

**CITY OF DAPHNE
CITY COUNCIL BUSINESS MEETING AGENDA
MARCH 7, 2005**

- 1. CALL TO ORDER**
- 2. ROLL CALL/INVOCATION:
PLEDGE OF ALLEGIANCE**
- 3. APPROVE MINUTES:** February 21, 2005

PRESENTATION: AL Coastal Foundation / Rod Platt

PROCLAMATION: Girl Scout Week

PRESENTATION: Home emergency Lifesaving Pack / James Rudolph

- 4. REPORT STANDING COMMITTEES:**
 - A. FINANCE COMMITTEE** - Scott
 - B. BUILDINGS AND PROPERTY COMMITTEE**- Lake
 - C. PLANNING/ZONING/CODE ENFORCEMENT** - Barnette
 - D. PUBLIC SAFETY/ORDINANCE COMMITTEE**- Burnam
 - E. PUBLIC WORKS COMMITTEE/SOLID WASTE AUTHORITY** - Yelding

5. REPORTS OF SPECIAL BOARDS & COMMISSIONS:

- A. Board of Zoning Adjustments** - Eady
Nomination: Frank Lamb
Re-appoint: Billy Mayhand: Term to expire 2008
- B. Downtown Redevelopment Authority** - Barnette
- C. Industrial Development Board** - Yelding
- D. Library Board** - Lake
Review minutes meeting held February 14th
- E. Planning Commission** - Barnette
Review minutes meeting held February 22nd
Set Public Hearing date for **April 6, 2005** to consider Annexation:
Crystal Springs, L.L.C.
MOTION: 60 day Moratorium
MOTION: Height Variance: Chunchula Energy Corp. / Apalachee Building, Lot #1
- F. Recreation Board** - Burnam
- G. Utility Board** - Scott
Review minutes meeting held January 25th
Review minutes meeting held February 10th

6. REPORTS OF THE OFFICERS:

- A. *Mayor's Report***
 - a.) Parade Permit / Animal Rescue Run / 5K & 1 Mile Fun Run*
- B. *City Attorney's Report***
- C. *Department Head Comments***

7. PUBLIC PARTICIPATION:

Mrs. Karen Nady / Height Variance

8. RESOLUTIONS, ORDINANCES, ORDERS & OTHER BUSINESS:

RESOLUTIONS:

- a.) Prepaid Travel /David Cohen/Bailey Yelding/Cathy Barnette/
Regina Landry..... /Resolution No. 2005-20
- c.) Acceptance of Streets & Drainage /Resolution No. 2005-21

ORDINANCES:

- a.) Fire Prevention Code for the City of Daphne..... /Ordinance No. 2005-07

9. COUNCIL COMMENTS

10. ADJOURN

**CITY OF DAPHNE
CITY COUNCIL MEETING**

ROLL CALL

CITY COUNCIL:

CALL VOTES

COUNCILMAN YELDING

PRESENT__ ABSENT__ __

COUNCILWOMAN BARNETTE

PRESENT__ ABSENT__

COUNCILMAN LAKE

PRESENT__ ABSENT__ __

COUNCILMAN BURNAM

PRESENT__ ABSENT__ __

COUNCILMAN SCOTT

PRESENT__ ABSENT__ __

COUNCILWOMAN LANDRY

PRESENT__ ABSENT__ __

COUNCILMAN PALUMBO

PRESENT__ ABSENT__ __

MAYOR

MAYOR SMALL

PRESENT__ ABSENT__ __

CITY CLERK:

DAVID L. COHEN

PRESENT__ ABSENT__

CITY ATTORNEY:

CITY ATTORNEY JAY ROSS

PRESENT__ ABSENT

MINUTE NOTES:

**CITY COUNCIL MEETING
MINUTES**

NOTES:

COMMITTEE RECOMMENDATIONS

1. CALL TO ORDER

Council President Burnam called meeting to order at 6:30 P.M.

2. ROLL CALL/INVOCATION/PLEDGE OF ALLEGIANCE

COUNCIL MEMBERS PRESENT: Bailey Yelding; Cathy Barnette; John Lake; Greg Burnam; Ron Scott; Regina Landry; August Palumbo;

Also present: Mayor Small; David Cohen, City Clerk, Rebecca Hayes, Assistant City Clerk; Jay Ross, City Attorney; Tim Fleming; Attorney; Bill Eady, Planning Department Director; David Carpenter, Police Chief; Ronnie Phillips, Building Inspection Director; Sharon Cureton, Human Resource Director; Ken Eslava, Public Works Director; David McKelroy, Recreation Director; Kim Briley, Finance Director; Sandra Morse, Civic Center Director; Mund Hanson, Fire Chief; Dale Foster, Librarian; Capt. Kenny Hanak, Fire Department; Melvin McCarley, Public Works Supervisor; Marge Scott, Public Works; Stephnie Merchant, Assistant to Public Works Director; Scott Hutchinson, City Engineer; Bob Segalla, Utility Board; Al Guarisco Village Point Foundation; Starke Irvine, DRA; Lon Johnston, Utility Board, Willie Robison, BZA.

3. APPROVE MINUTES OF MEETING HELD: February 9, 2005

MOTION BY Mrs. Landry to adopt the minutes of the February 9, 2005 meeting. *Seconded by Mrs. Barnette.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

PROCLAMATION: Recognizing Marge Scott

Sharon Cureton, the Human Resource Director, presented and read a proclamation recognizing Mrs. Scott for her years of service to the city.

PRESENTATION: Introduce People to People Student Ambassadors/Kay Fillingim

Mary Hanson gave an overview of the program. Cindy Brown introduced the students participating in the program.

Mr. Burnam recognized Mr. John Peterson a former Council member.

The Council agreed to send the request that was handed out by Ms. Hanson to the Council to the Finance Committee for review.

4. REPORTS OF STANDING COMMITTEES:

- A. FINANCE COMMITTEE - Scott
 - a.) 2005 Insurance Renewal

MOTION BY Mr. Lake to approve the renewal of the 2005 insurance package submitted by John A. Robertson Insurance. *Seconded by Mrs. Barnette.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

- b.) *Appropriate Funds: / Ordinance 2005-06*
 - 1.) Property & Liability Insurance / \$8,347

- 2.) Police Firing Range / \$1,200
- 3.) Gulf Coast Zydeco Music Festival / \$25,000
- 4.) Storage Building 0 Recreation & Beautification

These appropriations will be considered under Ordinances.

c.) *Prepaid Travel / Ken Eslava / Denise Penry / Tony Cross / Resolution 2005-14*

This is a budgeted item, and it will be considered under Resolutions.

d.) *Approve Paying Registration for City Attorney to Attend the NLC Conference in Washington D.C.*

MOTION BY Mr. Lake to approve payment of the City Attorney's registration fees to attend the National League of Cities 2005, Congressional City Conference in Washington, D.C. March 11-15, 2005. *Seconded by Mr. Yelding.*

AYE *Yelding, Barnette, Lake, Scott, Landry, Palumbo* **NAY** *Burnam*

MOTION CARRIED

e.) *Police Department Credit Card Request / Resolution 2005-15*

This will be considered under Resolutions.

f.) *Cooperative Purchasing Association of South Alabama / Resolution 2005-16*

This will be considered under Resolutions.

g.) *Authorize Retreat Mediator Contract / Bill Hart*

MOTION BY Mrs. Barnette to authorize the Mayor to enter into a contract with Mr. Bill Hart in the amount of \$600 for his services as a meeting facilitator for the Council Retreat to be held on Thursday, February 24, 2005. *Seconded by Mr. Lake.*

AYE *ALL IN FAVOR* **NAY** *NONE OPPOSED* ***MOTION CARRIED***

h.) *Declare Surplus Property: Football Helmets / Resolution 2005-17*

This will be considered under Resolutions.

i.) *Approve Refund: EMC Fire Truck Equipment*

MOTION BY Mrs. Barnette to authorize a refund in the amount of \$5,660 to EMC Insurance Company for equipment removed from a wrecked fire truck. *Seconded by Mrs. Landry.*

AYE *ALL IN FAVOR* **NAY** *NONE OPPOSED* ***MOTION CARRIED***

j.) *Treasurers Report / 1/31/05*

MOTION BY Mrs. Landry to approve the Treasurer's Report as of January 31, 2005 in the amount of \$10,119,625.15. Seconded by Mr. Palumbo.

Mr. Scott said that this is the first time in the history of Daphne that it has gone over the \$10,000,000 mark.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

k.) Review Sales & Use Tax / 12/31/04

Mr. Scott reported that this is another red letter day for the City of Daphne, in that over \$1,000,000 was collected for the first time in the city. The collection was \$1,091,073.78, which is \$196,932.76 over budget. Here to date it is \$511,563 over budget. He stated that they are above in lodging taxes, above what was projected, some of that is the impact of the storm.

B. BUILDING/PROPERTY COMMITTEE - Lake

The minutes for the February 4th meeting are in the packet starting on page 84. There is one request that needs Council action.

MOTION BY Mr. Lake to allow SEEDS to have booth space at the "Gulf Coast Zydeco Music Festival" to benefit all schools in the City of Daphne through the SEEDS organization. SEEDS is Supporting Educational Enrichment in Daphne's Schools, and is non-profit, independent education foundation dedicated to enriching our children's K-12 learning experiences and in turn, the quality of life in our community. SEEDS will be provided booth space at the Festival and allowed proceeds from the following targeted sales and events:

- 1.) Sales of Soft drinks for 2005
- 2.) SEEDS' Gulf Coast Zydeco Festival 5K Race and Community Walk
- 3.) Zydeco Rice Cook-Off
- 4.) Zydeco Music Festival Children's Activities as requested by the Festival

Director and approve by the Mayor

5.) Other fund raising events as requested by the Festival Director and approved by the Mayor;

and donation of three fund raising booths which are non-transferable to the:

- 1.) Village Point Foundation
- 2.) Boys and Girls Club of Daphne
- 3.) Downtown Redevelopment Authority.

Seconded by Mr. Palumbo.

The Council discussed the exclusive sale of soft drinks by SEEDS and the sale of non-alcoholic by other vendors. Mr. Lake reinforced that other vendors would be allowed to sale all types of non-alcoholic beverages with the exception of soft drinks.

AYE Yelding, Barnette, Lake, Scott, Landry, Palumbo NAY Burnam

MOTION CARRIED

PRESENTATION: Sandra Presentation

Mrs. Sandra Morse gave a presentation regarding the Zydeco Festival, playing some Zydeco music and reporting what will take place during the festival, which will be held May 20-21, 2005.

C. PLANNING/ZONING/CODE ENFORCEMENT - Barnette

No report.

D. PUBLIC SAFETY/ORDINANCE COMMITTEE - Burnam

The next meeting will be tomorrow 6:00 p.m. at the Justice Center.

E. PUBLIC WORKS COMMITTEE/SOLID WASTE AUTHORITY - Yelding

Mr. Yelding said there is a motion for the Beautification that needs Council action.

MOTION BY Mr. Yelding that each Council member nominate a member from each district to serve on the Beautification Committee. Seconded by Mr. Lake.

After discussion by the Council, it was agreed to amend the motion to read "appoint a person from each district to serve on the Beautification Committee."

Mr. Yelding amended the motion.

Mr. Lake seconded the amendment.

MOTION BY Mr. Yelding that the Council appoint a person from each district to serve on the Beautification Committee. Seconded by Mr. Lake.

There is not specific terms for this committee, as this is a volunteer group.

AYE ALL IN FAVOR NAY NONE OPPOSED

MOTION CARRIED

5. REPORTS OF SPECIAL BOARDS & COMMISSIONS:

A. Board of Zoning Adjustments -

There will not be a meeting in March.

B. Downtown Redevelopment Authority - Barnette

Mr. Irvine reported that the Authority met last week to discuss old business.

C. Industrial Development Board - Yelding

No report.

D. Library Board - Lake

Mr. Lake reported that the next meeting will be March 14th.

E. Planning Commission - Barnette

The minutes from the January 27th meeting are in the packet. There is a Planning Commission meeting tomorrow night 6:00 p.m. in the Council Chambers. The change is to accommodate the Council retreat on Thursday.

F. Recreation Board - Burnam

No report.

G. Utility Board - Scott

Mr. Scott reported that the Utility Board has reassigned the current Director to the position of Manager of Planning and Engineering, and on an interim basis, until the Board decides which way they want to go, Mr. Stan Clayton will be the acting Director. The next meeting will be Wednesday at 6:00 p.m. in the Council Chambers.

6. REPORTS OF THE OFFICERS:

A. Mayor's Report

a.) Parade Permit / United States Sports Academy / 5K & 1 Mile Fun Run

MOTION BY Mr. Lake to approve the Parade Permit for the United States Sports Academy's 5K & 1 Mile Fun Run for April 9, 2005. Seconded by Mrs. Landry.

AYE ALL IN FAVOR

NAY NONE OPPOSED

MOTION CARRIED

The Mayor asked that at the end of the meeting he would like a motion to enter into Executive Session to discuss a pending real estate proposal.

B. City Attorney's Report

No report.

C. Department Heads Comments:

Ken Eslava reported on the completed debris cleanup with FEMA. He is hoping that all the cost will covered 100%. Mr. Eslava thanked Mrs. Briley, Chief Carpenter, Chief Hanson for all the operations that went on during the hurricane. No one department could do everything by themselves.

Mrs. Briley reported that the FEMA representative said Daphne is the first large city to be closed out in Baldwin County. He highly commend the city for this.

Chief Hanson reported that two firemen / paramedics are being recognized in Foley tonight, Captain Kenny Hanak and Firefighter Eric Hayes for going out late at night into the hurricane, accompanied by two National Guard Officers to take a pregnant woman, who was ready to deliver, to Baldwin Hospital. While in route a tree fell on them and they ran into a ditch. The Police Department sent Captain Wilson, Detective Bidwell and Tommy Bozeman, another one of the city's Firefighters, to get them out of the ditch. The City of Loxley helped in the rescue effort. They are all to be commended for their actions.

Chief Carpenter stated that they used some equipment they received from a grant to locate those stranded by the hurricane, that Chief Hanson mentioned.

7. PUBLIC PARTICIPATION:

Mr. Mark Foster - Director of DHS Band - Thanked the Council for their support of the Percussion Band.

Mr. Bob Segalla - Daphne - spoke regarding the proposed high rise saying the city needs to plan better so the city will not be a hodge-podge of buildings, it is up to the Council as to how the city looks.

Mr. Frank Lamb - Daphne - spoke regarding health insurance cost.

8. RESOLUTIONS, ORDINANCES, & OTHER BUSINESS:

RESOLUTIONS:

- a.) Prepaid Travel / Ken Eslava / Denise Penry / Tony Cross
2005 Nat'l Hurricane Conf. /Resolution No. 2005-14
- c.) Authorizing Issuance of Credit Cards / Police Field
Operations Captain. /Resolution No. 2005-15
- d.) Authorizing the Mayor to Enter Into an Agreement for membership
in the Cooperative Purchasing Assoc of South AL. /Resolution No. 2005-16
- e.) Declaring Certain Property Surplus and Authorizing Disposition /Resolution No. 2005-17
- f.) ALDOT Industrial Access Road Grant on the North Side
Of Interstate I-10 /Resolution No. 2005-18
- g.) Alabama Coastal Connection Scenic By-Way. /Resolution No. 2005-19

MOTION BY Mr. Lake to waive the reading of Resolution No. 2005-14, 2005-15, 2005-16, 2005-17, 2005-18, 2005-19.
Seconded by Mrs. Landry.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Mr. Lake to **adopt** Resolution No. 2005-14. Secoded by Mr. Yelding.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Mrs. Barnette to **adopt** Resolution No. 2005-15. Secoded by Mr. Yelding.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Mr. Lake to **adopt** Resolution No. 2005-16. Secoded by Mrs. Landry.

Mr. Ross Wimberly from SARPC explained to the Council how the Cooperative works.
Mrs. Briley has been involved for a while with this and recommends it as a saving avenue for the city.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Mr. Lake to **adopt** Resolution No. 2005-17. Secoded by Mrs. Landry.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Mr. Lake to **adopt** Resolution No. 2005-18. Secoded by Mrs. Landry.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Mr. Lake to **adopt** Resolution No. 2005-19. Secoded by Mrs. Landry.

ORDINANCES:

- a.) Appropriating Funds / Police Firing Range / Property Liability Insurance /
2005 Gulf Coast Zydeco Festival / Storage Bldg. /Ordinance No. 2005-06

MOTION BY Mr. Lake to **suspend the rules** to consider Ordinance 2005-06. Secoded by Mrs. Landry.

