

**CITY OF DAPHNE  
CITY COUNCIL BUSINESS MEETING AGENDA  
APRIL 4, 2005**

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

**PUBLIC HEARING: Crystal Springs, L.L.C.**

- 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  
Review minutes meeting held March 25<sup>th</sup>**

**5. REPORTS OF SPECIAL BOARDS & COMMISSIONS:**

- A. Board of Zoning Adjustments – Eady  
Review minutes meeting held March 22<sup>nd</sup>**
- B. Downtown Redevelopment Authority – Barnette**
- C. Industrial Development Board – Yelding  
Review minutes meeting held February 28<sup>th</sup>**
- D. Library Board - Lake**
- E. Planning Commission – Barnette  
Set Public Hearing for Annexation of the Mitchell Company, Inc. / Lot 2, Higbee Subdivision**
- F. Recreation Board - Burnam**
- G. Utility Board – Scott  
Review minutes meeting held February 23<sup>rd</sup>**

**6. REPORTS OF THE OFFICERS:**

- A. *Mayors Report*  
*Appoint Voting Delegate to the AL League Huntsville***
- B. *City Attorney's Report***
- C. *Department Head Comments***

**PUBLIC PARTICIPATION:**

Jean Singleton / People to People Student Ambassadors

**RESOLUTIONS:**

**NO RESOLUTIONS**

**ORDINANCES:**

- a.) 2<sup>nd</sup> READ  
Overtime / Admin Pay Policy During Declared Emergency ..... /Ordinance No. 2005-04
  
- b.) 2<sup>nd</sup> READ  
Municipal Information Signage ..... /Ordinance No. 2005-10
  
- c.) 2<sup>nd</sup> READ  
Adopting Revision to the Zoning Map ..... /Ordinance No. 2005-11
  
- d.) 2<sup>nd</sup> READ  
Adopting Revision to the Olde Towne District Map ..... /Ordinance No. 2005-12
  
- e.) 2<sup>nd</sup> READ  
Adopting the Village Overlay Map ..... / Ordinance No. 2005-13
  
- f.) Annexation: Crystal Springs L.L.C. .... / Ordinance No. 2005-15

- 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



No one spoke.

*Council President Pro Tem Lake* closed the Public Hearing at 6:36 p.m.

**2. Daphne Zoning Map**

*Council President Pro Tem Lake* opened the Public Hearing at 6:38 p.m.

No one spoke.

*Council President Pro Tem Lake* closed the Public Hearing at 6:39 p.m..

**3. Olde Towne Daphne District Map**

*Council President Pro Tem Lake* opened the Public Hearing at 6:39 p.m..

No one spoke.

*Council President Pro Tem Lake* closed the Public Hearing at 6:40 p.m.

**4. Village Overlay Map**

*Council President Pro Tem Lake* opened the Public Hearing at 6:40 p.m.

No one spoke.

*Council President Pro Tem Lake* closed the Public Hearing at 6:41 p.m.

**4. REPORTS OF STANDING COMMITTEES:**

**A. FINANCE COMMITTEE - Scott**

Mrs. Landry reported the Finance Committee met on March 10<sup>th</sup> and there are a couple of Ordinances and Resolutions that will be considered at the end of the meeting. The minutes for that meeting are in the packet.

**a.) Surety Bonds/Employees / Dishonesty Insurance / Ordinance 2005-09**

This will be considered under Ordinances.

**b.) Bid Award: Jubilee Breeze Magazine**

1. Interstate Printing & Graphics, Inc. / **Resolution 2005-23.**

This will be covered under Resolutions,

**c.) Search & Rescue Squad: Authorization for Loan Pay-Off / MOTION**

This is concerning the boat that sank at the Lake Forest Yacht Club. This is just a formality, they need to give them the money, and then they will turn around and pay the City back the money from their budget. They need us to make the initial payment.

**MOTION BY Mr. Scott to authorize the loan pay-off for the Search & Rescue in the amount of \$1,355.61. Seconded by Mr. Yelding.**

**AYE ALL IN FAVOR**

**NAY NONE OPPOSED**

**MOTION CARRIED**

**d.) Workers Compensation Renewal / Resolution 2005-24**

This will be considered under Resolutions.

- e.) Police Department Personnel*
  - 1.) Authorize Position Realignment / MOTION*
  - 2.) Authorize Chief Corrections Officer*

Captain Bishop explained that the Corrections Officer is not additional personnel coming aboard. This will promote one of the corrections officers to Chief Corrections Officer.

**MOTION BY Mr. Yelding to authorize the Chief Corrections Officer position. Seconded by Mrs. Landry.**

Mr. Palumbo said that to make it clear, one of the Correction Officers will be promoted to Chief, but that persons job will not be open. It is putting one officer in charge of the other officers.

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

Mrs. Landry stated that the realignment is the difference between pay for a Patrolman and a Detective. The difference in pay is \$950.00. This is not creating a new position.

**MOTION BY Mr. Yelding to approve the realignment position for the Police Department from Patrol Officer to Detective. Seconded by Mr. Scott.**

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

- f.) Agreement: Volunteer Firefighters Association / Brush Truck / Resolution 2005-25*

This will be considered under Resolutions.

- g.) Approve SARPC FY05 1<sup>st</sup> Half Pro-Rata Contribution / MOTION*

SARPC submitted the information asked for by Council justifying the increase in the amount paid.

**MOTION BY Mrs. Barnette to authorize payment in the amount of \$8,000 to the South Alabama Regional Planning Commission for the 1<sup>st</sup> half pro-rata share for Fiscal Year 2005. Seconded by Mr. Palumbo.**

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

- h.) Approve Daphne High School Reimbursement-Summer Utilities / MOTION*

During the summer months the city uses their fields which incurs power bills. Mr. McKelroy went through the bills and highlighted the ones that were applicable to the times the city used the fields to make sure we are paying for only what we are using. The total os \$2,229.45.

**MOTION BY Mr. Scott to approve the reimbursement of \$2,229.45 to Daphne High School for the summer utility bills. Seconded by Mr. Yelding.**

Mr. Yelding said they had received a bill in the amount of \$4,400.00, and they questioned the amount, so they asked Mr. McKelroy to look over the bills, and he got with the school officials and came up with \$2,229.45. Mr. Yelding asked that they establish a new contract or another agreement with the school regarding these facilities.

Mrs. Barnette noted that in the comments from the Recreation meeting, that Mr. McKelroy said they had a separate contract with the Dixie Boys League, but in here the city is paying for the baseball field - Dixie Boys - March -July to the tune of \$1,161.54. She said she is not understanding why the city would be paying that in addition to the separate contract.

Mr. McKelroy said they used the Dixie Boys field from that period of time. There are two contracts, one of them dates back to the time when Mr. Reynolds was principal, then there was a different one that was strictly for the Dixie Boys field, that one has also expired. He said it was just two administrations making an agreement.

Mrs. Barnette wanted to know if the city was paying twice.



considered from the meeting. They have a contractor to do the fireworks show, and they went over the stats.

**E. PUBLIC WORKS COMMITTEE/SOLID WASTE AUTHORITY - Yelding**

*Mr. Yelding* said the minutes for the February 25<sup>th</sup> are in the packet. He commended Mr. Eslava for a letter he wrote to the County regarding Highway 64, in which he indicated that he wanted them to complete the work for that area by installing signs and traffic lights. He thought the letter was well written. The next meeting will be March 25<sup>th</sup> at 8:00 am at the Public Works Building.

**5. REPORTS OF SPECIAL BOARDS & COMMISSIONS:**

**A. Board of Zoning Adjustments -**

Mr. Eady said they will meet tomorrow at 6:00 p.m. This is a special called meeting with two appeals. One is a setback encroachment and the other is a Day Care Center.

**B. Downtown Redevelopment Authority - Barnette**

*Mr. Irvine* reported that the Authority continues to discuss Main Street. In 1999 Louis Wynne was hired to do a landscape and street development plan for the city that goes down to Bayfront Drive. This plan was adopted by the Council at that time. The DRA would like to seek the Council's support, so they can have some direction as to what they are supposed to be doing, so there will not be anymore confusion. This is a volunteer group and this will help so they won't have to fight for everything they are supposed to be doing. They will be seeking to do something with Jubilee Courtyard. They do not want to necessarily do away with it, an attempt to comprise was made but was rejected by the Beautification Committee. They will be coming back with that issue at a later date. The Fountain Park has been put on hold until the development of City Hall is complete, so they will know where the front door will be.

**C. Industrial Development Board - Yelding**

No report. The next meeting will be March 28<sup>th</sup> at 6:00 p.m. in the Executive Council Chambers.

**D. Library Board - Lake**

the Board met on met on the 14<sup>th</sup>, and the next meeting will be April 11<sup>th</sup> at 4:30 p.m. The Library is no open on most Tuesday evenings.

**E. Planning Commission - Barnette**

The next Planning Commission meeting is Thursday at 6:00 p.m. in the Council Chambers.

**F. Recreation Board - Burnam**

No report.

**G. Utility Board - Scott**

The next meeting is Wednesday night at 6:00 p.m. and the Public is invited.

**6. REPORTS OF THE OFFICERS:**

**A. Mayor's Report**

*Mayor Small* reported that they had a meeting with the Baldwin County School Board and the County Commission to discuss Highway 13 and the traffic problems there. The Mayor said he had written a letter to Dr. Hollinger earlier regarding helping out with the improvements, he came forth along with the Baldwin County Commission and Mr. Eslava, and it looks like all parties will be paying a third of the cost of the improvements. He thanked the Council members that went on the Leadership trip. He said they got to know each other a lot better, as well as meeting a lot of people. They met with Congressman Bonner and presented him, they brought up several issues with him, things that they would like to get done, and he thinks he was very receptive. Mayor Small thinks that in the future many of them will come true. Mayor Small introduced his new assistant, Shannon Spivey.

**B. City Attorney's Report**

*Mr. Ross* commented on Ordinance 2005-14 which follows the motion that was made in the Council meeting two weeks ago. Upon further study, he felt it more appropriate that it be put forth in Ordinance format, which is written and presented to the Council tonight. It is for a period of six (6) months, and will automatically terminate the provision of 13.7 of the Land Use Ordinance which deals with buildings in excess of 50 feet. This will give six months in order to do it. If they do nothing it will automatically cease, or if the Council wishes can be renewed or modified.

**C. Department Heads Comments:**

**Chief Carpenter** reported that Captain Taylor graduated from the FBI Academy last Friday, they are glad to see him back after ten weeks. The County School Board is working on is working on putting SRO's in all schools. He state Daphne has two SRO's in the schools, so the city is ahead of the game.

**Dale Foster** stated that they will be starting the State Pilot Program April 5<sup>th</sup> in which the Library will be open on Tuesday. He thanked Representative Davis for his help in getting the grant. The Library is attempting to be open every Tuesday during the remainder of the school year. The focus will be on students, it will be a special students night at the Library. The Friends of the Library has funded ten new public access computer terminals where you can access the Internet. They also funded some of the wireless network equipment.

**Kim Briley** stated that Public Safety Committee needs a motion to authorize the Fire Chief to submit an application for the fireworks permit.

**Sandra Morse** reported that in April the Civic Center will host the Home and Garden Show. She also mentioned some other events that will be happening at the Civic Center in the future.

**Mr. Eady** stated that the Council needs to appoint someone to the second alternate position for the BZA at the next Council meeting.

**Ken Eslava** mentioned that the Easter Egg Hunt was a success on Saturday. The city has recovered from all the hurricane damage at Village Point Park, the boardwalk reopened to the public last week. He elaborated on the Mayor's report regarding the road work on Highway 13 the commitment from the School Board and County Commission saying that in five minutes he walked away with \$274,000. He also stated that the city also received a significant reimbursement from FEMA for hurricane damage.

**7. PUBLIC PARTICIPATION:**

**Mrs. Ruth Sewell** - SEEDS Organization - presented information regarding placing the International Baccalaureate Program in the Daphne Schools.

**MOTION BY Mr. Scott to suspend the rules to consider a motion to adopt the Resolution included in the packet regarding placement of the International Baccalaureate Program in Daphne Schools. *Seconded by Mrs. Landry.***

**ROLL CALL VOTE**

<b>Yelding</b>	<b>Aye</b>	<b>Scott</b>	<b>Aye</b>
<b>Barnette</b>	<b>Aye</b>	<b>Landry</b>	<b>Aye</b>
<b>Lake</b>	<b>Aye</b>	<b>Palumbo</b>	<b>Aye</b>

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

**MOTION BY Mr. Palumbo to adopt Resolution 2005-26 regarding placement of the International Baccalaureate Program in Daphne Schools. *Seconded by Mr. Yelding.***

Mrs. Landry said this will be a positive thing if placed in Daphne schools.

Mrs. Barnette asked if this Resolution is passed that the Mayor send a letter to Dr. Hollinger letting him know that the city passed this Resolution by unanimous support showing that the City of Daphne embraces this project and would really like to see it located in Daphne.

Mr. Scott said that since Daphne has a history of cooperation between the city and School Board they would appreciate his help on this project.

Mr. Palumbo commended SEEDS for coming forward with this project.

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

Mr. Ross advised the Council they needed to waive the reading of Resolution 2005-26.

**MOTION BY Mrs. Barnette to waive the reading of Resolution 2005-26 regarding placement of the International Baccalaureate Program in Daphne Schools. *Seconded by Mrs. Landry.***

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



*MOTION BY Mr. Yelding to adopt Resolution 2005-25. Seconded by Mrs. Landry.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

**ORDINANCES:**

- a.) Overtime / Admin Pay Policy During Declared Emergency . . . . . /Ordinance No. 2005-04
- b.) Fire Prevention Code for the City of Daphne / 2<sup>nd</sup> READ. . . . . /Ordinance No. 2005-07
- c.) Surety Bonds / Employee Dishonesty Insurance Coverage . . . . . /Ordinance No. 2005-09
- d.) Municipal Information Signage . . . . . /Ordinance No. 2005-10
- e.) Adopting Revision to the Zoning Map . . . . . /Ordinance No. 2005-11
- f.) Adopting Revision to the Olde Towne District Map . . . . . /Ordinance No. 2005-12
- g.) Adopting the Village Overlay Map . . . . . / Ordinance No. 2005-13
- h.) Six Month Moratorium on Height Variances . . . . . /Ordinance No. 2005-14

**Council agreed to make Ordinance 2005-04 a First Read.**

*MOTION BY Mrs. Barnette to waive the reading of Ordinance 2005-07. Seconded by Mrs. Landry.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

*MOTION BY Mr. Palumbo to adopt Ordinance 2005-07. Seconded by Mrs. Barnette.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

*MOTION BY Mr. Yelding to suspend the rules to consider Ordinance 2005-09. Seconded by Mrs. Landry.*

**ROLL CALL VOTE**

Yelding Aye	Scott	Aye	
Barnette Aye	Landry	Aye	
Lake	Aye	Palumbo	Aye

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

*MOTION BY Mr. Yelding to waive the reading of Ordinance 2005-09. Seconded by Mrs. Barnette.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

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

MOTION BY Mr. Yelding to adopt Ordinance 2005-09. Seconded by Mrs. Landry.

Mrs. Barnette asked Mrs. Briley to furnish the Council a list of all volunteers and volunteer groups that are covered by the city's insurance.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

The Council agreed to make Ordinance 2005-10, 2005-11, 2005-12, and 2005-13 a First Read.

MOTION BY Mrs. Barnette to suspend the rules to consider Ordinance 2005-14. Seconded by Mr. Yelding.

ROLL CALL VOTE

Yelding	Aye	Scott	Aye
Barnette	Aye	Landry	Aye
Lake	Aye	Palumbo	Aye

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Mrs. Barnette to waive the reading of Ordinance 2005-14. Seconded by Mr. Yelding.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Mrs. Barnette to adopt Ordinance 2005-14. Seconded by Mr. Scott.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

Mr. Cohen stated that a motion needs to be made tonight regarding the fireworks permit.

MOTION BY Mr. Palumbo to authorize the Fire Chief to apply for a permit from the State Fire Marshall for the City of Daphne fireworks display to be held on 4<sup>th</sup> of July. Seconded by Mrs. Barnette.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

Mr. Palumbo asked if they had to suspend the rules to consider the motion.

Mr. Ross replied that the rules have to be suspended because the item is not on the agenda.



