

**MOBILE CITY PLANNING COMMISSION MINUTES**  
**MEETING OF JANUARY 4, 2007 - 2:00 P.M.**  
**AUDITORIUM, MOBILE GOVERNMENT PLAZA**

**Members Present**

Terry Plauche, Chairman  
William DeMouy  
Ann Deakle  
Nicholas Holmes, III  
Mead Miller  
Roosevelt Turner  
John Vallas  
James Watkins, III

**Members Absent**

Clinton Johnson  
Victoria L. Rivizzigno, Secretary

**Urban Development Staff Present**

Richard L. Olsen  
Deputy Director of Planning  
David Daughenbaugh, Urban Forestry  
Coordinator  
Mae Sciple, Secretary II

**Others Present**

John Lawyer, Assistant City Attorney  
Jennifer White, Traffic Engineering  
Rosemary Sawyer, City Engineering  
Pat Stewart, County Engineering

Mr. Plauche 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 #SUB2006-00264**

**Island Farms, Hollinger's Island Subdivision, Jakubowski's Addition to**

2187 and 2201 Island Road

(South side of Island Road, ¼ mile± West of Bay Road).

2 Lots / 3.2± Acres

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Mr. Matt Jakobowski, representing the applicant, concurred with the staff recommendations.

There was no one present in opposition.

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

- 1) **the placement of the 25-foot minimum building setback line on the Final Plat; and**
- 2) **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 #SUB2006-00269**

**Woodberry Forest Subdivision, Unit One, Phase Two**

North side of Woodberry Drive, 165'± West of Dawes Road.

2 Lots / 0.6± Acre

Don Coleman, Rester and Coleman Engineers, was present on behalf of the applicant and requested the application be held over one more time to the February 1<sup>st</sup> meeting.

There was no one present in opposition.

After discussion a motion was made by Mr. Plauche and seconded by Mr. Watkins to holdover this application until the meeting of February 1, 2007.

The motion carried unanimously.

**Case #SUB2006-00272**

**Creekwood Subdivision, Unit III**

South terminus of Ridgeline Drive.

27 Lots / 36.0± Acres

Don Coleman, Rester and Coleman Engineers, was present on behalf of the applicant and requested the application be held over one more time until the February 1, 2007 meeting.

There was no one present in opposition.

After discussion a motion was made by Mr. Plauche and seconded by Mr. Coleman to holdover this application until the meeting of February 1, 2007.

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The motion carried unanimously.

**EXTENSIONS:**

**Case #SUB2001-00177 (Subdivision)**

**Bellingrath Road Country Club Estates Subdivision, Addition to**

East terminus of Country Club Boulevard and extending through to the Southwest corner of Old Military Road and Section Line Road.

569 Lots / 243.0± Acres

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

After discussion a motion was made by Mr. Plauche and seconded by Mr. DeMouy to grant a one-year extension of approval for the above referenced subdivision. It is further recommended that future units will be required to provide certification regarding compliance with stormwater requirements and should provide one of the additional access points as required by the original approval.

The motion carried unanimously.

**Case #SUB2004-00268 (Subdivision)**

**Timberlane Woods Subdivision**

North terminus of Cross Creek Drive, extending to the West termini of Larchmont Drive and Timberline Ridge.

33 Lots / 15.7± Acres

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

After discussion a motion was made by Mr. Plauche and seconded by Mr. DeMouy to grant a one-year extension of approval for the above referenced subdivision.

The motion carried unanimously.

**Case #SUB2004-00272 (Subdivision)**

**Spring Grove Subdivision, Unit Two**

West terminus of Spring Grove South, extending to the North terminus of Summer Crossings and the West terminus of Spring Grove North; and the West side of Dawes Road extending to the North terminus of Spring Grove Court.

173 Lots / 36.7± Acres

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

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After discussion a motion was made by Mr. Plauche and seconded by Mr. DeMouy to grant a one-year extension of approval for the above referenced subdivision.

The motion carried unanimously.

**Case #SUB2005-00265 (Subdivision)**

**Nazaree Highlands Subdivision, Lot 2, Resubdivision of and Addition to**

Southwest corner of West I-65 Service Road North and First Avenue.

1 Lot / 12.2± Acres

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

After discussion a motion was made by Mr. Plauche and seconded by Mr. DeMouy to grant a one-year extension of approval for the above referenced subdivision. The applicant should be advised that future extensions will be unlikely.

The motion carried unanimously.

**NEW SUBDIVISION APPLICATIONS:**

**Case #SUB2006-00294**

**Cottonwood Senior Apartments Subdivision**

658 Azalea Road

(South side of Azalea Road at the South terminus of Village Green Drive)

1 Lot / 5.9± Acres

Mr. Plauche 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 Mr. Turner and seconded by Mr. Holmes to approve the above referenced subdivision subject to the following conditions:

- 1) **the dedication of right-of-way sufficient to provide 50 feet from the centerline of Azalea Road; and**
- 2) **placement of a note on the final plat stating that the development is allowed two curb cuts with the size, location and design to be approved by Traffic Engineering.**

The motion carried unanimously.

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**Case #SUB2006-00296**

**Betty Robinson Subdivision**

515 Dykes Road South

(East side of Dykes Road at the East terminus Pierce Creek Road).

1 Lot / 3.7± Acres

Mr. Plauche 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 Mr. Turner and seconded by Mr. Holmes to approve the above referenced subdivision subject to the following conditions:

- 1) **placement of the required 25' minimum building setback line on the final plat.**

The motion carried unanimously.

**Case #SUB2006-00300**

**Clay Subdivision**

4251 Jordan Lane

(Northwest corner of Jordan Lane and Byrnes Boulevard).

1 Lot / 0.4± Acre

Mr. Plauche 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 Mr. Turner and seconded by Mr. Holmes to approve the above referenced subdivision subject to the following conditions:

- 1) **placement of a note on the final plat stating that the site is limited to two curb-cuts, with the size, design and location to be approved by Traffic Engineering and conform to AASHTO standards; and**
- 2) **full compliance with all other municipal codes and ordinances.**

The motion carried unanimously.

**Case #SUB2006-00309**

**Cottage Hill Executive Park Subdivision, Lots 12 & 13, Resubdivision of**

Northeast corner of Oak Circle Drive North and Oak Circle Drive East, extending to the South terminus of Sagamore Road.

1 Lot / 1.2± Acres

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Mr. Plauche 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 Mr. Turner and seconded by Mr. Holmes to approve the above referenced subdivision.

The motion carried unanimously.

**Case #SUB2006-00307**

**J. C. Lawrence Subdivision**

2503 Old Shell Road and 37 Hurlbert Street

(South side of Old Shell Road, 60'± West of Hurlbert Street, extending to the West side of Hurlbert Street, 100'± South of Old Shell Road).

1 Lot / 0.3± Acre

Mr. Plauche announced that this application would be held over to the meeting of February 1, 2007, but if anyone was present who wished to speak in this matter, they could do so now. No one came forward.

After discussion a motion was made by Mr. Plauche and seconded by Mr. Holmes to holdover this application to the meeting of February 1, 2007.

The motion carried unanimously.

**Case #SUB2006-00311**

**West Mobile Senior and Therapeutic Center Subdivision**

3201 Hillcrest Road

(East side of Hillcrest Road at Trent Lane, extending to the South terminus of Valley Ridge Road).

1 Lot / 17.5± Acres

There was no one present representing the applicant.

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

- 1) **the dedication of right-of-way sufficient to provide 50-feet from the centerline of Hillcrest Road;**
- 2) **placement of a note on the final plat stating that the approval of Traffic Engineering is required for the location and design of any curb cuts; and**
- 3) **the placement of the 25-foot minimum building setback lines on the Final Plat.**

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The motion carried unanimously.

**Case #SUB2006-00297**

**Charles Dewberry Subdivision**

5904 Bourne Road

(North side of Bourne Road, 145'± West of Middle Road).

2 Lots / 2.0± Acres

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

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

- 1) **placement of a note on the final plat stating that each lot is limited to one curb-cut onto Bourne Road, with the size, design and location of all curb-cuts to be approved by the Mobile County Engineering Department;**
- 2) **placement of a note on the final plat stating that no future subdivision of Lot 2 is allowed until additional frontage on a public street is provided;**
- 3) **placement of a note on the plat stating such, and provision of a letter from a licensed engineer certifying compliance with the City of Mobile's stormwater and flood control ordinances to the Mobile County Engineering Department prior to the issuance of permits;**
- 4) **labeling of each lot with its size in square feet, or provision of a table on the plat with the same information; and**
- 5) **placement of a note on the Final Plat stating that any lots which are Developed commercially and adjoin residentially developed property must provide a buffer, in compliance with Section V.A.7. of the Subdivision Regulations.**

The motion carried unanimously.

**Case #SUB2006-00293**

**McTaylor Subdivision**

1750 Dawes Road

(West side of Dawes Road, 570'± North of Augusta Drive).

2 Lots / 1.9± Acres

Mr. Plauche announced that this application was recommended for holdover to the meeting of February 1, 2007, but if anyone was present who wished to speak today, they could do so now.

Matt Orrell, with Polysurveying, was present on behalf of the applicant. Mr. Orrell

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said he understood there was a question regarding the property that surrounded the subject property, which he was not aware of until he saw it on the website the day before. He noted that there was a 4-lot subdivision to the south of this property that was recorded approximately three years ago. The large piece of property to the north was deeded by a will. He had a deed from the will and said it was exempt from the Subdivision Regulations. Also, the smaller piece of property north of Lot 1 was deeded in 1964, which was 20 years before the requirements went into effect. Taking this into consideration, he felt they were okay, and felt there would not be any recommendations other than the 25-foot setback. He said they would like the Commission to go ahead and approve the plan approved today. He submitted copies of the deeds and the plat.

Mr. Olsen pointed out the properties to the north, one of which was fine, but the lots to the rear were a concern. He said the staff had not had time to review any of the information that Mr. Orrell had just submitted. In addition, depending on how the will left the property, Mr. Olsen said that when the land is ultimately divided it would have to go through the subdivision process and the staff would need time to review that. For that reason they would request that the application be held over to at least the January meeting to allow the staff time to review the information that was just submitted.

Mr. Orrell said his clients were just trying to build a house. He had shown where the adjoining properties were all grandfathered-in. They were simply taking two metes and bounds parcels and bringing them up to legal lots of record within the City of Mobile. If they verify that, it demonstrates that the south side has already been approved. The north side is exempt. He did not feel they needed to involve the entire family and half the neighborhood to be able to build a house. If these two parcels are in fact exempt from the Subdivision, he asked that they deal just with their property.

Mr. Plauche asked if January 18<sup>th</sup> would be okay for a holdover.

Mr. Orrell agreed.

After discussion a motion was made by Mr. Plauche and seconded by Mr. Watkins to holdover this application to the meeting of January 18, 2007, to allow the staff to review the submitted documentation.

The motion carried unanimously.

**Case #SUB2006-00301**

**Madonia Subdivision**

5006 Old Shell Road

(North side of Old Shell Road, 150' ± East of Border Drive East, extending to the West side of Babs Street[unopened right-of-way]).

2 Lots / 3.1± Acres

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Mr. Plauche 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 Mr. Holmes and seconded by Ms. Deakle to approve the above referenced subdivision subject to the following conditions:

- 1) **placement of the required 25' minimum building setback line on the Final Plat;**
- 2) **placement of a note on the Final Plat stating that Lot 1 is limited to the existing curb cuts, and Lot 2 is limited to one curb cut, with the size, location and design to be approved by Traffic Engineering; and**
- 3) **placement of a note on the final plat stating that access to Babs Lane is denied.**

The motion carried unanimously.

