setback lines on the final plat.

The motion carried unanimously.

Case #SUB2004-00053

Klumpp's Addition to Spring Hill Subdivision

West side of Dilston Lane, 100'± South of Sheips Lane.

2 Lots / 0.5± Acre

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

There was no one present in opposition.

A motion was made by Dr. Rivizzigno and seconded by Mr. Plauche to waived Section V.D.2. and approved the above referenced subdivision.

The motion carried unanimously.

Case #SUB2004-00050

Mattie's Place Subdivision

Northeast corner of Telegraph Road and Chin Street (unopened right-of-way).

1 Lot / 0.4± Acre

Jerry Byrd, Byrd Surveying, was present on behalf of the applicant and noted that Chin Street was an unopened right-of-way. Mr. Byrd asked that he be allowed to have a 20' minimum building setback from Chin Street, and 25' from Telegraph Road.

Ms. Pappas stated that was permissible under the Zoning Ordinance.

There was no one present in opposition.

After discussion a motion was made by Dr. Rivizzigno and seconded by Mr. Plauche to approve the above referenced subdivision subject to the following conditions:

- 1) the placement of a note on the final plat stating that the site is limited to one curb cut to Telegraph Road, with the location, size, and design to be approved by Traffic Engineering and that direct access to Chin Street is denied; and
- 2) the placement of the 25-foot minimum setback line along Telegraph Road and 20-foot minimum setback line along Chin Street on the final plat.

The motion carried unanimously.

Case #SUB2004-00058

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Rendu Terrace West Subdivision

North side of Old Shell Road, 420'± East of Fairway Avenue.

2 Lots / 10.9± Acres

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

Ms. Pappas stated that on recommended condition #4 in the staff report, the staff gave the option of either dedicating the right-of-way for the unnamed street along the West, or vacating it. She said they left out the word "vacation". Also, they wanted to add the condition as outlined in the report, denying access to the unnamed right-of-way if it remained, or if it is improved to County standards at that point, the applicant could have access.

There was no one present in opposition.

After discussion a motion was made by Dr. Rivizzigno and seconded by Ms. Deakle to approve the above referenced subdivision subject to the following conditions:

- 1) the dedication of necessary right-of-way to provide 50-feet from the centerline of Old Shell Road;
- 2) placement of a note on the final plat stating that Lot 1 is limited to one curb cut to Old Shell Road, with the size, location and design to be approved by County Engineering;
- 3) placement of a note on the final plat stating that Lot 2 is limited to two curb cuts to Old Shell Road, with the size, location and design to be approved by County Engineering;
- 4) the dedication of necessary right-of-way to provide 25-feet from the centerline of the unnamed right-of-way along the west boundary of the site or vacate thereof;
- 5) the placement of a note on the final plat stating that a buffer, in compliance with Section V.A.7., will be provided where lots are developed commercially (multi-family) when the lots adjoin residentially developed property;
- 6) placement of the required 25-foot minimum building setback line on the final plat; and
- 7) placement of a note on the final plat stating that access to the unnamed right-of-way to the west is denied until such time as it is paved to County standards.

The motion carried unanimously.

Case #SUB2004-00055

Springhill Estates Subdivision, Resubdivision of Lot 8

467 Evergreen Road (East side of Evergreen Road, 400'± South of McKenna Drive).

2 Lots / 0.9± Acre

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

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There was no one present in opposition.

A motion was made by Dr. Rivizzigno and seconded Mr. Plauche by to approve the above referenced subdivision subject to the following condition:

- 1) the dedication of adequate right-of-way to provide 25' from the centerline of Evergreen Road.

The motion carried unanimously.

Case #SUB2004-00045

H. O. Weaver Estates Subdivision, Unit One

South side of Howells Ferry Road, ¼ mile± West of Cody Road.

43 Lots / 26.6± Acres

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

There was no one present in opposition.

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

- 1) developer to obtain all necessary federal, state and local approvals prior to the issuance of any permits;
- 2) placement of a note on the final plat stating that maintenance of all common areas is to be the responsibility of the property owners association;
- 3) placement of a note on the final plat stating that Lots 1-3 are limited to one curb cut each; with size, location and design to be approved by the County Engineering Department; and
- 4) the placement of a note on the final plat stating that if any property is developed commercially and adjoins residential property will provide a buffer in compliance with Section V.A.7. of the Subdivision Regulations.