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

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

**THERE BEING NO FURTHER BUSINESS TO DISCUSS, THE MEETING ADJOURNED AT 7:50 P.M.**

Respectfully submitted by,

\_\_\_\_\_  
David L. Cohen, City Clerk, MMC

**Certification of Presiding Officer:**

\_\_\_\_\_  
John Lake  
Council President Pro Tem

Date & Time Signed: \_\_\_\_\_

MARCH 7, 2005  
CITY OF DAPHNE, AL  
CITY COUNCIL MEETING  
6:30 PM

**4. REPORTS OF STANDING COMMITTEES:**

***E. Planning Commission - Barnette***

*Council President Burnam moved the consideration of the Planning Commission to the first of the meeting.*

*Mrs. Barnette reported that the minutes for the meeting of February 22<sup>nd</sup> was in the packet. The Site Review meeting will be March 16<sup>th</sup> at 9:00 a.m. in the Council Chambers, and the Planning Commission meeting will be March 24<sup>th</sup> at 6:00 p.m. She said Council action was needed to set a Public Hearing to consider an annexation for Crystal Springs, L.L.C.*

**MOTION BY Mrs. Barnette to set a Public Hearing for April 4, 2005 to consider an annexation for Crystal Springs, L.L.C.  
Seconded by Mr. Scott.**

**AYE ALL IN FAVOR**

**NAY NONE OPPOSED**

**MOTION CARRIED**

Amended

**Consideration of the requested height variance by Chunchula Energy Corporation, Apalachee Project:**

*Mrs. Barnette reported that the final motion sent from the Planning Commission to the Council was to advise the City Council that the vote was split among the Planning Commission 4/4 to favorably or unfavorably recommend the height exception for the Apalachee Building, Lot 1 of Sundowne, but to implore them (City Council) to look at the planning implications during their final decision, and that motion did carry 7/1.*

**Public Participation for the Height Variance:**

*Mr. Eady presented some slides of the proposed building site.*

*Mr. Kevin Spriggs - Business owner in Daphne - spoke in favor of the project.*

*Mr. John Hull - Van Buren - questioned the traffic flow and safety issues.*

*Mr. Lon Johnston - 316 Whiting Avenue - spoke regarding the need for good planning on the city's part.*

*Mr. Jim Ellis - 564 Stuart Street - said the infrastructure issues need to be addressed. He said he is not exactly in favor of the project.*

*Mr. Willie Robison - Stuart Street - asked if they are allowed to build that it will have reached 95% allowable density for that piece of property, if that is true, and they build a second building, will they come and ask for a variance on the density of the population of that acreage?*

*Mr. Ernest Berger - 306 Belrose Avenue - spoke regarding having a vision for the city, the city setting goals and standards for the city and sticking to them.*

*Mr. Rod Drummond - Ridgewood Drive - spoke regarding Daphne becoming like Mobile, and is against the project.*

*Mrs. Judy Sullivan - 156 Green Bay Circle - spoke against the project.*

*Mrs. Karen Nady - Captain O'Neal - Mrs. Nady asked that her comments be made a part of the permanent record. Her comments are spread out in these minutes as given.*

*Mr. Philip Speirs - 730 Oak Bluff Drive - spoke against the project, saying they need to get input from the citizens.*

*Mr. Brice Cocke - 105 N Bradbury Circle - spoke in favor of the project.*

*Mr. Ray Micsan* - Hillwood - spoke in favor of the project saying it will be an asset to the community and lead to enhancements.  
*Ms. Kathleen Pattengale* - spoke against the project saying this is the start of the end of Daphne as we know it.  
*Mr. Bob Segalla* - Daphne - not for or against, but says there is a better way of doing it.  
*Mr. Ron Burkhart* - Lake Forest - spoke in favor of the project saying he does not think it will detract from the look of the city.  
*Mr. Barry Breeland* - 105 Fern Cliff Circle - asked the Council to delay the project.  
*Ms. Valla Grodzicki* - 600 Sandpiper Lane - spoke in favor of the project.  
*Mr. David Preston* - spoke against the project.  
*Mr. E. Jeffery Jefferies* - Fairway Drive - spoke in favor of the project saying he wants to live in the condo's.  
*Mr. Warren West* - Vice-Chairman of the Planning Commission - spoke against the project saying there is nothing in the Comprehensive Plan for this type of high rise. He urged the Council to deny.  
*Mr. David Wessler* - Old County Road - Spoke against the project saying it is all about money.  
*Mrs. Joan Crowder* - Belrose Avenue - asked the Council to check out the roads.  
*Dr. Barry Booth* - Montrose - Developer of project - said his intent with the project is to share a vision with his neighbors with a well conceived, environmentally sensitive, and socially responsible residential development can positively influence and reinforce the growth goals and aspirations of Daphne.

**MOTION BY Mrs. Barnette 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. *Seconded by Mr. Scott.***

*Attached*

*Mrs. Barnette* read a prepared document she read regarding delaying the height variance vote. This document is spread out upon these minutes.

**ROLL CALL VOTE**

<b>Yelding</b>	<b>Nay</b>	<b>Scott</b>	<b>Aye</b>
<b>Barnette</b>	<b>Aye</b>	<b>Landry</b>	<b>Aye</b>
<b>Lake</b>	<b>Nay</b>	<b>Palumbo</b>	<b>Nay</b>
<b>Burnam</b>	<b>Nay</b>		

**AYE** Barnette, Scott, Landry

**NAY** Yelding, Lake, Burnam, Palumbo

**MOTION FAILED**

## Why Delay the Chunchula Energy Corp requested Variance?

1.

Project was discussed at August 26<sup>th</sup> Planning Commission where a re-zoning was requested from R-3 to R-4. Minutes state:

*Mr. Bailey stated as a result of the presentation at the site review meeting my client has taken the comments under advisement and the proposal that was considered at this meeting will, upon approval of the zoning change, reflect a revision to the architectural renderings for this development. He stated it seems as if the Commission was pleased with the proposal with the exception of the height, so upon submittal of the site plan for review my client will present another concept which is acceptable with both the Planning Commission and the City Council. (Attachment A, August 26 Planning Commission Minutes)*

In August, the vote was 5-4 to favorably recommend the rezoning to the City Council.

Discussion during that meeting stated the Planning Commission as a body agreed the 50 foot restriction in that area of town was archaic. However, many felt the lack of a plan and the potential to "open the floodgates" was reason to unfavorably recommend the requested variance.

In addition to the lack of planning, additional concerns raised included:

- fire safety
- lack of public notice and involvement
- alteration to quality of life
- alteration to character of Daphne
- traffic congestion
- destruction of skyline
- geologic instability
- domino effect
- regional decision
- Planning Commission needs more analysis to recommend height

Height was certainly not addressed that was acceptable to Planning Commission since Planning Commission was split 4-4 on a recommendation to grant a 192 foot height variance at the February 22<sup>nd</sup> meeting.

A motion was made 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." This motion carried 7-1.

Given the landowner stated they would revise their height request *which is acceptable with both the Planning Commission and the City Council* it IS FAIR to ask them to wait while we develop a plan.

2.

Board of Zoning Adjustments is typically the authority to grant variances to the Daphne Land Use Ordinance. *Variances are to be granted in such individual case of unnecessary hardship upon a finding by the board that:*

- a) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography.*
- b) The application of this ordinance to this particular piece of hardship would create an unnecessary hardship*
- c) Such conditions are peculiar to the particular piece of property involved*
- d) Relief, if granted, would not cause substantial detriment to the public good or impair the purpose and intent of this Ordinance provided, however that no variance may be granted for a use of land or building or structure that is prohibited by this ordinance.*

(Attachment B, Daphne Land Use and Development Ordinance)

*Additionally, the term variance is a deviation from the design requirements of the zoning ordinance. The term "variance" is misunderstood due to the number of varying interpretations of the term "hardship." A hardship exists when conditions imposed by the zoning ordinance would deprive the property owner of certain development rights that are enjoyed by other property owners within the same zoning district. When examining this hardship it should be determined that*

- 1.) the property owner did not bring this hardship upon himself...*
- 2.) the physical site conditions are such that a hardship does exist*
- 3.) the property owner would be deprived of rights which are normally afforded under the same regulations for the zone in which the property is located.*

*The term hardship should never be interpreted as meaning personal or economic hardship to the property owner. These conditions are not grounds for granting variances. (Attachment C, Selected Readings, Alabama League of Municipalities)*

**Based on the above knowledge, the Daphne City Council should utilize these criteria in our decision-making. Given public interest, it is fair to say without a plan, we will cause detriment to the public good and impair the purpose of our Land Use Ordinance. Additionally, the property owner can not demonstrate any hardship!**

3.

*The purpose of a municipal zoning ordinance is to divide a municipality into districts or zones according to suitability for particular uses and to regulate the erection, construction, reconstruction, alteration, repair or use of buildings, structures, and land according to such districts.*

***A principle guideline defining the kind of public interest which a zoning action is supposed to serve is the requirement that it must be in conformity with a comprehensive plan.***

***Each particular zoning restriction affecting each particular piece of property must be consistent in principle with the total concept of the best way to use land in the city to serve the best interests of all the people in the city rather than an individual landowner or special interest group. (Attachment D, Selected Readings, Alabama League of Municipalities)***

***Preparing Daphne for the Future, Daphne Comprehensive Plan states***

***“The citizens of Daphne also have a vision—To be safe, healthy, caring community and through comprehensive planning, the citizens of Daphne intend to manage and direct the City’s growth, ensure the highest quality of living for each resident... In a word, the citizens of Daphne want to maintain their ‘community’.***

***Four mission statements were developed including “maintain vigorous citizens oversight of municipal activities to ensure that opportunities are realized for continuous improvement in the provision of services, facilities and resources.”***

**Our Comprehensive Plan tasks us with citizen involvement and long range planning. Approval of this project tonight negates both of those community desires. As elected officials we have a responsibility to the people of Daphne and the Comprehensive Plan clearly states Daphne residents want us to show forethought in our decision making. Attachment D1 and D2, Excerpts from Preparing Daphne for the Future.**

**The development of an overlay district would allow the City of Daphne to re-define the Gateway to our community. We could encourage redevelopment and new construction to allow for permeable parking, bay access while addressing the unique height needs of this area.**

**4.**

***When considering a request for a variance...should decide whether the variance, if granted, would maintain adequate levels of health, safety and general public welfare for the community and the neighborhood involved. Another aspect to be remembered is that the granting of a variance can be negotiated. Each side may have to give and take a little. (Attachment E, Selected Readings, Alabama League of Municipalities)***

**I met with Chief Hansen to discuss this proposal. From our meeting I learned sprinkler systems are 96% effective in extinguishing a fire. Unfortunately, most deaths are caused by smoke inhalation.**

If we approve this structure at 192 feet, and we do not get a new fire truck, we are saying that for the first time in Daphne history, it is okay that we won't be able to get residents out of the building and that we can't adequately protect our residents. I am not comfortable with that decision. Particularly not without adequate discussion as to the repercussions of such an action. To adequately address public safety we would need a new 275' ladder truck that would cost 1.5 million dollars!

The Chief also discussed the idea of a collapse zone. This zone would stipulate that nothing could be built within the collapse area so no domino effect of building loss would be a problem. This needs to be addressed before this project is approved as it may affect what adjacent property owners may or may not do with their property. (Attachment E2, Memo from Chief Hansen)

5.

We don't even know what we are approving. We have been asked to grant a 192 foot height variance. We have been told this 14 story building will have 53 units in our memo from the developers, yet at the Planning commission 56 units was discussed. Utilizing section 13-4 in the Daphne Land Use ordinance, this project exceeds the minimum lot area in square feet.

If the City of Daphne approves this project, we open ourselves to legal liabilities.

*The enforcement of municipal ordinances cannot be left to the whim or discretion of officials. Therefore, it is important that the ordinance provide reasonable standards to govern the decisions of zoning officials, or create objective criteria that a property owner must meet in order to comply with the zoning ordinance. (Attachment F, Selected Readings, Alabama League of Municipalities)*

It could also be argued the City acted with nonfeasance (failure to act) if a wrongful death were to occur in this tower. In risk management situations, the elimination of risk is the most desired goal. Cities have not been granted substantive immunity with fire. (Attachment G, Selected Readings, Alabama League of Municipalities)

Lastly, several of us discussed need to address growth during the recent election. Failure to develop a plan before addressing this request is contradictory to those campaign promises. Failure to establish a plan does not provide standards which govern our decisions and are therefore whimsical and potentially "arbitrary and capricious."

THE CITY OF DAPHNE  
PLANNING COMMISSION MINUTES  
REGULAR MEETING OF AUGUST 26, 2004  
COUNCIL CHAMBERS, CITY HALL - 6:00 P.M.

The Chairman stated the next order of business is a zoning amendment review for Barry L. Booth, DMD and Chunchula Energy Corporation.

**File 204-04: Barry L. Booth, DMD and Chunchula Energy Corporation**

**Location:** On the West side of U.S. Highway 98 immediately North of Pizza Hut, Lot 1 of Sundowne Subdivision

**Area:** 11.26 Acres ±

**Petitioner:** Owner(s)

**Engineer:** Hutchinson, Moore & Rauch - Doug Bailey

**Present Zoning:** R-3                      **Proposed Zoning:** R-4

An introductory presentation was given by Mr. Bailey, representing Hutchinson, Moore & Rauch, requesting the rezoning of a proposed high density single family condominium development from an R-3, High Density Single Family Residential, to an R-4, High Density Single and Multi-Family Residential, zone. He stated at the present time we are requesting a change of the zoning from high density to high density multi-family for the construction of a two-phase development.

Mr. Bailey stated as a result of the presentation at the site review meeting my client has taken the comments under advisement and the proposal that was considered at this meeting will upon approval of the zoning change will reflect a revision to the architectural renderings for the development. He stated it seems as if the Commission was pleased with the proposal with the exception of the height so upon submittal of the site plan for review my client will present another concept with is acceptable with both the Planning Commission and the City Council. I will be happy to answer any questions you may have.

The Chairman stated do any of the Commissioners or Mr. Eady have any questions or comments. He opened the floor to public participation.

The adjacent property owners addressed the Commission to express their concerns regarding the proposed development and how it would impact the adjacent property owners.

The main concerns expressed was the impact on the neighborhood which exists on Second Avenue and exits onto Van Buren Street with regard to traffic with the consideration of an alternate access to the development.

The Commission addressed the concerns of the adjacent property owners and discussed at length its possible effect on the adjacent properties.

Mr. Bailey stated the traffic must be direct through a residential area and the street, 2<sup>nd</sup>, would be improved to accommodate the development.

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

**THE CITY OF DAPHNE  
PLANNING COMMISSION MINUTES  
REGULAR MEETING OF AUGUST 26, 2004  
COUNCIL CHAMBERS, CITY HALL - 6:00 P.M.**

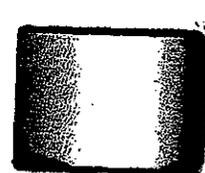
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A Motion was made by Mr. Schwarz and Seconded by Mr. Kirby for the affirmative recommendation by the Planning Commission to the City Council of Daphne for the rezoning of Barry L. Booth, DMD and Chunchula Energy Corporation, from an R-3, High Density Single Family Residential, to an R-4, High Density Single and Multi-Family Residential, zone.

Upon roll call vote, the Motion carried.

Mayor Brown	Aye
Mr. Coulter	Nay
Ms. Barry	Nay
Mr. West	Nay
Mr. Day	Aye
Mr. Schwarz	Aye
Mr. Johnston	Aye
Mr. Kirby	Aye

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- (5) Said Board shall keep minutes of its proceedings, show the vote of each member upon questions, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the Office of the City Clerk and shall become public record.

(f) Duties and Powers:

The Board shall have the following duties and powers:

(1) Administrative Appeal:

To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Director of Planning/Zoning, Zoning Enforcement Officer, Code Enforcement Officer or other administrative official, involved in the enforcement of this Ordinance.

(2) Special Exceptions:

To hear and decide special exceptions to the terms upon which said Board is required to pass under this Ordinance.

(3) Variances:

To authorize upon appeal in specific cases such variance from the terms of this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance will, in an individual case, result in unnecessary hardship, so that the spirit of this Ordinance shall be observed, public safety and welfare secured, and substantial justice served. Such variance may be granted in such individual case of unnecessary hardship upon a finding by the Board that:

- (a) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography.
- (b) The application of this Ordinance to this particular piece of property would create an unnecessary hardship.
- (c) Such conditions are peculiar to the particular piece of property involved.
- (d) Relief, if granted, would not cause substantial detriment to the public good or impair the purpose and intent of this Ordinance; provided, however, that no variance may be granted for a use of land or building or structure that is prohibited by this Ordinance.

the provisions of the zoning ordinance in special cases. The zoning board of adjustment is not a legislative body with authority to substitute its opinion for that of the governing body nor is it charged with the routine administration of the zoning administrator. The zoning board of adjustment is an appeal board for variances, ordinance interpretations and special exceptions. The board does not have unlimited power. It must comply with the powers granted to it by state statute and local ordinance.