**Case #SUB2006-00304**

**McCord Subdivision**

2236 Park Place

(Northwest corner of Riverside Drive and Park Place).

2 Lots / 3.4± Acres

Mr. Plauche announced that this application was recommended for holdover, but if anyone was present to speak in this matter, they could do so at this time.

Augustine Mayer, attorney, was present on behalf of the applicant, Mrs. McCord. Mr. Mayer said he was not sure about all the recommendations, but he had heard that there were some persons who were opposed to the application on the grounds that the frontage on Lot A was less than 100 feet. Mr. Mayer explained that Mrs. McCord wanted to convey property to her child and did not feel they would need 100 feet, but he said they would have no problem making that lot a total of 100 feet frontage on the water. Regarding the recommendations, Mr. Mayer said there was a reference that the owners of a parent parcel should be a part of the subdivision. He did not know how they could do that. He pointed out that this was an old subdivision, and prior to the time his clients became involved the properties had been conveyed apparently by metes and bounds and not in accord with the Subdivision Regulations. Mr. Mayer said they were trying to do it correctly and have a subdivision plat. Regarding the recommendation that additional notice be given, he said if the staff would let him know who needed additional notice, they would be happy to see that that was done.

Jerry Byrd, Byrd Surveying, engineer for the applicant, stated that last week he had submitted information concerning the parcels and parts of various lots. Two of the lots at the corner of Riverside Drive were conveyed in 1947. The half of a lot on the west side of the property was actually conveyed in 1968 or 1969. He realized that was

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not prior to 1952, but it had been 38 or 39 years in one ownership. With this information, Mr. Byrd said they would request that the application be heard today.

Mr. Olsen stated that the staff did receive the documentation Mr. Byrd referred to, and had prepared some conditions if the Commission was possibly considering approval of the subdivision. The staff would recommend tentative approved subject to: (1) dedication of right-of-way sufficient to provide 25 feet from the center line of Park Drive; (2) placement of a note on the final plat stating that Lot A shall not be resubdivided unless sufficient additional land is included; and (3) the provision of a 25-foot setback from the dedication.

Mr. Byrd said they were agreeable with the conditions as stated.

Mr. Olsen noted that the notification issue was only if the remainder of the parent parcel had to be included. With the documentation submitted, that was taken care of.

Mr. Vallas asked if the waiver language needed to be included.

Mr. Olsen said yes. Waiver of Section V.D.3. of the Subdivision Regulations would be required.

Mr. Watson noted that somebody indicated that some adjoining neighbors may not have gotten notice. He asked if that was an issue.

Mr. Lawler stated that in looking at the plat and talking to Mr. Olsen, he did not believe that the party they had in mind, considering what was being recommended, would need notification.

Mr. Plauche asked if there was anyone present who would like to speak in opposition.

Doug Anderson, with the law firm of Bowron, Latta and Wasden, 41 W. I-65 Service Road North, was present representing the adjoining property owners on both sides of the subject property. Mr. Anderson said his clients, who were present and also like to speak, were not opposed to the subdivision of the property, but had some concerns based on what the owner had told them as to how the property would be developed. Mr. Anderson referred to parcel B as shown on the site plan, pointing out the location of the existing residence. In front of the residence, right up against the river, there was a concrete pad, which was a gazebo or patio structure. Mr. Anderson said the neighbors had been told by the applicant that she planned to construct the new residence attached to that patio. The adjoining property owners felt that would be out of character, as the adjoining properties all up and down the river had previously been developed and set back further from the river. Mr. Anderson said he did not know until last week that on riverfront property, the property that fronts the river is considered the rear setback, which would be only 10 feet. In this situation where the property fronts the water and a public right-of-way, Mr. Anderson felt the setback issue as set out in the Zoning Ordinance was maybe not the best for this particular type

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of property. They were requesting, therefore, that a special condition be placed on the property that any future construction be within the setbacks as they are currently established by the current development. Referring to the information and pictures he had provided the members, Mr. Anderson noted that the first picture showed how much farther the gazebo/patio was in front of the house and how close it was to the river. The second picture was taken from his client's deck looking toward the subject property to the east, and the gazebo/patio was right in the middle of that picture. He said that building the new structure that close to the river would completely block his client's view toward the west. Mr. Anderson said the fourth and fifth pictures showed how far back the structures on the adjoining property, on both sides, were set back. The next page was taken off the City's web site and showed all the properties on the south side of the river. He had drawn a line showing what the normal setback was for those properties. Mr. Anderson contended that it was not good, safe development to build as close to the river as proposed, and it would not be in character with the neighborhood.

Mr. Plauche asked if the Planning Commission could dictate where a house could be placed.

Mr. Lawler said the only case that he was familiar with that talked about view was a variance case in Gulf Shores where one property owner complained that the construction of a new condominium unit was going to block a view. The Supreme Court said that the right to a view was not one of the property rights one had. In this case, the Subdivision Regulations themselves indicated that one of the purposes is to provide for adequate light, air, privacy, to secure safety from fire or flood and other dangers, to prevent overcrowding and also to preserve the natural beauty of the land that utilizes elements of the urban environment because there was graphic features of land and water. Mr. Lawler said that was a general statement and certainly broad enough to embrace what was being suggested, but there were no specific regulations written within our regulations that specifically address where you can locate a house. There is a general requirement, but there are certain setbacks. He said he could not say whether or not the Planning Commission had that authority. There was no Alabama case on it. If he were going to present it to some court to try to determine whether or not the Board had that authority, he would look to the purposes that are in the Subdivision Regulations that say what you are trying to accomplish. If, by adding a requirement on the setback you could preserve the view of all the people up and down the river, does that help accomplish those purposes? Mr. Lawler felt you could make a good argument that it does, but there was no specific direction.

Mr. Holmes asked what the arguments were with respect to the Supreme Court decision.

Mr. Lawler said the argument was substantially the same: that construction was going to block a view. He could not recall whether or not there was an argument about a setback, but he thought in that case it was the height of the building that was going to block a view.

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Mr. Holmes asked if it was this section of the Zoning Ordinance that was debated.

Mr. Watkins said it was a Board of Zoning Adjustment case where they were trying to get a height variance. The neighbors came in and objected to it.

Ms. Deakle recalled a case several years ago where someone wanted to put a garage or a beauty shop forward of where the normal setbacks were that were established by the common use in the neighborhood. She thought the Board denied that request.

Mr. Olsen recalled that in that case the recorded plat for that subdivision had 35 or 50-foot setbacks, and the Zoning Ordinance only requires a 25-foot setback. The applicant was requesting a resubdivision of one lot within the overall subdivision to change the setback from the recorded 35 or 50 feet to bring it forward to 25 feet, and the Commission did deny that resubdivision application because it was changing something that was an established setback in character for the neighborhood.

Ms. Deakle suggested this would be the same situation if they took the view out of this problem.

Mr. Olsen said it would be the same except that the setback that was in place was on a recorded plat. There was no recorded setback from the water in this case.

Ms. Deakle said she recalled that the real issue there was the appearance of that neighborhood. The neighbors felt that one exception would throw the whole neighborhood out of kilter.

Mr. Vallas commented that as long as a house was within the setbacks established by the Subdivision Regulations, he felt they had to have some flexibility of where they would want to position a house if they were designing a house on a lot.

Mr. Lawler said he felt they could add requirements to try to accomplish the overall goal of the Subdivision Regulations, but if someone appealed and it went to court, he could not say that the Planning Commission would win. He could only say that, in his opinion, it would make a good argument.

C. Frank Yeager, a resident of 2234 Riverside Drive, stated that his property adjoined the subject property on the east side. Mr. Yeager said that when they received notice of the hearing for this application they went over and talked to Mrs. McCord about her plans. At that time she indicated she was going to stick this house right out on the corner right where they would be looking in the back end of her house, completely blocking their view down the west side of the river. Mr. Yeager said that after 30 years in the army he retired here and was still working in order to have his home in this neighborhood and in this character. He said they had tried to be thoughtful neighbors. Whenever anyone wanted to do anything in the neighborhood they talked to their neighbors before they did it. He said they put in a fence to keep petty thievery

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down, and talked to the neighbors before they did it. He said they did not have any problem with Mrs. McCord subdividing her land, and was happy that she was going to have a new house. They were just asking that the neighborhood be kept in accordance with the way the neighborhood was now. All the houses sit back farther than what Mrs. McCord was proposing. They felt it was safer to be back farther from the river, and everyone gets a good view. Mr. Yeager felt it was reasonable for Mrs. McCord to subdivide her land and build a new home, but he felt it was very inconsiderate, and it would change the whole character of the neighborhood, if she did not set back like the other houses were.

Ann Stein, a resident of 2224 Riverside Drive, stated that she was concerned about three things: protecting their privacy, their way of life, and their investment. Ms. Stein said that Mrs. McCord's property sits on a beautiful high lot on Dog River. When they bought their property on the river six years ago, Ms. Stein said she and her husband were very impressed with the beautiful sloping lots leading down to the river with the houses set back a great distance from the river, which saved them in Hurricane Katrina. She said there was a lot of damage to many homes on Dog River, but their neighborhood, because they have high lots and the houses were set well back, was protected. The lots were at least one acre in their part of the neighborhood. Ms. Stein said the fact that their neighbor's house was priced for sale at over half a million dollars helped convince them to make a large investment on the river. Privacy, high sloping front yards, and great river views were prized by current home owners, and they felt they were important for future heirs and future sales of their properties. Ms. Stein requested that Mrs. McCord be required to build back from the river to protect herself, her new home, her fabulous river view, and to keep her home consistent with those around her. She asked that the size of the proposed lots be reconsidered, because their neighborhood had lots of at least 100 feet of river frontage, and she felt it was important to maintain this consistency in the neighborhood. Ms. Stein said that as Dr. Yeager said, while they had been on the river the neighbors had always worked cooperatively with each other before they built anything and tried to preserve the view of the river. She and her husband were very glad to have Ms. McCord as a neighbor. She had lived on the river a long time, and they were just asking that the traditions of their neighborhood be protected.

There being no other opposition speakers, Mr. Plauche asked if the applicant would like to respond.

Mr. Mayer stated that in regard to Ms. Stein's remark about the lot size, he again stated that Mrs. McCord would have no problem with a requirement that Lot A have 100 feet of frontage on the river, assuming that was agreeable with the Planning staff. Regarding the point raised by Mr. Yeager, Mr. Mayer said that his client certainly did not want to devalue the neighborhood. If there was to be any setback requirement, they would ask that it be no more than 40 feet. He noted that the gazebo/patio up front was intended to be just that. It was to be in the front yard, and not a part of the construction. Mr. Mayer said they were also concerned about landscaping, because if his client planted some magnolia trees or other vegetation, she would not want to be

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accused of interfering with somebody's view, but by its own nature, vegetation and trees can get to such a height that they could interfere with someone's view. He did not believe, however, that you were entitled to a view as a matter of law. Mr. Mayer asked that the Commission go ahead and vote on this application today.

Ms. Deakle noted that on the plat it appeared that Lot B was twice the width of Lot A. She asked why the plan was not done on the eastern side of this parcel, which would eliminate most of the problems.

After conferring with his client, Mr. Mayer said that Lot B could be reduced in size. He noted, however, that there were structures on Lot B that obviously they could not run a subdivision line through.

Mr. Vallas said it appeared that the entire east half of Lot B had no structures. There also appeared to be an existing subdivision lot line east of the existing residence and the gazebo/patio property. He asked if any thought had been given to keeping that as the subdivided parcel, which is what he thought Ms. Deakle was asking.

Mr. Mayer asked if understood that he meant moving the vertical lot where the letter "B" appeared.