**FEBRUARY 21, 2005
CITY OF DAPHNE, AL
CITY COUNCIL MEETING
6:30 PM**

THERE BEING NO FURTHER BUSINESS TO DISCUSS, THE MEETING ADJOURNED AT 10:30 PM P.M.

Respectfully submitted by,

David L. Cohen, City Clerk, MMC

Certification of Presiding Officer:

Greg Burnam
Council President

Date & Time Signed: _____

City of Daphne, Alabama

A PROCLAMATION
GIRL SCOUT WEEK
MARCH 6-12, 2005

WHEREAS, Saturday, March 12, 2005 marks the 93rd anniversary of Girl Scouts of the USA, founded by Juliette Gordon Low in 1912 in Savannah, Georgia; and,

WHEREAS, throughout its long and distinguished history, Girl Scouting has inspired millions of girls and women with the highest ideals of character, conduct, and patriotism; and

WHEREAS, through Girl Scouting, girls grow strong, gain self-confidence and skills for success, and learn their duty to the world around them; and,

WHEREAS, Girl Scouting takes an active role in increasing the interest and skill levels of today's youth in science and technology to fulfill our country's economic needs; and,

WHEREAS, more than 3.6 million current Girl Scout members nationwide will be celebrating 93 years of an American tradition, with 45 million women who are former Girl Scouts who can be mentors to help today's girls succeed; and

WHEREAS, in the Deep South Girl Scout Council, more than 5, 000 members join to enhance life and contribute to the future of girls in Southwest Alabama; and

WHEREAS, Girl Scouts of the Deep South Council learn to relate to peers and others, to respect individual, racial and ethnic differences, and to develop their own feelings of self-worth; and

WHEREAS, Girl Scouts of the Deep South Council encourage and foster strong positive character-building skills through troop and group-based activities for girls ages 5-18.

NOW, THEREFORE, I, Fred Small, Mayor and the City Council of the City of Daphne, Alabama do hereby proclaim the week of March 6-12, 2005 as:

"Girl Scouts Week"

in the City of Daphne, Alabama



Fred Small, Mayor

David L. Cohen City Clerk, MMC

**CITY COUNCIL MEETING
STANDING COMMITTEE RECOMMENDATIONS:**

FINANCE COMMITTEE REPORT

BUILDINGS & PROPERTY COMMITTEE REPORT

PLANNING/ZONING/CODE ENFORCEMENT COMMITTEE REPORT

PUBLIC SAFETY/ORDINANCE COMMITTEE REPORT

PUBLIC WORKS/BEAUTIFICATION/MUSEUM COMMITTEE REPORT

**CITY COUNCIL MEETING
REPORTS OF SPECIAL COMMITTEES**

NOTES:

BOARD OF ZONING ADJUSTMENTS REPORT:

DOWNTOWN REDEVELOPMENT AUTHORITY REPORT:

INDUSTRIAL DEVELOPMENT BOARD:

LIBRARY BOARD:

PLANNING COMMISSION REPORT:

RECREATION BOARD REPORT:

UTILITY BOARD REPORT:

BZA Nomination

E. Franklin Lamb
603 Maxwell Avenue
Daphne, AL 36526-4053

251-626-3993

1 March 2005

Cathy Barnette
Councilperson District 2

Dear Cathy:

I live at 603 Maxwell Avenue in Daphne having resided here since September 1991. I am retired from International Paper after 36 years of service. I retired as one of the managers in the Corporate Purchasing Group based in Memphis, Tennessee.

I have previously served on the Board of Adjustments for the City of Daphne. I was appointed to and served on the Daphne Planning Commission. During my term of service to the City, I became a Certified Alabama Planning and Zoning Official in the first group ever awarded this certification in the State of Alabama.

I will be happy to serve the City of Daphne again.

Sincerely yours,



E. Franklin Lamb

City of Daphne, Alabama
Office of the Mayor

C O N G R A T U L A T I O N S
to the
C E R T I F I E D A L A B A M A P L A N N I N G
A N D Z O N I N G O F F I C I A L S

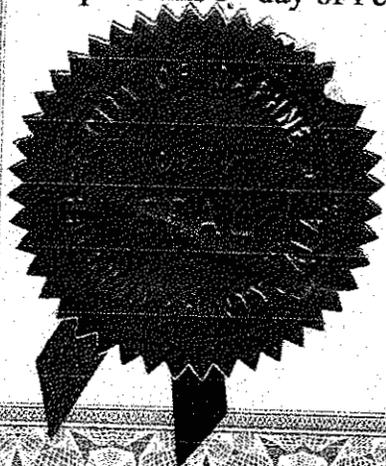
WHEREAS, Mr. Frank Lamb, Planning Commissioner of the City of Daphne Planning and Zoning department, has taken the initiative to further his education by learning more about his chosen field; and

WHEREAS, the certification requires a series of four basic seminars and a home study course that includes exams, and a final seminar that focuses on public meeting management and dispute resolution; and

WHEREAS, on December 6, 2000, in Birmingham, Alabama, Frank Lamb was presented with an official certificate related to advanced Alabama Planning and Zoning.

Now, Therefore, the Mayor and City Council of the City of Daphne hereby extend sincere congratulations to Mr. Lamb for his achievement and for his perseverance in obtaining this goal.

IN WITNESS WHEREOF, I have affixed the official seal of the City of Daphne this 5th day of February, 2001.



E. Harry Brown
E. Harry Brown, Mayor

Attest: *David L. Cohen*
David L. Cohen, City Clerk, CMC

To: Fred Small, Mayor
From: William H. Eddy Sr., Director Community Dev.
Subject: BZA Board Members
Date: March 1, 2005

MEMO

Mr. Billy Mayhand's term on the BZA expires March 2005.. *New term expires - 2008*

The Council needs to reappoint this member and one new member as Alternate 2.

Mr. Mayhand has served well and attended meetings.

I, respectfully request that he be reappointed to his position as board member of the BZA.



**Daphne Library Board
February 14, 2005
Meeting Minutes**

In Attendance:

Library Director Dale Foster, Board Members Glenn Swaney, Chairman, Gayle Robinson, Cassandra Day, Ernie Seckinger, Anita Rigas, and Council Representative Gus Palumbo. Absent was John Lake.

Call to Order:

After a quorum was established, Glenn Swaney called the meeting to order at 4:30 pm.

Reading and Approval of Minutes:

The minutes from the January 10, 2005 meeting were reviewed and approved.

Monthly Report:

The report for January was presented by the Director and approved by the Board. Numbers flattened out in January for circulation and patron count. However, there were over 1200 computer users, up substantially from 2004 levels.

Request to Paint Children's Wing - Tonja Young:

Children's Librarian Tonja Young reported that the Children's Tower needs to be painted. Since the walls are curved it is hard to hang decorations on them, so she presented a proposal to paint them like a castle wall. Carol Mercer, art teacher at Daphne High School, has offered to let her junior and senior students take on this project, which she will supervise. The students would receive grades and community service hours for their participation. The work would be completed over a weekend, with the Friends of the Library providing pizza and cokes for the artists. Ernie Seckinger moved that the Board approve this project. Anita Rigas seconded and the motion carried unanimously. Tonja also presented an outline of the Spring Into Reading Festival plans, which features "A Day in Old Daphne" theme.

Update on New SAM Public Access Computer Network:

Phase II is complete and working 100%. A technician came from New Jersey Mardi Gras Day to install the SAM software. The system is working well, with patrons logging themselves on to the system. Thanks again to Glenn Swaney, Charlie Wilson, Don Parman, and Dale Foster for their help in setting up this system. In the future, other libraries in the county could "piggyback" on our

system to help reduce the cost. Several old PCs need to be replaced, so the Friends of the Library will give \$4000 for four new ones, bringing the total to ten on the new network. The Friends also approved funding for the wireless system to be set up. It will be a flexible system that can be placed in the ceiling, providing a 150 foot radius of service. The Library would be designated a "Hot Spot" for people to bring their laptops and work online separate from the wired system.

Report on Library Building Expansion:

It is hoped that the five to seven member Steering Committee will be in place by April. Glenn Swaney will contact the Foundation that handles the Friends' capital improvement fund for a list of names and contacts. Board members mentioned several people to be approached to serve on the committee, including Colleen Hatchett, Ernie Seckinger, Jack Edwards, Robert Edington, Glenn Swaney, Carolyn Walthall, and Mrs. Bradley Byrne. Mr. Palumbo suggested talking to the Rotary Club for area business people. It was decided to send an informational package to our Senators and Representatives with John Lake and Gus Palumbo when they travel to Washington, DC in March for The League of Municipalities Conference, in the hopes of getting on the list for any available federal money. Information will also be forwarded to our state legislators, Bradley Byrne and Randy Davis. Mr. Foster and Mr. Swaney will develop a report, including graphs, pictures, and statistics.

Upcoming Library Events:

Jubilee Mornings: 10:00 am on March 2, 2005, featuring Terry Cline.

Children's Spring Into Reading Festival: Saturday, April 16, 2005
11:00 am - 2:00 pm.

Children's Summer Reading Program: June 1- June 30.

New Business:

The Director presented a copy of a newspaper article from the Daphne Bulletin highlighting the Library.

Mr. Palumbo informed the Board that the Friends do not have to remove their stored books from the Eastern Star building at this point. A possible future renovation is still being discussed by the City but no time has been finalized.

The meeting was adjourned at 5:40 pm.

Submitted by Anita Rigas

**THE CITY OF DAPHNE
PLANNING COMMISSION MINUTES
REGULAR MEETING OF FEBRUARY 22, 2005
COUNCIL CHAMBERS, CITY HALL - 6:00 P.M.**

SUMMARIZATION OF MINUTES:

THIS DOCUMENT IS A SUMMARIZATION OF THE MINUTES OF CITY OF DAPHNE PLANNING COMMISSION MEETING AND IS TO BE USED FOR REVIEW PURPOSES ONLY. THE OFFICIAL MINUTES OF THIS MEETING MAY BE OBTAINED IN THE CITY CLERK'S OFFICE UPON APPROVAL. _____

CALL TO ORDER:

The Chairman stated the number of members present constitutes a quorum and the regular meeting of the City of Daphne Planning Commission was called to order at 6:01 p.m.

CALL OF ROLL:

Members Present:

Fred Small, Mayor
Larry Chason
John Barry
Warren West, Vice Chairman
Ken Day, Chairman
Cathy Barnette, Councilwoman
John Coulter, Secretary
Ed Kirby

Members Absent:

Brian Dekle

Staff Present:

William H. Eady, Sr., Director of Community Development
Pat Houston, Planning Technician
Helen Burdette, Administrative Assistant
Nancy Anderson, GIS Technician
Jay Ross, Attorney

The Chairman stated the first order of business is the call to order. Please let the record reflect that Mr. Dekle is not present. The next order of business is approval of the minutes of the January 27, 2005 regular meeting.

APPROVAL OF MINUTES:

The minutes of the January 27, 2005 regular meeting were considered for approval. A copy of the minutes were furnished previously to us. If there are no additions, deletions, or corrections at this time, the Chair will entertain a motion.

A **Motion** was made by Mr. West and **Seconded** by Mr. Kirby **to approve the minutes. The Motion carried unanimously.**

THE CITY OF DAPHNE
PLANNING COMMISSION MINUTES
REGULAR MEETING OF FEBRUARY 22, 2005
COUNCIL CHAMBERS, CITY HALL - 6:00 P.M.

SUMMARIZATION OF MINUTES:

THIS DOCUMENT IS A SUMMARIZATION OF THE MINUTES OF CITY OF DAPHNE PLANNING COMMISSION MEETING AND IS TO BE USED FOR REVIEW PURPOSES ONLY. THE OFFICIAL MINUTES OF THIS MEETING MAY BE OBTAINED IN THE CITY CLERK'S OFFICE UPON APPROVAL. _____

The Chairman stated the next order of business is final plat review for TimberCreek Business Park.

NEW BUSINESS:

FINAL PLAT REVIEW:

File SDF05-02:

Subdivision: TimberCreek Business Park, (Formerly known as TimberCreek Office Park, Unit Two)

Location: The West side of State Highway 181, North of Millwood Circle on Mill Lane

Area: 6.82 Acres +, (12) lots

Owner: TimberCreek Land Company, Inc. - Allen Cox

Engineer: Rester & Coleman Engineers - Don or Joel Coleman

An introductory presentation was given by Mr. Joel Coleman, representing Rester & Coleman Engineers, requesting final plat review for the office park North of the main entrance to TimberCreek and the first office park. Mr. Coleman apologized for missing the site preview and stated he would be happy to answer any questions.

The Chairman stated do any of the Commissioners have any further questions or comments. If there is no objection, the Chair will entertain a motion.

A **Motion** was made by Mr. Kirby and **Seconded** by Mr. Coulter **to approve the Final Plat for TimberCreek Business Park. The Motion carried unanimously.**

The Chairman stated the next order of business is preliminary plat review for Daphne Commercial Park, Phase Two.

PRELIMINARY PLAT REVIEW:

File SDP05-02:

Subdivision: Daphne Commercial Park, Phase Two

Location: Northwest of the intersection of Whispering Pines and Pollard Roads, West of Daphne Commercial Park, Phase

**THE CITY OF DAPHNE
PLANNING COMMISSION MINUTES
REGULAR MEETING OF FEBRUARY 22, 2005
COUNCIL CHAMBERS, CITY HALL - 6:00 P.M.**

SUMMARIZATION OF MINUTES:

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One

Area: 4.10 Acres \pm , (2) lots
Owner: Project 64, L.L.C. - Rance Reehl
Engineer: Hatch Mott MacDonald - Russell Lomax

An introductory presentation was given by Mr. Russell Lomax, representing Hatch Mott MacDonald, requesting preliminary plat approval of a four-point ten-acre subdivision consisting of two lots located at the Northwest intersection of Whispering Pines and Pollard Roads, West of Daphne Commercial Park, Phase One. We are trying to close off this end of the subdivision by making the cul-de-sac two separate lots and the master plan has already been approved. The area has been rezoned and we just want to take this one larger lot and resub it into two lots. The storm drainage was set up in phase one. We have a small amount of asphalt put in along the storm drain with a connection to the existing drainage. I will be happy to answer any questions you may have.

The Chairman stated this is fairly straightforward. Do any of the Commissioners or Mr. Eady have any questions or comments? He opened the floor to public participation. With no adjacent property owners present, he closed public participation. If there is no objection, the Chair will entertain a motion.

A **Motion** was made by Mr. Warren and **Seconded** by Mr. Barry **to grant Preliminary Plat approval to Daphne Commercial Park, Phase Two. The Motion carried unanimously.**

The Chairman stated the next order of business is a presentation requesting revised master plan approval for Whisper Woods and Savannah Woods and preliminary plat review for Whisper Woods, Phase Three.

ADMINISTRATIVE PRESENTATION:

An introductory presentation was given by Mr. David Diehl, representing Engineering Development Services, requesting revised master plan approval for a 12.88 acre subdivision consisting of twenty-seven lots located on the South side of U.S. Highway 31, South of and adjacent to Whisper Woods Subdivision, Phase 2A. We actually have two items before you. One is a modification of a master plan of which there is going to be two builders. There also will be two different developers, even though Savannah Woods and Whisper Woods will be connected to each other. Therefore, we are asking for revised master plan approval based on that.

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The Chairman stated do any of the Commissioners or Mr. Eady have any questions or comments?

Ms. Barnette stated I have a request for clarification. Savannah Woods has been withdrawn. We are really only reviewing Whisper Woods. Is that correct?

Mr. Eady stated correct.

The Chairman stated yes.

Mr. Diehl stated as far as the preliminary plat for Savannah Woods, you are right. We did withdraw it, pending a permit.

Ms. Barnette stated you are showing us what you are planning, but officially you are here for Whisper Woods.

Mr. Diehl stated right. Actually, we asking for official formal action on the master plan. At this point we do not have any details in the area to work toward our master plan. It is pretty standard.

Mayor Small stated the master plan includes both areas. Savannah and Whisper Woods.

Mr. Diehl stated it does. When we have a large multi phase development, we always bring it to you for master plan approval. Then when we bring in phases, it is with a completed construction plans and a detail plat for each phase. Therefore, we are asking for the master plan approval first.

Mr. Barry stated this is the master plan you already had approved one time, correct.

Mr. Diehl stated yes, but it now is actually less dense. The lots are a little larger on the new part. You are correct.

The Chairman stated do any of the Commissioners or Mr. Eady have any questions or comments? If there is no objection, the Chair will entertain a motion.