Section 11-52-80, Code of Alabama, 1975, provides for the appointment of a zoning board of adjustment consisting of five members appointed for three-year staggered terms. In addition, the statute calls for the appointment of two supernumerary members for three-year terms to serve on the board at the call of the chairman in the absence of regular members. While serving, supernumerary members have and exercise the power and authority of regular members. In cities of not less than 175,000 and not more than 275,000 in population, board members must be bona fide residents and qualified electors of the city. One member of the planning commission may sit as a member of the zoning board of adjustment except in cities of not less than 175,000 and not more than 275,000 inhabitants. Section 11-52-3, Code of Alabama, 1975. The statute states that vacancies on the board shall be filled for the unexpired term of any member whose position becomes vacant. Appointed members may be removed for cause by the appointing authority upon written charges and after a public hearing.

**Powers of the Zoning Board of Adjustment**

Section 11-51-80, Code of Alabama, 1975, gives the governing body the power to designate the powers and duties of the board as long as the powers granted do not conflict with state law. In cases where the governing body does not define the board's powers and duties, the board shall assume those powers and duties specified in the enabling law. Section 11-52-80, Code of Alabama, 1975. See *Nelson v. Donaldson*, 255 AL 76, 50 So. 2d 244 (1951).

State law has given the Zoning Board of Adjustment authority to decide issues in three distinct areas: (1) variance requests; (2) interpretation of existing zoning ordinances; and (3) requests for uses that may be permitted by the zoning ordinance upon appeal.

**Variances.** One of the specified duties of the board is to consider and grant or deny variance requests. A variance is a deviation from the design requirement of the zoning ordinance. Many times a variance is thought of as being granted when the meeting of design restrictions would place a hardship on the use of the property. However, variances can also be granted in constructive situations which would enhance the design or utilization of the property.

The term "variance" is misunderstood due to the number of varying interpretations of the term "hardship." A hardship exists when the conditions imposed by the zoning ordinance would deprive the property owner of certain development rights that are enjoyed by other property owners within the same zoning district. When examining the hardship claimed, it should be determined that: (1) the property owner did not bring this hardship upon himself or herself; (2) the physical site conditions are such that a hardship does exist; or (3) the property owner would be deprived of rights which are normally afforded under the same regulations for the zone in which the property is located. The term "hardship" should never be interpreted as meaning personal or economic hardship to the property owner. These conditions are not grounds for granting variances. *Gadsden Board of Adjustment v. VFW Post 8600*, 511 So. 2d 216 (AL Civ. App. 1987) and *Board of Zoning Adjustment for the City of Fulda v. Summers*, 814 So.2d 851 (AL 2001).

However, see *Board of Zoning Adjustment of the City of Huntsville v. Mill Bakery and Eatery, Inc.*, 587 So. 2d 390 (AL Civ. App. 1991), where the Court of Civil Appeals held that a variance should have been granted to a property owner who would suffer financial hardship not common to that of other property owners in the district if the variance was refused. In this case, the property owner had made improvements to his property based upon a previously-issued variance and the court held that the Board of Adjustment could not later refuse to issue them another variance.

No one factor is dispositive as to what constitutes undue hardship. *City of Mobile v. Sorrell*, 271 AL 468, 124 So. 2d 463 (1960). Instead, all relevant factors, when taken together, must indicate that the problems of the property are unique in that it cannot reasonably be used for a conforming use.

Other cases which discuss the question of undue hardship include:

- *City of Trussville v. Simmons*, 675 So. 2d 474 (Ala. Civ. App. 1996) – city's enforcement of its sign ordinance did not create a hardship for the property owner that would permit him to obtain a variance;

- *Asmus v. Ono Island Board of Adjustment*, 716 So.2d 1242 (Ala. Civ. App. 1998) – landowner did not suffer any unnecessary hardship that would entitle him or her to a variance to build a boat deck 250 feet from shore;

- *Behm v. Board of Zoning Adjustment of the City of Mobile*, 571 So. 2d 315 (Ala. Civ. App. 1990); *Brock v. Board of Zoning Adjustment of the City of Huntsville*, 571 So. 2d 1183 (AL Civ. App. 1990) and *Board of Adjustment v. City of Mobile v. Murphy*, 591 So. 2d 505

## 67. ZONING IN ALABAMA

**Z**oning is not a new concept. The 1923 Alabama Legislature passed Act 443 to give all municipalities in the state the authority to zone all territory located within their corporate limits. This act is presently codified at Section 11-52-70, Code of Alabama, 1975.

Although zoning laws deprive property owners of absolute control over property, these same laws provide protection to property owners from nuisances which might otherwise be located near a person's property and reduce the value of the property.

The purpose of a municipal zoning ordinance is to divide a municipality into districts or zones according to suitability for particular uses and to regulate the erection, construction, reconstruction, alteration, repair or use of buildings, structures and land according to such districts. The goal is to lessen congestion in the streets; to provide safety from fire; to provide adequate light and air; to prevent overcrowding of land; to facilitate adequate provisions for transportation, water, sewage, schools, parks and other public requirements; and to conserve the value of buildings.

Section 11-52-70, Code of Alabama, 1975, authorizes municipalities to establish zoning districts and to provide for the "kind, character and use of structures and improvements that may be erected or made" in each of these districts. The Alabama Supreme Court has held that "The only limitation placed upon the power of municipalities to pass zoning ordinances is that such ordinances must be *comprehensive in scope and purpose* and not in conflict with the laws of the state or the state and federal constitutions." (Emphasis added) *Jefferson County v. City of Birmingham*, 55 So.2d 196. The comprehensive nature of a zoning plan was discussed in *Johnson v. City of Huntsville*, 249 AL 36, 29 So. 2d 342 (1942). In this case, the Alabama Supreme Court held that zoning ordinances which create a zone for residential purposes only and failed to zone the rest of the municipality are invalid. The court said that a zoning ordinance should include the whole municipality in a 'comprehensive plan.' According to the court, spot zoning and zoning piecemeal are not authorized. See also Attorney general's opinion to Hon. C. B. Johnson, June 8, 1977.

### Comprehensive Plan

A principal guideline defining the kind of public interest which a zoning action is supposed to serve is the requirement that it must be in conformity with a comprehensive plan. This requirement is specified in most

state enabling legislation, including Section 11-52-72, Code of Alabama, 1975. It is clear, then, that as required by Section 11-52-72 of the code, zoning regulations must be consistent with a comprehensive plan. But what is a comprehensive plan?

The Alabama Supreme Court discussed this issue in *Come v. Chancy*, 289 AL 555, 269 So. 2d 88 (1972). The Court noted that:

"Cities should be encouraged to formulate long range plans encompassing all facets of municipal development ... [These] are of course only guidelines to be used in directing proper growth of a municipality, and zoning ordinances should be drafted to further the main objectives. Even though such master guidelines should be a helpful basis in all zoning legislation, the former does not occupy a position of legal superiority over the latter. The entire collection of zoning maps, zoning ordinances, and master plans or guidelines constitutes the basis for a comprehensive zoning plan of a municipality. It is, however, the ultimate zoning ordinance, the product of all of the above, that must govern.

"The ultimate criterion in determining the validity of zoning ordinances is whether the ordinance creates zones in such manner that the classifications are consistent with the land use pattern of the area, and bear a substantial relationship to the public health, safety, morals and general welfare; the size and location of the property would necessarily enter into a determination of this question, which is primarily for the governing body of a political subdivision whose conclusions in the premises should not be judicially disturbed unless it be arbitrary and capricious, and therefore palpably wrong."

Thus, the court concluded that the "requirement of [Section 11-52-72] of a comprehensive plan merely means that zoning ordinances must be enacted with the general welfare of the entire community in mind."

Each particular zoning restriction affecting each particular piece of property must be consistent in principle with the total concept of the best way to use land in the city to serve the best interests of all the people in the city rather than an individual landowner or any special interest group. The exercise of the power to zone territory should be zealously guarded to protect the whole municipality rather than certain property owners.

### Ordinance Required

Alabama municipalities have the authority to zone all territory located within the corporate limits of the

## PLAN OF ACTION

The citizens of Daphne have a purpose – *to be the preferred residential waterfront community in South Alabama for families, business, and industry.*

The citizens of Daphne also have a vision – *To be a safe, healthy, caring community and through comprehensive planning, the citizens of Daphne intend to manage and direct the City's growth, ensure the highest quality of living for each resident, stimulate economic growth, and attract quality industry.*

That's a lot to say for a city of 16,581 people, with many of its residents having moved to Daphne in the last 15 years. But what is more is that the citizens of Daphne have a plan for getting what they want. That says even more – not just about the city's leadership, but also about the residents and the businesses who depend on Daphne's well-being to provide them with the lifestyle they have come to enjoy and want to continue.

In August of 1999 the City of Daphne began formulating a plan of action to maintain a city where heritage is strong, people are respected, city character is valued, and where growth is welcome. In a word, the citizens of Daphne want to maintain their 'community'. Early in the process, the citizens established four mission statements to help them reinforce the purpose of the city and achieve their vision:

- Continually confirm our purpose as the "Preferred Community in South Alabama" by providing superior educational facilities and opportunities so that Daphne children may remain nationally competitive graduates.
- Excel in the provision of protection services, infrastructural facilities and cultural opportunities so that Daphne residents are afforded the highest quality of living possible.
- Maintain vigorous citizens oversight of municipal activities to ensure that opportunities are realized for continuous improvement in the provision of services, facilities and resources.
- Foster an atmosphere which stimulates economic growth and attracts quality industry through adequate transportation facilities, a stable and active business environment, a skilled and educated work force and a strong customer base.

Over the course of a year, the citizens of Daphne evaluated the city's resources and liabilities; identified those issues which could encourage or limit desired growth; and made recommendations which would address deficiencies and promote the type of development that is wanted and needed. The results of these studies are found in the six elements of this plan, which are Population and Economy, Housing, Transportation, Open Space and Recreation, Education and Land Use. The study of each of these elements of the city's life produced goals and

## Summary Of Implementation Strategy For Daphne Comprehensive Plan

**Phase I:  
One Year  
Implementation Time**

Focus: Establish ordinances, regulations and plans in place to insure that future development is in compliance with the comprehensive plan.

**Phase II:  
One to Three Years  
Implementation Time**

Focus: Educate the citizens of Daphne about long-range plans through the development of public/private committees and public meetings. Encouraging citizen involvement in the decision-making process and implementation of plans. High cost items include purchase of land and additional rights-of-way.

**Phase III:  
Three to Five Years  
Implementation Time**

Focus: Upgrade and construct new infrastructural services to continue to provide a high quality of life and to continue to attract growth. The responsibility for implementing lower cost items, such as citizen education and attracting development, is shifted to public/private committees and other agencies.

**Phase IV:  
Five to Seven Years  
Implementation Time**

Focus: Continue constructing, upgrading, and expanding infrastructural facilities, with a particular emphasis on transportation services. The private sector is focused on improving appearance and increasing resources, as well as, working to secure site for industrial park.

**Phase V:  
Seven to Ten Years  
Implementation Time**

Focus: Acquire land for industrial and institutional growth and improvements, and continued emphasis on improving educational system and transportation system. Private sector to continue encouraging commercial attractions and provision of housing, educational and recreational facilities.

**Phase VI:  
Ten to Fifteen Years  
Implementation Time**

Focus: Begin extending development efforts beyond corporate boundaries by improving transportation accessibility. Begin working on increased quality of life factors.

**Phase VII:  
Fifteen to Twenty Years  
Implementation Time**

Focus: Looking into alternative transportation facilities which ease commuting and increase the quality of life through transportation/recreation facilities.

(AL Civ. App. 1991) – questions of undue hardship are factual issues to be submitted to the jury; and

- *Vernon's Tri-State Pawn v. Board of Adjustment of the City of Mobile*, 571 So. 2d 309 (AL Civ. App. 1990) – jury instruction on self-inflicted hardships was correct and should have been given.

- In *Ex parte Board of Zoning Adjustment*, 636 So. 2d 415 (AL 1994) – loss of potential future economic gain was insufficient to establish unnecessary hardship to justify the grant of a use variance for a mobile home park.

There are as many types of variances possible as there are design criteria incorporated into the zoning ordinance being considered. For example, variances are sought when any of the following criteria in a zoning ordinance create unnecessary hardship – set-back criteria; area criteria; height criteria; structure criteria; accessory structure criteria; fence, wall and screening criteria; and parking, storage and loading criteria.

A variance is granted to allow deviation from established design requirements. Appeal for a use variance occurs when an appeal is made to request allowance of a use within a zoning district which is prohibited by the ordinance in that district. According to courts in most jurisdictions, such an allowance negates the intent of the ordinance, constitutes rezoning and is not within the power and authority of zoning boards of adjustment. A change of use should be undertaken by the municipal governing body. **Note:** Although the above statement is the general weight of authority, the *Nelson* case cited above ruled to the contrary in Alabama. For a different opinion, see *McKay v. Strawbridge*, 656 So. 2d 845 (AL Civ. App. 1995). In this case, property owners purchased a parcel of land on which they planned to relocate their truck repair shop and to build a grocery store. At the time of the purchase, the property was zoned for residential use. They petitioned the Board of Adjustment for a variance in the zoning of the property from residential use (R-1) to general commercial use (B-2). After a hearing, the board granted the variance. The Court of Civil Appeals held that a board of adjustment had no authority to grant the requested variance because the request should have been done as a rezoning.

The attorney general cannot decide whether a board of zoning adjustment should issue a variance. This is a factual issue the board must resolve. Attorney General's Opinion 96-00222. The attorney general's office cannot decide factual issues, such as whether a variance should be granted by a zoning board of adjustment or whether a mobile home comes within the definition of a mobile home as defined in a zoning ordinance. Attorney General's Opinion 96-00314.

The Alabama Court of Civil Appeals held that a contractor did not have standing to apply for a variance

because the contractor did not own the property, nor did he have any interest in the property. In this scenario, the owner had merely contracted for a contractor to perform improvements on the property. *Birmingham Zoning Board of Adjustment v. Jackson*, 768 So.2d 407 (AL Civ. App. 2000).

A landowner who knows of a zoning ordinance prohibiting mobile homes before he purchases a mobile home is not entitled to a variance to allow him to place a mobile home on his property, even if the landowner has previously secured a variance for another family member to place a mobile home on the property at an earlier date. A previously granted variance cannot be the basis on which to install a second mobile home. *City of Russellville v. Vernon*, 842 So.2d 627 (AL 2002).

When considering a request for a variance, each member of a zoning board of adjustment should decide whether the variance, if granted, would maintain adequate levels of health, safety and general public welfare for the community and the neighborhood involved.

Another aspect to be remembered is that the granting of the variance can be negotiated. Each side may have to give and take a little. For example, a variance might be granted with the stipulation that certain design features will be added.

**Interpretation of Existing Zoning Ordinances.** The second of the three delegated functions of the zoning board of adjustment is the interpretation of existing zoning ordinances. This does not mean that the zoning board of adjustment can adopt new or amended provisions which revise the intent of the zoning ordinance.

The most common interpretations required are: (1) the intent of the zoning ordinance and (2) the administrative procedures to be followed when they are not clearly spelled out. To maintain consistency in both cases, it is recommended that once an intent or administrative interpretation has been made it should be documented as a policy statement so that future cases will be handled in the same manner.

When interpreting the provisions of the zoning ordinance, the interpretation should be thought of not only as it relates to the specific case being considered, but as having general city-wide applicability. Interpretations should not be made on an individual basis.

Zoning interpretations must not be isolated decisions made only by the zoning board of adjustment. The equitable administration of any zoning ordinance relies on close coordination between the legislative body, the zoning office and the zoning board of adjustment. If for no other reason than to assure equitable treatment and avoid discriminatory lawsuits against the local government, this coordination must be achieved.

Attachment E1

**Cathy Barnette**

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**From:** "Mund Hanson" <daphfire@bellsouth.net>  
**To:** <barnette2@bellsouth.net>  
**Cc:** "MICHELE WHALEN" <mthanson2005@yahoo.com>  
**Sent:** Saturday, March 05, 2005 6:14 PM  
**Subject:** Building Heights

FIRST, I want you to know that I am not opposed to Dr. Booths project. I would like for the City to have the best regulations in place to adress any issues that may arise that will protect all parties involved. I have concerns with dealing with projects of this magnitude with our existing regulations.

1. The Codes that the City of Daphne have adopted will be enforced on all structures built in the City. All employees involved have the citizens safety as the number one priority. They all work very closely together and very well as a team.
2. I am opposed to the current restriction that requires the Council approval of buildings above fifty feet. I recommend that a height be set and that the employees involved be given the tools and infustructure to handle these buildings. There should not be any variances allowed above the set height.
3. Other items that should be considered to assist in the height limit are:
  - A. Larger area allowed for emergency vehicle access.
  - B. Cost of equipment and personnel required to service these buildings.
    1. Ladder truck depending on height– 1 mil. to 2 mil.
    2. Pumper truck (if required)–\$300,000 to \$350,000.
    3. Manpower for additional trucks–\$37,500 to \$40,000 (includes benifits) per firefighter.