Mr. Byrd said his client was agreeable to moving the common lot line between Lots A and B over a little, but he did not think you would want it over there where Lot B was shown, because to build a house there would block the neighbor's view more than what was being proposed.

Ms. Deakle contended it would not block the view if the house was set back where the rest of the houses were up and down the river.

Mr. Byrd said he did not know if that was physically possible, but it could be.

Ms. Deakle said she felt that was a better compromise than putting it right up almost on the shore line.

Mr. Byrd did not think they wanted to move the lot line that far over. Still, he felt this configuration was one configuration that the view was a major issue.

Mr. Miller said he was confused as to what was going to happen with Lot A. It looked like they were going to have to have a mighty skinny house, or one right up at the front. He suggested the application be held over.

Regarding Ms. Deakle's question that the lot line be moved to the east of the structure, Mr. Anderson said that the house as shown on the plat was not really in that location. The house on Lot B was really 50 feet from his client's property line, so there was not enough room to make the smaller lot between the existing house and his client's property.

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Mr. Watkins noted that the neighbors indicated that a 40-foot setback from the river would be acceptable to them. He asked Mr. Anderson to give the Commission an idea of scale from the river right now.

Mr. Anderson said the existing houses were probably 100 feet back. Lot B was 600-650 feet deep. As it was, they felt that 100 feet on that deep of a lot was a reasonable setback.

Ms. Deakle said if a 100-foot setback was required on Lot A, they could not build a house there.

Mr. Anderson said he was just talking about Lot B.

Mr. Mayer said they firmly felt that 40 feet was a fair setback requirement and one that they could abide by.

In deliberations session Mr. Miller questioned how they could fit a house on Lot A. He did not see any dimensions on the plat.

Mr. Olsen said the pole of the flag lot was 80 feet, which would be 50 feet wide, and then the wider portion at the river was 80 feet wide. That would require that any proposed home be up closer to the river.

Mr. Miller said that, in a way, that almost renders this argument of the relocation of the Lot B house moot because the Lot A house has got to be up front there by the design of this. He said the whole thing seemed half-baked to him, and he would like to see the application held over and maybe the neighbors get together on this.

Mr. Watkins asked if the buildings shown on the plat were in the right place.

Mr. Olsen said they may not be. He said it was not uncommon that the structures as shown on these maps were a general representation of the structure location. They were based on aerials from 2002. Since that time they had received new base map information from the County Tax Assessor, which they receive annually and periodically. He said those lines, for whatever reason, shift a little bit in how they are in relation to the structure layer.

Mr. Watkins asked if the staff visited the site, would they have an idea whether the structures that appear to be on the line are either on Lot A or Lot B.

Mr. Olsen said no, the staff would have no way of knowing.

Mr. Watkins felt that was a problem the applicant would have to deal with once the lots were approved. He was more concerned with what Mr. Lawler said, as to whether or not the Commission had the authority to establish a setback off the river. If not, he

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said he could understand the argument of maintaining the character of the surroundings, and it did look like most of the homes in the area were a good bit off the river. He asked where the Commission would draw the line as to whether the setback should be 20 feet or 60 feet.

Mr. Vallas agreed with Mr. Watkins. He said he could understand the concern of the neighbors about losing their visibility, but he asked what was to be said if someday somebody was to come in and buy all the property west of this and resubdivided it and demolished those houses, changing the character. Then all of a sudden the Commission has told this property owner that they have to set their house at this particular point. Mr. Vallas said he would hate for this Commission to get into the location of houses.

Mr. Lawler said the problem that arises often is that people come in and complain that they want things to stay as they were when they bought into the neighborhood. They want to maintain their large lots and they want to maintain the character of as it was when they purchased their property. They have made an investment in it. The question is whether or not the Commission has the authority to try to assist in that regard. Mr. Lawler referred to the Nugen case, which is the leading case on this, says that maybe there is such a thing as "out of character", if you can show that other properties are actually depreciated or diminished in value because of what is proposed. Unfortunately, he said they did not have as much guidance in the court cases as would be helpful. In this case, however, Mr. Lawler said they had to determine if this was something the Planning Commission should consider. He noted that one of the neighbors mentioned the safety issue about building so close to the water. That was true. Property, life and limb are more in peril if buildings are put closer to the water. If the Commission wanted to use that as a way of requiring the setback that has been requested, then he suggested that that might be a vehicle. He could not guarantee that it would hold up, but neither could he guarantee that one or the other sides would appeal, should they decide one way or the other. It may be that the people that object would then take the matter up and they would have a court decision that way, or maybe the Commission would feel compelled to offer some protection and it would go up that way. Looking at the Regulations themselves, Mr. Lawler said this was an attempt to achieve those goals - that is, safety and beauty, and things to fit in. That is what is was all about. He said the Regulations were not as comprehensive as they were in many places, and that was one of the problems.

Mr. Miller further commented that he appreciated Mr. Vallas' concern, but he did not think the Commission should be overly pro-active. He asked how someone was going to build a house on Lot A with a 40' setback. It did not seem like an adequate lot to him, and he felt this needed to be looked at further.

Mr. Watkins said he did not hear anything about a 40' setback on Lot A. The 40' setback would be on Lot B.

Mr. Miller said he still did not see how you could put a house on that piece of property

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Mr. Holmes noted that the house on Lot B was designed looking across the other persons property. The neighbor wants it to continue to be vacant so he could look across the other person's property. That was part of the issue here. Mr. Holmes asked what the difference was in coming in and saying that you bought your property when there was all woodlands behind you and you bought it so you could see the woodlands.

Mr. Miller said that occasionally people do come in who have built their house behind a beautiful woods like on the corner of Grelot and Knollwood, and they get surprised that all of a sudden someone is going to build something there. Another example is the proposed Wal Mart on Airport Boulevard. What do people think they are going to do with a big piece of commercial property on Airport Boulevard. Mr. Miller said he though Lot A was supposed to be some family member's home site. If so, where was the home?

Mr. Vallas said the applicant was not obligated to show where the house was to be located for a subdivision. They were just asking for approval to divide the property into two legal lots of record.

Mr. Miller said that if you subdivide a lot to build a house and there is no room to build a house, then he felt that came into play.

Mr. Vallas said the Commission approves 80-foot lots every day.

Mr. Olsen noted that the width was 80 feet.

Mr. Miller asked what the depth was.

Mr. Olsen said that from the river to where it goes back to 50 feet, there was 115 feet.

Ms. Deakle did not feel that it would made common sense to approve this plan as it stood. She made a motion to deny it on the basis of the safety issue.

The motion failed for lack of a second.

In further discussion Mr. Vallas said he had a problem on the safety issue. He felt that for this Commission to say that the house needs to be 10 feet or 20 feet or 30 feet or whatever from the water was very arbitrary. It was not for this Commission to decide what is safe in positioning a house close to the water, unless an engineer comes in and says it needs to be 40 feet from the river to be safe. No one said that.

Mr. Miller felt that was another compelling reason to hold this over or deny it.

Ms. Deakle asked what good holding it over would do.

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Mr. Miller felt it would give them time to do a little homework. He noted that all of the neighbors who spoke said they did not mind having Mrs. McCord as a neighbor. Mr. Miller also said they had not heard where the house on Lot B was to be situated.

Mr. Turner noted that the staff had recommended that the application be held over. He asked if all of the staff's concerns had been addressed.

Mr. Olsen said the staff's concerns had been met, and they did have a recommendation for tentative approval subject to: (1) the dedication of right-of-way sufficient to provide 25 feet from the center line of Park Drive; (2) placement of a note on the final plat stating that Lot A shall not be resubdivided unless sufficient additional land is included; and (3) that the 25-foot minimum building setback line be shown on the final plat. It would also require the waiver of Section V.D.3. of the Subdivision Regulations - the width-to-depth ratio.

A motion was made by Mr. Holmes and seconded by Mr. Vallas to grant tentative approval of this plan subject to the staff's recommendations.

The vote was three in favor of the motion and four opposed. The motion failed to carry. Approval was denied.

In further discussion Mr. Lawler advised the Commission to make a specific motion to deny, and to give specific facts on which to base the denial.

After discussion a motion was made by Mr. Miller to deny this plan for the following reasons:

- 1) The subdivision would be out of character with other lots in the neighborhood;
- 2) The subdivision does not comply with Section V.D.3 of the Subdivision Regulations, Maximum Depth; and
- 3) The house would be too close to the water for safety.

Mr. Turner seconded the motion.

In further discussion Mr. Watkins said he wanted to make sure that the Commission was careful with its interpretation of the Subdivision Regulations, that when a subdivision meets minimum standards, they be very circumspect in how they treat that.

Mr. Vallas agreed, especially on a waiver that they grant on a weekly basis - the width-to-depth ratio. He also felt it was a mistake for the Commission to tell someone, with no professional guidance, where it is safe to position a house.

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Mr. Lawler invited Mr. Miller to amend his motion to specifically site the section of the Subdivision Regulations concerning the size, width, depth, shape and orientation of lots, and that the minimum building setback line shall be appropriate to the location of the subdivision and the type of development and use contemplated, and that every lot shall contain a suitable building site.

Mr. Miller amended his motion to exclude the statement about safety, and deny the plan for the following reasons:

- 1) The proximity of the proposed house to the river, and the potential for flooding - Section V.A.3, Land Subject to Flooding;**
- 2) Impact of the proposed subdivision/house on the natural scenic features of the site - Section V.A.4, Natural Features;**
- 3) The character of the subdivision - width, depth, shape, orientation and setbacks may not be appropriate to the location of the subdivision - Section V.D.1 of the Subdivision Regulations, Size and Shape of Lots; and**
- 4) The subdivision does not comply with Section V.D.3 of the Subdivision Regulations regarding maximum depth.**

The motion was seconded by Mr. Turner.

There being no further discussion, Mr. Plauche called for the vote.

The vote was four in favor of the motion and three opposed. The motion carried.

**Case #SUB2006-00308**

**Marion S. Kelly Estates Subdivision, Resubdivision of**

3529 Riviere du Chien Road

(East side of Riviere du Chien Road, 150'± North of Riviere du Chien Court).

2 Lots / 3.0± Acres

Mr. Plauche 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 Mr. Watkins and seconded by Mr. Vallas to approve the above referenced subdivision subject to the following conditions:

- 1) placement of a note on the plat stating that each lot is limited to one curb cut each onto Riviere du Chien Road, with the size, design and location to be approved by Traffic Engineering, and comply with AASHTO standards;**

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- 2) **labeling of each lot with its size in square feet, or provision of a table on the plat with the same information;**
- 3) **placement of a note on the plat stating that approval of all applicable federal, state and local agencies is required prior to the issuance of any permits or land disturbance activities;**
- 4) **compliance with Engineering comments (*Show minimum finished floor elevation on each lot. Must comply with all storm water and flood control ordinances. Any work performed in the right-of-way will require a right-of- way permit.*); and**
- 5) **full compliance with all other municipal codes and ordinances.**

The motion carried unanimously .

**Case #SUB2006-00298**

**Cole's Addition to Kingswood Subdivision**

4586 Hawthorne Place and 57 Hawthorne Place North

(Northeast corner of Hawthorne Place and Hawthorne Place North).

4 Lots / 1.2± Acres

Mr. Plauche stated that this application was recommended to be held over to the meeting of February 1, 2007, but if anyone was present and wished to speak in this matter they could do so now.

There was no one present to speak.

After discussion a motion was made by Mr. Plauche and seconded by Mr. Vallas to holdover this application until the February 1<sup>st</sup> meeting to allow the applicant to depict adequate buildable area on each lot. Revised drawings must be submitted by January 12.

The motion carried unanimously.