A Motion was made by Mr. Kirby and Seconded by Mr. Barry to grant Revised Master Plan approval to Whisper Woods and Savannah Woods Subdivisions. The Motion carried unanimously.

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The Chairman stated the next order of business is preliminary plat review for Whisper Woods, Phase Three.

PRELIMINARY PLAT REVIEW:

File SDP05-03:

Subdivision: Whisper Woods, Phase Three

Location: On the South side of U.S. Highway 31, South of and adjacent to Whisper Woods Subdivision, Phase 2A
Area: 12.88 Acres +, (27) lots
Owner: DJM, L.L.C.
Engineer: Engineering Development Services - Jason Estes or David Diehl

An introductory presentation was given by Mr. David Diehl, representing Engineering Development Services, requesting preliminary plat approval of a 12.88 acre subdivision consisting of twenty-seven lots located on the South side of U.S. Highway 31, South of and adjacent to Whisper Woods Subdivision, Phase 2A. We will have less than seven acres south of the existing Whisper Woods. It meets all of your standards and it is as straightforward as the master plan you previously approved. I will be happy to answer any questions.

The Chairman stated do any of the Commissioners or Mr. Eady have any questions or comments?

Mr. Coulter stated David, is this in Spanish Fort or the County.

Mr. Diehl stated the County.

Mr. West stated I think you have a good subdivision, and I am not asking you to change anything. What concerns me is the traffic this subdivision will generate onto U.S. Highway 31. Do you or the County have any plans to address the traffic, because within the next year it is going to be horrendous? Someone should address it because with this, and a possible building on the corner off U.S. Highway 31, it is going to be another County Road 181.

Mr. Diehl stated U.S. Highway 31 has been addressed, if you have been out there. They have already constructed an extra lane, which has helped tremendously. Mr. Eady, addressed that when we bought in Whisper Woods, Phase One, as well as the County when they did their

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Mr. West stated so you have addressed it then.

Mr. Diehl stated yes, sir.

Mr. West stated thank you very much.

The Chairman opened the floor to public participation. With no adjacent property owners present, he closed public participation. If there is no objection, the Chair will entertain a motion.

A **Motion** was made by Mr. West and **Seconded** by Mr. Kirby **to grant Preliminary Plat approval to Whisper Woods, Phase Three Subdivision. The Motion carried unanimously.**

The Chairman stated the next order of business is annexation review for Aronov, on the Northwest side of the intersection of State Highway 181 and U.S. Highway 90.

PETITIONS:

ANNEXATION REVIEW:

An introductory presentation was given by Mr. Frank Johnston, representing Aronov, requesting annexation of a one hundred and forty-eight (148) acre parcel on the Northwest side of the intersection of State Highway 181 and U.S. Highway 90 with B-2, General Business, zoning. Said owners of subject property are the Crystal Springs, L.L.C., Exchange Intermediary Services, Malbis Plantation, Inc., Christine T. Marks, Constantine T. Tampary, and Anthony T. Tampary. We have a B-2 zoning with a created overlay district that will operate as such and utilities will be provided, which will be developed as soon as we receive input we need from the researchers. We had some financial disclosure in our petition that we did not need and we were asked to take it out. We will get it back to Mr. Eady, as soon as the comments have been revised.

The Chairman stated do any of the Commissioners or Mr. Eady have any questions or comments. If there is no objection, the Chair will entertain a motion.

Ms. Barnette stated I want to thank Aronov for addressing our concerns

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that we discussed in the site preview about the issue surrounding the Planning Ordinance, and for working with us in setting up the Overlay District. I think this position is certainly a better plan to put forth to the Planning Commission. Thank you.

The Chairman stated do any of the Commissioners or Mr. Eady have any questions or comments. If there is no objection, the Chair will entertain a motion.

A **Motion** was made by Mr. Kirby and **Seconded** by Mr. Barry *for the affirmative recommendation by the Planning Commission to the City Council of Daphne for the annexation to the one hundred and forty-eight (148) acre parcel on the Northwest side of the intersection of State Highway 90 with B-2, General Business, zoning.*

Upon roll call vote, *the Motion carried.*

Mayor Small	Aye
Mr. Barry	Aye
Mr. West	Aye
Mr. Day	Aye
Ms. Barnette	Aye
Mr. Coulter	Aye
Mr. Kirby	Aye

The Chairman stated the next order of business is an administrative presentation, regarding a height exception for a building on Lot 1 of the Sundowne Subdivision.

ADMINISTRATIVE PRESENTATION:

An introductory presentation was given by Mr. Doug Bailey, representing Hutchinson, Moore & Rauch, for a height exception for the Apalachee Building, on Lot 1 of Sundowne Subdivision. We are asking for an exception up to the height of one hundred and ninety-feet. The City's general requirement is up to fifty-feet. The Apalachee is a fourteen story, fifty-six unit condominium building. We believe, as we represented at the work session, that it does meet the requirements of the City for Smart Growth. We are taking a density that could be spread over the eleven acres and compressing it into a small footprint to reduce the purposed area and impact upon the site. I will be happy to answer any questions you make have.

The Chairman stated as I understand this, let us try and make sure we

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are all on the same court to move forward in discussing this issue in terms of the maximum building height as referred to in our Ordinance. The requirements for R-4, which is the zone for this particular height, says construction of no more than four stories or fifty-feet may be permitted, subject to approval by the City Council, upon recommendation by the Planning Commission. There seemed to be a discussion by some that there is no requirement to go beyond the fifty-feet, but there is a requirement in the Ordinance to provide for exceptions. The process is laid out as to how you go about achieving that exception.

Mr. Bailey stated yes, sir. We understand the process. We had looked at an older copy of the Zoning Ordinance that I believe was a little bit different. It has been changed here of late, and that is why we are here.

The Chairman stated do any of the Commissioners or Mr. Eady have any questions or comments.

Mr. West stated I understand that the way the height got to be fifty-feet was back many years ago when the City of Daphne did not have the fire protection equipment to really service any building above fifty-feet. As far as I can determine it has been in the book since then. It seems to me that it is time for the City of Daphne to review that applicability part of the Ordinance to fit today's environment. With the fire equipment we now have it may be appropriate to change it. I am reluctant to grant exceptions to it for fear it would take off and result in more high rises than what is really, best for the City of Daphne. I feel pretty strongly that a large proportion of the population of Daphne is here, as I am, because of the uniqueness of the City, the people who live in it, thereby giving you a quality of life for all of us to enjoy. When I see what is happening to our neighbors on the Gulf I do not visualize it happening to us. What I do visualize is if we approve this it certainly will not be the only one that will attempt to get this type thing approved. I am of the opinion we should look at our Ordinance, and given time to revise it, perhaps we can come up with something we all could live with, and bring us up to date. It could prevent opening the door, so to speak, to something that could act as part of the rights of the citizens of Daphne. I think it is premature to act on a request for a deviation. We either need time to do that or make the public aware of what we are doing. Our Ordinance, rightfully so, says if we change the zoning of a piece of property we must put a big sign on it stating the change. The way the public found out about this is they read an article in the newspaper that this is going on. Compared to the other decisions this

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_____ is monstrous and I do not feel like we, and I am part of this, have done a good enough job of informing the public of what we are doing. We may find, if we bring the public in on what is going on, as we ought always to do, we might find that by a survey like we did in 1999 they may or may not want this. They will be happy to show us how they feel about this. I think before the City decides to do this and I am reluctant to vote on it until we make more of an effort to advise the citizens of Daphne of what we are doing. I would use a public forum of some type, and or several articles in the newspaper to solicit the recommendation from the City of Daphne. We would be surprised to see how many people in Daphne would not want this quality of life to change. This is a quality of life situation, but I could be wrong. There may be just as many or more that think this is the quality of life and we need to do it. I cannot judge, and I am just reluctant to recommend this exception with so much unknown out there. I do not think we have done a good enough job of advising the public. Thank you.

Ms. Barnette stated I just want to add a little bit to what Mr. West has said. The challenge before the Planning Commission, ultimately, is that we have to either favorably recommend or not favorably recommend to the City Council this type variance request. We are charged by the City to make decisions based on our Land Use plans to make a recommendation to the City Council for them to act upon.

Ms. Barnette stated with this height variance, if approved tonight, we are aware of some current rezoning of at least two proposals that will come before us in the near future without any visioning process of where the City wants to go. How high is not really the question, not that it will not be a question, but it is more of, if we continue to operate within the City of Daphne, as a reactionary, as opposed to a proactive status. I do not know if the developers would be willing to table this. I know they have a certain amount of time on a rezoning to break ground or it goes back to the old status. I do not know if the City can offer some sort of leeway to allow us to work through this for them to get closer to where they are trying to get. I feel it is imperative we communicate to the Council the importance of planning. Unfortunately, this is the first project of this kind, and it is very difficult to base it on merit alone as to whether it is a quality development. It is without a doubt a fantastic development, and it would be a wonderful asset to the City of Daphne. The question at hand for us, as a Planning Commission, and as our responsibility, is are we doing our job planning for Daphne's future by granting a variance, so that when the next one comes along will it be an arbitrary and capricious decision because we have no criteria on how to approve or

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deny the project. I think we will set a very dangerous precedent. Of course, ultimately, it is not the Planning Commission's decision, it is the City Council's, and I do not know how we can convey it to them because they are not charged with a planning decision. I feel we do have a large responsibility to make sure the City Council hears that, but as a Planning Commission we need to take this serious.

Mr. Barry stated when we talk of this as a variance, it seems to me as one drastic understatement. When you go from fifty-feet to one hundred and ninety-two feet, I do not consider it as a variance. I consider it as going to a maximum. We are talking about the height of a building that might be small or nice for New York, but for here it is a monster. I think the only way to show the people of this community how tall the building really will be is to put up a one hundred and ninety-two feet pole, and if they did, I think you would be amazed at the number of people that would be thrown off their awe to see it. You are talking about a big spike in the middle of a development, which is a flat area. We have some variances around like the hotel that was put in. We are never going to make everybody happy, because I heard some people say that was getting a little to commercial looking. I think going from a height of fifty-feet to one hundred and ninety-two feet is not really asking for a variance to me. Really, what you are saying is, let us open up the flood gates, because very few of the high rises I have heard of are going for that kind of height, except yours. You are sort of setting a sort of very high level. Now, as for the footprints are concerned, I understand the problem being relevant, thinking we may get too many people asking for this type variance. It is something we have to put up.

Mr. Barry stated I will not change the appearance of the City for those of us who happen to like the skyline of it. There may be one or two little things I would like to correct as I look at the skyline coming into the City, but those little things were done before the City had a Planning Commission. I think a variance is necessary. Consideration for a variance is very appropriate. If we were looking at one hundred feet height I would call it a variance. Above that it is just conceivable to me, at this point, with where the City is going. It does not seem to flow with the City is being done as I read the revisions for the City, it does not seem to fit. I do not know how to convey the exception of the variance to the Council, because I think fifty-feet is not high, but one hundred and ninety-two feet is too high. Somewhere between the two there is a good answer. If I am going to make a recommendation to the City Council based on this, I would have to say no. My recommendation is to say, let us give a variance to give people an idea of what good height would be as the

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maximum for the skyline we want to have. Knowing that we are probably going to have three or four more of these type developments at a later date. If we are talking about four or five, one hundred and ninety-two feet buildings, then you have another Panama City.

The Chairman stated do any of the other Commissioners have any comments at this time. Again, I think our task is to recommend either a positive or negative for the height variation to the City Council. My standpoint is that this is sort of a major decision because we are talking about what will define our Comprehensive Plan, as one of the gateways to our community. Therefore, whatever we do, particularly, in terms of a variance of this magnitude will certainly have an effect on the gateway, and affect the overall character of our community, when it comes down to the decision of how we want to decide our character. There may some members of the public here who would like to weigh in on this decision. I would like to offer them a small slot of time to do so, realizing that we are simply making a recommendation to the City Council, and the Council has to make the final determination. Based on respect for the time of others we request that you keep you comments within two minutes or less, and please do not repeat comments made by others, thereby giving a preliminary indication to the City Council of your concerns. By a show of hands how many of you would like to make comments. He stated eight people seem to be a reasonable number and he opened the floor to public participation.

Mr. Williams stated thank you, Mr. Chairman, I have a letter of introduction from Dr. Bob Green, President of the Board of Director's of Loma Alta Towers outlining and requesting that I address you all tonight. I have a typed submittal and it sounds a little like maybe Mr. West may have helped me write this presentation. I will read it aloud and leave it with you.

Mr. Williams stated my name is Ecurie Williams, and I reside at 100 Tower Drive, here in Daphne. I have been asked by the Chairman of the Board of Directors of Loma Alta Towers, a forty-eight member Property Owners Association, to speak in opposition of granting a height variance to build the Apalachee Condominium. We feel very strongly that granting the variance will be the start of destroying our beautiful skyline, as we know it today. Anyone can look to our neighbors at Gulf Shores, and Orange Beach to see how the horizons have disappeared from sight and been replaced by walls of high rise condos as you drive east and west the length of Beach Boulevard. This has taken place in only a few years. We feel somewhat deceived since the property for this project was rezoned as low rise multi dwelling, and then a short time later a height variance is being considered. One

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_____ can only assume that a high rise was the original intent for the project. Now we have additional concerns that this could be a cluster of high rises since we hear there are negotiations with surrounding properties by the developers. You are the ones that can prevent this wall of condominiums and preserve our unique skyline. We respectfully ask you to deny this variance. Thank you very much for allowing me to speak. I will leave a copy of this with you.

The Chairman stated we appreciate your statement.

Mr. Bailey stated at this time the project includes only eleven acres, and to my knowledge, we are not negotiating with adjacent property owners. As far the exception, back in August of last year when we first came to the Planning Commission to talk about the structure, if you can remember, at that time there was a different structure presented. It was more of a post modern type structure. It was a high rise type structure with fourteen or fifteen stories high, which was presented as part of the exception for the rezoning. We were told we had to get the rezoning before we could do the building, it had to be multi family.

Mr. Johnston stated Lon Johnston, resident of Daphne, and a former member of this august body, and I would like to make comments, of which, may be some duplication, and I apologize. There is no question that the character of the City will be changed dramatically. We are already removed from the ultra quiet bedroom community that many of us sort and came here for, and we moved in on that basis. Here just recently a Council made the comment that it was his vision for Daphne to incorporate all kinds of housing diversity, to include high rises. This scares me when I think of everything from trailers to high rise type structures in our City. This may be his vision, but it is certainly not mine. Very clearly, I think it is fairly sufficient to point out all of the recent work was done on developing the Comprehensive Plan, which is not that old, never addressed any issues of changing the height level in the City of Daphne. Tonight, more than anything else I think that is what this body has to deal with. There have not been any studies or otherwise, to change this particular height.

Mr. Johnston stated traffic, as stated by Mr. West, is another one of my big concerns. We do not want to look like Orange Beach with the series of high rises there, but the fact of getting into those high rises, and the additional traffic onto U.S. Highway 98 would compound an already bad traffic situation. Finally, let us not invalidate a reasonable height ordinance without full Daphne resident

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orchestration. Planning Commission recommendation tonight, positive or negative, should include permission for at least minium, a well-organized public hearing. I am not sure if it should go as far as a referendum, paid for by the City, to get the full input of what the public wants. In conclusion, my personal opinion is I strongly recommend and encourage the Planning Commission to disapprove the height variance as a recommendation to the City Council. Thank you.

Ms. Yokel stated good evening. Thank you and I appreciate everyone's comments this evening. My name is Lee Yokel, and I am a local from Daphne, who lives on Whiting Court, and I have several quick statements I would like to make. For one, old, Mr. West, is not necessarily bad. I was taught as I grew to sort of respect the wisdom of our elders. Therefore, I think we need to respect some of the planning that has been set forth before us, and not just the last Council, but people going back several years because they had visions of what they wanted for us too. I might like to suggest that perhaps you talk to the reps of the South Alabama Poling Group and do something in the Mobile Press Register in trying to get sort of an informal official poll to see what the citizens think about this. I personally do not like the idea of a fourteen story condo in the City of Daphne, and I like some of the comments already made against it. It is a decision for the Eastern Shore, not just Daphne. It is Fairhope, Point Clear, Spanish Fort, and everybody that drive back and forth across the bay. You will be setting a precedent for everybody that is developing on this side of Baldwin County. There are a lot of things you can do with a smaller building to maintain some of those principles. For example, you can follow the lead standard of building practices, no, I am not an architect or engineer, but there are a lot ways you can define the building that is more environmentally friendly. You can pursue things like par legal paving, and alternate uses for how you would dispose of the groundwater on the site. I like the idea of a small footprint, but the site has already been stripped for the most part. Small footprints are often best when trying to save beach dunes and wetlands. I would also ask that you consider the banks there along the bay. The geology is pretty unstable there. If you look at the Nautilus, you can see they have had a lot of problems with their bulkhead. The sediments are not always the best. They are highly erodible. It would probably be in the best interest of the berm of looking into a professional geologist to help with that area. In a hypothetical situation, if you allow a fourteen story building, we can see East Bay Apartments tearing down a couple of their apartment structures, request a variance, and put in condos.