3/6/2005

property for a church may violate the free exercise of religion clause in the First Amendment. *Church of Jesus Christ of Latter Day Saints v. Jefferson County*, 721 F. Supp. 1212 (11th Cir. 1990). In *City of Prattville v. Hunting Ridge Church of God*, 608 So. 2d 750 (AL Civ. App. 1992), the Court of Civil Appeals held that the board of adjustment's denial of a variance to construct a church building was not justified by the evidence.

A Massachusetts law that prohibits municipal zoning authorities from excluding religious uses of property from any zoning district, does not violate the First Amendment's Establishment Clause. The court held that the statute has a legitimate secular purpose of barring religious discrimination, and its primary effect is "acceptable accommodation" of religion, not "impermissible favoritism." *Boyajian v. Gatzunis*, 68 L.W. 1683 (First Cir. 2000).

### Judicial Review of Zoning Ordinances

When a municipality adopts a zoning ordinance, it is presumed valid. Generally speaking, zoning ordinances, like all ordinances, are entitled to a presumption of correctness by the courts. *Marshall v. City of Mobile*, 250 AL 646, 35 So.2d 553. As Alabama courts have pointed out in numerous cases, the wisdom of a municipal zoning ordinance rests, in large measure, in the wise discretion of the local governing body. See, e.g., *Fleetwood Development Corp. v. City of Vestavia Hills*, 282 Ala. 439, 212 So.2d 693 (1968). Courts generally will not substitute their judgment for that of the council. *American Petroleum Equipment and Construction, Inc. v. Fancher*, 708 So. 2d 129 (AL 1997). The Supreme Court has held that a trial court must not disturb the zoning decision of a duly constituted municipal body so long as that decision is based upon a 'fairly debatable' rationale. *Jefferson County v. O'Rorke*, 394 So. 2d 937 (AL 1980), and *Cale v. City of Bessemer*, 393 So. 2d 959 (AL 1980). Courts must recognize that zoning is a legislative function committed to the sound discretion of municipal legislative bodies, not to the courts. *Waters v. City of Birmingham*, 282 AL 104, 209 So. 2d 388 (1968); *Marshall v. City of Mobile*, 250 AL 646, 35 So. 2d 553 (1948). As a result, local governing authorities are presumed to have a superior opportunity to know and consider the varied and conflicting interests involved, to balance the burdens and benefits and to consider the general welfare of the area involved. *Episcopal Foundation of Jefferson County v. Williams*, 281 AL 363, 202 So. 2d 726 (1967); *Leary v. Adams*, 226 AL 472, 147 So. 391 (1933). They, therefore, must of necessity be accorded considerable freedom to exercise discretion not diminished by judicial intrusion. *Walls v. City of Guntersville*, 253 AL 480, 45 So. 2d 468 (1950).

Nevertheless, this discretion is not unbounded and local authorities may not, under the guise of legislative power, impose restrictions that arbitrarily and capriciously inhibit the use of private property or the pursuit of lawful activities. Courts generally look to see if the municipality acted arbitrarily or capriciously. This issue has been held to be one of fact for a jury to resolve. *Bratton v. City of Florence*, 688 So. 2d 233 (AL 1996). The only limitations on municipal zoning ordinances are that they must be comprehensive and not in conflict with the laws of the state or the state and federal constitutions. *Jefferson County v. City of Birmingham*, 256 AL 436, 55 So.2d 196 (1951). Zoning ordinances are generally not overturned unless there is an abuse of discretion or the ordinance itself is arbitrary and capricious. *Come v. Chancy*, 289 AL 555, 269 So.2d 88 (1972).

Of course, the enforcement of municipal ordinances cannot be left to the whim or discretion of officials. Therefore, it is important that the ordinance provide reasonable standards to govern the decisions of zoning officials, or create objective criteria that a property owner must meet in order to comply with the zoning ordinance. While defining objective standards is difficult, many courts have recognized that a municipality, within the limits of its discretionary power, can limit a landowner's use of his or her property. Because municipal zoning power in Alabama is derived from the Legislature's police power, *White v. Luquire Funeral Home*, 221 AL 440, 129 So. 84 (1930), any regulations a municipality places in its ordinance must fit within the parameters of public protection. Ordinances based on police power are enacted to preserve and further the public peace, order, health, morality and welfare. *City of Homewood v. Wofford Oil Co.*, 232 AL 634, 169 So. 288 (1936).

In *Ryan v. City of Bay Minette*, 667 So. 2d 41 (AL 1995), the Alabama Supreme Court held that summary judgment for the city was improper where the plaintiff raised a question of whether an administrative decision violated the city's own zoning ordinance. The "fairly debatable standard" for reviewing municipal zoning ordinances applies only to legislative decisions, not administrative decisions. *Ex parte City of Fairhope*, 739 So. 2d 35 (AL 1999).

Municipalities must enforce their zoning ordinances even-handedly, or they may lose the right to enforce certain provisions at all. *Pearson v. City of Hoover*, 706 So.2d 1251 (AL Civ. App. 1997). In some cases, though, enforcement may not be possible. The Court of Civil Appeals has held that because the construction of a county courthouse is a governmental operation of the county government, the construction is not subject to municipal zoning regulations. *Lane v. Zoning Board of Adjustment of the City of Talladega*, 669 So. 2d 958 (AL Civ. App.

### Areas Protected by Substantive Immunity

In two other cases, the court extended the substantive immunity rule to municipal police departments. In *Calogrides v. City of Mobile*, 475 So. 2d 560 (AL 1985), the plaintiff attended a fireworks display sponsored in part by the city of Mobile. While there, the plaintiff was attacked by a gang of teenagers and stabbed several times. He sued the city, alleging that it failed to assign a sufficient number of police officers to patrol the crowd attending the display.

The court held that the plaintiff's action was barred by the substantive immunity rule. The court recognized the fact that the city's duty was to provide adequate police protection to the public at large rather than to a particular individual and that to find the city liable would threaten the benefits the public received from police protection.

Similarly, the plaintiff in *Garrett v. City of Mobile*, 481 So. 2d 376 (AL 1985), was injured by the same group of teenagers that injured the plaintiff in *Calogrides*. However, because he was injured several minutes later, the plaintiff in *Garrett* argued that a special duty had been created for him as an individual. Again, the court refused to hold the city liable despite notice of the attack on *Calogrides*.

The Court also followed the substantive immunity rule in *Nunnelee v. City of Decatur*, 643 So. 2d 543 (Ala. 1993), upholding a summary judgment in favor of two officers who were sued for releasing a drunk driver who later killed another motorist. Substantive immunity has also been used to protect a municipality from liability from failing to destroy a building which had been condemned. *Belcher v. City of Prichard*, 679 So. 2d 635 (AL 1995).

However, in *Williams v. City of Tusculumbia*, 426 So. 2d 824 (AL 1983), the Alabama Supreme Court declined to apply the substantive immunity rule to a municipal fire department that failed to respond immediately when notified of a fire. The reason for this failure was because the driver of the fire truck had gone home sick and the city had no one with which to replace him. The court found that the failure to have a backup driver on hand was negligent.

The reason for the distinction between fire protection and police protection is not immediately clear from the facts of the case in the reported decision. As pointed out by Justices Maddox and Torbert in their dissent, "the same public policy considerations that the court found applicable in [*Rich*], are even more compelling in the present case." Hopefully, the court will rethink this position.

In *City of Mobile v. Sullivan*, 667 So.2d 122 (AL Civ. App. 1995), the Court of Civil Appeals held that the substantive immunity rule does not bar a suit against the city for negligent misrepresentations regarding the city's zoning laws.

### Overcoming the Substantive Immunity Rule

To overcome the substantive immunity rule, it must generally be shown that the municipality owed some special duty to the plaintiff that it did not owe to the public as a whole and the municipality breached this duty in some way. This issue was raised in *Garrett*, but the court held that the police were not on notice of the attack against him just because of the earlier attack on *Calogrides*. Generally, a municipality, through its officers or employees, must acknowledge the existence of a special duty in order for it to arise. For instance, in at least one case, a special duty was found to exist when a police department assured a caller that help was on the way and the caller relied upon that assertion to his detriment. *Chambers-Castenes v. King's County*, 100 WA 275, 669 P.2d 451 (1983).

In *City of Kotzebue v. McLean*, 702 p. 2d 1309 (AL 1985), a municipality was held liable for the failure of its police department to respond to a call informing them of an impending homicide. Further, in one case, a special relationship was found to exist simply because police protection was provided in the area of a penitentiary. *Cansler v. State*, 234 KS 554, 675 P. 2d 57 (1984).

In a California case, the court held that the police owe duties of care only to the public at large and, except where a "special relationship" has been established, have no duty to offer affirmative assistance to anyone in particular. Without a special relationship, the police owed no duty to the plaintiff. Without a duty, no negligence cause of action can be stated. *Benavidez v. San Jose Police Department*, 71 Cal. App. 4th 853, 84 CA Rptr. 2d 157, 99 Daily Journal D.A.R. 3919 (6th Dist. April 27, 1999).

### Hilliard v. City of Huntsville

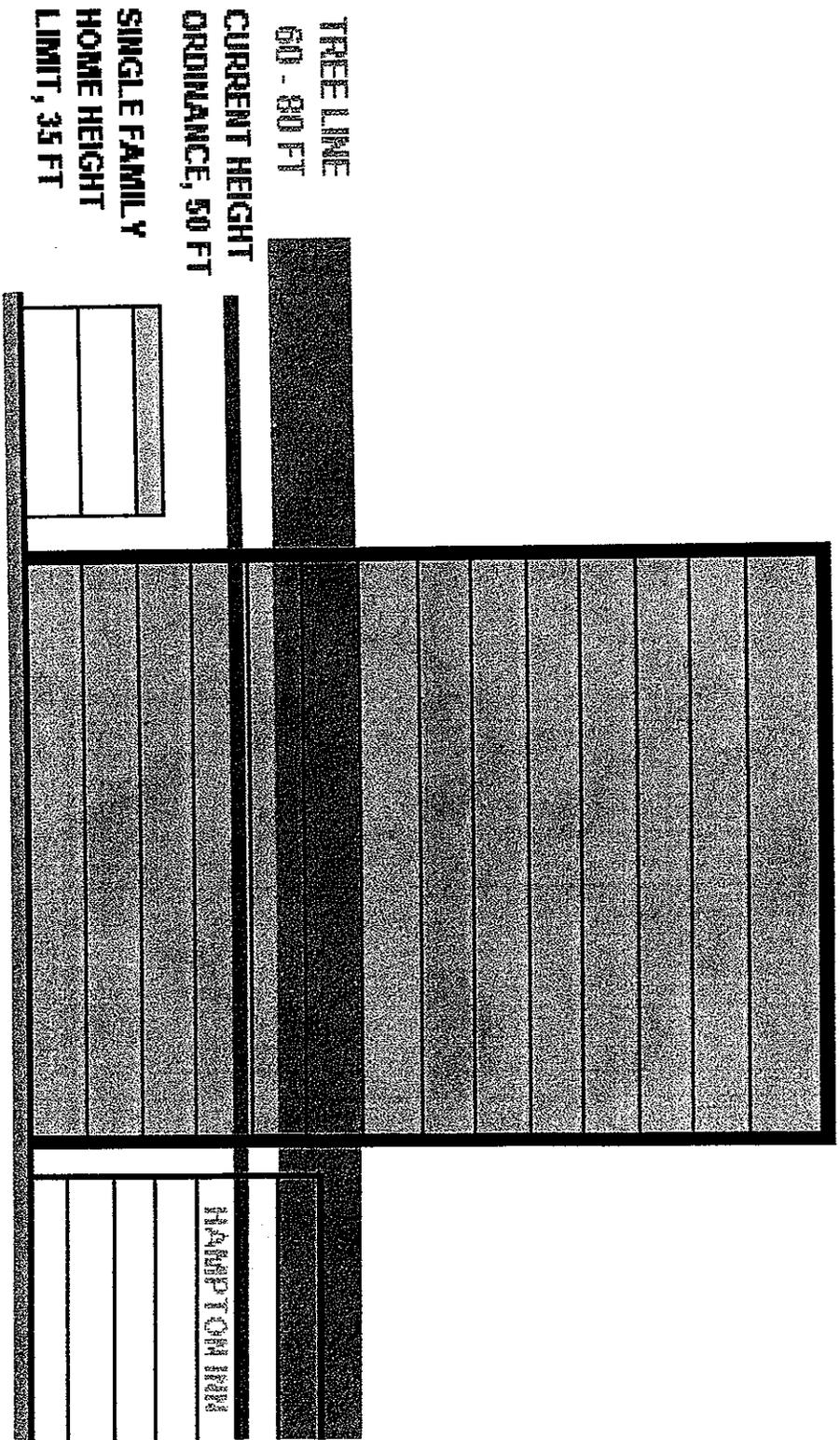
An excellent discussion of the substantive immunity rule appears in *Hilliard v. City of Huntsville*, 585 So. 2d 889 (AL 1991). This case involved an allegedly negligent electrical inspection by the city of Huntsville. The city inspected the wiring in an apartment complex. Just over a month later, three people died in an electrical fire at the complex.

The plaintiff argued that the substantive immunity rule adopted in *Rich* should not apply in this case, arguing that *Rich* should be limited to facts identical to those in that case.

The court rejected this interpretation of *Rich*, ruling instead that "the present case is precisely the type of case in which the substantive immunity rule applies." The court found that the city of Huntsville, like most municipalities, performs electrical inspections as a benefit to itself and to the general public. While individuals receive a benefit from these inspections, the benefit is merely incidental to the true goal of the inspection. Just as an individual driver