**Case #SUB2006-00302**

**Hadley Subdivision**

8125 Fordham Road

(Southeast corner of Leroy Stevens Road and Fordham Road).

4 Lots / 4.2± Acres

Don Williams, Williams Engineering, was present on behalf of the applicant. Mr. Williams explained that Mr. Hadley's original intention was to carve off several lots from an existing 4.2-acre parcel for his children. Apparently there was a covenant restriction for the neighborhood that limits lot sizes to 2.5 acres, and that had caused some consternation amongst the neighbors. Mr. Williams said Mr. Hadley had just learned this morning that this was an issue and would like to request a holdover for four weeks to the February 1<sup>st</sup> meeting. This would give him time to discuss this with his neighbors, to seek legal counsel, and decide what he would like to do at this

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particular point.

Mr. Plauche said if there was anyone present who wished to speak in opposition to this proposal they could do so today, even though the actual hearing would not be held until February 1<sup>st</sup>.

Marie Wilson stated that she was very much against this proposal. She said she and her husband had purchased their land many years ago from Mrs. Sprinkle so that they would have more land to build their home on. They felt that the approval of Mr. Hadley's proposal would greatly depreciate their land, as well as that of her neighbors. Ms. Wilson stated that the deed restrictions on property in this subdivision limit the size of lots to a minimum of 2 1/2 acres, and require at least 1500 square feet for each house. Mr. Hadley's proposal goes against all of that. She said it was her understanding that the Commission will not enforce restrictions on land. If that was the case, she asked what right the Commission had to say that another person could break the restrictions on this land. Ms. Wilson said she would appreciate it if the Commission would consider denying Mr. Hadley's proposal when it comes back up.

Neil Herrington, 8312 Fordham Road, said he was also a member of the subdivision Mr. Hadley was trying to break up into small parcels. He said they moved to this area because the lots were large and the houses were far apart. Mr. Hadley was trying to break up the lay of the land, and he asked that the Commission not allow this. He also pointed out that what Mr. Hadley was trying to do could possibly jeopardize some road issue on Leroy Stevens Road. Mr. Herrington said the residents of this area had put their life savings into their property and enjoyed living in this secluded area. Many of them were present today to voice their concern. He said they were not aware that Mr. Hadley wanted to change his plan as originally submitted. They felt the subdivision as proposed would devalue their property. Mr. Herrington said they had no problem with Mr. Hadley wanting to protect his children, but the restrictions on the subdivision were clear when they signed their deeds, and they felt Mr. Hadley should also have to adhere to the restrictions.

Pat Kilpatrick, 4058 Leroy Stevens Road, stated that he purchased 10 acres of land in 1965 before Leroy Stevens Road was a road. They were restricted to 2 1/2 acre lots, and the residents had all adhered to those restrictions. Mr. Kilpatrick was concerned what would happen to the neighborhood if this property is broken up into house trailer size lots amongst estate size lots and estate size homes. He asked that the Commission reject Mr. Hadley's proposal and retain the character of their neighborhood. The residents had invested a great deal of money out there and they did not want to see the area changed.

Virginia Roundtree, a resident of 8035 Hilltop Street, said she was the neighbor of the proposed Hadley Subdivision. Ms. Roundtree asked that the members of their subdivision who had come today to protest, to stand. (A large contingent of people stood.) Ms. Roundtree also submitted a list of names, addresses, telephone numbers and additional letters from people in the neighborhood who were opposed to the

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proposed subdivision. As evidenced by those present, Ms. Roundtree said the opposition was both strong and widespread, and for good reason. First, she said the subdivision of the property into very small lots as proposed would be totally out of character with everything in this area. Secondly, the subdivision would violate one of the restrictive covenants on the property and would set a precedent and make it much easier for the next person who wanted to break the restrictive covenants and to violate the character of the neighborhood. Ms. Roundtree stated that all of the lots in this subdivision were estate size lots, and the proposed Hadley Subdivision with lots of 100' x 150' would definitely be out of character with all the lots in the area. Ms. Roundtree said they purchased their homes and lots in this area because this was the kind of setting they wanted to live in. They wanted space around them, and did not want their homes jammed up next to another house. They wanted peace, quiet and privacy, which their large lots had provided. She said they were willing to pay a higher price for such a setting. They developed and maintained these larger lots and paid higher property taxes. The residents had invested their life savings and years of hard work to establish the neighborhood as it is, and they felt the Hadley Subdivision threatened all of that. It would violate the restrictive covenants of the property, which are: (1) No dwelling shall be built on fewer than 2 1/2 acres; (2) No trailers or temporary buildings are permitted; (3) A dwelling must have a minimum of 1500 square feet of living area. Ms. Roundtree said Hadley Subdivision was a flagrant violation of the first covenant. The Hadley lot is 4.2 acres, and it could not be divided at all to be in compliance with the restrictive covenants. Ms. Roundtree said Mr. Hadley knew the rules when he purchased his property. She suggested that if he wanted to live in an area with a high concentration of houses he should sell his property and move to such a development. Ms. Roundtree said the residents all value the restrictive covenants and have honored them. For most of them, that was the reason they bought in the area. The estate size lots and the spaciousness were perhaps the most appealing characteristics of their neighborhood. Ms. Roundtree said they were here today to plead with the Commission to reject Hadley Subdivision, because if approved, it could well be the beginning of the ruin of their neighborhood as they know it, and as they have worked for a large part of their lives. It would infringe on their rights to enjoy their property as they have and hope to in the future.

Mr. Miller complimented the residents of this subdivision for their activism in this matter. He said citizen input was very important to the Commission, and they would certainly consider their comments and their presence today, and would remember it when the application is heard in the future.

After discussion a motion was made by Mr. Plauche and seconded by Mr. Miller to holdover this application until the February 1, 2007 meeting, at the applicant's request.

The motion carried unanimously.

**Case #SUB2006-00306**  
**Rangeline Road Subdivision**  
5064 Rangeline Road

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(West side of Rangeline Road at Downey Drive, extending to the North side of Downey Drive Extension right-of-way [to be vacated]).  
7 Lots / 4.1± Acres

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

Mr. Plauche asked if there was anyone present in opposition to the proposal.

Bob Mathis, a resident of 5070 Rangeline Road, stated that his property was adjacent to the proposed subdivision. Mr. Mathis pointed out that the subject property was on a canal. He said his property was flooded with 22 inches in Jorges and four feet of water in Katrina. The subject property was at least three feet lower than his property, and if it was developed they would have to raise it up to seven feet, and this would put a flood stage on his house most any time. Mr. Mathis said he did not think the developer knew that the subject property was low land. He said he had copies of a Cease and Desist Order from the Corps of Engineers that had been sent to Audubon Investment. (He submitted copies to the Commission.) Mr. Mathis said the developer had cut all the property and gone in with a track hoe before they received a call from the Corps of Engineers to stop. But they did not stop until they got this Cease and Desist Order. He said he and his neighbors fish in the canal, but while the developers were digging they could not fish because the water was muddy in the canal and they dug a deep hole on the side of the canal so their property would drain into this deep hole to make a catch basin. Mr. Mathis said the Corps of Engineers and the environmentalists were on top of this now, and he asked the Commission not to approve anything until they had a chance to do their work.

Mr. Plauche thanked Mr. Mathis for bringing this matter to the Commission's attention.

Rick Twilley, with Audubon Investments, stated that this property was not in a wetlands area. He said there was an adjacent easement running up one side, and they were simply taking that easement out and realigning the properties where they front Rangeline Road. Mr. Twilley said the Corps had contacted them about that, and they had stopped, but it was not a wetlands area. He said they had a report being written at this time on that.

Mr. Vallas asked Mr. Twilley if he would have any problem with the Commission holding over this application until they got some correspondence back from the Corps that their requirements had been met.

Mr. Twilley said that would be no problem.

After discussion a motion was made by Mr. Vallas and seconded by Mr. Turner to holdover this application until the February 1, 2007 meeting so that the applicant can provide additional information to the Planning Section of Urban Development

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regarding the presence of wetlands on the site, as determined by the U.S. Army Corps of Engineers.

The motion carried unanimously.

**Case #SUB2006-00299**

**River Oak Estates Subdivision**

3700 Rochelle Lane

(East terminus of Rochelle Lane at the South terminus of Lipscomb's Landing [prescriptive right-of-way], and extending East to Moore Creek and South to an unnamed drainage canal).

11 Lots / 33.8± Acres

Jerry Byrd, Byrd Surveying, was present on behalf of the applicant. Regarding condition #2 of the staff's recommendation that the island and wetland areas also be labeled as common area, Mr. Byrd stated that the owner would like to convey that island to Lot 2 and let them be the controlling owner. Mr. Byrd said if the wetland areas were labeled as "common area", it would divide the lots 4, 5, 6 and 7 into two lots. He said the wetlands, if the owner desired, could be mitigated. He said they would more than likely build a small pier through that to get out to the water. On Lot 9, Mr. Byrd said they would not want to restrict that against any future use by labeling it "common area". The same comments would also apply to the wetlands/common area in condition #3.

Mr. Plauche said he was not clear as to what Mr. Byrd was asking.

Mr. Byrd said the applicant did not mention that the island and the wetlands area be labeled "common areas". He said they do not want that, but that is what the staff had recommended.

Mr. Olsen said he thought Mr. Byrd was requesting that conditions #2 and #3 be deleted.

Mr. Byrd said they did not want to delete all of #3. They could then remain in their natural state, unless they were mitigated. But the area adjacent to the north property line could be maintained by the property owners association, which is what they had intended.

Mr. Watkins asked, from a legal perspective, if there was some way it could be noted on the plat that Lot 2 becomes the island, or should the plat show Lot 2-A and 2-B.

Mr. Byrd said that actually the lot line had to stop at the shore line, which was normal. The property line was actually the center of that canal that it goes through. Those lot lines, therefore, will be dog-legged around the island and the rest of them will continue on to the property line.

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Mr. Olsen noted that they would not want the lots labeled 2-A and 2-B, as that would indicate 2-B could be sold separately from 2-A.

Ms. Deakle said she assumed whoever purchased Lot 2 would not have any liability for that island out there.

Mr. Olsen said that was correct.

Ms. Deakle said she did not understand why they did not want Lot 9 labeled as "common area" since they were going to build a walk pier, which she understood would be a common area.

Mr. Byrd said the walk pier would probably be up on Lots 4, 5, 6 and 7 to get to the waterfront. There would be room along the bank to erect a small dock there to bring a boat in. You could actually do the same thing along the north line of Lot 9. Lots 10 and 11 were going to have to build a pier through it to get out to Moore Creek. Lot 9 could go along it. That would be the shortest distance. Mr. Byrd said he actually thought the owner was planning on holding Lot 9 in their ownership right now.

There was no one present in opposition.

Mr. Watkins said he would agree to deletion of requirement #2, but he was not sure he understood condition #3.

Mr. Olsen explained that condition #3 should read: Placement of a note on the final plat stating that the common area adjacent to the north property line shall be maintained by the property owners association".

After discussion a motion was made by Mr. Watkins and seconded by \_\_\_\_\_ to approve the above referenced subdivision subject to the following conditions:

- 1) **labeling of each lot with its size in square feet, or provision of a table on the plat with the same information;**
- 2) **placement of a note on the final plat stating that the common area adjacent to the north property line shall be maintained by the property owners association; and**
- 3) **the approval of all applicable federal, state and local agencies.**

The motion carried unanimously.

**Case #SUB2006-00303**  
**Pecan Grove Place Subdivision, Phase Two**  
West terminus of Pecan Grove Drive.  
15 Lots / 9.8± Acres

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

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recommendations.

There was no one present in opposition.