Ms. Yokel stated then they will have units that are more expensive

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than their current residents can afford, thereby pricing themselves out of some of the more affordable housing opportunities that we have here. Finally, I am just one resident standing here, but in talking with others at the YMCA and in asking them what they think, they have not heard of it, and some have heard about it in passing, but their comments to me have not been positive. I think I like the idea of you sitting back to rethink the planning as to what is best for the City, and I certainly hope the Council will take your recommendation to heart. Thank you very much.

Ms. Nady stated my name is Karen Nady and I am a resident of Captain O'Neal Drive and the President of Olde Town Daphne West. I tried to do a bit of a poll with our group to orchestra involvement with community affairs. I have not been able to get hold of everybody so I cannot say definitely on an answer for our group. Certainly everyone that I have spoken with is concerned about the height of this building. Most comments are yes, and height of some sort is a possibility that we have to consider in this community, but not this high, five, six, or seven stories. I too have heard comments about taking a regional approach. We will be setting a precedent for the Eastern Shore and other surrounding communities. Smart growth is a good idea, but when accommodating the aesthetic of the area we do not need to make a stark difference with the height of this building. I believe Mr. West talked about if the City has to look at a change in the master plan or in raising the height for these type developments, I would suggest looking at the height of one hundred feet. Something that tucks in at that level would really be appropriate. It would not change or comprise our skyline now or with future developments. Thank you.

Mr. Lamb stated Frank Lamb, 603 Maxwell. When I was a member of this Planning Commission, during all the years I was there an administrative presentation was for general information, requiring no action from the Planning Commission. It was always my understanding that was the way they operated. An administrative presentation was a part of the final plat approval process, after you were satisfied that each project was satisfactory, then any recommendation or variance was put into place at that time. What I find usual is, if, in fact, you vote tonight favorably for the height variance, to the City Council, you have not even approved the project. It seems to me the cart is before the horse. If you are satisfied that the project meets all the criteria the City has placed in your hands to make sure is met, then the next step is for a variance to be recommended, but to do it this way, no. Suppose you recommend favorably for a height variance, and you get into the final plat presentation, find all kind of question,

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and for some reason, disapprove it. I, for one, would think that does not look good on the City. You approve a variance, but you do not approve the project. Well, something is not in tune, at least, not to me. It would be more logical to approve the project, and then recommend the variance, if you so choose.

Mr. Lamb stated that would be logical. You are taking an element of the approval process out, saying okay, on with this, that is fine and let us go back with the real project. The second thing that really bothers me and I hope it does not happen, is the mere fact, if the City Council approves it would it impact all questions you want answered in the final plat process approval. Thank you.

Mr. Bailey stated of course, we understand that we have to come back for full process before the Planning Commission. We did not want to do the plot plan without the height exception. The plot plan could change, drastically. We were not trying to put the cart before the horse, just getting all of our ducks in a row.

The Chairman stated I thought I saw a few more hands when I opened public participation. If your comments have already been addressed, that is fine. He stated with no further comments or questions, public participation is closed.

He stated I guess we have to wrestle with the idea of making a recommendation on moving on this action. In reference to the Comprehensive Plan, I guess I am kind of struck by the very first sentence on page 11, Daphne is a growing community and change is inevitable. I guess the questions set before us are how much change, and how fast. There certainly is a vast difference between fifty feet and one hundred and ninety-feet. I guess that is the issue before us, in terms of making a recommendation to the City Council. Do any of the Commissioners or Mr. Eady have any additional questions or comments. If there is no objection, the Chair will entertain a motion.

Mr. Barry stated I do not see what decision we can reach. For me to address the project location, it is in my opinion, an excellent location for something higher than a four story building. I am not against the location, because it seems like it is right on the edge of a commercial area. My only thing is to make sure we recommend the right thing to the Council, to set a good precedent. I think there should be a variance from the fifty-feet, but how much more, I do not know. We have already had a variance with the hotel, motel. Somewhere in there is a decision the Council has to make. I think we should do more analysis as a Planning Commission on exactly how much height we

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want to recommend.

Mr. Chason stated a lot of the questions about how high or how much or who decides what is not relevant to this. I guess, I am frankly, surprised that with the article in the newspaper and the information in the article that there is not three hundred or more people here tonight, if there is as much objection to this proposal as I have been hearing. I, on the other hand, have been hearing positive comments about it. We have a hand full of letters up here, not the least of which, are the adjacent property owners, who are for this, which I think is usual.

Mr. Chason stated I think when we had our work session the other day, we had a varied group of opinions about how to solve the problem. My concern was that the Planning Commission was not going to be much help to the City Council because we are all over the board in what we think is appropriate. Mr. Day's comment on change being evitable is right. I am not the only person who has been here a long time. I have watched that piece of property, and I look at that site as having a lot of other options, which are less desirable. It has been rezoned to a residential zone, but it would not be very difficult to let it expire and become another strip mall, another parking lot or another drainage problem. Obviously, there has been some care taken by the developers, who are local, who are known to us, and who have a track record. I realize most of my questions about this will be more appropriate in a site preview meeting and they will not be something we will address tonight. The thing I am coming back to is (a.) there does not seem to be any overwhelming opposition as compared to support, none I have heard, and (b.) I think we have done a lot of talking about smart growth, and the direction that the City is headed in. We just approved a large annexation of a major shopping center, which will affect the drainage in that part of town. I do not want to send a mixed signal to the City Council. If it takes more discussion, then it takes more discussion, but what I have heard hear tonight has not swayed me from voting to move forward with the project. Thank you.

The Chairman stated perhaps I may be reading proverbs wrong, but the general consensus is that there may not be a great opposition against going above fifty-feet, but the concern is, should we go as high as one hundred and ninety-feet. The decision before us is to make a recommendation on approving the structure that will be in the neighborhood of about one hundred and ninety-feet. We are here to advise the Council.

Ms. Barnette stated I have a question. Is there any action other than

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a favorable or unfavorable recommendation to be made tonight?

The Chairman stated I would prefer, since we are not the final decision or body on this, to give a recommendation. Ultimately, the City Council is looking for input from us and the public in making the final decision on whether this remains in character of our City. Again, there are other steps that can be taken in making this decision, but we must make a recommendation to the Council, tonight. There are ways of getting additional information and input, but they are not actions we can use tonight.

A **Motion** was made by Ms. Barnette and seconded by Mr. Barry **to unfavorably recommend approval of a height exception for the Apalachee Building, Lot 1 of Sundowne Subdivision.**

The Chairman stated can I get a second.

Mr. Chason stated no. We have been working to look toward revising the Ordinance because we realize there are issues with it. Personally, I think there are a lot of serious issues going on right now in terms of the character and quality of life in this town which our Ordinance does not address, and we do not have time for that discussion. I do not think the burden is on the general public to bring in the project, and then we decide on a time to review it, and stagger it. We have had our Ordinance a long time with ample time to rewrite and review it, and to put people on hold every time it does not fit what we need to decide, that is not adequate leadership on our parts. I think we need to make the changes as soon as possible, whether it deals with high rises, track developments, retail developments, drainage problems, all of our traffic problems or whatever, all of the other things we have identified that we feel need to be addressed, but for this we need to make a decision. We have a responsibility to correct these things, but will this be any more of a straw to break the camel back. I do not know, but I do not think that burden should fall, I think we have to act on what we have. If they want to volunteer to make revisions, to give us an opportunity to redo our Ordinance, then that is fine. I think we have to act on the Ordinance we developed and put out in the public for them to design their project by to bring back to us.

Mr. Barry stated was it fifty-feet. What you are saying to me is we have not said how many feet it should be. Our Ordinance says fifty-feet and we have had variances to that effect, and I think the variances we have had does set a precedent. Now, they are asking for a huge precedent. A huge variance to what we have already done. I am saying if you want to know what the Planning Commission thinks you

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should look at the variances that have already gone into effect to know what is acceptable or close to it, but when you are bringing in something twice as high as the highest then you are really sort of saying let us test the waters. I am saying you can test the water if an individual is coming into the City with the set fifty-feet. We know overall in the plans fifty-feet is like a benchmark, and anything over that needs an exception. I understand where you are coming from. I also understand that we want the City to grow but we do not want to look like any other in the County. I am not sure if what the input would be from the people in Lake Forest, but the comments I have had are not for one hundred and ninety-feet. Over fifty-feet, yes. I have already got a feeling from my neighbors.

Mr. Chason stated we really are getting into site plan questions, but I would like to say the height variance has the information to go forward with the site plan.

Mr. Chason stated on the flip side, once they have presented, and they are asking for the height variance, and they have the footprint down to five percent, and the density down two thirds percent of what would be permitted for a traditional apartment complex. I am not saying I have reviewed any of the information to know how I would vote on their site plan. I am saying it appears from the information we are being given they have looked at our Ordinance and they are well within all of our requirements, as a matter of fact, well below most of our requirements with the exception of the height.

The Chairman stated I know we have had a great deal of discussion about the process of granting the variance from the fifty-feet level. The Ordinance states up to fifty-feet, and all others need a height variance and it outlines the process as to how you get it approved. It has to be approved by the City Council upon recommendation from the Planning Commission, and that is a standard we cannot get around, that is my interpretation of the Ordinance.

Mr. Barry stated then, are you saying that there is an unlimited variance as to the height.

The Chairman stated no where in the Ordinance is there a top limit. In the Ordinance, it says we, as a Planning Commission reviewing plans, can approve a development up to fifty-feet, but to go beyond fifty-feet requires our recommendation, and approval by the City Council so there is no limit. I do not know, and some of you may have been around, how the fifty-feet came about, but I certainly think the City Council is aware of the character and quality of the City, in order to

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preserve it.

Mr. Coulter stated Mr. Chairman may I call to question the motion on the floor.

The Chairman stated it has been motioned to recommend against granting, and I am paraphrasing, a height exception for the Apalachee Building, Lot 1 of Sundowne Subdivision.

Upon roll call vote, *the Motion failed.*

Mr. Kirby	Nay
Ms. Barnette	Aye
Mr. Chason	Nay
Mr. Day	Nay
Mr. West	Aye
Ms. Barry	Aye
Mr. Coulter	Aye
Mayor Small	Nay

Ms. Burdette stated Mr. Day, we need to clarify that because all the voices ran together.

Mr. Kirby stated we discussed the fact that we need to make some revisions to our Ordinance, but exactly how much, we do not know. It is my belief that the Council is charged with the decision of how far up to go. We do not make that decision. We can only give them a recommendation. We have been unable to reach a consensus on a height or a recommendation to the Council at this time, and I do not know if this will be totally appropriate or not, but here goes.

A **Motion** was made by Mr. Kirby and **Seconded** by Mr. Chason *to favorably recommend approval without a height specification for the Apalachee Building, Lot 1 of Sundowne Subdivision. The Motion failed.*

Ms. Barnette stated I think I understand, and Mr. Kirby, correct me if I am wrong. I think you are trying to make a point that there is an acknowledgment that some type of variance needs to be made, but we cannot come to consensus that one hundred and ninety-feet is the point to get to. There does seem to be a pretty fair consensus that we need to reexamine that part of the City and perhaps modify our height. I think we are in consensus that it is a conceivable thing. It seems a little ridiculous for us to attempt to set what number that height will be, but maybe it will be beneficial to give the Council some recommendations on where we are trying to go. The other point I would

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like to make is that we are looking at this to discuss a modification to our Land Use Ordinance, and I do not know if there will be a way for us to make an exception that if this was denied at one hundred and ninety-feet the developer would be permitted to come back. Normally, when they are denied, they cannot come back for a year or how long before we would allow them to come back.

The Chairman stated that is for rezoning. Is that correct, Mr. Eady, that only applies to rezoning?

Mr. Eady stated yes.

Ms. Barnette stated so they can come back whenever. Okay, with that acknowledgment once we modify it, all of this will not be necessary to take it to the Council.

The Chairman stated so are you saying you oppose the plan.

Ms. Barnette stated I do not like the motion, I guess, is my point.

Mr. Barry stated it seems to me we are saying something similar are you still beating your wife because I am not opposed to a variance on the height. If we say we recommend a variance of one hundred and ninety-two feet, and I cannot in clear conscience recommend it.

Mr. Barry stated I can recommend a variance within the fifty-feet which is more consistent with what we have done in the past.

Mayor Small stated Mr. Chairman, I want to understand this, are we just making a motion to grant a variance with no height to allow the Council to set it.

The Chairman stated that is how I understood it.

Mr. Kirby stated to favorably recommend to Council a variance without a specific height from this body, since we cannot agree. We have no agreement and in order to move the project forward. I have a problem holding up one person or group, for us, to change an Ordinance, we probably should have looked at back when, but now behold a project has come to ask us for a recommendation. The Council is the one that has to decide, not us. Then if it is denied, and they want to come back and modify it or whatever they propose to do, is fine, but I have a problem with putting them on hold until we can rewrite and come up with an agreeable Ordinance for everybody.

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Mr. West stated I think we are dodging the issue. My recommendation would be to table it and have a public hearing. Let us recommend it be denied, and in the meantime the Council can help us get a public hearing going, and help, if we need help, in revising the Ordinance, giving the developer and engineer an opportunity if it fits their schedules to come back in ninety to one hundred and twenty days or so to take another look at it. I do not like dodging it.

Mayor Small stated we have all looked at this and it looks like a great development, and I think the developer has set the bar pretty high. We do not have an Ordinance ready for this, and I think that is what is so uncomfortable for everyone. We are charging into the unknown, and I get that we have a split Commission. I do not know exactly what the answer is, but I do know the course tonight is to either vote yea or nay. I know it is up to the Council to make the decision as to whether the height variance is granted or not. Now, I personally would like to see the Ordinance, the height ordinance, and especially the area around these developments so they are not so close, in order for us to preserve, which is exactly what this project is going for, trees and ground space to absorb drainage, and I do like this project. I think at some and time we do need to address this and seriously look at our Land Use Ordinance, but we must decide what recommendation we are going to make to the Council.

Mr. Chason stated along with the point you were talking about, I want to make sure what everyone is thinking because I know what I think. We are talking about changing the Ordinance from fifty-feet. We are talking about we agree that it probably should be higher than fifty-feet.

Mr. Chason stated our Ordinance, the way it is written, at some point in the future we anticipate changing the number from fifty-feet to one hundred or one hundred and twenty-five, it does not matter, as long as we all agree on something reasonable, is not relevant to this particular project. We are talking about this particular project, permitting up to a possible one hundred and ninety-feet. In my opinion we are not opening up a can of worms that would allow anyone else to come in and get a variance of one hundred and ninety-feet, that is not what we said.

Ms. Barnette stated I do not mean to interrupt, but we do not have any criteria.

Mr. Chason stated we are not making a change by recommending this favorably. We are not making a change to the Ordinance, it still

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stands at fifty-feet until it changes. Any other application that comes to us will have to go the same route they have gone to request higher than fifty-feet.

Ms. Barnette stated we will have no criteria then, too. As to define why we said yes to this, and no to the next one is an arbitrary and capricious decision, which we are not allow to do.

Mr. Chason stated well, we have been asked to make a decision, and that is not arbitrary. I mean, we are either yea or nay, and we are split on that, but to me it is not an arbitrary decision. It is looking at this particular project, this particular location, at this particular time the way it has been given to us, whether or not we give a favorable recommendation to the height is the question before us.

Ms. Barnette stated but we are charged with the path of planning for Daphne's future, that is our mandate. The point, land use planning.

Mr. Chason stated even now the Ordinance does not stipulate a specific height. It says less than fifty-feet you have the right, but if it says over fifty-feet you have to ask. We may raise that to one hundred-feet or whatever, but you know the point is that is a decision which has to be made on a case by case basis. I do not think that is arbitrary. I think if they came to us wanting six towers on this site it would be a different set of facts, but given the facts we have this is what is being asked for. They can come back with a second tower and not get one hundred and ninety feet.

Ms. Barnette stated case and point. If we are at that part of our code right now, they are pushing the maximum density allowed on the eleven point plus acres, so a proposed phase two would not even be allowed.