# PROPOSED HIGHRISE, 192 FT

APALACHEE, LOT #1, SUNDOWNE SUBDIVISION  
PHASE 1



TREE LINE

60 - 80 FT

CURRENT HEIGHT

ORDINANCE, 50 FT

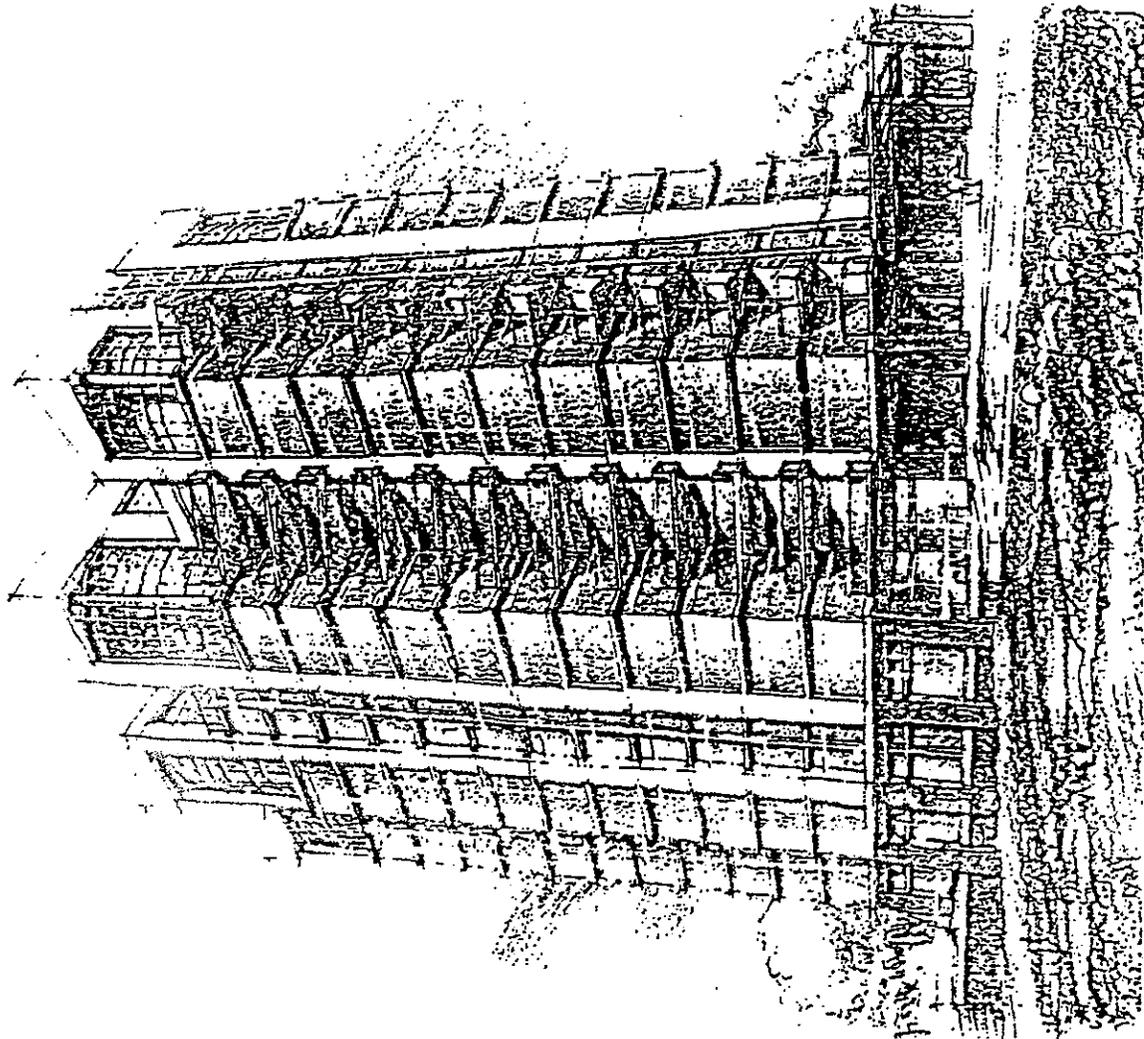
SINGLE FAMILY

HOME HEIGHT

LIMIT, 35 FT

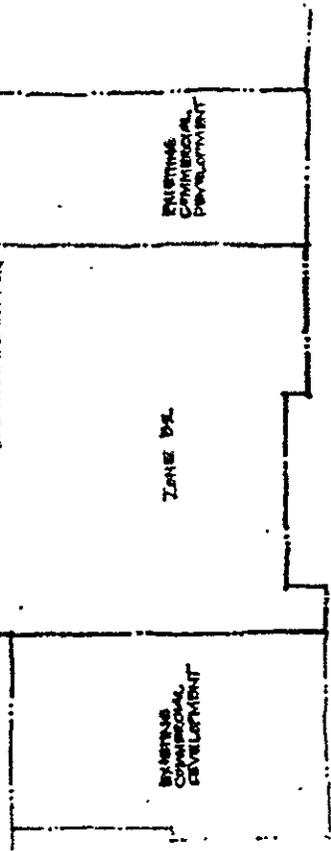
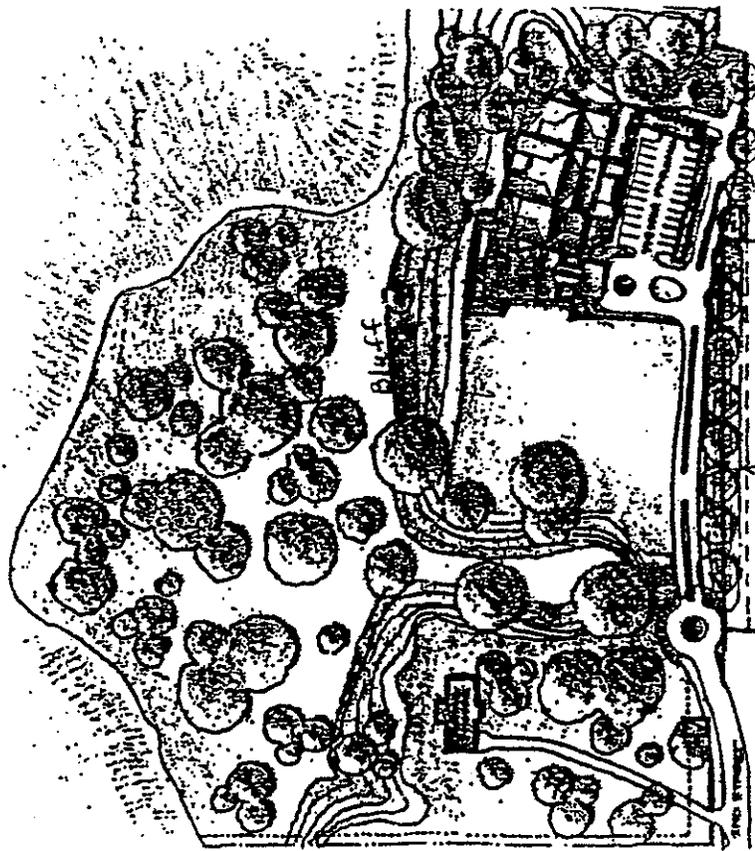
HARRINGTON

March 7, 2005  
Council Mtg.



Design by  
**APALACHEE**  
 SKETCH/PERSPECTIVE

NO. 2000  
 01-27-74  
 1-2007-2008



EXISTING  
 COMMERCIAL  
 DEVELOPMENT

ZONE DPL

EXISTING  
 COMMERCIAL  
 DEVELOPMENT

US 11 @ HWY 98

IAN BURCH

OTDWA took a sampling of public opinion in the form of a petition. The petition reads:

*We, the undersigned, request that the City of Daphne review and update the City's Comprehensive Master Plan with provisions for input from the public before granting major variances for projects that will significantly alter the character of Daphne and the Eastern Shore.*

The petition included a picture of the proposed project and a graphic showing it to scale including the current height limit and the tree line.

The petition was started one week ago and most signatures were gathered this weekend.

A total of 254 signatures were gathered.

Several signed as Mr. and Mrs. and were counted as one signature.

In many cases only one family member was home, but others in the same household may share their opinion.

Approximately 30 signatures are from residents of the Eastern Shore outside of Daphne.

We also spoke to about 20 people who did not sign the petition. Including them in the results, the breakdown is:

1.8% (5 residents) approve of the variance and high rise condominium project and did not sign the petition.

5.5% (15 residents) did not know about the project, felt they were not informed enough to sign a petition, or were uninterested.

92.7% (254 who signed the petition) supported the need to review the Master Plan and make appropriate changes before granting any variance. The majority of this group had strong concerns about a 192' building, but were sympathetic to the need for raising the current height limit.

The percentages I mentioned seem to be similar throughout each district. I would project that if a larger and more comprehensive survey were done, the support for this petition would probably be well over 80% city wide.

With this petition, OTDWA has tried to take the pulse of our community.

There has been a ground swell of concern about our planning process.

Please take the request of these petitioners into consideration when you vote tonight.

Before I leave the podium I would like to say: Not included in any of the statistics I have mentioned tonight are a number of people I have spoken to, in confidence, who are opposed to the height of this building or to the planning process that has forced this public conversation tonight. These are people who will not come forward to speak or to sign a petition because of their various roles in our community. Their silence is profound.

### PETITION: PROPOSED HIGHRISE

We, the undersigned, request that the City of Daphne review and update the City's Comprehensive Master Plan with provisions for input from the public before granting major variances for projects that will significantly alter the character of Daphne and the Eastern Shore.

NAME	ADDRESS	DISTRICT
JOHN SHELOW	506 Pinewood St DAPHNE AL	1
BARBARA SHELOW	506 Pinewood St Daphne AL	1
Anne F Bodet	504 Pinewood St Daphne AL	1
Ikin Walker	501 Pinewood St Daphne AL	1
Norman Walker	501 PINWOOD ST DAPHNE AL	1
JOHN HALLIDAY	804 PINWOOD CT DAPHNE, AL	1
Sally Halliday	804 Pinewood Ct Daphne AL	1
Robert C Wilk	812 Pinewood Ct Daphne AL	1
Keita F. Wilkins	812 Pinewood Ct Daphne AL	1
Camron Stauffer	903 Ryan Ave Daphne AL	1
George Stauffer	903 Ryan Ave Daphne AL	1
Melanie Simic	800 Pinewood Ct Daphne AL	1
Robert Secull	810 Pinewood Ct Daphne AL	1
Melinda Oliver	814 Pinewood Ct. Daphne	1
Brenda Oliver	503 Pinewood St. Daphne	1



PETITION: PROPOSED HIGHRISE

We, the undersigned, request that the City of Daphne review and update the City's Comprehensive Master Plan with provisions for input from the public before granting major variances for projects that will significantly alter the character of Daphne and the Eastern Shore.

NAME	ADDRESS	DISTRICT
John Marc A. Dammell	P.O. Box 57, Daphne	District 2
Bob Drummond	367 RIDGEWOOD DR. " "	Dist. 6
Mary J. Drummond	"	"
Karen Lee Vacy	1301 Captaw O'Neal	2
A. Barco, Jr.	505 Collega Ave	2
Maria C. Barco	PO Box 485 Daphne	2
Sethy Baker	PO Box 246 Daphne	2
Cindy Hammer	1304 Capt O'Neal Dr	2
Patsy Lindsey	18 Blue Island Foursteps	
Marye Ann Pinner	601 Collega	2
Michayl Beykin	207 Beall Lane, Daphne	2
Dee Bentley	1501 3rd St Daphne	2
Helen Callaway	PO Box 256 Daphne	2
Jeanne B. Pruitt	P.O. Box 267 Montrose, 36559	
Camille Butler	P.O. Box 835 Daphne 27340	③ Main
Robyn D. Waldrop	605 Van Ave, Daphne	2
Jan Gowde	P.O. BX 435 Daphne	2
Carol Hafner	106 Hanover Dr, Daphne	
Clifford Hester	1109 Randall Ave	1
Jeanne Nelson	1214 Randall Ave	1



PETITION: PROPOSED HIGHRISE

We, the undersigned, request that the City of Daphne review and update the City's Comprehensive Master Plan with provisions for input from the public before granting major variances for projects that will significantly alter the character of Daphne and the Eastern Shore.

} 4

NAME	ADDRESS	DISTRICT
Franklin Lamb	603 Maxwell Ave	2
Carolyn Whitell	616 Maxwell Ave.	2
Juhan W. Whitell	616 Maxwell Ave	2
Joseph Marler	518 Bay Bluff	2
Clayton Shroyer	515 Bay Bluff Dr. W.	2
Clayton Whitell	515 Bay Bluff DR	2
Margaret	515 Bay Bluff Dr	2
Douglas J. Mammone	317 Bay Bluff Dr.	2
J. Mammone	517 Bay Bluff	2
Paul Burch	604 Bay Bluff E.	2
Clayton	601 Bay Bluff E.	2
Clayton	602 Bay Bluff E	2
Clayton	605 Bay Bluff E	2
Mary Palladino	605 Bay Bluff E	2
Kathy Michel	601 Maxwell	2
Dave Michel	601 Maxwell	2
Elsie Lamb	603 Maxwell Ave.	2
Paul Morris	509 Maxwell Ave	2
The Commons	509 Maxwell Ave	2
Debra Lason	514 Bay Bluff W	2

2







PETITION: PROPOSED HIGHRISE

We, the undersigned, request that the City of Daphne review and update the City's Comprehensive Master Plan with provisions for input from the public before granting major variances for projects that will significantly alter the character of Daphne and the Eastern Shore.

NAME	ADDRESS	DISTRICT
Honnet's Engley	314 Whiting Court	2
Maria Engley	314 Whiting Ct.	2
W. S. Lopez	320 Whiting Ct.	2
Belou Pats	100 James Dr 1102	5
Charlie Moore	502 Polo Trace	2
Jane Lewis	8756 NO. LAMHATTY LN	
Barbara Thomas	102 Sam Ave.	
Jo Vickey	<del>52240</del> 52240 B Ammons Rd	
Dileen Bills	State Hwy 181	
John & Helen Glenn	604 Oak Ridge Ct. W	2
Charles H. Moore	149 RICHMOND RD	
Bryan O'Connor	11 Saint Charles Place	2
Cheyl Courtney	10 St. Charles Place	2
Tom Courtney	10 Saint Charles Place	2
Murrell Amison	9 St. Charles Place	2
Dick & Cheryl White	503 Polo Trace	2
Kou & Laura Roberts	510 Polo Trace	2
David & Lynn Johnson	508 POLO TRACE	2
Christina & Ken Hillmer	513 Polo trace	2
Pam McPherson	512 Polo Trace	2

PETITION: PROPOSED HIGHRISE

We, the undersigned, request that the City of Daphne review and update the City's Comprehensive Master Plan with provisions for input from the public before granting major variances for projects that will significantly alter the character of Daphne and the Eastern Shore.

NAME	ADDRESS	DISTRICT
Lesi Bullock	511 Polo Trace	2
Hail Davis	516 Polo Trace	2
Boyz M <sup>c</sup> Gray	509 Polo Trace	2
Lee Johnson	507 Polo Tr	2
Virginia + Bill Alley	505 Polo Tr	2
Marilyn O'Brien	502 Polo Trace	2
Melhi Tamm	504 Polo Trace	2
Theresa Lyons	9257 Wood Claw Dr	2
Rosemary Schmitt	139 Ridgewood Dr.	4
Geane Baker	710 Magnolia Dr.	4
John L. Bone	25170 Co Rd. 13	
Alan Curtis	500 Polo Trace	2
Dale C...	500 Polo Trace	2





### PETITION: PROPOSED HIGHRISE

We, the undersigned, request that the City of Daphne review and update the City's Comprehensive Master Plan with provisions for input from the public before granting major variances for projects that will significantly alter the character of Daphne and the Eastern Shore.

NAME	ADDRESS	DISTRICT
Pat Tippet	201 Patten Mill Ave. Daphne	2
Gidget Zolczynski	16993 Ferry Rd Fairhope	
Phyllis Dye	27811 Dogwood Ct., Daphne	
Monica Smith	160 CLUB DRIVE, FAIRHOPE	
Bertie Sheller	5 Big Way Home, Montrose	
Hyman Zuna	126 Bayview Dr Daphne	
Rita Jemel	109 RYAN CT Daphne	1
Lynda Boney	165 Willow DRWS Fairhope	
Tracey Gammitt	8068 Holley Ct Daphne AL	4
Karen Mundy	Box 953 Fairhope	
Joe Mundy	Box 953, Fairhope	
Marilyn O'Connell	502 Pole Trace, Daphne	2
Allyce Jackson	21 Drama Ln Daphne	5
Martha Wood	100 Lowlandy Sport	
Kate Whitford	20398 Sherryman Way Rd	
Mrs. Young	25225 Rustin Rd	
George Jackson	108055 - Point Clear, AL 36864	
Barbara Harbor	21500 Parvity Wood Dr. Fairhope	
Rosemary Short	PO Box 257 Montrose	
Sally Avelson	9341 Aspen Circle Daphne 36257	6-7







PETITION: PROPOSED HIGHRISE

We, the undersigned, request that the City of Daphne review and update the City's Comprehensive Master Plan with provisions for input from the public before granting major variances for projects that will significantly alter the character of Daphne and the Eastern Shore.

NAME	ADDRESS	DISTRICT
Eunie Willem	100 Tower Dr	5
Nell Shonast	" #401	5
Mickey Stewart	" #801	5
Lillyn Richards	100 tower Dr #604	5
Nell Turner	100 Tower Dr #602	5
Helen Jumbow	100 Tower Dr #402	5
Joan Wilhelm	100 Tower Dr #202	5
Angela Baker	100 tower dr #1202	5
Charles W Baker	100 Tower Dr. #1202	5
George F. Schmidt	100 Tower Dr #203	5
Mary Juman	100 Tower Dr #503	5
Margaret Jman	100 Tower Dr #503	5
Joan Thompson	100 Tower Dr #501	5
Jan Juman	100 Tower Dr #304	5
Nita McHenry	100 Tower Dr #801	5
Michael W. Mandy	100 Tower Dr #603	5
Ernest O. Nordquist	100 TOWER DR #704	5
Sally Rofandich	100 Tower Dr #1103	5
Reggie H. Dupen	100 Tower Dr #903	5
Ann W.	100 Tower Dr #903	5





PETITION: PROPOSED HIGHRISE

We, the undersigned, request that the City of Daphne review and update the City's Comprehensive Master Plan with provisions for input from the public before granting major variances for projects that will significantly alter the character of Daphne and the Eastern Shore.

NAME	ADDRESS	DISTRICT
Amy DeForest Collins	Spanish Fort	
<del>Carol Collins</del>	<del>Spanish Fort</del>	
<del>W.H. H.W.H.</del>	<del>Sp Fort</del>	
Gene Semons	Daphne	
James Thomas	Daphne	
Harry E. Halley	Spanish Fort	
Stacy Legg	Spanish Fort	
Jane Smith	Daphne	
Wanda Thomas	Spanish Fort	
Gene Williams	Spanish Fort	
Hill Bushnell	Daphne	
Stanley Miller	Spanish Fort (16)	
Avery Miller	SPANISH FORT (13)	
Sharla Berry	Daphne	
Pete Miller	SPANISH FORT	
Judy Sullivan	156 Green Bay Circle LAKEFOREST	
Martin Berry	Daphne, AL	

I LIKE YOUR EFFORT TO BRING TO BRING IN BUSINESS, JUST SLOW DOWN, Thank!