After discussion a motion was made by Mr. Turner and seconded by Mr. Miller to approved the above referenced subdivision subject to the following conditions:

- 1) the placement of a note on the Final Plat stating that Lot 2 (corner lot) is limited to one curb-cut, with the size, design and location to be approved by County Engineering;**
- 2) provision of a certification letter from a licensed engineer to the Planning Section of Urban Development, certifying that the stormwater detention, drainage facilities, and release rate comply with the City of Mobile stormwater and flood control ordinances prior to the signing and recording of the final plat;**
- 3) labeling of all lots with size in square feet, or provision of a table with the lot size information on the plat;**
- 4) the approval of all necessary federal, state and local agencies; and**
- 5) placement of a note on the Final Plat stating that any lots which are developed commercially and adjoin residentially developed property must provide a buffer, in compliance with Section V.A.7. of the Subdivision Regulations.**

The motion carried unanimously.

**Case #SUB2006-00310**

**Colleton Place Subdivision**

8101 Howells Ferry Road

(South side of Howells Ferry Road at Harvey Hill Road).

148 Lots / 46.6± Acres

Mr. Plauche stated that this application was recommend for holdover, but if anyone was present who wished to speak they could do so now.

Matt Orrell, Polysurveying, was present on behalf of the applicant. Mr. Orrell said this subdivision had been submitted previously with quite a number of lots, and they had sent a letter to Urban Development justifying the innovative design. Mr. Orrell said they did not get the staff report, as it was not posted until late probably due to the holidays. He had given a letter to Mr. Olsen, however, before today's meeting justifying the innovative design. He felt that the report on this subdivision clearly indicated that it was an innovative subdivision. Mr. Orrell said they had no problems with the recommendations as listed in the staff report. He requested that the Commission go ahead and act on this application today since Mr. Olsen does have the letter stating that it is an innovative subdivision.

Mr. Olsen said he was not aware of a letter that was sent before the one he received

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prior to the meeting today. He said the staff had not had a real opportunity to go into detail and read the letter. As far as coming up with exact recommendations, Mr. Olsen said there were a list of things for the applicant to undertake for the revised plat. He was not sure that there would be additional conditions that the staff would recommend. At a minimum, if not February 1<sup>st</sup>, he said he would at least like to see this held over to the January 18<sup>th</sup> meeting to give the staff an opportunity to review it, knowing that they are intending for it to be an innovative subdivision, so they could make sure they had adequate conditions.

Mr. Orrell agreed to a holdover.

After discussion a motion was made by Mr. Plauche and seconded by Mr. Miller to holdover this application until the January 18, 2007 meeting to allow the staff time to review the additional documentation provided.

The motion carried unanimously.

**NEW SIDEWALK WAIVER APPLICATIONS:**

**Case #ZON2006-02662**

**Ladas Land & Development, Inc.**

3451 Springhill Avenue

(Southwest corner of Springhill Avenue and West I-65 Service Road North).

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

Mr. Plauche recused from discussion and voting in this matter.

Mr. Watkins asked if the applicant was present in this matter. There was no response.

There was no one present in opposition.

Mr. Watkins noted that the sidewalk waiver was recommended for approval by the staff.

After discussion a motion was made by Mr. Vallas and seconded by Mr. Holmes to approve this request.

The motion unanimously carried.

**Case #ZON2006-02690**

**Cottage Hill Baptist Church**

4255 Cottage Hill Road

(Southeast corner of Cottage Hill Road and Demetropolis Road, extending Southward to Thigpen Drive South).

Request to postpone construction of sidewalks along Cottage Hill Road, Demetropolis Road, and Thigpen Drive South, until building renovations are complete.

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

Mike Breland was present representing the applicant. Mr. Breland explained that this sidewalk requirement was put on Phase 2 of a four-phase master plan, which he had spoken to Mr. Olsen about and had since submitted their complete master plan for Planning Approval and PUD approval. He said they had been involved in constructing Phase 2 for about 18 months, and were probably about a month away from being complete. This sidewalk requirement would fall into construction areas of subsequent phases. While he understood that it had been recommended that the sidewalks be installed by January 4, 2009, he asked that they be allowed to review it at that time because he could not say that they would be complete with construction in two years.

There was no one present in opposition.

Mr. Miller stated that he did not think the Commission should grant this in perpetuity. He asked if there was a way they could require compliance within a reasonable amount of time.

Mr. Watkins asked Mr. Olsen if the staff had a subdivision approval process that alerts them when an extension is needed.

Mr. Olsen said the staff does not automatically notify the applicant that an extension is required. That was the applicant's responsibility.

Ms. Deakle thought he wanted it waived because construction was going on and he did not want to run over his new sidewalks and break them up. She noted that if the Commission does not give him an extension he cannot get a C.O. on the buildings that he is building, because you have to have a sidewalk to get a C.O. She asked if that was not correct.

Mr. Olsen said he would be able to obtain a temporary C.O. If the Commission granted the waiver outright, they would be able to get a permanent C.O. If it were only for a period such as two years, then the staff would work with them for a temporary C.O. or something to that effect.

Ms. Deakle felt it would be a better solution to get a temporary C.O. than trying to do a written agreement that they would install the sidewalk by 2009.

Mr. Vallas said they would have to post a bond.

Mr. Watkins said the City had done that.

Mr. Olsen said yes, the City had accepted a bond for a certified check.

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Mr. Lawler said he had done that maybe three or four times in the last 10 years, but it was certainly available.

After discussion a motion was made by Mr. Holmes to approve this request for postponement of installation of the sidewalk along Cottage Hill Road, Demetropolis Road, and Thigpen Drive South until January 4, 2009, but require a bond that it be built during whatever time the staff says, but be sure it is done.

In further discussion Ms. Deakle said that the developer could not get permanent financing on this if they have a temporary sidewalk waiver. The sidewalk would have to be constructed before they could get a C.O.

Mr. Watkins said he would like to second the motion, but they had to figure out how to post a bond.

Mr. Lawler said there was no magic language. They just had to pick an amount.

Mr. Holmes said they should work with the City as to the amount.

Mr. Watkins said he would second Mr. Holmes' motion if he would amend it making it subject to the immediate submission of a performance bond in an amount sufficient to cover the construction of the sidewalks, to be determined by City Engineering.

Mr. Holmes amended his motion that this request for postponement of installation of the sidewalk along Cottage Hill Road, Demetropolis Road, and Thigpen Drive South be approved until January 4, 2009, subject to the immediate submission of a performance bond in an amount sufficient to cover the construction of the sidewalks, to be determined by City Engineering.

Mr. Watkins seconded the motion.

Mr. Watkins further stated that if they build it within the two years, the City can release the bond. If they do not build it within two years, they would need to replace the bond.

There being no further discussion, Mr. Plauche called for the vote.

The motion carried unanimously.

**NEW PLANNED UNIT DEVELOPMENT APPLICATIONS:**

**Case #ZON2006-02683**

**McCrary Storage**

4057 Moffett Road

(South side of Moffett Road at Pine Grove Avenue).

Planned Unit Development Approval for multiple buildings on a single building site.

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Mr. Plauche 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 Mr. Miller and seconded by Mr. Turner to approve this plan subject to the following conditions:

- 1) **compliance with the tree and landscaping requirements of the Zoning Ordinance to be coordinated with Urban Forestry, and to reflect the amount of new construction proposed, with full compliance ultimately required as the site is incrementally redeveloped;**
- 2) **compliance with Engineering comments (*Verify existing detention has capacity and functionality to replace existing gravel with additional parking and a building. Must comply with all storm water and flood control ordinances. Any work performed in the right-of-way will require a right-of-way permit.*);**
- 3) **the provision of a buffer, in compliance with Section 64-4.D.1. of the Zoning Ordinance, where the site adjoins residential zoning; and**
- 4) **full compliance with all other municipal codes and ordinances, with the exception of the sidewalk requirement.**

The motion carried unanimously.

**Case #ZON2006-02664**

**Sophia's Landing Apartments, Ltd.**

1400 Azalea Road

(West side of Azalea Road, 730'± North of Halls Mill Road).

Planned Unit Development Approval to allow an 8-building, 60-unit apartment complex on a single building site.

Mr. Plauche asked if the applicant was present in this matter. There was no response.

There was on one present in opposition.

After discussion a motion was by Mr. Miller and seconded by Mr. Turner to approve this plan subject to the following conditions:

- 1) **the provision of a protection buffer along the West side property line in compliance with Section 64-4.D if the adjacent property is developed as Single-Family residential; and**
- 2) **full compliance with all municipal codes and ordinances.**

The motion carried unanimously.

**NEW PLANNING APPROVAL APPLICATIONS:**

**Case #ZON2006-02658**

**Hall-McCormick & Associates, PC**

3100 Cottage Hill Road

(North side of Cottage Hill Road, 540' ± West of Bel Air Boulevard).

Planning Approval to allow for a 120-student Technical College in a B-1, Buffer Business District.

Mr. Plauche 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 Mr. Miller and seconded by Mr. Turner to approve this plan.

The motion carried unanimously.

**NEW ZONING APPLICATIONS:**

**Case #ZON2006-02684**

**David Roberts**

201 South University Boulevard

(Southeast corner of South University Boulevard and Sunset Drive South).

Rezoning from R-1, Single-Family Residential District to B-1, Buffer Business District, to allow an insurance office.

It was noted that this application was recommended for denial.

Don Williams, Williams Engineering, was present on behalf of the applicant. Mr. Williams stated that this property was very near Airport Boulevard, and the staff had recommended denial. He said the applicant proposes to use the site for an insurance company office. He proposes to construct a residential type single-story structure that would be comparable in looks and to scale with the rest of the neighborhood. He noted that several years ago the property to the immediate south of this site was rezoned B-1 for a chiropractor's office. They built a very residential type building and it seemed to fit in very well with the neighborhood. The parking was behind the building, so it looked very much like a residence from the road, although there was a little bit of asphalt in front of the building for handicapped parking. Mr. Williams said his client planned to do a very similar type situation, but they would put all of the parking in the back yard. Access would be off of Sunset Drive, which is the residential street. He said their traffic would have to pass the corner lot that is catty-corner to them directly across from Sunset Boulevard from them. Due to the way the houses are arranged, however, traffic would not have to go in front of any other residential property. Putting all of the parking, including handicapped, to the rear of

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the building would allow them to put grass in the front so it would look very much like a residence. The entrance would be at the back of the building. Mr. Williams said this would also allow them to have a 10-foot buffer between their property and the property to the east, and would allow them to continue the landscaping and fencing that was already in place on that property next door. They could also kind of close in that front entrance with some more landscaping so they would just get the two-way traffic which would be the minimum for commercial. Mr. Williams said they felt this was an appropriate step-down for the buffer. Referring to the sketch showing the general land use, he pointed out that they were directly across, and half way in front of a residence and half way in front of a bank on the corner of University and Airport. They were actually on a service road, which they felt was a whole lot better situation for traffic management than some of the other properties that were directly off of University Boulevard. Their traffic would be a lot slower than the normal situation being directly on University Boulevard. They felt the step down to the neighborhood would be a continued accomplishment by stepping down from the B-2 of Barnhill's and Super Lube, down to the chiropractor, down to their insurance agency. He noted that the previous use of this property was for a day care center, which did not go well when they tried to expand. That house had been demolished and it was a vacant piece of property. They felt that a house for residential purposes would not really function well there because of the noise and the traffic. Mr. Williams noted that the house on the corner directly across from this site faced University, but all of the other houses faced Sunset, so they did not think they were intruding well into the neighborhood. He said being on corner lot gives them an opportunity to put a street marker, if the neighborhood so desires, on their property that would actually help enhance and define that neighborhood. There was no existing marker there now that indicates the entranceway to the subdivision. They also felt the security aspect would be helped as there would be somebody there during the day to watch the houses, and somebody there at night to watch the insurance agency, which they feel was a very good co-existence of B-1 with residential right next door.