Ms. Barnette stated that would be another irresponsible decision on the part of the Planning Commission to recommend approval when you know they are pushing the maximum density allow, and then have them turn around to come back with a phase two upon which they are right at the edge for the density. You know as soon as we approve phase one there will be a phase two and density wise they cannot add any more units.

Mr. Chason stated that is not a reason to deny it. Tonight, they are asking for one tower and one hundred and ninety-feet.

Ms. Barnette stated that is what I am saying about opening the can of

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worms.

Mr. Barry stated when our recommendation goes to the City Council can we cite it, showing them we are recommending there be a variance, which could be as high as one hundred and ninety-two feet.

Mr. Kirby stated that is not what I said. That was not my motion.

The Chairman stated we do have a motion on the table that we need to get back to.

Ms. Barnette stated I do believe that the City Council will read that as a favorable recommendation.

Mr. Barry stated I do not believe they are going to be able to read our intent. Our intent is to say fifty is too low, but one hundred and ninety-two is too high, and I do not think that the motion you are giving is saying that. I am reading us in agreement as saying that fifty is too low. I do not know. Are we going to have another chance to do anything within the Planning Commission concerning the one hundred and ninety-two feet if the Council grants the exception because that is basically what we are putting before the Council. Not a variance from fifty because I agree with the variance from fifty, but we are saying we are doing an approval on this number. I really do not think we want to give an approval on that specific number.

Mr. Chason stated if they are not bound by an unfavorable recommendation, then they are not bound by one hundred and ninety-two feet. It is the Council's decision.

Mr. Kirby stated if I remember correctly, it is a recommendation, they are not bound by anything we say. We can favorably recommend it and they can deny it or we can unfavorably recommend it and they could approve it. They are not bound by this recommendation at all. This is strictly a recommendation. The reason I made the motion I did was because we could not come to a consensus on an unfavorable recommendation. The motion failed. The only other alternative was to see if we could come to some agreement on a motion to recommend.

Mr. Barry stated we have already had this discussion once about the fact that we could bring to them a specific language to say here is our problem with this and we would like you to know what it is. Not just yea or nay, but maybe some kind of little language. You would be amazed because we are still sort of saying are you still beating your wife.

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The Chairman stated I understood the motion. It was to favorably recommend the project without a specific height requirement.

Upon roll call vote, *the Motion failed.*

Mayor Small	Aye
Mr. Coulter	Nay
Mr. Barry	Nay
Mr. West	Aye
Mr. Day	Aye
Mr. Chason	Nay
Ms. Barnette	Nay
Mr. Kirby	Aye

Ms. Barnette stated you mean we have to tell the City Council we had a draw, and they will have to factor in what our discussion has been, right.

Mr. West stated I think we cannot. I think we should not.

Mr. Ross stated I think that is the recommendation. It is a split vote however, you want to shake it. It is the recommendation that goes to the Council. The Council members certainly can read the remarks which are a matter of record when they are transcribed. I think that is the recommendation. It might have been a different turnout if everyone had been here. Ms. Barnette is correct, it goes to Council four to four, that is the recommendation.

Mr. West stated Mr. Chairman, just let me say this and I will not say anything else. I have said it and I will say it again we need public opinion. We need to take it to the public. If you do not do that then you have got it. The public will be about fifty to fifty on this, but I still urge the Council to get their input. They have the authority to try and involve the citizens more before they vote on this.

Ms. Barnette stated I want to try one more motion. At least let us communicate where we are to the Council.

A **Motion** was made by Ms. Barnette and **Seconded** by Mr. Barry **to advise the City Council the vote was split among the Planning Commission to favorably or unfavorably recommend the height exception for the Apalachee Building, Lot 1 of Sundowne Subdivision, but implore them to look at the planning implications during their final decision.**

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Upon roll call vote, *the Motion carried.*

Mayor Small	Aye
Mr. Coulter	Aye
Mr. Barry	Aye
Mr. West	Aye
Mr. Day	Aye
Mr. Chason	Nay
Ms. Barnette	Aye
Mr. Kirby	Aye

The Chairman stated the next order of business is the attorney's report.

ATTORNEY'S REPORT:

Mr. Ross, City Attorney, stated no report, Mr. Chairman.

ADJOURNMENT:

The Chairman stated do any of the Commissioners or Mr. Eady have any questions or comments. If there is no objection, the Chair will entertain a motion to adjourn.

A **Motion** was made and **Seconded to adjourn. The Motion carried unanimously.**

There being no further business, the meeting was adjourned at 7:35 p.m.

Respectfully submitted by:

Pat Houston, Planning Technician

APPROVED: March 24, 2005

Kenneth Day, Chairman

PLANNING COMMISSION

SET PUBLIC HEARING FOR:

APRIL 4, 2005

- 1.) Annexation: Crystal Springs

PLEASE Publish in the Bulletin Legal Section on Wednesday, March 9, 2005, 2005

FIRST NOTICE OF PUBLIC HEARING

Notice is hereby given the first time that the City Council of the City of Daphne will hold a Public Hearing on April 4, 2005 at 6:30 pm in the Council Chambers at City Hall, 1705 Main Street, Daphne, Alabama. The public is welcome to attend and offer comments opposing or favoring a proposed Ordinance annexing certain property as presented below. Any person with an American's with Disabilities Act disability must contact the City Clerk's office ten days prior to the Public Hearing, in order for accommodations to be made.

David L. Cohen, City Clerk, CMC

PROPOSED ORDINANCE:

ORDINANCE NO. 2005-

**FOR THE ANNEXATION OF CERTAIN PROPERTY TO THE CORPORATE LIMITS
OF THE MUNICIPALITY OF THE CITY OF DAPHNE, ALABAMA**

Crystal Springs, L.L.C.

(Property located at the Northwest Corner of Intersection U.S. 90 Hwy. and AL Hwy. 181)

**BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF
DAPHNE, ALABAMA, AS FOLLOWS:**

WHEREAS, the owners of the property described in Section 2 of this Ordinance have signed and filed a written petition with the City Clerk of the City of Daphne, Alabama, requesting that such property be annexed to the corporate limits of the City of Daphne, Alabama; and,

WHEREAS, all of such property is located and contained within an area contiguous to the corporate limits of the City of Daphne, Alabama and does not lie within the corporate limits or police jurisdiction of any other municipality; and,

WHEREAS, said petition contains an accurate description of the property or territory proposed to be annexed together with a map of said property showing its relationship to the corporate limits of the City of Daphne; and,

WHEREAS, said petition has been presented to the Planning Commission of the City of

WHEREAS, said petition has been presented to the Planning Commission of the City of Daphne on February 22, 2005 and a affirmative recommendation was **approved** for the City Council to consider said request for annexation and said property **shall be zoned B-2, General Business, zone**; and,

WHEREAS, after proper publication, a public hearing was held by the City Council on April 4, 2005 concerning the petition for annexation; and,

WHEREAS, the City Council of the City of Daphne, Alabama has determined that it is in the best interest of said City that the property described in Section 2 hereof be annexed to the corporate limits of the City of Daphne, and that all the requirements of Sections 11-42-21 through 11-42-24, Code of Alabama, 1975, as amended have been complied with by said Petitioner.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, as follows:

SECTION 1: CONSENT TO ANNEXATION. The City Council of the City of Daphne, Alabama does by this Ordinance assent to the annexation of the property described in Section 2 of this Ordinance to the corporate limits of the City of Daphne, Alabama, and does by the adoption of this Ordinance, extend and rearrange said corporate limits to embrace and include such property.

SECTION 2: THE PROPERTY. That property requested to be annexed into the City of Daphne is described in Exhibit "A", attached hereto and made a part of this Ordinance as if fully set out herein.

SECTION 3: MAP OF PROPERTY. The property hereby annexed to the City of Daphne, Alabama, is set forth and described in Exhibit "B" and attached hereto a map of the property showing its relationship to the corporate limits of the municipality of the City of Daphne and made a part of this Ordinance.

SECTION 4: PUBLICATION. This Ordinance shall be published as required by Section 11-42-21, Code of Alabama, 1975, as amended, and the property described herein shall be annexed to the corporate limits of the City of Daphne, Alabama, upon such publication.

SECTION 5: PROBATE COURT. A description of the property described in this Ordinance shall be filed in the Office of the Judge of Probate of Baldwin County, Alabama, as required by Section 11-42-21, Code of Alabama, 1975, as amended.

**"EXHIBIT A"
LEGAL DESCRIPTION**

COMMENCING AT THE NORTHEAST CORNER OF SECTION 34, T4S-R2E, BALDWIN COUNTY, ALABAMA, RUN N 89° 49' 05" W ALONG THE NORTH LINE OF SAID SECTION 34, T4S-R2E, A DISTANCE OF 533.77 FEET TO ITS INTERSECTION WITH THE SOUTH RIGHT OF WAY LINE OF INTERSTATE HIGHWAY NO. 10; SAID

POINT BEING THE POINT OF BEGINNING OF THE PROPERTY HEREIN DESCRIBED; THENCE ALONG SAID SOUTH RIGHT OF WAY LINE OF INTERSTATE HIGHWAY NO. 10 RUN S 67° 58' 55" E 273.0 FEET TO A POINT; THENCE CONTINUING ALONG SAID SOUTH RIGHT OF WAY LINE OF INTERSTATE HIGHWAY NO. 10 RUN S 33° 51' 59" E 166.21 FEET TO ITS INTERSECTION WITH THE WEST RIGHT OF WAY LINE OF ALABAMA STATE HIGHWAY NO. 181; THENCE ALONG SAID WEST RIGHT OF WAY LINE OF ALABAMA STATE HIGHWAY NO. 181 RUN S 00° 12' 37" W 479.08 FEET TO A POINT; THENCE CONTINUING ALONG SAID WEST RIGHT OF WAY LINE OF ALABAMA STATE HIGHWAY NO. 181 RUN S 29° 47' 24" E 63.54 FEET TO THE NORTHEAST CORNER OF THE PROPERTY NOW OR FORMERLY OF MIDSTREAM FUEL SERVICES, INC.; THENCE ALONG THE NORTH BOUNDARY OF SAID MIDSTREAM FUEL SERVICES, INC. PROPERTY RUN N 89° 47' 24" W 158.28 FEET TO THE NORTHWEST CORNER OF SAID MIDSTREAM FUEL SERVICES, INC. PROPERTY; THENCE ALONG THE WEST BOUNDARY OF SAID MIDSTREAM FUEL SERVICES, INC. PROPERTY RUN S 00° 07' 30" W 218.0 FEET TO THE SOUTHWEST CORNER OF SAID MIDSTREAM FUEL SERVICES, INC. PROPERTY; THENCE ALONG THE SOUTH BOUNDARY OF SAID MIDSTREAM FUEL SERVICES, INC. PROPERTY RUN S 89° 47' 24" E 211.19 FEET TO A POINT ON THE AFOREMENTIONED WEST RIGHT OF WAY LINE OF ALABAMA STATE HIGHWAY NO.181; THENCE ALONG SAID WEST RIGHT OF WAY LINE OF ALABAMA STATE HIGHWAY NO. 181 RUN S 00° 12' 36" W 1267.85 FEET TO ITS INTERSECTION WITH THE NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 90; THENCE ALONG SAID NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 90 RUN S 89°05' 23" W 554.70 FEET TO A POINT ON THE EAST LINE OF WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E; THENCE ALONG SAID EAST LINE OF THE WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E AND THE EAST LINE OF THE WEST HALF OF THE NORTHEAST QUARTER OF SAID NORTHEAST QUARTER OF SECTION 34, T4S-R2E RUN N 00° 13' 54" E 2269.84 FEET TO A POINT ON THE AFOREMENTIONED NORTH LINE OF SECTION 34, T4S-R2E; THENCE ALONG SAID NORTH LINE OF SECTION 34, T4S-R2E, RUN N 89° 49' 05" W 655.92 FEET TO THE NORTHWEST CORNER OF SAID WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E; THENCE ALONG THE WEST LINE OF SAID WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E AND THE WEST LINE OF SAID WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E RUN S 00° 17' 52" W 2282.40 FEET TO A POINT ON THE AFOREMENTIONED NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 90; THENCE ALONG SAID NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 90 RUN S 89° 05' 23" W 1683.54 FEET TO A POINT; THENCE RUN N 00° 54' 37" W 2128.49 FEET TO A POINT OF THE AFOREMENTIONED SOUTH RIGHT OF WAY LINE OF INTERSTATE HIGHWAY NO. 10; THENCE ALONG SAID SOUTH RIGHT OF WAY LINE OF INTERSTATE NO. 10, RUN AS FOLLOWS: N 81° 47' 20" E 816.04 FEET, N 83° 28' 08" E 1158.93 FEET, S 85° 56' 57" E 455.77 FEET, S 67° 58' 55" E 100.7 FEET TO THE POINT OF BEGINNING. CONTAINING 113.9577 ACRES.

THE WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E, BALDWIN COUNTY, ALABAMA AND A PROTION OF THE

WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S- R2E, BALDWIN COUNTY, ALABAMA, BEING MORE PARTICULARLY DESCRIBED, AS FOLLOWS: COMMENCING AT NORTHEAST CORNER OF SECTION 34, T4S-R2E, BALDWIN COUNTY, ALABAMA, RUN N 89° 49' 05" W ALONG THE NORTH LINE OF SAID SECTION 34, T4S-R2E, A DISTANCE OF 655.92 FEET TO THE NORTHEAST CORNER OF THE WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 34, T4S-R2E; THENCE CONTINUING N 89° 49' 05" W ALONG SAID NORTH LINE OF SECTION 34, T4S-R2E RUN 655.92 FEET TO THE NORTHWEST CORNER OF SAID WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E; THENCE ALONG THE WEST LINE OF SAID WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E AND THE WEST LINE OF SAID WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E RUN S 00° 17' 52" W 2282.40 FEET TO A POINT ON THE AFOREMENTIONED NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY NO.90; THENCE ALONG SAID NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY NO.90 RUN N 89° 05' 23" E 658.69 FEET TO A POINT ON THE EAST LINE OF THE WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E; THENCE ALONG SAID EAST LINE OF THE WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E AND THE EAST LINE OF THE AFOREMENTIONED WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E RUN N 00° 13' 54" E 2269.84 FEET TO THE POINT OF BEGINNING. CONTAINING 34.3422 ACRES.

REFERENCE: EASTERN SHORE PARK

ADOPTED AND APPROVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA on this _____ day of _____, 2005.

Greg Burnam
Council President
Date & Time Signed: _____

Fred Small
Mayor
Date & Time Signed: _____

ATTEST:

David L. Cohen
City Clerk, MMC

SECOND NOTICE OF PUBLIC HEARING

Notice is hereby given the first time that the City Council of the City of Daphne will hold a Public Hearing on April 4, 2005 at 6:30 pm in the Council Chambers at City Hall, 1705 Main Street, Daphne, Alabama. The public is welcome to attend and offer comments opposing or favoring an Ordinance annexing certain property as presented below. Any person with an American's with Disabilities Act disability must contact the City Clerk's office ten days prior to the Public Hearing, in order for accommodations to be made.

David L. Cohen, City Clerk, CMC

PROPOSED ORDINANCE:

ORDINANCE NO. 2005-

**FOR THE ANNEXATION OF CERTAIN PROPERTY TO THE CORPORATE LIMITS
OF THE MUNICIPALITY OF THE CITY OF DAPHNE, ALABAMA**

Crystal Springs, L.L.C.

(Property located at the Northwest Corner of Intersection U.S. 90 Hwy. and AL Hwy. 181)

**BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF
DAPHNE, ALABAMA, AS FOLLOWS:**

WHEREAS, the owners of the property described in Section 2 of this Ordinance have signed and filed a written petition with the City Clerk of the City of Daphne, Alabama, requesting that such property be annexed to the corporate limits of the City of Daphne, Alabama; and,

WHEREAS, all of such property is located and contained within an area contiguous to the corporate limits of the City of Daphne, Alabama and does not lie within the corporate limits or police jurisdiction of any other municipality; and,

WHEREAS, said petition contains an accurate description of the property or territory proposed to be annexed together with a map of said property showing its relationship to the corporate limits of the City of Daphne; and,

WHEREAS, said petition has been presented to the Planning Commission of the City of Daphne on February 22, 2005 and a affirmative recommendation was **approved** for the City Council to consider said request for annexation and said property **shall be zoned B-2, General Business, zone;** and,

/END OF SYNOPSIS

ORDINANCE NO. 2005-

**FOR THE ANNEXATION OF CERTAIN PROPERTY TO THE CORPORATE LIMITS
OF THE MUNICIPALITY OF THE CITY OF DAPHNE, ALABAMA**

Crystal Springs, L.L.C.