# **PUBLIC HEARING**

**April 4, 2005**

- 1. Annexation of Crystal Springs L.L.C.**

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

STATE OF ALABAMA  
COUNTY OF BALDWIN

**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 8<sup>th</sup> 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*  
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 8<sup>TH</sup> day of February, 2005.

*James S. Bellamy*  
Notary Public  
(Print Name) JAMES S. BELLAMY  
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 9<sup>th</sup> day of February, 2005.

**MARIE PRICE**

Notary Public, State of Florida

My Comm. Expires March 2, 2007.

Comm. No. DD 680872

Marie Price

Notary Public

My commission expires: 2-8-06

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

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

By: *[Signature]*  
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 9<sup>th</sup> day of February, 2005.

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

*Marie Price*  
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.

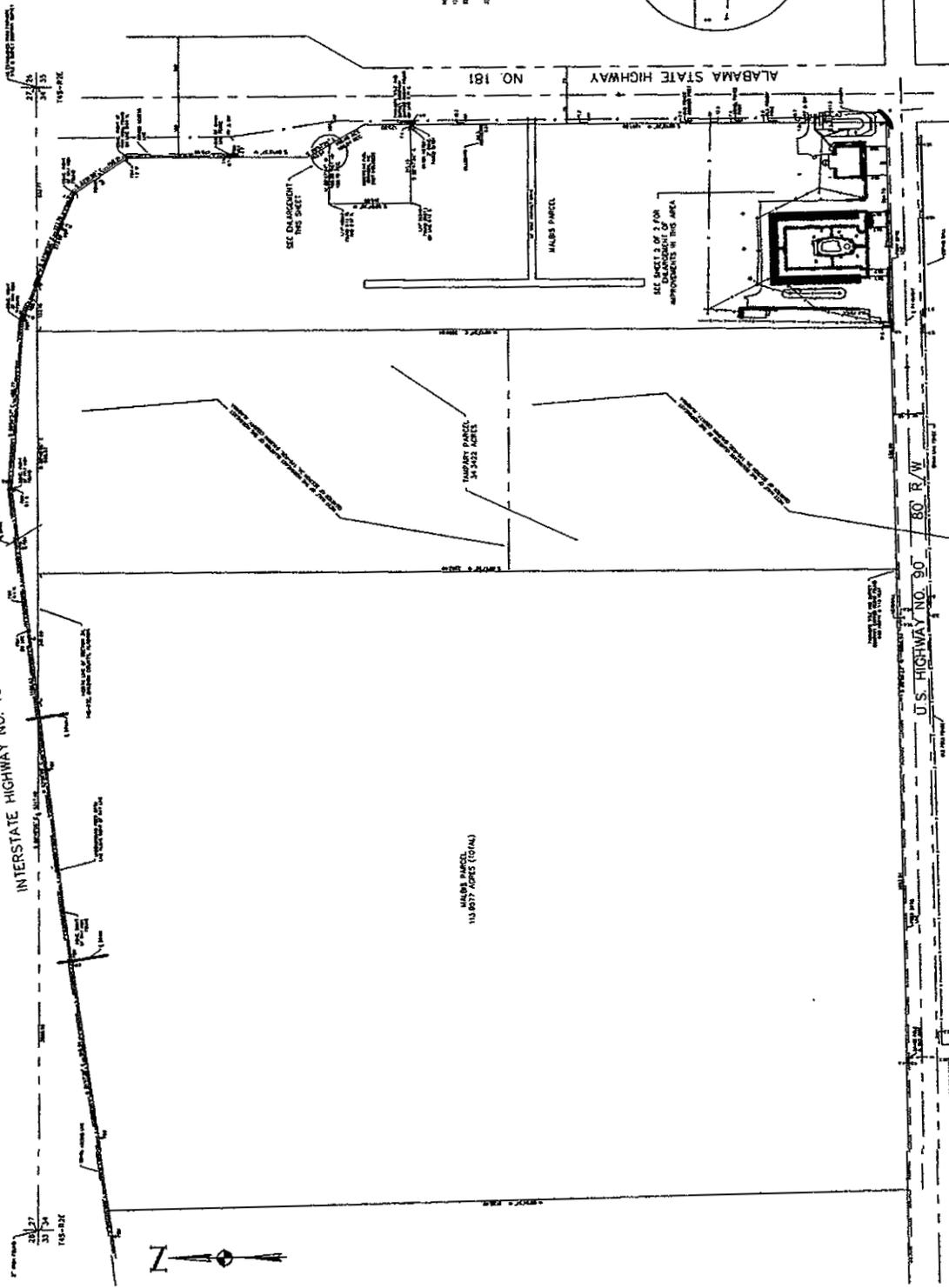
CRYSTAL SPRINGS, L.L.C., EXCHANGE INTERMEDIARY SERVICES,  
MALBIS PLANTATION, INC., CHRISTINE T. MARKS,  
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REFERENCE: EASTERN SHORE PARK

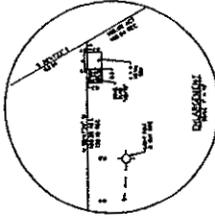
INTERSTATE HIGHWAY NO. 10 (R/W VARIES)



NO.	DESCRIPTION
1	Easement
2	Improvement
3	Boundary
4	Right of Way
5	Easement
6	Improvement
7	Boundary
8	Right of Way
9	Easement
10	Improvement
11	Boundary
12	Right of Way
13	Easement
14	Improvement
15	Boundary
16	Right of Way
17	Easement
18	Improvement
19	Boundary
20	Right of Way
21	Easement
22	Improvement
23	Boundary
24	Right of Way
25	Easement
26	Improvement
27	Boundary
28	Right of Way
29	Easement
30	Improvement
31	Boundary
32	Right of Way
33	Easement
34	Improvement
35	Boundary
36	Right of Way
37	Easement
38	Improvement
39	Boundary
40	Right of Way
41	Easement
42	Improvement
43	Boundary
44	Right of Way
45	Easement
46	Improvement
47	Boundary
48	Right of Way
49	Easement
50	Improvement

NOTES:

1. THE LINES SHOWN BY THIS PLAN REPRESENT THE PROPERTY BOUNDARIES AND ARE NOT TO BE CONSIDERED AS A GUARANTEE OF THE ACCURACY OF THE INFORMATION CONTAINED HEREIN.
2. THE INFORMATION CONTAINED HEREIN IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TO BE USED FOR ANY OTHER PURPOSE.
3. THE INFORMATION CONTAINED HEREIN IS NOT TO BE USED FOR ANY OTHER PURPOSE.



THIS PLAN IS A PART OF A PROJECT AND IS NOT TO BE USED FOR ANY OTHER PURPOSE.

ANNEXATION

EXHIBIT "B"

PROPERTY SUBJECT:

MALBIS PARCEL

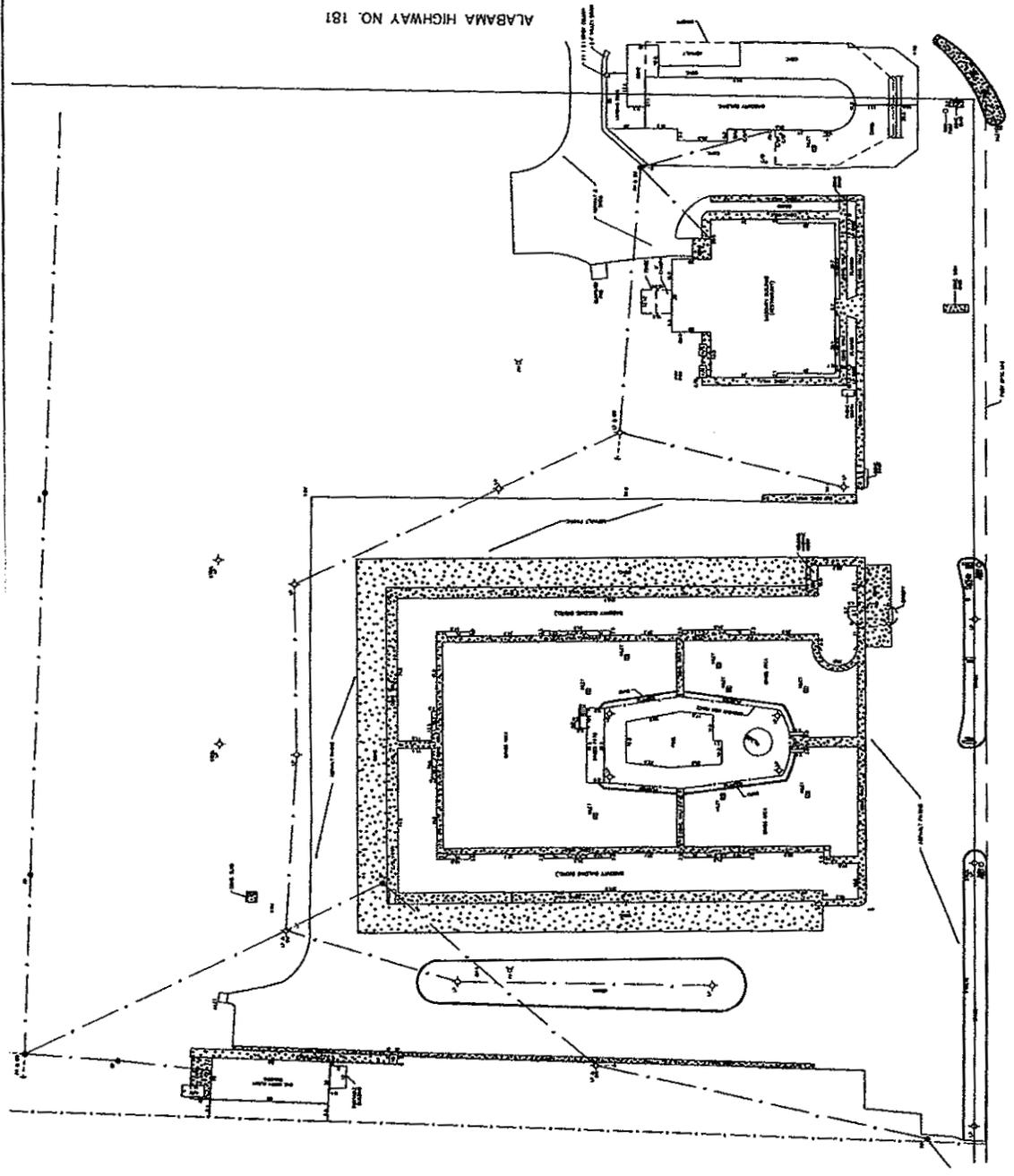
MALBIS COUNTY, ALABAMA

PROJECT: ANNEXATION

DATE: 11/11/2005

SCALE: 1" = 100'

NO.	DATE	BY	REVISION
1	11/11/2005	J. L. SMITH	ISSUE FOR PERMIT
2	11/11/2005	J. L. SMITH	ISSUE FOR PERMIT
3	11/11/2005	J. L. SMITH	ISSUE FOR PERMIT
4	11/11/2005	J. L. SMITH	ISSUE FOR PERMIT
5	11/11/2005	J. L. SMITH	ISSUE FOR PERMIT
6	11/11/2005	J. L. SMITH	ISSUE FOR PERMIT
7	11/11/2005	J. L. SMITH	ISSUE FOR PERMIT
8	11/11/2005	J. L. SMITH	ISSUE FOR PERMIT
9	11/11/2005	J. L. SMITH	ISSUE FOR PERMIT
10	11/11/2005	J. L. SMITH	ISSUE FOR PERMIT



ALABAMA HIGHWAY NO. 181

U.S. HIGHWAY NO. 90 80' R/W

LEGEND	DESCRIPTION
1	EXISTING CONCRETE
2	NEW CONCRETE
3	EXISTING BRICK
4	NEW BRICK
5	EXISTING BLOCK
6	NEW BLOCK
7	EXISTING STONE
8	NEW STONE
9	EXISTING METAL
10	NEW METAL
11	EXISTING WOOD
12	NEW WOOD
13	EXISTING GLASS
14	NEW GLASS
15	EXISTING ROOF
16	NEW ROOF
17	EXISTING FLOOR
18	NEW FLOOR
19	EXISTING WALL
20	NEW WALL
21	EXISTING DOOR
22	NEW DOOR
23	EXISTING WINDOW
24	NEW WINDOW
25	EXISTING PAINT
26	NEW PAINT
27	EXISTING FINISH
28	NEW FINISH
29	EXISTING MECHANICAL
30	NEW MECHANICAL
31	EXISTING ELECTRICAL
32	NEW ELECTRICAL
33	EXISTING PLUMBING
34	NEW PLUMBING
35	EXISTING LANDSCAPE
36	NEW LANDSCAPE
37	EXISTING UTILITIES
38	NEW UTILITIES
39	EXISTING SITEWORK
40	NEW SITEWORK

ANNEXATION EXHIBIT "B"

DONOR'S SURVEY HARRIS PLANTATION PROPERTY BALDWIN COUNTY, ALABAMA PETER AND COLMAN 44 WYOMING AVENUE, SEVEN MILE, ALABAMA 36505-1118 PHONE (205) 331-1807		SHEET NO. 1 OF 1
DATE 11-11-1987	DRAWN BY J. L. BROWN	CHECKED BY J. L. BROWN
SCALE AS SHOWN	DATE 11-11-1987	TIME 1:00 PM
PROJECT NO. 1111	SHEET NO. 1	OF 1

**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: *Jeff F. Chou*  
Its: *PRESIDENT*

STATE OF ALABAMA  
COUNTY OF MONTGOMERY

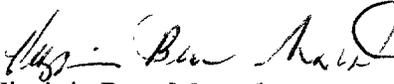
I, the undersigned authority, a Notary Public in and for said State at Large, hereby certify that *JAKE F. ARONOV*, whose name as *President* of Crystal Springs Management, Inc., a corporation, acting in its capacity as the Manager of Crystal Springs, L.L.C., an Alabama limited liability company, is 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 8<sup>th</sup> 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

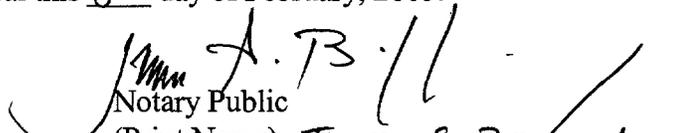
By: Exchange Intermediary Services, Inc.  
Its: Sole Member

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 8<sup>th</sup> day of February, 2005.

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

**MALBIS PLANTATION, INC.**

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

By:  
Its:



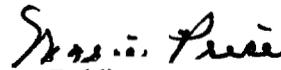
Neal Nash  
Pres.

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 9<sup>th</sup> day of February, 2005.

**MARIE PRICE**  
Notary Public, State of Florida  
My Comm. Expires March 8, 2006  
Comm. No. 000350872



Marie Price  
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

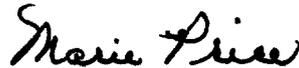
By:  
Its:

  
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 9<sup>th</sup> day of February, 2005.