There was no one present in opposition.

In deliberations session Mr. Vallas said he would like to move for approval and asked the staff to create some recommendations. He said he would like to include a common area or landscaped area for the subdivision to put a marquee for the neighborhood. Mr. Vallas said he drove by the site and saw the chiropractor's office, and he could not imagine that a residential structure would be better suited for this little parcel.

Mr. Olsen said since the staff had recommended denial, they would need some time to come up with some recommendations if the Commission wanted to approve the rezoning.

Mr. Holmes moved for a holdover.

In further discussion Mr. Vallas asked if anyone else just opposed the B-1 use. He noted that it adjoined a B-1 use, and there was a restaurant next to that which was B-3.

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Mr. Miller agreed, but was concerned that this would cause a domino effect, and the next time someone may want to go across Sunset Drive.

Mr. Vallas said they could make the argument that Sunset Drive was the natural boundary.

Mr. Miller agreed with Mr. Olsen that a holdover would be a wise idea.

Mr. Vallas withdrew his motion and seconded Mr. Holmes' motion to holdover this application until January 18<sup>th</sup> to give staff time to develop conditions for possible approval.

The motion carried unanimously.

**Case #ZON2006-01380**

**Tommy Brooks**

North side of Howells Ferry Road, extending North to Garrow Avenue, and West to Erdman Avenue.

Rezoning from R-1, Single-Family Residential District to B-1, Buffer Business District, to allow a real estate office.

Tommy Brooks, owner of the subject property, was present.

Harvey Dinkins, 6900 Howells Ferry Road, said he was the proposed developer of the property. Mr. Dinkins noted that the application was recommended for denial. They had not received any information from the staff and wanted to know the reason for that recommendation.

Mr. Olsen stated that there were several reasons for denial listed in the staff report. The first was that the Ordinance requires a reason for rezoning of the property that has to be specific to either there being a manifest error in the map, that there are changing conditions in the particular area that make rezoning necessary, that there is a need to increase the number of sites available for business, and the subdivision of land into building sites makes reclassification necessary. Mr. Olsen said there was no documentation submitted to support any of those reasons for rezoning. In addition, the site did not meet the minimum size guidelines for establishment of a new free-standing commercial district. The nearest commercially zoned property was approximately a half mile away, and it would basically constitute spot zoning in the middle of a residentially zoned area. Mr. Olsen said there were other issues with the site plan, but a rezoning not being site-plan-specific, that was really not addressed in the staff report in any great detail.

Mr. Plauche wondered if it might be better for the applicant to request a holdover so they could get with the staff and discuss this more.

Mr. Dinkins said he had dialoged with the staff. They had been down there six times

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trying to address the issues. They also met with 12 department heads trying to determine what the problems were and thought they had addressed them at that time. Mr. Dinkins said he had been a real estate appraiser for 25 years. He did not want to do anything to hurt a community, but said this property was not suitable for residential use. This was the hardship. It was not feasible for a residential site. That was the problem they have had in trying to sell the property, and he told Mr. Brooks he would buy the property if it could be rezoned.

Mr. Vallas asked if the subject property had always been an island like it was now. Had it always had right-of-way on all three sides, or did some change in road construction create that?

Mr. Olsen said there had not been any recent change in road construction in the area that the staff knew of.

Mr. Vallas said he understood spot zoning, but this was literally a spot in the middle of the right-of-way and he could not imagine someone building a house in the middle of that.

Mr. Watkins said this looked to him like a prime example of hardship in the topography of this land that you would go to the Board of Zoning Adjustment to request a use variance because of the setting of it being in this triangle, rather than coming to the Planning Commission to request a zoning change which is forever. He said given the situation that this lot is centered in the middle of a big residential parcel, for this Commission to approve a rezoning would go against everything in the Ordinance with respect to spot zoning. In order for the Commission to rezone the property there has to be justification for it set out in the Ordinance, as stated previously by Mr. Olsen.

Mr. Dinkins said Mr. Brooks would agree to request a variance from the Board of Zoning Adjustment.

Asked if the applicant should request that this application be withdrawn, Mr. Olsen said it probably would be best to withdraw the application. He said if the Commission was to deny it and the City Council upheld the denial, the applicant would not be able to resubmit an application to this Commission if they chose to for at least six months.

It was asked if the applicant could go right to the Board of Zoning Adjustment if he withdrew the application today.

Mr. Olsen said the deadline for filing an application for the next Board of Zoning Adjustment meeting was next Tuesday. That would be for the March meeting, since the deadline had already passed for the February meeting.

Mr. Plauche said a holdover was possible if that was what they preferred.

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Mr. Plauche asked if there was anyone else who wished to speak in this matter.

Robert F. Hill, a resident of 6600 Howells Ferry Road, stated that he owned all the property across Garrow from the subject property. He said the corner two lots was the site of the former residence. He gave his son-in-law two lots and he owned all the rest of it, indicating on the plat. Mr. Hill said the reason the subject property was like this was because when the County built Howells Ferry Road they did not line the roads up. Howells Ferry Road used to come like it is and turn down Erdman and go to Garrow. Garrow was Howells Ferry Road. They did not straighten the curve, but made it worse, and ruined Mr. Brooks' property. Mr. Hill said they built the road in 1950 and it had been a thorn since then. He said he hated that Mr. Brooks was stuck with a piece of property like this, but pointed out that all of this area was residential and the residents were opposed to any business of any type going in this neighborhood. He said it was a half mile to the nearest business. Mr. Brooks was building a house right behind the subject property, and his son was planning to build a house next to his. Mr. Hill said if he had the money he would buy the property from Mr. Brooks and that would be the end of it, but he felt he would want more for the property than what it was worth. He emphasized that he was opposed to the rezoning because this was strictly a residential area. There was a church across the street, but Mr. Hill said if he had his way the church would not even be there, although he would never speak against the church. He said it took away from the neighborhood because it was a quiet neighborhood, except for Howells Ferry Road, which was ridiculous. He said he could deal with a house on this site, but questioned whether or not it was big enough for a business if it was not big enough for a house. A business would have to have parking.

Buck Roden stated that he owned property across the street from the subject property. He noted that Howells Ferry Road was already very busy, and the property was at a very congested intersection. He did not see how a business would help the area. He noted that one gentleman was killed a few months ago right in front of the church. Mr. Roden said he was also interested in buying the land if the price was right.

Mr. Hill further stated that he and his wife owned the property across the street from the subject property but was not notified of the hearing. He asked that they be put on the mailing list if this comes up again. If it had not been for the zoning sign that was put up on the property, he said he would not have known anything about this hearing, and none of his family or neighbors would have known about it. He said he had talked to everyone in the neighborhood and no one knew anything about it except for the church.

Mr. Plauche asked the resident to identify himself.

He said he was Robert F. Hill.

Mr. Olsen stated that a notice was sent to Robert Frank Hill at 1720 Withers Avenue,

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which was the information provided by the applicant.

Mr. Hill said that was not his, but his daughter's address, and her name was Studell. She did not receive a notice either, nor did any of the other neighbors except for the church. That was how they found out.

Mr. Olsen said he could read the list of the names provided who were notified.

Mr. Plauche said they would ask the applicant to submit a new list.

Mr. Hill said his address was 6600 Howells Ferry Road.

After discussion a motion was made by Mr. Miller and seconded by Mr. Vallas to holdover this application until February 1<sup>st</sup>, at the applicant's request.

The motion carried unanimously.

**GROUP APPLICATIONS:**

**Case #SUB2006-00295 (Subdivision)**

**Golden Glow Farms Subdivision, First Addition, Lot 1, Resubdivision of**

3556 Halls Mill Road

(North side of Halls Mill Road, 930' ± West of West I-65 Service Road South, and extending Westward to Montlimar Creek).

2 Lots / 10.7± Acres

(Also see **Case #ZON2006-02636 (Rezoning) -Carol J. Pugh** -3556 Halls Mill Road - below; and **Case #ZON2006-02637 (Planned Unit Development)**

**Carol J. Pugh** - 3556 Halls Mill Road - below; and **Case #ZON2006-02667 (Sidewalk Waiver) - Carol J. Pugh** - 3556 Halls Mill Road - below.)

Matt Orrell, Polysurveying, was present on behalf of the applicant. Mr. Orrell said they did not have any problems with the staff's recommendations except on the sidewalk waiver. He said they understood there was no topographical reason why a sidewalk could not be put in, but they were rezoning it to an industrial zone and contended there would be no pedestrians walking up and down this road. He pointed out that there were no sidewalks within a couple of miles of this property. They felt a sidewalk would be totally unnecessary and requested it be waived.

Mr. Plauche asked if there was anyone else who wished to speak in favor of this application.

Arthur Cross, 854 Azalea Road, was present representing the buyers of the subject property. Regarding the sidewalks, Mr. Cross pointed out that there were pecan trees on the site, which have shallow roots, a sidewalk would need to be five or six feet

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away from the trees so that the roots would not be damaged. If that was done, the sidewalk would be within 18 inches of Halls Mill Road, which he felt would be a very dangerous situation. As Mr. Orrell said, there was not any residential development coming down through there so there would be no one walking up and down Halls Mill Road in this area.

Regarding the statement that the sidewalk would be within 18 inches of Halls Mill Road, Mr. Plauche asked Mr. Cross if that would be 18 inches from the edge of the road or the curb, or what.

Mr. Cross said there was no curb on Halls Mill Road. There was just a white line.

Mr. Watkins asked Mr. Daughenbaugh to address the tree situation.

Mr. Daughenbaugh said that Mr. Cross was correct. The trees would be impacted by installing a sidewalk. Even though the roots were shallow, they would be impacted negatively by putting a sidewalk in and disturbing the root system. There was very little green space where the sidewalk could be built to City standards. Mr. Daughenbaugh said, however, that he felt they could work with the contractor and the City Engineering Department to ramp over the existing root system to where the sidewalk could be put at the existing grade. That would require some fill on the back side as well as the front side. But he felt they could install the sidewalk minimizing the impact to the roots where the trees would survive. Mr. Daughenbaugh said they had done this in other places. He asked if the Engineering Department had any comments on this.

Mr. Plauche asked if the fill would impact the trees.

Mr. Daughenbaugh said it should not impact the trees if they used a sandy soil. He said he was not real clear, however, as to exactly where the right-of-way line was in regards to the existing green space where the trees were located, and asked City Engineering to comment.

Ms. Sawyer said she was not sure either. She asked Mr. Olsen if there was going to be any additional dedication of right-of-way on this project.

Mr. Olsen said he had just noticed that that was not one of the conditions recommended. He noted that Halls Mill Road was a collector street, and with only 50 feet of existing right-of-way there should be a 10-foot dedication required to provide 35 feet from the center line.

Ms. Sawyer said with the dedication, that would provide additional distance away from the edge of the pavement, theoretically, if they keep it away from the trees in question.

Mr. Olsen said that was correct, if the Commission chose to add that dedication

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requirement.