(Property located at the Northwest Corner of Intersection U.S. 90 Hwy. and AL Hwy. 181)

**BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF
DAPHNE, ALABAMA, AS FOLLOWS:**

WHEREAS, the owners of the property described in Section 2 of this Ordinance have signed and filed a written petition with the City Clerk of the City of Daphne, Alabama, requesting that such property be annexed to the corporate limits of the City of Daphne, Alabama; and,

WHEREAS, all of such property is located and contained within an area contiguous to the corporate limits of the City of Daphne, Alabama and does not lie within the corporate limits or police jurisdiction of any other municipality; and,

WHEREAS, said petition contains an accurate description of the property or territory proposed to be annexed together with a map of said property showing its relationship to the corporate limits of the City of Daphne; and,

WHEREAS, said petition has been presented to the Planning Commission of the City of Daphne on February 22, 2005 and a affirmative recommendation was **approved** for the City Council to consider said request for annexation and said property **shall be zoned B-2, General Business, zone**; and,

WHEREAS, after proper publication, a public hearing was held by the City Council on April 4, 2005 concerning the petition for annexation; and,

WHEREAS, the City Council of the City of Daphne, Alabama has determined that it is in the best interest of said City that the property described in Section 2 hereof be annexed to the corporate limits of the City of Daphne, and that all the requirements of Sections 11-42-21 through 11-42-24, Code of Alabama, 1975, as amended have been complied with by said Petitioner.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL
OF THE CITY OF DAPHNE, ALABAMA, as follows:**

SECTION 1: CONSENT TO ANNEXATION. The City Council of the City of Daphne, Alabama does by this Ordinance assent to the annexation of the property described in Section 2 of this Ordinance to the corporate limits of the City of Daphne, Alabama, and does by the adoption of this Ordinance, extend and rearrange said corporate limits to embrace and include such property.

SECTION 2: THE PROPERTY. That property requested to be annexed into the City of Daphne is described in Exhibit "A", attached hereto and made a part of this Ordinance as if fully set out herein.

SECTION 3: MAP OF PROPERTY. The property hereby annexed to the City of Daphne, Alabama, is set forth and described in Exhibit "B" and attached hereto a map of the property showing its relationship to the corporate limits of the municipality of the City of Daphne and made a part of this Ordinance.

SECTION 4: PUBLICATION. This Ordinance shall be published as required by Section 11-42-21, Code of Alabama, 1975, as amended, and the property described herein shall be annexed to the corporate limits of the City of Daphne, Alabama, upon such publication.

SECTION 5: PROBATE COURT. A description of the property described in this Ordinance shall be filed in the Office of the Judge of Probate of Baldwin County, Alabama, as required by Section 11-42-21, Code of Alabama, 1975, as amended.

**"EXHIBIT A"
LEGAL DESCRIPTION**

COMMENCING AT THE NORTHEAST CORNER OF SECTION 34, T4S-R2E, BALDWIN COUNTY, ALABAMA, RUN N 89° 49' 05" W ALONG THE NORTH LINE OF SAID SECTION 34, T4S-R2E, A DISTANCE OF 533.77 FEET TO ITS INTERSECTION WITH THE SOUTH RIGHT OF WAY LINE OF INTERSTATE HIGHWAY NO. 10; SAID POINT BEING THE POINT OF BEGINNING OF THE PROPERTY HEREIN DESCRIBED; THENCE ALONG SAID SOUTH RIGHT OF WAY LINE OF INTERSTATE HIGHWAY NO. 10 RUN S 67° 58' 55" E 273.0 FEET TO A POINT; THENCE CONTINUING ALONG SAID SOUTH RIGHT OF WAY LINE OF INTERSTATE HIGHWAY NO. 10 RUN S 33° 51' 59" E 166.21 FEET TO ITS INTERSECTION WITH THE WEST RIGHT OF WAY LINE OF ALABAMA STATE HIGHWAY NO. 181; THENCE ALONG SAID WEST RIGHT OF WAY LINE OF ALABAMA STATE HIGHWAY NO. 181 RUN S 00° 12' 37" W 479.08 FEET TO A POINT; THENCE CONTINUING ALONG SAID WEST RIGHT OF WAY LINE OF ALABAMA STATE HIGHWAY NO. 181 RUN S 29° 47' 24" E 63.54 FEET TO THE NORTHEAST CORNER OF THE PROPERTY NOW OR FORMERLY OF MIDSTREAM FUEL SERVICES, INC.; THENCE ALONG THE NORTH BOUNDARY OF SAID MIDSTREAM FUEL SERVICES, INC. PROPERTY RUN N 89° 47' 24" W 158.28 FEET TO THE NORTHWEST CORNER OF SAID MIDSTREAM FUEL SERVICES, INC. PROPERTY; THENCE ALONG THE WEST

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REFERENCE: EASTERN SHORE PARK

ADOPTED AND APPROVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA on this _____ day of _____, 2005.

Greg Burnam
Council President
 Date & Time Signed: _____

Fred Small
Mayor
 Date & Time Signed: _____

ATTEST:

David L. Cohen
City Clerk, MMC

To: Office of the City Clerk
From: William H. Eady, Sr.,
Director of Community
Development
Subject: Proposed annexation into the
City of Daphne

MEMORANDUM

Date: February 23, 2005

At the regular meeting of the City of Daphne Planning Commission, February 22, 2005, eight members were present and one vacant. The vote was unanimous for the affirmative recommendation.

Upon receipt of said documentation, please set the public hearing, advertise, and place on the appropriate agenda for action by the City Council.

If you should have any questions, please do not hesitate to contact the undersigned.

Thank you,

WHE/hb

cc: Mayor Small
file

**PETITION FOR ANNEXATION OF CERTAIN PROPERTY
INTO THE CORPORATE LIMITS OF THE MUNICIPALITY
OF THE CITY OF DAPHNE, ALABAMA**

The undersigned, Crystal Springs, L.L.C., Exchange Intermediary Services SPE #1, L.L.C., Malbis Plantation, Inc., Christine T. Marks, Constantine T. Tampary and Anthony T. Tampary file this petition with the Clerk of the City of Daphne requesting the property hereafter described commonly referred to as Eastern Shore Park to be annexed into the City of Daphne, a municipal corporation incorporated under the laws of the State of Alabama, and submits the following in support of their petition:

1. **Description Of Property:** The description of the property which Petitioners request to be annexed into the City of Daphne is described in Exhibit "A" attached hereto and made a part of this Petition as if fully set out herein (the "Property").

2. **Map Of Property:** Attached hereto as Exhibit "B" and made a part of this Petition, is a map of the Property showing its relationship to the corporate limits of the municipality of the City of Daphne.

3. **Owners:** The Petitioners, Crystal Springs, L.L.C., Exchange Intermediary Services SPE #1, L.L.C., Malbis Plantation, Inc., Christine T. Marks, Constantine T. Tampary and Anthony T. Tampary, are the owners of the Property hereby sought to be annexed into the corporate limits of the City of Daphne.

4. **Specific Conditions:** This Petition is conditioned upon the adoption of an ordinance, which shall include specifically the conditions requested below in this Section 4 upon annexing the said Property into the corporate limits of the City of Daphne (the "Conditions"). The Conditions are as follows:

(a) The Property receives a B-2 (General Business District) zoning classification;

(b) The City of Daphne provides water, sewer and electrical utility service to the Property in quantities sufficient to service the commercial and retail development of the Property.

5. Code: This Petition is filed pursuant to the provisions of Article 21, Chapter 42, Title 11, Code of Alabama, 1975, as amended.

DATED this _ day of February, 2005.

Respectfully submitted,

[EXECUTION ON FOLLOWING PAGES]

CRYSTAL SPRINGS, L.L.C.,
an Alabama limited liability company

By: Crystal Springs Management, Inc.
Its: Manager

By: *Jake F. Aronov*
Its: *President*

STATE OF ALABAMA
COUNTY OF MONTGOMERY

I, the undersigned authority, a Notary Public in and for said State at Large, hereby certify that *JAKE F. ARONOV*, whose name as *President* of Crystal Springs Management, Inc., a corporation, acting in its capacity as the Manager of Crystal Springs, L.L.C., an Alabama limited liability company, is signed to the foregoing document, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as Manager of the aforesaid limited liability company.

Given under my hand and official seal this *8th* day of February, 2005

Janice B. Nix
Notary Public
(Print Name) *JANICE B. NIX*
My commission expires: *11-8-08*

**EXCHANGE INTERMEDIARY SERVICES SPE#1,
L.L.C.,**
an Alabama limited liability company

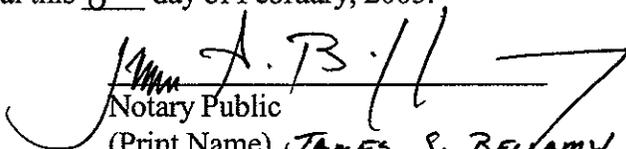
By: Exchange Intermediary Services, Inc.
Its: Sole Member

By: 
Virginia Bear Mazyck
Its: Manager

STATE OF ALABAMA
COUNTY OF MONTGOMERY

I, the undersigned authority, a Notary Public in and for said State at Large hereby certify that Virginia Bear Mazyck, whose name as Manager of Exchange Intermediary Services, L.L.C., an Alabama limited liability company, acting in its capacity as the Sole Member of Exchange Intermediary Services SPE #1, L.L.C., an Alabama limited liability company, is signed to the foregoing document, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, she, as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company, acting in its capacity as the Sole Member of Exchange Intermediary Services SPE#1, L.L.C.

Given under my hand and official seal this 8th day of February, 2005.


Notary Public
(Print Name) JAMES S. BELAMY
My commission expires: JUNE 25, 2005

MALBIS PLANTATION, INC.

By: Historic Malbis Development Corporation,
Its Attorney-in-Fact

By: 
Its: Pres

STATE OF ALABAMA
COUNTY OF BALDWIN

I, the undersigned, Notary Public in and for said County in said State, hereby certify that Neal Nash, whose name as President of Historic Malbis Development Corporation, an Alabama corporation acting in its capacity as attorney-in-fact for Malbis Plantation, Inc., an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said Historic Malbis Development Corporation, acting in the aforesaid capacity for Malbis Plantation, Inc.

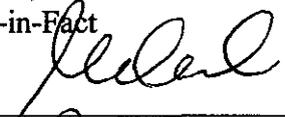
Given under my hand and seal this 9th day of February, 2005.

MARIE PRICE
Notary Public, State of Florida
My Comm. Expires March 8, 2006
Comm. No. DD 080872


Notary Public
My commission expires: 3-8-06

CHRISTINE T. MARKS, CONSTANTINE T. TAMPARY, AND ANTHONY T. TAMPARY

By: Historic Malbis Development Corporation,
Their Attorney-in-Fact

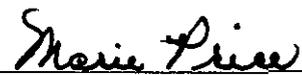
By: 
Its: Pres.

STATE OF ALABAMA
COUNTY OF BALDWIN

I, the undersigned, Notary Public in and for said County in said State, hereby certify that Neal Nash, whose name as President of Historic Malbis Development Corporation, an Alabama corporation acting in its capacity as attorney-in-fact Christine T. Marks, Constantine T. Tampary and Anthony Tampary, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said Historic Malbis Development Corporation, acting in the aforesaid capacity for Anthony Tampary.

Given under my hand and seal this 9th day of February, 2005.

MARIE PRICE
Notary Public, State of Florida
My Comm. Expires March 8, 2006
Comm. No. DD 080872


Notary Public
My commission expires: 3-8-06

CRYSTAL SPRINGS, L.L.C., EXCHANGE INTERMEDIARY SERVICES,
MALBIS PLANTATION, INC., CHRISTINE T. MARKS, CONSTANTICE T.
TAMPARY, AND ANTHONY T. TAMPARY
ANNEXATION

EXHIBIT "A"

COMMENCING AT THE NORTHEAST CORNER OF SECTION 34, T4S-R2E, BALDWIN COUNTY, ALABAMA, RUN N 89° 49' 05" W ALONG THE NORTH LINE OF SAID SECTION 34, T4S-R2E, A DISTANCE OF 533.77 FEET TO ITS INTERSECTION WITH THE SOUTH RIGHT OF WAY LINE OF INTERSTATE HIGHWAY NO. 10; SAID POINT BEING THE POINT OF BEGINNING OF THE PROPERTY HEREIN DESCRIBED; THENCE ALONG SAID SOUTH RIGHT OF WAY LINE OF INTERSTATE HIGHWAY NO. 10 RUN S 67° 58' 55" E 273.0 FEET TO A POINT; THENCE CONTINUING ALONG SAID SOUTH RIGHT OF WAY LINE OF INTERSTATE HIGHWAY NO. 10 RUN S 33° 51' 59" E 166.21 FEET TO ITS INTERSECTION WITH THE WEST RIGHT OF WAY LINE OF ALABAMA STATE HIGHWAY NO. 181; THENCE ALONG SAID WEST RIGHT OF WAY LINE OF ALABAMA STATE HIGHWAY NO. 181 RUN S 00° 12' 37" W 479.08 FEET TO A POINT; THENCE CONTINUING ALONG SAID WEST RIGHT OF WAY LINE OF ALABAMA STATE HIGHWAY NO. 181 RUN S 29° 47' 24" E 63.54 FEET TO THE NORTHEAST CORNER OF THE PROPERTY NOW OR FORMERLY OF MIDSTREAM FUEL SERVICES, INC.; THENCE ALONG THE NORTH BOUNDARY OF SAID MIDSTREAM FUEL SERVICES, INC. PROPERTY RUN N 89° 47' 24" W 158.28 FEET TO THE NORTHWEST CORNER OF SAID MIDSTREAM FUEL SERVICES, INC. PROPERTY; THENCE ALONG THE WEST BOUNDARY OF SAID MIDSTREAM FUEL SERVICES, INC. PROPERTY RUN S 00° 07' 30" W 218.0 FEET TO THE SOUTHWEST CORNER OF SAID MIDSTREAM FUEL SERVICES, INC. PROPERTY; THENCE ALONG THE SOUTH BOUNDARY OF SAID MIDSTREAM FUEL SERVICES, INC. PROPERTY RUN S 89° 47' 24" E 211.19 FEET TO A POINT ON THE AFOREMENTIONED WEST RIGHT OF WAY LINE OF ALABAMA STATE HIGHWAY NO.181; THENCE ALONG SAID WEST RIGHT OF WAY LINE OF ALABAMA STATE HIGHWAY NO. 181 RUN S 00° 12' 36" W 1267.85 FEET TO ITS INTERSECTION WITH THE NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 90; THENCE ALONG SAID NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 90 RUN S 89°05' 23" W 554.70 FEET TO A POINT ON THE EAST LINE OF WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E; THENCE ALONG SAID EAST LINE OF THE WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E AND THE EAST LINE OF THE WEST HALF OF THE NORTHEAST QUARTER OF SAID NORTHEAST QUARTER OF SECTION 34, T4S-R2E RUN N 00° 13' 54" E 2269.84 FEET TO A POINT ON THE AFOREMENTIONED NORTH LINE OF SECTION 34, T4S-R2E; THENCE ALONG SAID NORTH LINE OF SECTION 34, T4S-R2E, RUN N 89° 49' 05" W 655.92 FEET TO THE NORTHWEST CORNER OF SAID WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E; THENCE ALONG THE WEST LINE OF SAID WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E AND THE WEST LINE OF SAID WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E RUN S 00° 17' 52" W 2282.40 FEET TO A POINT ON THE AFOREMENTIONED NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 90; THENCE ALONG SAID NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 90 RUN S 89° 05' 23" W 1683.54 FEET TO A POINT; THENCE RUN N 00° 54' 37" W 2128.49 FEET TO A POINT OF THE AFOREMENTIONED SOUTH RIGHT OF WAY LINE OF INTERSTATE HIGHWAY NO. 10; THENCE ALONG SAID SOUTH RIGHT OF WAY LINE OF INTERSTATE NO. 10, RUN AS FOLLOWS: N 81° 47' 20" E 816.04 FEET, N 83° 28' 08" E 1158.93 FEET, S 85° 56' 57" E 455.77 FEET, S 67° 58' 55" E 100.7 FEET TO THE POINT OF BEGINNING. CONTAINING 113.9577 ACRES.