Notary Public

My commission expires: 3-8-06

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

CRYSTAL SPRINGS, L.L.C., EXCHANGE INTERMEDIARY SERVICES,  
MALBIS PLANTATION, INC., CHRISTINE T. MARKS, CONSTANTICE T.  
TAMPARY, AND ANTHONY T. TAMPARY  
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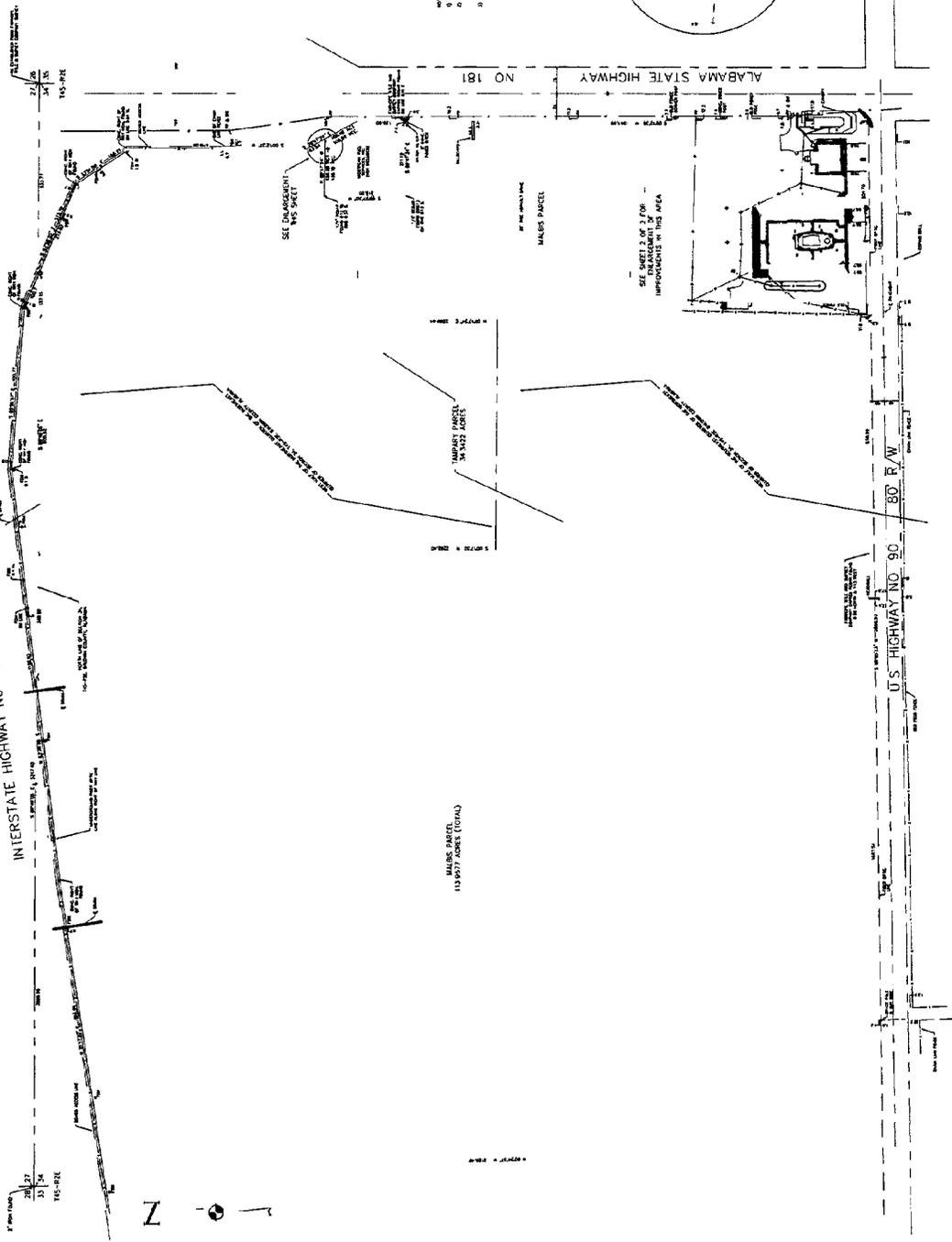
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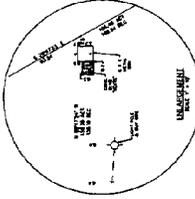
REFERENCE: EASTERN SHORE PARK

INTERSTATE HIGHWAY NO 10 (R/W VARIES)



LEGEND  
 --- EASEMENT  
 --- PROPERTY LINE  
 --- EXISTING ROAD

NOTES  
 1. THE OWNER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE LOCAL GOVERNMENT.  
 2. THE OWNER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE LOCAL GOVERNMENT.  
 3. THE OWNER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE LOCAL GOVERNMENT.



SHEET 1 OF 2

BOUNDARY SURVEY  
 OF  
 MALBIS PARCEL  
 BALDWIN COUNTY, ALABAMA

DATE	BY	SCALE	NTS
08-21-05	MTS	1" = 40'	
08-21-05	MTS	1" = 40'	
08-21-05	MTS	1" = 40'	
08-21-05	MTS	1" = 40'	

1. THIS PLAN IS A PRELIMINARY SURVEY AND IS NOT TO BE USED FOR CONSTRUCTION OR AS EVIDENCE IN COURT.

2. THE SURVEYOR HAS CONDUCTED A VISUAL INSPECTION OF THE PROPERTY AND HAS FOUND NO OBVIOUS ENCUMBRANCES.

3. THE SURVEYOR HAS CONDUCTED A VISUAL INSPECTION OF THE PROPERTY AND HAS FOUND NO OBVIOUS ENCUMBRANCES.

ANNEXATION EXHIBIT 'B'



**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**

# DRAFT

CITY OF DAPHNE  
PUBLIC WORKS COMMITTEE AGENDA  
MARCH 25, 2005

Councilman Bailey Yelding, District 1  
Councilwoman Cathy Barnette, District 2  
Councilman John Lake, District 3

**I. CALL TO ORDER**

The meeting was called to order at 8:14 a.m.

Present: Mr. Yelding, Mrs. Barnette, Mr. Lake, Ken Eslava,  
Melvin McCarley, Stephnie Merchant, Elaine Maxime

**II. PUBLIC PARTICIPATION & CORRESPONDENCE**

A. Correspondence

The committee reviewed and discussed the correspondence from March 2005.

B. Ms. Elaine Maxime of 105 East Avon Circle presented a complaint to the committee about the roads in Lake Forest. She wanted to know when they could be resurfaced and how often they are resurfaced. Mr. Eslava responded that they are of prime concern and that they are looking into funding for the project. She mentioned that the roads are in such bad shape due to all the patching and repair they have endured. Ms. Maxime complimented on how good Public Works has been on responding to calls she has made in the past. The committee thanked Ms. Maxime for taking the time to come and express her concerns. Mr. Yelding asks if there were any other questions or responses in the correspondence area. Mrs. Barnette brought up the striping and the quotes, because she was curious to find out the price. Mr. Yelding closes and moves on to the work report.

C. Work Request Report

The committee reviewed and discussed the work requests for February 2005. Mr. Eslava speaks of starting mosquito control early, due to the publicity of mosquitos since Hurricane Ivan. Mrs. Barnette asks if Public Works will be continuing the larvicide program to which Mr. Eslava responded in the affirmative. Mr. Eslava states that he is going to start the mosquito campaign early. Mrs. Barnette states that there are things the public can do to help with the problem and it is important that we educate them. Mr. Yelding and Mr. Barnette speak of all the compliments they have received and overheard on how beautiful and clean the city is. Mr. Yelding moves on to old business.

**III. OLD BUSINESS**

A. Minutes - February 25 The committee reviewed the minutes from February 25. Mrs. Barnette motioned to

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adopt the minutes; Mr. Lake seconded the motion and all were in favor.

## IV. NEW BUSINESS

## V. DIRECTOR'S REPORT

### A. Financing Recommendation

Mr. Yelding mentioned that he had made a commitment to have sidewalks installed in Daphmont and Carolina Avenue. Mrs. Barnette requested that Mr. Eslava submit a recommendation to finance and all were in agreement. Mr. Eslava plans to mark the sidewalks every tenth of a mile. Mrs. Barnette asks if they should prioritize a few of these areas and Mr. Eslava agreed. They discuss getting volunteers involved. Mr. Yelding moves on to the next topic and Mr. Eslava states that a finance recommendation relating to streets and roads. He also brings up that someone asked about a pay as you go program. The committee discusses it and thinks it isn't in the best interest of the city at this time. They discuss how bad the roads in Lake Forest are as well as other areas. Mr. Eslava states an inexact figure on how much it may cost to resurface the roads. He estimates that it may be around one million dollars. He also states that he would like a list of all roads that are of top priority so he can look into them as well. Mrs. Barnette asks if they can do whatever is appropriate for the finance committee to understand that these are additional costs added to the one million already mentioned. Mr. Lake seconded the statement. Mr. Lake went into detail on what the additional costs may include, and he mentioned the sewer project on Pinehill Road being inappropriately handled. He goes on to say that it is important that Pinehill is addressed and put on the list. They turn the conversation back to the resurfacing of the roads. Mr. Eslava said that they may want to do this by bond issue. They were all in favor. Mrs. Barnette asked that they mention to finance that it is important that they catch up with the maintenance. Mr. Yelding asks if there is a motion on the floor for sending the aforementioned information to the finance committee in the amount of 1.2 million dollars. Mr. Lake motioned that in order to establish a better road maintenance program, that a bond issue be requested in the amount of 1.2 million dollars for necessary resurfacing throughout the City; Mrs. Barnette seconded the motion and all were in favor.

### B Sediment & Erosion Control Enforcement

Mr. Eslava presented a job description for the Environmental Officer of the City of Fairhope. He stated that it could be used a starting point for the creation of a position for the

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City of Daphne. Once the committee has decided on the qualifications on this position, it will then be submitted to Human Resources. Mrs. Barnette states that they need to figure out what the qualifications need to be and how technical the position should be. She suggests that they find someone that may be willing to further their education if need be. They decide to discuss it further at a work session on April 8, at 8:00 a.m.

- C. County Road 13 - City/County/Baldwin Co. Board of Education  
Mr. Eslava repeats, from the last council meeting, that they were successful in getting approximately \$274,000 from the County and the Board of Education. Mr. Yelding states that they need a motion to send to the finance committee for the City's portion of the project for approval. Mrs. Barnette motioned to request financing in the amount of \$137,000 as the City's portion of the County Road 13 project; Mr. Lake seconded the motion and all were in favor.
- D. Environmental Officer Update  
Mr. Eslava explains to the committee that he had a discussion with all of his supervisors on this subject on erosion control. Mrs. Barnette mentions that ADEM has a free course for public service workers and wanted to know if Mr. Eslava would be interested. She mentioned that was free training, but wasn't entirely sure if they do the course anymore, but that she would check into it. Mr. Lake stated that the solid waste crews cover the entire city twice a week and that they would be excellent reporting agents. Mr. Yelding asks about the supervisors and whether or not they were authorized to close a job, and Mr. Eslava stated that they would be directing any problems to him.
- E. County Road 64 Update  
Mr. Eslava wrote a letter to the county engineer and had received no response thus far.
- F. Lake Forest  
Mr. Eslava explains that the lake is coming up in a work session. He wants any questions brought up now while it's on the table. Mrs. Barnette starts out saying that her initial instinct is to say no, then changes her answer to a maybe. She thinks that they should finish up on the storm water authority grant and look over the budget assessment first before making a decision on the lake. Mr. Lake states that he somewhat agrees with Mrs. Barnette. He goes on to explain that the State and the County both need to be involved in this project because they are contributing to the problem. Mr. Yelding brings up the fact that an Environmental Officer would do a world of wonder, due to all the trouble the lake

# DRAFT

has caused in the past and continues to cause in the present. Mr. Yelding is curious to know what Mr. Eslava thinks of the lake and wants his opinion. Mr. Eslava states that he has always wanted the problem solved and that's why he brought it to council, and especially before a legal issue comes of it. Mrs. Barnette thinks there should be a study performed to better inform the council of what exactly needs to happen.

- G. Old County Road & Captain O'Neal  
Mr. Eslava announced that he obtained quotes on thermoplastic striping for the entire run of Captain O'Neil and Old County, to include reflective markers all the way down the middle and on both sides of the street. He stated that the price would be around \$18,000, but would make the very dangerous curves a safer place to both walker and drivers. That quote would cover the 2 ½ mile stretch of road in question. Mr. Lake states that it sounds like the safest thing to do as well. They discuss thermoplastic material amongst themselves. Mrs. Barnette motioned to request financing in the amount of \$18,000 for 4 and 7 cent tax funds for the striping project on Old County and Captain O'Neal; Mr. Lake seconded the motion and all were in favor.
- H. Paint Striping Request - Baldwin Co. Highway Dept.  
Mr. Eslava mentions that there are parking lots and turning lanes that need to be striped. He mentions that there are also some roads to be striped and lets the committee know that he will get them all a list.

## VI. SOLID WASTE AUTHORITY

- A. Household Hazardous Waste Program  
Mr. Yelding asked Mr. Eslava how things are going in this particular area and Mr. Eslava responded that things are moving slowly but surely. He speaks of a piece of new equipment that was donated to the department. Mr Lake says that they might consider placing an ad in the paper or Jubilee Breeze on this subject.
- B. Recycling Program Update  
Mr. Eslava states that with the grant they received from ADECA, they are able to get bins out to each individual apartment owner. Mrs. Barnette asked if Mr. Eslava heard back from ADECA and his response was no.

## VII. MUSEUM COMMITTEE

- A. Minutes
- B. Replacement Windows  
Mr. Yelding asked about the windows at the museum and Mr.

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Eslava said that they were in need of repair and would be addressing the issue in the near future.

**VIII. BEAUTIFICATION COMMITTEE**

A. Minutes - March 4

**IX. ENGINEER REPORT**

A. NRCS Update

**X. FUTURE BUSINESS**

A. Next Meeting - April 22

**XI.**

The meeting adjourned at 9:30 a.m.

**ADJOURNMENT**

**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:**

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**CITY OF DAPHNE**  
**BOARD OF ZONING ADJUSTMENT MINUTES** **DRAFT**  
**REGULAR MEETING OF MARCH 22, 2005 - 6:00 P.M.**  
**COUNCIL CHAMBERS, CITY HALL**

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The Chairman stated the number of members present constituted a quorum and the regular meeting of the Board of Zoning Adjustment was called to order at 6:00 p.m.

**Call of Roll:**

**Members Present:**

Jeri Hargiss  
Billy Mayhand  
Glen Swaney, Vice Chairman  
Walt Crimmins  
Willie Robison

**Members Absent:**

Frank Lamb

**Staff Present:**

William H. Eady, Sr., Director of Community Development  
Pat Houston, Recording Secretary  
Nancy Anderson, GIS Technician  
Jerry Speegle, Attorney\*

\* Arrive at 6:04 p.m.

Mr. Eady stated the five of you are the board members. Mr. Frank Lamb has been appointed as first alternate, and he is out of town tonight. We are still short a second alternate.

The Vice Chairman stated am I right, Mr. Eady, in assuming that since five members are present a super majority is required tonight. In other words, four out of the five members must vote affirmatively to issue a variance.

Mr. Eady stated four of the five is correct. Four members have to agree.

The Vice Chairman stated if everyone has had an opportunity to look at the minutes I will entertain a motion to approve them.

**Approval of Minutes:**

The minutes of the September 2, 2004 meeting were considered for approval. A **Motion** was made by **Mr. Mayhand** and **Seconded** by **Mr. Crimmins to approve the minutes**. Mr. Robison abstained since he was not a member of the Board of Zoning Adjustment at that time.

Upon roll call vote, *the Motion carried.*

Ms. Hargiss	Aye
Mr. Mayhand	Aye
Mr. Swaney	Aye
Mr. Crimmins	Aye
Mr. Robison	Abstained

The Chairman stated on to the first appeal for a variance. Appeal #2005-01, Brian & Kim Bozenhardt, 27179 Creekwood Drive, Creekside Subdivision.

Mr. Eady stated I am sorry, Mr. Chairman, but we have them reversed on our power point presentation.

Ms. Anderson stated I am sorry. It will take a very seconds for me to switch over to the next presentation.

The Vice Chairman stated that is alright, we will just go to the second appeal. It will be easier for us to switch.

**New Business:**

**Appeal #2005-02, Lot 2, on American Way, Daphne Commercial Park**

Ms. Anderson displayed a color power point presentation of Lot 2, on American Way, Daphne Commercial Park, developed by Frank Dagley & Associates, Incorporated.

Mr. Dagley stated my name is Frank Dagley, Consultant Engineer, 717 Executive Park Drive, Mobile. I am here representing my client, who wishes to put a daycare center in Daphne Commercial Park. The zoning requires a variance because it is basically a commercial park.

The map is a little bit inaccurate, in that, where you see the site. The owners have put a cul-de-sac in. It has already been before the Planning Commission and approved. This is the basic layout we are looking at to have a daycare center. As you know, parents come in, drop their kids off and leave. They will come into the cul-de-sac, turn left into the driveway, drive through and there will be a covered drop-off point, then, of course, they will exit out onto the main road. There is certain criterion set for daycare centers as to the fence and playground that is controlled by the Department of Human Resources. We have met all of the requirements for the City of Daphne, Building Codes. We feel like this, especially being at the end of a cul-de-sac, is ideal to where you can make a circle and come right back out. I will be happy to answer any questions you may have.

The Vice Chairman stated this is new construction, is it not.

**CITY OF DAPHNE  
BOARD OF ZONING ADJUSTMENT MINUTES  
REGULAR MEETING OF MARCH 22, 2005 - 6:00 P.M.  
COUNCIL CHAMBERS, CITY HALL**

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**DRAFT**

Mr. Dagley stated that is correct.

The Vice Chairman stated there will no through traffic around this site. How many children will be here?

Mr. Dagley stated I am the developer. I will let Mr. James Michael McIntyre, the owner, answer that. I call him Mike.

Mr. McIntyre stated they will start out with about forty children, and over time, they are looking to go to an estimated seventy or eighty children over five years old.

Mr. Mayhand asked what will be the square footage of the building?

Mr. McIntyre answered the square footage on the building will be about six-thousand square feet.

Mr. Dagley stated once again, DHR controls that. You are required thirty-two square feet for each child, of course, excluding bathrooms, and that sort of stuff. It is pretty much controlled by the size of the building. Six-thousand divided by thirty-two is about two hundred and there definitely will not be that many. You have the administrative offices, bathrooms and support facilities. I think what Mr. McIntyre said is accurate as to what they can accommodate.