Karen Williamson stated that she was the daughter of Carol Puch and the step-daughter of Austin James Pugh. Ms. Williamson said that Mr. Pugh had been a business owner and responsible citizen, paying his taxes for over 40 years, and she was sure the City had benefited quite well during the time that Austin's Country Palace and the car lot that he owns had been in business. She said her step-father was 76 years old and in poor health and was unable to attend this hearing, so she was speaking on his behalf, as well as his mother's behalf. Ms. Williamson noted that Halls Mill Road was a very busy, two-lane road, heavily traveled by 18-wheelers, delivery trucks, etc. She said she recently took pictures in the area along Halls Mill Road from Nevius Road in the Tillman's corner area down to McVay Drive. As evidenced by the pictures, the road was plagued with open drainage ditches. There were bridges that cross over creeks as well as crossing over the Interstate I-10. There were many wooded areas. Ms. Williamson contended that the area was designed to serve industry and large construction, as well as building projects. She said she had made a list of the businesses in this area, which she submitted to the Commission along with her pictures. She emphasized that there were no family-friendly shopping areas in this area. There were no boutiques, no fast food establishments, no medical facilities, no parks to ply in, no public parking, no schools and no playgrounds. Ms. Williamson contended there was no reason to have pedestrians walking along this business area where commercial and light industry exist. Pedestrians would be placed in danger and would be a liability to the businesses, as well as the City that may be endorsing the walkways next to this dangerous road. She noted that there were other businesses up and down this area that did not have sidewalks. She further pointed out that there were some businesses that sit closer to Halls Mill Road, and considering their closeness and the ditches in the area, it would be impossible to have sidewalks for everyone, and it would serve no purpose to have sidewalks spotted in different area. Mr. Williamson requested that the Commission grant the sidewalk waiver.

Robert Berg, with Berg and Company Real Estate, stated that he owned the property on the south side of Halls Mill Road. Mr. Berg said he had two questions: (1) Have they made any provision for sewer line easement to bring that down to Halls Mill Road.? And, (2) Were they being required to allow for the future widening of Halls Mill Road?

Mr. Olsen stated that the plat does reflect an easement through the property approximately along the rear portion of Lot 1, which he pointed out on the plat, and there was a sanitary sewer easement, which he also pointed out. As far as the future widening of Halls Mill Road, Mr. Olsen said the staff did reference, based on the question by Ms. Sawyer, that they did inadvertently omit that requirement from their recommendation. It was referenced in the staff report, but was not included in the staff recommendation. That should have been included in the staff recommendation.

Mr. Watkins asked how much would be required for the future widening.

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Mr. Olsen said 35 feet from the center line would be required.

Mr. Berg asked why 50 feet would not be required.

Mr. Olsen said this was not a major street. It was a collector street.

Mr. Berg said they had been requiring some others to provide 50 feet.

Mr. Olsen said they had not required 50 feet in recent years. He said it may have been possible that at that point in time when 50 feet was required, Halls Mill Road was on the Major Street Plan. It was not, however, on the Major Street Plan today. It was only a collector street, and the Subdivision Regulations require 70 feet.

Mr. Berg asked if they would then waive the 15 feet they had taken in the past.

Mr. Olsen said the Planning Commission did not have that authority. That would have to go through the vacation process.

Mr. Berg asked Mr. Olsen to give him a little better explanation on the sewer line easement, because it was not shown on the plat.

Mr. Olsen showed Mr. Berg a map that did reflect the sewer line easement, and then a 7 1/2 foot easement along this (indicating on the map) line.

Mr. Berg said he was satisfied, and he hoped they get Halls Mill Road straightened out.

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

- 1) the placement of a note on the final plat stating that a buffer is required, in compliance with Section V.A.7, where the site adjoins residentially zoned property;**
- 2) full compliance with landscaping and tree requirements of the Zoning Ordinance to be coordinated with Urban Forestry;**
- 3) the placement of a note on the final plat stating that any redevelopment of Lot 1 is limited to two curb cuts to Halls Mill Road, and Lot 2 is limited to one curb cut, with the size, location and design of all curb-cuts subject to Traffic Engineering approval; and**
- 4) the dedication of right-of-way sufficient to provide 35 feet, as measured from the centerline of Halls Mill Road, and adjustment of the minimum building setback line to reflect the dedication.**

The motion carried unanimously.

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**Case #ZON2006-02636 (Rezoning)**

**Carol J. Pugh**

3556 Halls Mill Road

(North side of Halls Mill Road, 930' ± West of West I-65 Service Road South, and extending Westward to Montlimar Creek).

Rezoning from R-1, Single-Family Residential District, B-3, Community Business District, and I-1, Light Industry District, to I-1, Light Industry District, to eliminate split zoning and allow a Commercial Business Park.

Matt Orrell, Polysurveying, was present on behalf of the applicant.

(See Case #SUB2006-00295 (Subdivision) -**Golden Glow Farms Subdivision, First Addition, Lot 1, Resubdivision of** - above, for discussion; also see Case #ZON2006-02637 (Planned Unit Development) **Carol J. Pugh** - below; and Case #ZON2006-02667 (Sidewalk Waiver) - **Carol J. Pugh** - below.)

After discussion a motion was made by Mr. Watkins and seconded by Mr. Vallas to recommend this change in zoning to the City Council subject to the following conditions:

- 1) **the provision of a buffer, in compliance with Section 64-4.D.1. of the Zoning Ordinance, where the site adjoins residentially zoned property;**
- 2) **full compliance with landscaping and tree requirements of the Zoning Ordinance to be coordinated with Urban Forestry;**
- 3) **the placement of a note on the final plat stating that any redevelopment of Lot 1 is limited to two curb cuts to Halls Mill Road, and Lot 2 is limited to one curb cut, with the size, location and design of all curb-cuts subject to Traffic Engineering approval;**
- 4) **the submission of a revised PUD plan eliminating the shared access between Lots 1 and 2 by providing a solid curb;**
- 5) **full compliance with all municipal codes and ordinances, including landscaping, tree planting, parking, and buffering, as soon as practicable; and**
- 6) **the dedication of right-of-way sufficient to provide 35 feet, as measured from the centerline of Halls Mill Road, and adjustment of the minimum building setback line to reflect the dedication.**

The motion carried unanimously.

**Case #ZON2006-02637 (Planned Unit Development)**

**Carol J. Pugh**

3556 Halls Mill Road

(North side of Halls Mill Road, 930' ± West of West I-65 Service Road South, and

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extending Westward to Montlimar Creek).  
Planned Unit Development Approval to allow 2 buildings on a single building site with shared parking between 2 building sites.

Matt Orrell, Polysurveying, was present on behalf of the applicant.

(See Case #SUB2006-00295 (Subdivision) -**Golden Glow Farms Subdivision, First Addition, Lot 1, Resubdivision of** - above, for discussion; and Case #ZON2006-02636 (Rezoning) - **Carol J. Pugh** - above; and Case #ZON2006-02667 (Sidewalk Waiver) - **Carol J. Pugh** - below.)

After discussion a motion was made by Mr. Watkins and seconded by Mr. Vallas to approve this plan subject to the following conditions:

- 1) **the placement of a note on the final plat stating that a buffer is required, in compliance with Section V.A.7, where the site adjoins residentially zoned property;**
- 2) **full compliance with landscaping and tree requirements of the Zoning Ordinance to be coordinated with Urban Forestry;**
- 3) **the placement of a note on the final plat stating that any redevelopment of Lot 1 is limited to two curb cuts to Halls Mill Road, and Lot 2 is limited to one curb cut, with the size, location and design of all curb-cuts subject to Traffic Engineering approval;**
- 4) **the submission of a revised PUD plan eliminating the shared access between Lots 1 and 2 by providing a solid curb; and**
- 5) **the dedication of right-of-way sufficient to provide 35 feet, as measured from the centerline of Halls Mill Road, and adjustment of the minimum building setback line to reflect the dedication.**

The motion carried unanimously.

**Case #ZON2006-02667 (Sidewalk Waiver)**

**Carol J. Pugh**

3556 Halls Mill Road

(North side of Halls Mill Road, 930' ± West of West I-65 Service Road South, and extending Westward to Montlimar Creek).

Request to waive construction of a sidewalk along the North side of Halls Mill Road.

Matt Orrell, Polysurveying, was present on behalf of the applicant.

(See Case #SUB2006-00295 (Subdivision) -**Golden Glow Farms Subdivision, First Addition, Lot 1, Resubdivision of** - above, for discussion; and Case #ZON2006-02636 (Rezoning) - **Carol J. Pugh** - above; and Case #ZON2006-02637 (Planned Unit Development) - **Carol J. Pugh** - above.)

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In deliberations session a motion was made by Mr. Watkins to grant this request.

In further discussion, Mr. Watkins said he could understand Mr. Daughenbaugh's comments about the backfill, but he felt it was not right to ask the applicant to spend a lot of money on a sidewalk that was not going to amount to anything.

Mr. Vallas commented that there was no curb in this area. The road had an open shoulder that kind of ran into the area and there were big trucks traveling this road, and he did not feel that pedestrians should be walking so close to Halls Mill Road.

Mr. Vallas seconded the motion.

In further discussion, Mr. Holmes recalled that a precedent had been set several meetings ago when the Commission granted a sidewalk waiver in an industrial area under almost the same exact circumstances.

Mr. Olsen said he was not arguing either way, but just wanted to remind the Commission that at the last meeting there was a Rezoning/PUD/Subdivision in an industrial area at the corner of Halls Mill and Lees Lane on the south side of Halls Mill that provided a sidewalk along Halls Mill, but obtained a waiver along Lees Lane because there was an open ditch with a dramatic drop.

Mr. Daughenbaugh said he wanted to follow-up and point out that with the dedication of the 10 feet - 35 feet from the center line - the tree should not be an issue with the installation of a sidewalk because the sidewalk would actually be put further back than the original survey showed. He said he had a chance to do some more research with Mr. Hoffman, and they looked at the surveying. It showed that the existing trees were pretty much on the property. He said Mr. Cross was right that if the sidewalk was installed right where the trees were, at the base of the trees, it would cause damage and he would not be in favor of installing the sidewalk. The trees, however, were not an issue now since the extra 10 feet was approved in the previous Subdivision, Rezoning, and PUD applications.

There being no further discussion, Mr. Plauche called for the vote.

There were five votes in favor of the motion and one in opposition. The motion carried.

**Case #SUB2006-00305 (Subdivision)  
2402 Government Street Subdivision**

2402 Government Street

(Northwest corner of Government Street and Morgan Avenue).

1 Lot / 0.4± Acre

Mr. Plauche stated that the applicant was present in this matter and concurred with the staff recommendations.

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(Also see **Case #ZON2006-02674 (Rezoning) - T. Bruce MacKinnon** - below.)

Linda Burkett, with Marshall McLeod Professional Land Surveyors, 3169 Midtown Park South, stated that she wanted to make one clarification for her client. Ms. Burkett said her client was only interested in one curb cut on Morgan Avenue, and therefore she understood that he did not necessarily have to make a curb cut on Government Street.

Mr. Olsen said that was correct. That was the maximum he could have. If, however, he did not want one on Government Street, they would have to close both of them on Government.

Ms. Burkett said that was fine. Additionally, she noted that there were two curb cuts on Morgan Avenue. One was blocked by a chain link fence, which they did not plan to use. She asked if that would be sufficient.

Mr. Olsen said no. The apron would have to be removed from the right-of-way and landscaping and curbing installed.

Ms. Burkett asked if there was a sidewalk that would have to be connected.

Mr. Olsen said yes.

Mr. Plauche asked if there was anyone else who wished to speak in this matter.

Kris Enzor, a resident of 2305 Government Street, stated that he was in opposition to this request. She noted that the list of recommendations from the staff was very detailed and desirable for the neighborhood, but she was not certain that their neighborhood needed a B-3 in such a small location. Ms. Enzor said one thing she had heard in listening to other comments was that a zoning change was forever. Once the site was rezoned B-3, it could be used for any use permitted in a B-3 district. She also noted that one of the staff's comments was that this was a .4 acre site, and normally B-3 requires four acres. Although he felt the requirements of the staff recommendations would be improvements to the area, she felt B-2 was probably the best zoning for the site.