The motion carried unanimously.

Case #SUB2004-00046

Westminster Place Subdivision, Revised Lot 1

5276 Old Shell Road (North side of Old shell Road at the North terminus of Schwaemmle Drive).

1 Lot / 0.3± Acre

Paul Mayer of 6712 Cedarwood Court, applicant, was present and said Steve Nodine said he should mention that he supported this application. Mr. Mayer stated that when they bought this property they were told they had to build 45 feet back from Old Shell Road.

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He said they proceeded to get their plans drawn up and planned it 45 feet back. There was a massive Live Oak in the northeast corner of the property that they planned the house around. It progressed to their builder and when the surveyors came out to put the footings in and discovered that apparently the City required 65 feet back. Mr. Mayer said they checked and found that there were about 18 properties about a quarter of a mile each way that were even closer than the 45 feet they wanted to be, and one house two doors down that was only 22 feet from Old Shell Road.

Someone interjected that they thought it was 25 feet and had been changed to 45 feet, not 45 feet to 65 feet.

Mr. Mayer said that was correct. He said they were requesting to be allowed to move it forward 20 feet like they had originally planned. He said it was not on a line with what most of the homes and some of the businesses in the immediate area.

Mr. Frost noted that the staff report indicated that the properties to the east provide adequate setback for the Major Street, whereas this does not. He asked if he understood correctly that Mr. Mayer contended that there might be a couple of exceptions but in general they were all basically in line with what he was requesting.

Mr. Mayer indicated the houses in question.

Patrick Waller, builder of record for this property, said he understood there were two issues on this; the setback and a secondary curb cut.

Ms. Pappas said that was correct, this site was limited to share a curb cut with the adjoining property.

Mr. Waller noted that the existing houses have their own curb cuts and driveways already established on their property. They were just asking for a curb cut for a driveway on this piece of property. Mr. Waller said they were not asking for a precedent on Old Shell Road as Mr. Mayer indicated. He said it might be an inconvenience down the road for his client to have their house closer to Old Shell Road than it proposed. Mr. Waller said it would not inhibit the City widening Old Shell Road, because there are many other properties closer to Old Shell Road than what this house would be. There are also concrete walls 10 or 15 feet from Old Shell Road further down. Mr. Waller said they were asking for two cuts and to move the residence forward.

In discussion Mr. Plauche asked if he understood Mr. Mayer would be at the same setback as the two houses next to this that were built prior.

Ms. Pappas stated that based on the information the staff had available, the houses comply with setback that was shown on the final plat and approved in the late '90's. The Major Street comes through this area and on the second lot to the east; the setback goes from 35 feet on the east property line and extends to 45 feet on the west property line,

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and then the same 45-foot setback on for the lot to the east. Based on the information available, those two structures comply with those setbacks.

Mr. Plauche asked if he understood correctly that the applicant could not meet this setback because it would infringe on the tree in the back yard.

Ron Jackson replied that that was correct.

Mr. Plauche said that he understood that if he saved the tree he would have to move the house forward.

Mr. Jackson said he had not seen evidence of that, but he believed that was the case.

There was no one present in opposition.

After discussion a motion was made by Mr. Quimby and seconded by Dr. Rivizzigno to holdover this application until April 15, 2004 meeting to allow Urban Forestry and planning staff time to review new information regarding trees and adjacent setbacks

The motion carried unanimously.

NEW SUBDIVISION APPLICATIONS:

Case #ZON2004-00562

Regions Bank (Rudy P. Baugh, Agent)

5202 Cottage Hill Road (Northwest corner of Cottage Hill Road and University Boulevard).

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

There was no one present in opposition.

In discussion a motion was made by Mr. Laier and seconded by Mr. Plauche to approve this request.

There being no further business, the meeting was adjourned.

APPROVED: May 6, 2004

Victor McSwain, Secretary

April 1, 2003

Terry Plauche, Vice-Chairman

vm