CRYSTAL SPRINGS, L.L.C., EXCHANGE INTERMEDIARY SERVICES,
MALBIS PLANTATION, INC., CHRISTINE T. MARKS,
CONSTANTICE T. TAMPARY, AND ANTHONY T. TAMPARY
ANNEXATION

EXHIBIT "A"

THE WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E, BALDWIN COUNTY, ALABAMA AND A PROTION OF THE WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S- R2E, BALDWIN COUNTY, ALABAMA, BEING MORE PARTICULARLY DESCRIBED, AS FOLLOWS: COMMENCING AT NORTHEAST CORNER OF SECTION 34, T4S-R2E, BALDWIN COUNTY, ALABAMA, RUN N 89' 49' 05" W ALONG THE NORTH LINE OF SAID SECTION 34, T4S-R2E, A DISTANCE OF 655.92 FEET TO THE NORTHEAST CORNER OF THE WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 34, T4S-R2E; THENCE CONTINUING N 89' 49' 05" W ALONG SAID NORTH LINE OF SECTION 34, T4S-R2E RUN 655.92 FEET TO THE NORTHWEST CORNER OF SAID WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E; THENCE ALONG THE WEST LINE OF SAID WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E AND THE WEST LINE OF SAID WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E RUN S 00' 17' 52" W 2282.40 FEET TO A POINT ON THE AFOREMENTIONED NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY NO.90; THENCE ALONG SAID NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY NO.90 RUN N 89' 05' 23" E 658.69 FEET TO A POINT ON THE EAST LINE OF THE WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E; THENCE ALONG SAID EAST LINE OF THE WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E AND THE EAST LINE OF THE AFOREMENTIONED WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E RUN N 00° 13' 54" E 2269.84 FEET TO THE POINT OF BEGINNING. CONTAINING 34.3422 ACRES.

REFERENCE: EASTERN SHORE PARK

**MOTION TO BE MADE BY CATHY BARNETTE
AT THE MARCH 7, 2005 CITY COUNCIL MEETING**

Motion to table the Chunchula Energy Corp., Apalachee Project variance request, and place a 60 day moratorium on height requests to provide the City of Daphne and the City of Daphne Planning commission time to develop a plan to address building height needs.

To: Office of the City Clerk

MEMO RANDU M

From: William H. Eady, Sr., Director of Community Development

Subject: Height Exception / Apalachee Building Lot # 1

Date: February 23, 2005

At the regular meeting of the City of Daphne Planning Commission, February 22, 2005, eight members were present and the vote was four for and four against the height exception for Apalachee Building Lot 1, Sundown Subdivision.

Please place on the appropriate agenda for action by the City Council.

Thank you,

WHE/hb

cc: file

**UTILITY BOARD MEETING
DAPHNE UTILITIES
CITY COUNCIL CHAMBERS
February 23, 2005
5:00 P.M.**

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. PLEDGE OFF ALLEGIANCE**
- 4. APPROVAL OF MINUTES – January 25, 2005 and February 10, 2005**
- 5. ENGINEER REPORTS**
- 6. OLD BUSINESS**
 - a) SEWER NON CONNECTION – STATUS REPORT**
 - b) GREASE AND SEWER OORDINANCE – UPDATE**
 - c) WEBSITE – STATUS REPORT**
 - d) ROTARY CLUB REPORT**
 - e) MAINTENANCE – FUEL COST COMPARISION**
 - f) GIS REPORT**
 - g) CITY / DAPHNE UTILITIES CENTRAL PLANT**
 - h) HWY 90 SEWER LINE PROPOSAL**
 - i) TAP FEE PROPOSAL – NATURAL GAS**
 - j) NATURAL GAS AGREEMENT**
- 7. NEW BUSINESS**
 - a) HWY 13 FORCE MAIN – OTTAWA SPRINGS
- APPROVAL FOR BID PROPOSAL TO BE RECEIVED BY HMR
ON FEBRUARY 18, 2005**
 - b) WATER TOWER LEASE NEGOTIATIONS**
 - c) NICHOLSON CENTER – VARIANCE FOR SEWER CONNECTION**
- 8. FINANCE REPORT**
- 9. DEPUTY DIRECTOR REPORT**
- 10. PLANNING / ENGINEER MANAGER REPORT**
- 11. EXECUTIVE SESSION**

12. ADJOURNMENT

**UTILITY BOARD MEETING
DAPHNE UTILITIES
CITY COUNCIL CHAMBERS
January 25, 2005
6:00 P.M.
Page 1**

Call to Order

Mr. Segalla called the meeting to order at 6:00 p.m. with a quorum present.

Roll Call

Members Present:

Mr. Robert Segalla, Chairman of the Board
Mr. Ron Scott, Vice - Chairman
Mr. Lon Johnston, Secretary Treasurer
Mr. Bob Patterson
Mayor Small

Others Present:

Art Rigas, Director
Stan Clayton, Deputy Director
Teresa Logiotatos, Finance Manager
Lloyd Taylor, Board Attorney
Debbie Martin, Recording Secretary

After roll call Mr. Segalla introduced Ms. Martin to the Board of Directors as the Executive Assistant to the Deputy Director.

Pledge of Allegiance

Approval of Minutes of the Regular Meeting on December 15, 2004

Mr. Johnson made a **motion** to approve the minutes. Ron Scott **seconded** the motion.

The motion carried unanimously.

Mr. Segalla asked if the Gas Rate Change had been published on the bills to customers, to which Mr. Clayton responded "yes".

**UTILITY BOARD MEETING
DAPHNE UTILITIES
CITY COUNCIL CHAMBERS
January 25, 2005
6:00 P.M.
Page 2**

Engineer Report: David Volkert & Associates, Melinda Immel

Melinda Immel gave out the minutes from the SRF Permit meeting. Melinda Immel stated that they did hear from ADEM, and that a letter will be coming regarding pre-application approval and that funding will be available for Daphne projects.

Engineer Report: Hutchinson, Moore & Rauch, Ray Moore

Ray Moore stated that the decision was made to submit the formal application for the SRF Permit, and the committee will meet every other month to keep track of the Long Range Capital Improvement Projects identified. Also when the audit comes in the committee will get together and talk about the funding sources for capital projects. Mr. Segalla suggested that current items be discuss, as they come in to keep moving forward with the projects.

Old Business

Website: Mr. Clayton reviewed the cost of initial set-up and monthly fees for the website, and its benefits to pursue having a website available for customers.

After some discussion regarding Credit/Debit Card advantages and disadvantages, Mr. Segalla requested Ms. Logiotatos to further investigate and report at the next regular Board meeting.

Natural Gas Projects: Mr. Douglas presented the Purposed Main Extension Analysis Summary for review and approval. It was reported that Pecan Trace –28, which was approved in the last Board meeting, has not been started, and they are taking a cautious look at it to insure that we get adequate loads to support investment.

Mr. Segalla recognized and applauded the Utility for being alert to see that Pecan Trace needs further evaluation before we continue on with the project.

Mr. Douglas requested approval on three projects Avalon III – 130, Tealwood 1-27 and Lake Forest Unit 28-33.

**UTILITY BOARD MEETING
DAPHNE UTILITIES
CITY COUNCIL CHAMBERS
January 25, 2005
6:00 P.M.
Page 3**

Mr. Johnston made a **motion** to approved Avalon III, Tealwood 1 and Lake Forest Unit 28, Mayor Small, **seconded** the motion.

The motion carried unanimously.

Outside Activity List: Mr. Segalla suggested that at the next regular Board meeting Mr. Rigas have the Rotary Club make a presentation about the Rotary Club and its benefits.

Mr. Segalla suggested that Mr. Douglas attend the Home Builders Association meetings.

New Business

Marketing Committee: Mr. Clayton stated that a Marketing Committee is being developed.

Upgrade Waste Water Treatment Plant SCADA Software: Mr. Clayton stated that there were issues with software and hardware. The software has been reinstalled and is working successfully, and they are looking into other software options.

Tap Fee Request (Pat Collins): Mr. Segalla presented a letter to Pat Collins in response to the Tap Fee Request.

Mr. Johnston made a **motion** to approve the letter sent to Pat Collins from the Board regarding the Tap Fee Request with noted corrections, Mayor Small **seconded** the motion.

The motion carried unanimously.

Finance Manager's Report

Ms. Logiotatos presented the December Financials.

Mr. Segalla requested that Ms. Logiotatos re-investigate the advantages and disadvantages of using Fuelman and City Barn.

**UTILITY BOARD MEETING
DAPHNE UTILITIES
CITY COUNCIL CHAMBERS
January 25, 2005
6:00 P.M.
Page 4**

Deputy Director's Report

BioTerminator Status: Mr. Clayton updated the Board on the status of the different techniques for handling solids at the Waste Water Treatment Plant of which BioTerminator is one process. Volkert is looking into the process from an engineering, contract and feasibility standpoint of this new technology. More time is needed to answer questions before a presentation is made to the Board.

Director's Report

Project Updates: Mr. Rigas presented a Project Status Update for Sewer Non-Connect List; Land Swap with Riviera Utilities; Bidding Out the Office Building for possible sale; Potential development of 19 acre Parcel owned by the Board; Growth corridor along Highway 90 from Malbis to Lake Forest WWTP; Grease Ordinance Review; Discussions with Fairhope regarding water and Gas customers; Preparing a Feasibility Study for Combining GIS Activities with the City; Project Administrator for City Sewer Projects; which is attached and made part of the minutes.

Public Participation

None

Executive Session

Mayor Small made a **motion** to go into Executive Session at 8:20 pm. Mr. Scott **seconded** the motion.

The motion carried unanimously.

Mayor Small made a **motion** that the Board reconvene the Regular Meeting at approximately 9:00 p.m. Mr. Patterson **seconded** the motion.

The motion carried unanimously.

**UTILITY BOARD MEETING
DAPHNE UTILITIES
CITY COUNCIL CHAMBERS
January 25, 2005
6:00 P.M.
Page 5**

Mr. Johnston made a **motion** to adjourn the Board meeting at approximately 9:02. Mr. Patterson **seconded** the motion.

The motion carried unanimously.

Mr. Segalla adjourned the Board meeting at approximately 9:02 p.m.

Approved

Respectfully Submitted By

**Robert Segalla
Chairman of the Board**

**Debbie Martin
Recording Secretary**

**SPECIAL UTILITY BOARD MEETING
DAPHNE UTILITIES
CITY COUNCIL CHAMBERS
FEBRUARY 10, 2005
5:00 P.M.
Page 1**

Call to Order

Mr. Segalla called the meeting to order at 5:00 p.m. with a quorum present.

Roll Call

Members Present:

Mr. Robert Segalla, Chairman of the Board
Mr. Ron Scott, Vice- Chairman, arrived at 6:00 pm
Mr. Lon Johnston, Secretary Treasurer
Mr. Bob Patterson
Mayor Small

Others Present:

Art Rigas, Director
Stan Clayton, Deputy Director
Teresa Logiotatos, Finance Manager
Lloyd Taylor, Board Attorney
Debbie Martin, Recording Secretary

Baldwin County Sewer System Proposal: Mr. Segalla opened the discussion of the proposal. Mr. Rigas handed out a summary of the advantages, disadvantages and conclusions.

Mr. Johnston made a **motion** to disapprove the sale of the Spanish Fort Sewer lines to Baldwin County Sewer System. Mayor Small **seconded** the motion.

The motion carried unanimously.

The Board instructed Mr. Rigas to write a letter to the Baldwin County Sewer System declining the offer.

**SPECIAL UTILITY BOARD MEETING
DAPHNE UTILITIES
CITY COUNCIL CHAMBERS
FEBRUARY 10, 2005
5:00 P.M.
Page 2**

City Hall/Daphne Utilities Proposed Central Location: Mr. Segalla led the discussion regarding the City Hall/Daphne Utilities proposed Central Location, letter from Mayor Small.

Mr. Rigas presented the current and future requirements for DUB Office space.

Mr. Segalla stated that it is critical that everyone's input be considered for accommodating the workers, security of the building and creating a safe environment, by the next regular Board meeting.

Resolution to Participate in the Municipal Workers Comp Fund Inc.: Ms. Brown passed out copies of the Resolution.

Mr. Johnston made a **motion** to participate in the Municipal Workers Compensation Fund Inc. Mr. Patterson **seconded** the motion.

The motion carried unanimously.

Organizational Chart: Mr. Segalla stated that the Organizational Chart would be discussed in the Executive Session.

Other Items Discussed and could not be voted on:

Mr. Segalla presented a letter dated February 17, 2003 that was sent to Board Members February 3, 2005 from Lloyd Taylor on Board Member Liability.

Mr. Segalla requested that Ms. Martin update the New Board Members packets and include the Board Member Liability documents.

Mr. Segalla also, asked Mr. Rigas for an update on the Malbis and Timbercreek refund.

Mr. Rigas updated the Board on the Utilities agreement with Mr. Malbis.

Mr. Segalla requested that financial information be made available at the next regular Board meeting.

**SPECIAL UTILITY BOARD MEETING
DAPHNE UTILITIES
CITY COUNCIL CHAMBERS
FEBRUARY 10, 2005
5:00 P.M.
Page 3**

Mr. Taylor informed the Board of a lease negotiation with Verizon Wireless and of being approached by Clear Wire for a lease of Loma Alta Towers. Mr. Taylor further stated concerns about the lack of an escape clause in the current lease with Verizon. Mr. Segalla requested a letter be written by Mr. Taylor requesting an escape clause as part of the negotiation with Verizon. Further discussion is needed at the next regular Board meeting.

Executive Session

Mr. Johnston made a **motion** to go into Executive Session at 5:50 pm. Mayor Small **seconded** the motion.

The motion carried unanimously.

The Special Board meeting reconvened at 6:50 p.m.

Mayor Small made a **motion** to approve the Organizational Chart with recommendations by the Board. Mr. Johnston **seconded** the motion.

The motion carried unanimously.

Mayor Small made a **motion** to adjourn the Special Board meeting at approximately 6:52. Mr. Patterson **seconded** the motion.

The motion carried unanimously.

Mr. Segalla adjourned the Special Board meeting at approximately 6:52 p.m.

Approved

Respectfully Submitted By

Robert Segalla
Chairman of the Board

Debbie Martin
Recording Secretary

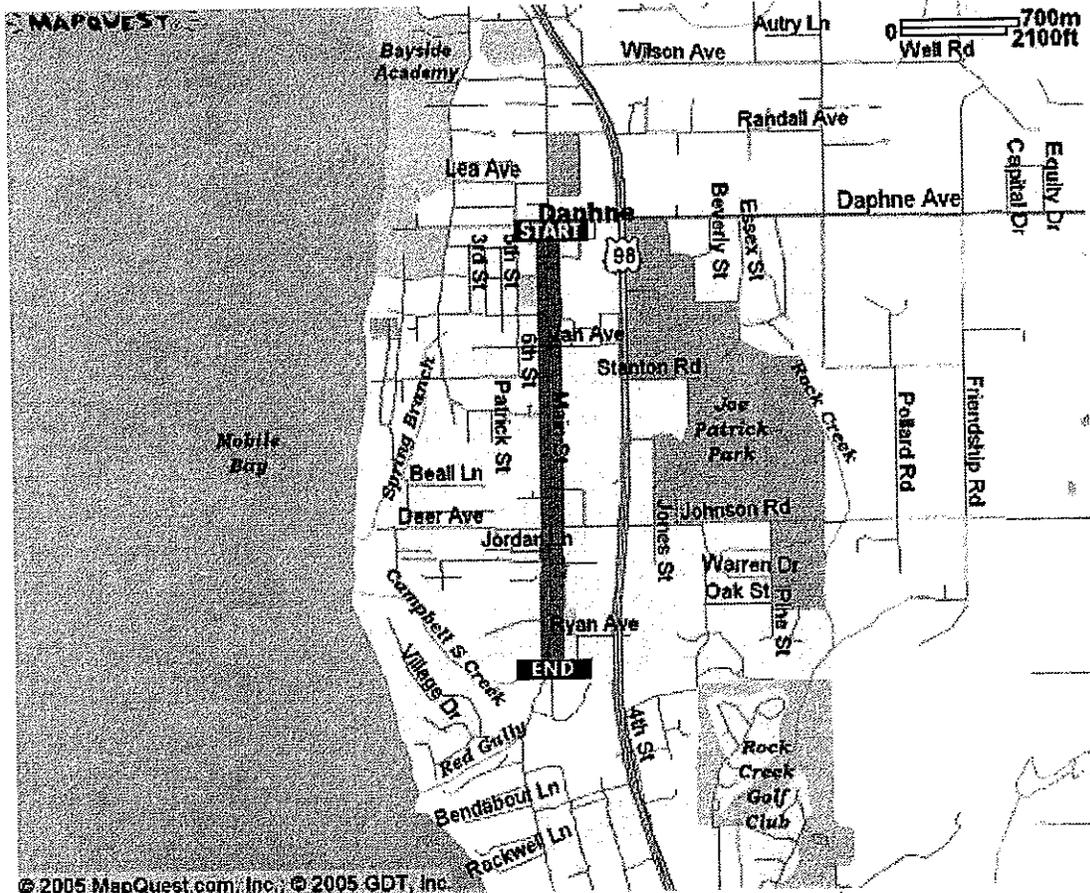
**CITY COUNCIL MEETING
MAYOR'S REPORT**

NOTES:

CITY OF DAPHNE SPECIAL EVENTS PERMIT

ORGANIZATION:	<i>Animal Rescue Run</i>
CONTACT PERSON:	<i>James Pennington</i>
ADDRESS:	<i>27073 County Road 27 Daphne, AL 36526</i>
PHONE NUMBER: (HOME): PHONE NUMBER: (BUSINESS):	<i>626-2917 456-4044</i>
DATE OF SPECIAL EVENT:	<i>April 16, 2005</i>
TYPE OF SPECIAL EVENT:	<i>5 K & 1 Mile Fun Run</i>
APPROXIMATE # OF PEOPLE & CARS:	<i>300 People & 100 Vehicles</i>
START TIME:	<i>8:00 AM</i>
STOP TIME:	<i>10:00 AM</i>
FACILITY/PARK TO BE USED:	<i>(5 K) Start run on Main Street at Centennial Park traveling south 1½ miles. Return to Centennial Park. (1 Mile) Start run on Main Street at Centennial Park traveling south ½ mile. Return to Centennial Park.</i>
SPECIAL REQUEST:	<i>Will utilize Centennial Park.</i>
APPROVAL	
COUNCIL MEMBER:	
POLICE: Chief David Carpenter	<i>For Chief D. Williams</i>
FIRE: Chief Mund Hanson	<i>Mund Hanson</i>
PUBLIC WORKS: Ken Eslava	<i>Ken Eslava</i>
SPECIAL INSTRUCTIONS:	
DATE ROUTED:	<i>February 23, 2005</i>
NOTIFICATION OF APPROVAL:	

MAPQUEST



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CITY ATTORNEY'S REPORT

NOTES:

DEPARTMENT HEAD'S COMMENTS

Olde Towne Daphne West Association
P.O. Box 506
Daphne, Al. 36526
www.hometown.aol.com/otdwa
otdwa@aol.com

March 2, 2005

I would like to make a brief presentation, on behalf of the Olde Towne Daphne West Association (OTDWA), to the City Council at the Council meeting scheduled for Monday, March 7th.

My comments will be in regards to the proposed height variance requested by the Chunchula Energy Corp. and Dr. Barry Booth. I am requesting that this presentation be put on the agenda so that it may be heard before the Council votes on this issue.

OTDWA will provide the Council with copies of our petition the morning of March 7th.

Sincerely, 

Karen Nady
President, OTDWA

**CITY COUNCIL MEETING
RESOLUTIONS, ORDINANCES, ORDERS & OTHER BUSINESS**

NOTES:

RECOMMENDATIONS

COUNCIL COMMENTS:

RESOLUTION NO. 2005 - 20
PREPAID TRAVEL REQUEST

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA HEREBY AUTHORIZES THE FOLLOWING:

that prepaid travel expenses for the following City employees be approved for the purpose and amounts indicated below:

David L. Cohen / NLC Conference / March 11-15, 2005 / Washington, D.C./ \$175.00
Bailey Yelding / NLC Conference / March 11-15, 2005 / Washington, D.C./ \$175.00
Cathy Barnette / NLC Conference / March 11-15, 2005 / Washington, D.C./ \$175.00
Regina Landry / NLC Conference / March 11-15, 2005 / Washington, D.C./ \$175.00

A complete expense summary with receipts will be submitted upon the return from the above conferences.

ADOPTED AND APPROVED BY THE MAYOR AND CITY COUNCIL, CITY OF DAPHNE, ALABAMA on this ____ day of _____, 2005.

Greg Burnam

Council President

Date & Time Signed: _____

Fred Small

Mayor

Date & Time Signed: _____

ATTEST:

David L. Cohen
City Clerk, MMC

RESOLUTION 2005-21

**Acceptance of Streets and Drainage
located in TimberCreek Business Park**

(Formerly known as TimberCreek Office Park, Unit One)

Whereas, the City Council of the City of Daphne, Alabama has received notice that the Planning Commission of Daphne has given Final Plat approval to TimberCreek Business Park on February 22, 2005 and the City of Daphne hereby recommends acceptance of said street located in TimberCreek Business Park; and,

Whereas, an inspection was made by the Director of Community Development. All reports, as well as, all other related documents has been provided stating that said streets and storm water drainage have been installed in conformity with city standards; and,

Whereas, the Division of Public Works has accepted said streets and storm water drainage of TimberCreek Business Park; and,

Whereas, the Utilities Board of the City of Daphne has accepted the utilities of TimberCreek Business Park; and,

Whereas, the developer has provided to the City a two-year construction warranty bond as required and requests acceptance and dedication of the same for maintenance of said improvements as outlined in Article XVII, entitled Subdivision Review of the City of Daphne Land Use and Development Ordinance; and,

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DAPHNE AS FOLLOWS, that TimberCreek Business Park according to the plat by Rester & Coleman Engineers as recorded in the Judge of Probate, Baldwin County, Alabama, and said street being named Timber Circle is hereby accepted by the City of Daphne, Alabama as a city street for maintenance.

ADOPTED AND APPROVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA ON THIS THE 7TH DAY OF MARCH, 2005.

**THE CITY OF DAPHNE,
AN ALABAMA MUNICIPAL CORPORATION**

GREG BURNAM _____
COUNCIL PRESIDENT
DATE AND TIME SIGNED:

FRED SMALL
MAYOR
DATE AND TIME SIGNED:

ATTEST:

DAVID L. COHEN, CITY CLERK, MMC

ORDINANCE NO. 2005-07

FIRE PREVENTION CODE FOR THE CITY OF DAPHNE

AN ORDINANCE TO REPEAL ORDINANCE NO. 2002-10 AND TO ADOPT THE 1999 EDITION OF THE STANDARD FIRE PREVENTION CODE WITH AMENDMENTS THERETO FOR THE CITY OF DAPHNE, ALABAMA.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA THAT:

The 1999 edition of the Standard Fire Prevention Code, copyright 1999 by the Southern Building Code Congress International Incorporated, with amendments thereto, has heretofore been on file in the Office of the City Clerk of the City of Daphne, Alabama, pursuant to Resolution No. 2005- , adopted by the City Council of the City of Daphne, Alabama, on the ____ day of _____, 2005, is hereby adopted as the "Fire Prevention Code of the City of Daphne".

SECTION 1: AMENDMENTS

A. Section 101.4 of the 1999 Edition of the Standard Fire Prevention Code shall be repealed in its entirety and a new Section 101.4 shall be added to read as follows:

101.4 Bureau of Fire Prevention. There is hereby established a department to be called the Bureau of Fire Prevention and the person in charge shall be known in this Code as the Fire Official, who shall be the Fire Marshal of the City of Daphne, and who is charged with the administration and enforcement of the Standard Fire Prevention Code."

B. Section 402 of the 1999 Edition of the Standard Fire Prevention Code shall have the following included as part of the code:

402.35 Automatic Fire Sprinkler Systems

402.35.1 No person shall install or maintain an automatic fire sprinkler system without obtaining a permit from the Bureau of Fire Prevention.

402.35.1.1

Fire sprinkler systems (hereinafter called in Section 402.35 "installer") must be certified by the Alabama State Fire Marshal's Office, and have a Certificate of Insurance, General Liability for \$1,000,000 with the City of Daphne, Bureau of Fire Prevention, P.O. Box 400, Daphne AL. 36526 listed as a Certificate Holder.

402.35.1.2 Installer must possess a current City of Daphne business license.

402.35.1.3 Installer must have sprinkler plans approved by the Fire Official before commencing installation.

402.35.1.4 No person shall perform maintenance or testing on fire sprinkler systems unless that person is certified by the Alabama State Fire Marshal's Office.

402.35.1.5 Upon final inspection, the National Fire Protection Association (NFPA) Contractor's Material and Test Certificate for Aboveground and Underground Piping must be properly completed and submitted to the Bureau of Fire Prevention.

402.35.1.6 The Fire Official shall be present during the final inspection of the sprinkler system.

402.35.1.7 Relocating more than three (3) sprinkler heads in an existing fire sprinkler system shall require a permit from the Bureau of Fire Prevention.

402.35.1.8 The permit fee for each installation shall be \$50.00.

402.36 Fire Alarm Systems

402.36.1 No person shall install or maintain a fire alarm system without obtaining a permit from the Fire Official. There are exceptions from the requirements of Section 402.36 installations of the following types:

- (1) One and two family dwellings
- (2) Any buildings with single station detectors only.
- (3) Owners of buildings may maintain their own systems as long as their maintenance person is certified by the manufacturer of the installed equipment or has National Institute for Certification in Engineering Technologies (NICET) level II in fire alarms.

402.36.2 Any person who installs or maintains fire alarm systems (hereinafter called in Section 402.36 "installer") must possess a current City of Daphne business license, and have a Certificate of Insurance, General Liability for \$1,000,000 with the City of Daphne, Bureau of Fire Prevention P.O. Box 400, Daphne AL 36526 listed as a Certificate Holder.

402.36.3 Installer must possess written evidence from the manufacturer of the equipment to be installed, certifying that the installer is qualified to install such equipment or the installer must be certified by the National Institute for Certification in Engineering Technologies (NICET), in the field of Fire Alarm Systems level II.

402.36.4 Licensed electricians may pull wire, install ancillary equipment, and connect the main power to the control panel; but no one other than a qualified fire alarm installer shall be allowed to make any other connections inside the fire alarm control panel.

402.36.5 A person certified by the Alabama State Fire Marshal's Office to install and maintain fire sprinkler systems may install devices integral to the operation of the fire sprinkler system, but shall not make any connection inside the fire alarm control panel.

402.36.6 Only fire alarm installers holding a valid permit from the City of Daphne shall be authorized to certify the system upon completion of the installation.

- 402.36.7 Upon final inspection, the NFPA Fire alarm system record of completion form must be properly filled out and submitted to the Fire Official and a fire alarm system check must be performed in the presence of the Fire Official.
- 402.36.8 The replacement and/or relocation of a control panel or relocation of more than three (3) detection devices in an existing fire alarm system shall constitute an installation which requires a permit from the Fire Official under Section 402.36.
- 402.36.9 Service – Any service or work done to the fire alarm system other than testing or replacing detection devices, such as smoke detector head, (less than 3).
- 402.36.10 A service tag or sticker shall be required to be installed by the permitted alarm servicing individual or company at the control panel of each fire alarm system, stating the company's name, address, phone number, name of the technician performing the service, date and the type of service performed.
- 402.36.11 Any person or entity who designs fire alarm systems must possess written evidence from the manufacture of the equipment to be installed, certifying that system or be NICET certified in fire alarms level III.
- 402.36.12 The permit fee for each installation shall be \$50.00
- 402.37 Portable Fire Extinguisher Service
- 402.37.1 No person shall engage in the business of servicing portable fire extinguishers without obtaining a permit from the Bureau of Fire Prevention
- 402.37.2 No person shall service portable fire extinguishers without obtaining a current City of Daphne business license.
- 402.37.3 No person shall be issued a permit to service portable fire extinguishers who does not possess a manufacturer's certification for servicing the type of extinguisher being serviced, and have a Certificate of Insurance, General Liability for \$1,000,000 with the City of Daphne, Bureau of Fire Prevention, P.O. Box 400 Daphne, AL 36526 listed as a Certificate Holder.
- 402.37.4 The technician who actually performs the work of servicing the portable fire extinguishers shall legibly sign and date the service tag verifying that all work was done in compliance with current NFPA standards.
- 402.37.5 The annual permit fee for portable fire extinguisher service shall be \$50.00

402.38 Fixed Fire Extinguishing Systems

402.38.1 No person shall engage in the business of installing or servicing fixed fire extinguishing systems without obtaining a permit from the Bureau of Fire Prevention.

402.38.2 No person shall install or service a fixed fire extinguishing system without obtaining a current City of Daphne business license.

402.38.3 No person shall be issued a permit to install or service fixed fire extinguishing equipment who does not possess a manufacturers certification for installation and servicing for the type system being installed or serviced, and have Certificate of Insurance, General Liability for \$ 1,000,000 with the City of Daphne, Bureau of Fire Prevention, P.O. Box 400, Daphne AL. 36526 listed as a Certificate Holder.

402.38.4 The technician who actually performs the work of servicing the fixed fire extinguishing systems shall legibly sign and date the service tag verifying that all work was done in compliance with current NFPA standards.

402.38.5 A permit is not required for follow up inspection or service, if a permit was received for that system in the same year. However a report shall be furnished to the Bureau of Fire Prevention upon completion of work being done.

402.38.6 The permit fee for each installation shall be \$50.00

402.39 Additional Permits

402.39.1 The permits that are listed in section 402.35 through 402.38.7 are in addition to any required permits or fees that the Building Department or Community Development Department may have.

402.39.2 Where work for which a permit is required by this code commences prior to obtaining said permit, the permit fee herein specified shall be doubled.

402.39.3 It shall be required that a copy of all annual or semi-annual inspection reports be submitted to the Bureau of Fire Prevention with any and all deficiencies clearly noted.

402.39.4 All checks and money orders shall be made out to the City of Daphne.

402.39.5 All certifications whether they are manufacture or NICET must be current and not have expired.

C. Section 501.1.1, of the 1999 Edition of the Standard Fire Prevention Code shall be repealed in its entirety and a new Section 501.1.1 shall be added to read as follows:

501.1.1 No person shall kindle or maintain any bonfire or rubbish fire or authorize any such fire to be kindled or maintained without a permit or other proper authorization. No waste materials, rubbish, trees, bushes or brush cleared for construction or demolition of buildings or structures shall be disposed of by burning on the premises or in the immediate vicinity by the owner, the contractor, or any other person, unless a permit or other proper authorization has been obtained to burn said waste materials in an approved waste burner/incinerator.

501.1.1.1 The permit for each approved waste burner/incinerator shall cost \$50.00.

D. Section 602.2 of the 1999 Edition of the Standard Fire Prevention Code shall be repealed in its entirety and a new Section 602.2 shall be added to read as follows:

602.2 Addresses. Approved numbers or addresses shall be a minimum of 5 inches in height and shall be provided for all new and existing buildings so that the numbers or address is plainly visible and legible from the street or roadway."

E. Section 602.4 of the 1999 Edition of the Standard Fire Prevention Code shall be repealed in its entirety and a new Section 602.2 shall be added to read as follows:

602.4 Key boxes. Key boxes shall be installed in all buildings having an automatic sprinkler system. The fire official shall have the authority to require a key box to be installed in an accessible location where access to or within a structure or area is difficult because of security."

SECTION 2: PROCEDURES FOR VIOLATION OF MUNICIPAL ORDINANCES

Any person violating this Ordinance shall be subject to a fine as adopted by City of Daphne Procedures for Violation of Municipal Ordinances Ordinance No. 2001-01 and/or its amendments or updated ordinance in effect at the time of the offense.

SECTION 3: ORDINANCES REPEALED

Ordinance No.2002-10 shall be repealed in its entirety and replaced with the provisions of this Ordinance. All other ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 4: SEVERABILITY

If any provision of this Ordinance is held to be invalid or unenforceable for any reason, such holding shall not in any way effect the remaining portions hereof, which shall remain in full force and effect.

SECTION 5: PUBLICATION

A copy of this Ordinance shall be published pursuant to and according to law, after its adoption, but it shall not be necessary for the said 1999 Edition of the Standard Fire Prevention Code to be published in a newspaper, nor shall the same be spread at length upon the minutes of this Council, but this Ordinance shall be recorded in the minutes.

SECTION 6: EFFECTIVE DATE

The said 1999 Edition of the Standard Fire Prevention Code and amendments thereto shall be in full force and effect upon adoption this _____ day of _____, 2005.

APPROVED AND ADOPTED this _____ day of _____, 2005.

GREG BURNAM, PRESIDENT
DAPHNE CITY COUNCIL

FRED SMALL, MAYOR
FOR THE CITY OF DAPHNE

ATTEST:

DAVID COHEN, CITY CLERK, CMC