Mr. Plauche asked Mr. Olsen to comment about the size of the site.

Mr. Olsen said that in this particular instance, the size of the site does fall well below the minimum guidelines set forth in the Ordinance. A different scenario in this case from the previous application on Halls Mill Road is that there are, and have been over recent years, rezonings in this area to B-3, establishing a trend. He indicated two sites on the site plan that were rezoned to B-3 within the last two years, as well as several other B-3 properties. Mr. Olsen explained that the site currently had a non-conforming B-3 status because it had been used, unless it had been vacant for more

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than two years, for car sales, which was a B-3 use. For the conditions to be applied to this property, therefore, the only way they would be applicable is if the property were rezoned.

Ms. Enzor further commented that she wondered if the applicant should apply for a variance, rather than requesting a rezoning. Also, even though she could not find where it was zoned B-3 in the past, she did know that many years ago it was used for car sales.

Mr. Olsen said that if it had been longer than two years, the non-conforming status had expired.

Regarding his point made earlier on another application, Mr. Watkins said that the Board of Adjustment usually looks at something with respect to a hardship. In this case, however, he was not sure that this would qualify as any particular kind of hardship.

Mr. Plauche asked if the applicant would like to respond.

Ms. Burkett said the applicant has always been aware of the neighborhood comments. In this case, however, she pointed out that this applicant had taken several properties in the area and improved them. This was a mixed use community, which she said was supposed to be what they were working toward in the downtown and midtown area, with homes nearby and places to eat nearby that people could walk to. Ms. Burkett also noted that there was a park across the street, which the applicant headed up the organization to put the park in the neighborhood, and he had also improved several properties in this area. She said the subject property had been used for all sorts of things, some of which had attracted some traffic that was not very favorable for the neighborhood. She said the applicant had made a commitment to improve other properties in the area, and because the recommendations were a litany of improvements, she felt the Commission would hold him to that. She said he would have to work with Urban Forestry to come up with some rather creative ideas for green space, which he was willing to do to improve and beautify this property to accommodate B-3.

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

- 1) **placement of a note on the final plat stating that the site is limited to one curb-cut onto Morgan Avenue and one curb-cut onto Government Street, and denied access to the adjacent alley, with the size, design and location to be approved by ALDOT and Traffic Engineering, and conform to AASHTO standards for any new curb-cut construction;**
- 2) **revision of the 25-foot minimum building setback line to reflect the future right-of-way of Government Street (100-foot total width, or 50-**

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- feet as measured from the centerline); and  
3) **full compliance with all other municipal codes and ordinances.**

The motion carried unanimously.

**Case #ZON2006-02674 (Rezoning)**

**T. Bruce MacKinnon**

2402 Government Street

(Northwest corner of Government Street and Morgan Avenue).

Rezoning from B-2, Neighborhood Business District, to B-3, Community Business District to allow Used Automobile Sales.

Mr. Plauche stated that the applicant was present in this matter and concurred with the staff recommendations.

For discussion see **Case #SUB2006-00305 (Subdivision) - 2402 Government Street Subdivision** - above.)

After discussion a motion was made by Mr. Miller and seconded by Mr. Turner to recommend this change in zoning to the City Council subject to the following conditions:

- 1) **completion of the Subdivision process;**
- 2) **the site is limited to one curb-cut onto Morgan Avenue and one curb-cut onto Government Street, and denied access to the adjacent alley, with the size, design and location to be approved by ALDOT and Traffic Engineering, and conform to AASHTO standards for any new curb-cut construction;**
- 3) **removal of one curb-cut onto Morgan Avenue and one curb-cut onto Government Street, and replacement of the concrete with curbing and grass, with appropriate permitting;**
- 4) **compliance with the tree and landscaping requirements of Section 64-4.E. of the Zoning Ordinance;**
- 5) **revision of the 25-foot minimum building setback line to reflect the future right-of-way of Government Street (100-foot total width, or 50-feet as measured from the centerline);**
- 6) **provision of a site plan to the Planning Section of Urban Development depicting any required parking, dumpster locations, landscaping, etc.;**
- 7) **provision of a letter to the Planning Section of Urban Development indicating if the site contains an oil separator, if car washing is undertaken as a primary or accessory use to auto sales;**
- 8) **provision of residential adjacency buffers where the site abuts existing residential uses; and**
- 9) **full compliance with all other municipal codes and ordinances.**

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The motion carried unanimously.

**Case #SUB2006-00274 (Subdivision)**

**Springhill Food Mart Subdivision**

1507 Springhill Avenue

(South side of Springhill Avenue, 70'± East of North Catherine Street).

1 Lot / 0.9± Acre

Mr. Vallas recused from discussion and voting in this matter.

(Also see **Case #ZON2006-02614 (Rezoning) - Marianna Mobil, LLC** - below.)

Jerry Byrd, Byrd Surveying, was present on behalf of the applicant. Mr. Byrd request that the #2 condition in the staff recommendations on both the Subdivision and Rezoning applications be deleted. He explained that this site was already developed with an office building and paving. The office building had operated in the past with access to Catherine Street and apparently did not create major problems at that time. He also noted that there were two existing entrances on Springhill Avenue, however, they were proposing only one curb cut to Springhill Avenue, which was indicated on their site plan. Mr. Byrd said the denial of access to Catherine Street would probably prohibit traffic flow into and out of this site due to the traffic flow on Springhill Avenue, a major artery. He felt it would be almost impossible to turn going out on Springhill Avenue. A Catherine Street access would allow traffic to exit the site and go north to the traffic light at Springhill Avenue, which would allow a right turn onto Springhill or allow traffic to continue north on Catherine Street. Left turns from Catherine Street west onto Springhill Avenue, however, were prohibited. He felt this would help in the flow of traffic in and out of the site. Mr. Byrd further stated that the applicant had met with the staff of the Historic District Board, and felt they could work with them on the conditions they raised at that time. They will meet with the Historic Board on Monday. Mr. Byrd explained that the 50' x 70' tail end on the south end of the property was zoned B-1, and they were requesting B-2 to eliminate split zoning.

Roy Wiggins, with Marianna Mobile, stated that they currently had the property under contract and they were the developers of the proposed convenience store to be located on the site. Mr. Wiggins pointed out the dashed line that goes across the back of the site was the historic district line. He said they could have developed the property, but they would have given up the curb cut on Catherine, and they felt like that was important. He said they were definitely willing to work with the historic district to get it put back in.

In deliberations session Mr. Miller asked how the staff felt about the Catherine Street access.

Mr. Olsen said the staff recommendation for the denial of access to Catherine street was based predominantly on the fact that the majority of Catherine Street in this area

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was developed residentially. While some of the property may be zoned B-1, they were developed, or occupied, residentially. He said the existing access to Catherine Street was for an office type development as opposed to the proposed use, which was a convenience store. This use would create potentially higher traffic late at night. The staff could also foresee that there may be a need for it for some access for the customers and possibly even for the truck or tanker that delivers gas to the convenience store. Mr. Olsen said their main concern, however, was that there was existing residential property immediately adjacent to that, and the change of use.

Mr. Watkins asked if there was any way that the buffering could be increased, which would reduce the staff's concern about it adjoining residential property. It would have to meet the landscape requirements. Mr. Watkins said he traveled Springhill Avenue almost every day and was very familiar with the heavy traffic. He felt access to Catherine Street might help the circulation of traffic.

Mr. Olsen said the proposed drive to Catherine Street was 24 feet, which was the minimum that it could be. He suggested the Commission might wasn't to required some type of additional landscaping or minor berm along the south property line.

The possibility of requiring a larger, more substantial additional landscape requirement along the south property line was discussed. Mr. Watkins asked Mr. Williams if he would agree to that.

Mr. Williams said he would agree.

After discussion a motion was made by Mr. Miller and seconded by Mr. Turner to approve the above referenced subdivision approved the above referenced subdivision subject to the following conditions:

- 1) **placement of a note on the final plat stating the site is limited to one curb cut to Springhill Avenue and one curb-cut to Catherine Street, with the size location and design to be approved by Traffic Engineering and ALDOT (for Springhill Avenue);**
- 2) **placement of a note on the final plat stating that a 10-foot vegetative buffer and 6-foot privacy fence is required along the South side of the property where it abuts residential uses; and**
- 3) **completion of the rezoning process prior to issuance of any building permits.**

The motion carried unanimously.

**Case #ZON2006-02614 (Rezoning)**

**Marianna Mobil, LLC**

1507 Springhill Avenue

(South side of Springhill Avenue, 70'± East of North Catherine Street).

Rezoning from B-1, Buffer Business District, and B-2, Neighborhood Business

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District, to B-2, Neighborhood Business District to eliminate split zoning and allow a Convenience Store with gas pumps.

(See Case #SUB2006-00274 (Subdivision) - **Springhill Food Mart Subdivision** - above, for discussion.)

After discussion a motion was made by Mr. Miller and seconded by Mr. Turner to recommend this change in zoning to the City Council subject to the following conditions:

- 1) **completion of the Subdivision process prior to the issuance of any permits;**
- 2) **placement of a note on the final plat stating that a 10-foot vegetative buffer and 6-foot privacy fence is required along the South side of the property where it abuts residential uses;**
- 3) **limited to one curb cut to Springhill Avenue and one curb-cut to Catherine Street, with the size location and design to be approved by Traffic Engineering and ALDOT (for Springhill Avenue);**
- 4) **appropriate approval from the Architectural Review Board; and**
- 5) **compliance with all municipal codes and ordinances, including but not limited to landscaping, tree plantings, signage, sidewalks, and buffering.**

The motion carried unanimously.

**Case #SUB2006-00288 (Subdivision)**

**Persons-Wilkins Subdivision**

South side of Blue Heron Ridge, 660'± East of Skywood Drive.

**Number of Lots / Acres:** 2 Lots / 0.5± Acre

**Engineer / Surveyor:** Rester and Coleman Engineers, Inc.

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

(Also see Case #ZON2006-02615 (Planned Unit Development)

**Persons-Wilkins Subdivision** - below)

There was no one present in opposition.

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

- 1) **revision of the plat to clearly state 35% maximum site coverage for each lot, per the approved PUD;**
- 2) **labeling of each lot with its size in square feet;**
- 3) **provision of a revised PUD site plan prior to the signing of the final plat;**

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**and**

**4) full compliance with all other municipal codes and ordinances.**

**Case #ZON2006-02615 (Planned Unit Development)**

**Persons-Wilkins Subdivision**

South side of Blue Heron Ridge, 660' ± East of Skywood Drive.

Planned Unit Development Approval to allow reduced side yard setbacks in a single-family residential subdivision.

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

(Also see Case #SUB2006-00288 (Subdivision) - **Persons-Wilkins Subdivision** - above.)

After discussion a motion was made by Mr. Miller and seconded by Mr. Turner to recommend the this change in zoning to the City Council subject to the following conditions:

- 1) completion of the Subdivision process prior to the issuance of any permits;**
- 2) placement of a note on the final plat stating that a 10-foot vegetative buffer and 6-foot privacy fence is required along the South side of the property where it abuts residential uses;**
- 3) limited to one curb cut to Springhill Avenue and one curb-cut to Catherine Street, with the size location and design to be approved by Traffic Engineering and ALDOT (for Springhill Avenue);**
- 4) appropriate approval from the Architectural Review Board; and**
- 5) compliance with all municipal codes and ordinances, including but not limited to landscaping, tree plantings, signage, sidewalks, and buffering.**

The motion carried unanimously.

**OTHER BUSINESS:**

**APPROVED:** May 3, 2007

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Victoria Rivizzigno, Secretary

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Terry Plauche, Chairman

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