The Vice Chairman stated you have met all of the requirements, in case, anyone wants to bring up an argument over it.

Mr. Dagley stated yes, sir. It has to go through all of the proper channels with the Planning Commission, assuming the special exception is granted. It will have to be under review again. We have a concept here, there may be some slight deviations from where the building is going. We did not want to make this site specific. In fact, we have shown it to you with two possible driveways on the property. As you can see, the dotted line is an alternate or possible way we might want to do the driveway. We went for a general variance here to put the daycare center in hoping that it would not have to be site specific. We may want to alter it somewhat. I am talking about minor changes, like maybe going into the building a little different, or putting the fence around the playground.

Mr. Robison stated if I may ask a question or make a statement. Somewhere in all the packets I was given, I believe you applied for a small daycare with DHR. The way I understand it is, and if I am way off base let me know, is you have the large and small daycare, and you applied for the small daycare, of which, you can go up to a certain number of children. What number did you say you were going to have?

Mr. Dagley stated I am not familiar with the small and the large. I do not know if there has been any application made as of yet.

CITY OF DAPHNE  
BOARD OF ZONING ADJUSTMENT MINUTES  
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Mr. Robison stated I read applied for a small daycare with DHR with up to five children.

Mr. McIntyre stated like Mr. Dagley, I am not aware of them actually applying with DHR for a small or large. The couple that this building is actually for have license and have been licensed for quite some time. What they shared with me is that they are looking at starting out with about forty children, and expect within three to five years going to seventy-five to eighty children.

Mr. Eady stated I think what you might be thinking about is a small and large home daycare which can have from six to twelve children.

Mr. Robison stated somewhere within all of this, I read, six to twelve children, but that is strictly for a home daycare.

Mr. Eady stated yes, sir. Strictly for a home daycare. When you keep children in the home under certain rules you can have up to six, and under certain rules they can have up to twelve, but this is not a home daycare. It is a daycare.

The Vice Chairman stated Mr. Eady, I see your office recommends approval.

Mr. Eady stated yes, sir. They meet all of the regulations.

The Vice Chairman opened the floor to public participation. With no adjacent property owners present, he closed public participation. He stated does any of the Board members have any questions or comments. If there are no objections, the Chair will entertain a motion.

**A Motion was made by Mr. Crimmins and Seconded by Mr. Mayhand to approve Appeal #2005-02, James M. McIntyre, Lot 2, American Way - Daphne Commercial Park, to allow the operation of a Daycare.**

Upon roll call vote, **the Motion carried.**

Mr. Robison	<b>Aye</b>
Mr. Crimmins	<b>Aye</b>
Mr. Swaney	<b>Aye</b>
Mr. Mayhand	<b>Aye</b>
Ms. Hargiss	<b>Aye</b>

The Vice Chairman stated okay, the appeal is approved and again, give me the time it can be picked up in the morning.

Ms. Houston stated around nine o'clock in the morning.

Mr. Dagley stated thank you.

**CITY OF DAPHNE  
BOARD OF ZONING ADJUSTMENT MINUTES  
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**DRAFT**

**Appeal #2005-01, Brian & Kim Bozenhardt**

The Vice Chairman stated now back to Appeal #2005-01, Brian & Kim Bozenhardt, Creekside Subdivision. Who is going to start this off, Mr. Eady?

Mr. Eady stated the real estate agent, and I will help her.

Ms. McAlister stated my name is Cynthia McAlister, and I am actually the real estate agent, and this is Jason Schoettelkotte, he is the new manager of the Belks Department Store in Malbis and he is the one that is going to be purchasing this house in Creekside. The owners of this home, presently, the husband is in Russia, and his wife had to take her mother to Las Vegas. They had talked to Mr. Eady, and the Mayor, requesting a variance. Basically, we have a piece of property on the market that had two incorrect surveys. The house is actually encroaching the setback 6.1-feet on the northeast corner and 2.0 on the northwest corner, and we need a variance for it to comply with the thirty-foot rear setback line.

The Vice Chairman stated in the request for a variance it states, in essence, that the house should have been facing one street and later they requested it face the other. Is that what this is?

Mr. Eady stated Mr. Chairman, this happens quite often on corner lots. The Ordinance says on a corner lot the narrow side facing the street is the front. It does not have anything to do with the organization of the house at the front of the lot. According to the Ordinance this side would be the front on the lot. The house faces Creekwood Drive, which is the side of the lot. As you can see here the front of the lot should have been on Holley Court, but now on the rear of the house is an extremely deep gully. There were really limited as to how the house was built upon it. Here you can see on the northeast corner where the house is 6.1-feet into the rear setback.

Mr. Crimmins stated so that is not the back of the house.

Mr. Eady stated no, that is the front.

Mr. Crimmins stated no, I know that is the front, but I mean that end is the back of the house now. It is the opposite of the narrow end.

Mr. Eady stated yes. It would be the rear of the lot.

Mr. Crimmins stated okay. It would be 6.1-feet over the setback. The side of the house before is now the rear of the house.

Mr. Eady stated it is the side of the house and the rear of the lot.

Mr. Crimmins stated thank you.

Mr. Eady stated this is the existing property line. Here is another close up of the property line, and this is the rear of the house. This is still the rear of the lot and the side of the house with 6.1-feet on the northeast corner and 2.0-feet on the northwest corner over the rear setback line.

The Vice Chairman stated you indicated that the previous surveys were in error. To me this looks like the right.

Mr. Eady stated that is correct, this is the right survey. The reason the others were in error was because they used the side of the lot, facing Creekwood Drive, as the front, and that is wrong.

The Vice Chairman stated to begin with that was not a street.

Mr. Eady stated yes, sir. It reads that on a corner lot that the narrow side facing the street, which the narrow side does face Holley Court, is the front of the lot. The one facing the house has nothing to do with it. Let us keep in mind that the lots are laid out long before the homes are built.

The Vice Chairman stated I understand, but to me it is the wording of the Ordinance.

Mr. Speegle stated excuse me, Mr. Chairman. Mr. Eady, did the Ordinance use to read differently from that many years ago.

Mr. Eady stated no, it did not.

Mr. Speegle stated I thought it said the principle street or something like that, was the front.

Mr. Eady stated no.

Mr. Speegle stated I do understand from talking to the City Attorney, that the City understands this situation. As a matter of fact, Mr. Waldrop, when he was the Building Inspector, actually inspected the house, issued a certificate of occupancy, and said the lot lines were fine. Of course, this is what you have with these kinds of corner lots all the time. The City's position is as far as the enforcement side is that they do not ever intend to enforce the setback line here. I think this property has been sold two or three times, and I understand the problems with the surveys.

Ms. McAlister stated no, it has not. These are the original owners.

**CITY OF DAPHNE**  
**BOARD OF ZONING ADJUSTMENT MINUTES** **DRAFT**  
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Mr. Speegle stated okay. Mr. Ross told me he thought it had been sold once before. Anyway, the City has no interest in trying to enforce the literal reading of the Ordinance.

Mr. Eady stated this is only to clear the title. That is all it is.

Mr. Speegle stated yes, that is right. Just to clear the title.

The Vice Chairman stated I understand all of the above, but I cannot help wondering though, if the Ordinance language ought to be cleared up in some manner.

Mr. Speegle stated it is confusing. Over the years I do not know how many times this has come up. A lot of them.

Mr. Robison stated you said this happens quite a lot. If it is in the Ordinance that the narrow side of the lot is the front, why is it that the builders do not build on it that way. If the narrow side is the front why did the builder not build on Holley Court.

Mr. Eady stated they are not required to face the house in any particular direction. It is a matter of choice.

Ms. McAlister stated the customer requested to build this way.

Mr. Robison stated well, I rode out there and looked. I went down Holley and Creekwood, and I thought to myself if you turned it around how could they have built a house like that. Like the attorney said if the City never intends to enforce an ordinance, why do they even have an ordinance like that.

Mr. Speegle stated I think, at least this is what I was told, is because of the circumstances surrounding it. The City's Building Inspectors goes out and inspect foundations to make sure they are not over the lot lines or to stop construction before you have a finished house there. The City is pretty much saying our Building Inspector looked at this, said it was in compliance, and issued a Certificate of Occupancy. It complies with the City Ordinances.

Mr. Robison stated are you saying they intend to enforce this particular Ordinance.

Mr. Speegle stated yes, sir. They fully intend to enforce their Ordinances.

**CITY OF DAPHNE**  
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Mr. Eady stated I do not like the selection of words. We fully intend to enforce our Ordinances. We have a new Building Official now and he does check the setbacks at the time the string line is put up for the foundation. That is the time to check it, before the foundation is ever poured. This house was built in 1999, and we have had them before, particularly in Lake Forest. Just like the others we have done in the past this is simply to clear the title because if it is not cleared there will be a cloud over it from now on.

The Vice Chairman stated it appears to me based on the layout of this house it could not have been built facing Holley Court.

Mr. Eady stated as you can see from the layout they have a bulkhead back there. There is a deep gully along here and it could have been moved this way a little bit.

The Vice Chairman stated I guess my point is it could not have been built facing Holley Court.

Mr. Eady stated no, sir.

Mr. Speegle stated I believe Mr. Eady pointed out that with the gully back, since we do not have anyone here pointing out different Ordinances, I think his point is, although he can correct me if I am reading something into it that is not correct, if asked at the time, this property might have been one where you could have asked for a necessary hardship because there is a gully down the side of the property and you cannot use it as you normally would a corner lot. Mr. Eady, was that your point.

Mayor Small stated if I may, Mr. Vice Chairman. One thing I noticed is that Bozenhardt's did get signed affidavits from the adjoining property owners giving their consent to this variance, and I think it is on record as well. I would like to make it part of this record as well, and for you to know it. This is clearly just a problem that happened years ago and something, hopefully, we would like for you all to get straightened out for us so we can move forward.

The Vice Chairman stated hopefully, we can do that this evening.

**A Motion was made by Mr. Crimmins and Seconded by Mr. Robison to approve Appeal #2005-01, Brian & Kim Bozenhardt, 27179 Creekwood Drive, to encroach the 30-foot rear setback line by 6.1-feet on the northeast corner and 2.0-feet on the northwest corner.**

Upon roll call vote, *the Motion carried.*

Mr. Robison	<i>Aye</i>
Mr. Crimmins	<i>Aye</i>
Mr. Swaney	<i>Aye</i>
Mr. Mayhand	<i>Aye</i>
Ms. Hargiss	<i>Aye</i>

The Vice Chairman stated the variance is approved as requested. The next order of business is the election of officers. It seems like it is coming up early this year.

**ELECTION OF OFFICERS:**

Mr. Eady stated we have not had a meeting since last September.

The Vice Chairman stated Mr. Jensen is not here tonight.

Mr. Eady stated he is not on the Board any longer. The five of you are the Board officers. Mr. Frank Lamb has been appointed as first alternate and we do not have a second alternate yet.

The Vice Chairman stated since Mr. Jensen is no longer on the Board we need to open the nominations for a Chairman, Vice Chairman and a Secretary.

A **Motion** was made by Mr. Robison and **Seconded** by Mr. Mayhand **to appoint Mr. Swaney as Chairman.**

**The Motion carried unanimously.**

The Vice Chairman opened the nominations for Vice Chairman.

A **Motion** was made by Mr. Swaney and **Seconded** by Mr. Robison **to appoint Mr. Mayhand as Vice Chairman.**

**The Motion carried unanimously.**

The Vice Chairman opened the nominations for Secretary.

A **Motion** was made by Mr. Robison and **Seconded** by Mr. Mayhand **to appoint Mr. Crimmins as Secretary.**

**The Motion carried unanimously.**

**Adjournment:**

The Vice Chairman stated if there is no other business or objection, the Chair would entertain a motion to adjourn.

CITY OF DAPHNE  
BOARD OF ZONING ADJUSTMENT MINUTES DRAFT  
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A Motion was made and Seconded to adjourn. The Motion carried unanimously.

There being no further business the meeting was adjourned at 6:37 p.m.

Respectfully submitted by:

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Pat Houston, Recording Secretary

APPROVED: XXXXXXXX , 2005

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Glen Swaney, Chairman

/ph

JULY 5, 2000  
CITY COUNCIL  
DAPHNE, ALABAMA

2

NOTE: Mr. Montgomery arrived at 6:45 pm.

Mayor Brown pointed out that the streets close from Magnolia Avenue down to Dryer Avenue, rather than College Avenue.

***PUBLIC HEARING: Approval for the revised City of Daphne Zoning Map***

Mayor Brown requested Mr. Eady to give comments on the revised zoning map. Mr. Eady commented that there was a copy of the revised zoning map on display in the council chambers. (Note for the record: A copy of the revised zoning map has been on display in the City Hall lobby and the Library, since the public hearing noticed was advertised.)

*Public Hearing opened at 6:45 p.m.*

Mayor Brown opened the public hearing, asking if there was anyone who wished to address the council regarding the revisions to the zoning map, there being no one, he closed the public hearing.

*Public Hearing closed at 6:45 p.m.*

**4. REPORTS OF STANDING COMMITTEES:**

***A. BUILDINGS & PROPERTY COMMITTEE - Lake***

Mr. Lake commented on the need to receive bids on the decks to be added to the bay front building.

**MOTION BY** Mr. Lake to authorize Mayor Brown to go out for bids for the construction of the Bay Front Pavilion decks. Seconded by Mr. Burnam.

AYE - ALL IN FAVOR

NAY - NONE OPPOSED

NOTE: Mr. Wynne has the Master Landscape Plan drawings to present to the council.

Mayor Brown requested Mr. Wynne to review the changes for the council members approval.

**MOTION BY** Mrs. Gustvason to approve the final Master Landscape Plan, as reviewed and that payment be approved for Mr. Louis Wynne. Seconded by Mr. Lake.

AYE - ALL IN FAVOR

NAY - NONE OPPOSED

***B. FINANCE COMMITTEE - Gwin***

Mr. Gwin announced that the next meeting would be held on Tuesday, July 11<sup>th</sup> at 4:00 pm.

***C. PLANNING/ZONING/CODE ENFORCEMENT COMMITTEE - Silvernail***

Mr. Eady announced the next meeting would be July 12<sup>th</sup> at 8:00 am in the Planning Department.

***D. PUBLIC SAFETY/ORDINANCE COMMITTEE - Collins***

Mr. Collins announced the next meeting would be held on July 7<sup>th</sup> at 8:00 am at the Police Department and that it is always opened to the public.

***D. PUBLIC WORKS COMMITTEE - Gwin***

Mr. Gwin reviewed the minutes of the meeting held Thursday, June 22<sup>nd</sup> at 8:00 am. He commented on the two ordinances to be reviewed later in the meeting regarding the Whispering Pine turn lane and the resurfacing of Highway 64 by the new Target Store. He continued reviewing the minutes as contained in the council booklet.

Mr. Gwin announced the next meeting to be on July 27<sup>th</sup> at 8:00 am.

**February 28, 2005  
CITY OF DAPHNE, AL  
INDUSTRIAL DEVELOPMENT BOARD MEETING 6:00 P.M.**

**1. CALL TO ORDER/ROLL CALL.**

Members present – Jack Ehlenberg, Yancey Baldwin, John Coulter, and Toni Fassbender

Also present – David Cohen Secretary, Councilman Ron Scott, Mayor Fred Small, and Lance LaCour BCEDA

**2. OLD BUSINESS**

- a. Approval of January 24, 2005 Minutes

**Motion by Ms. Fassbender Seconded by John Coulter To approve the minutes.**

**ALL IN FAVOR                      NONE OPPOSED                      MOTION CARRIED**

**3. TREASURERS REPORT**

**Mr. Coulter gave the report with a overall balance of \$33,260.45.**

**Motion by Ms. Fassbender Seconded by Mr. Baldwin To approve the report.**

**ALL IN FAVOR                      NONE OPPOSED                      MOTION CARRIED**

**4. DAPHNE COMMERCE AND TECHNOLOGY CENTER**

Lance gave an update on DCTC and the need to get a variance from the Daphne Planning Commission.

**5. OTHER BUSINESS**

The board discussed the need to set a meeting up with the Daphne City Council on April 4, city council meeting to give a update of DCTC.

**6. ADJOURN**

**Motion by Mr. Baldwin      Seconded by Ms. Fassbender      To adjourn.**

**THERE BEING NO FURTHER BUSINESS TO DISCUSS THE MEETING  
ADJOURNED AT 6:55 P.M.**

**February 28, 2005**

**CITY OF DAPHNE, AL  
INDUSTRIAL DEVELOPMENT BOARD MEETING 6:00 P.M.**

Respectfully Submitted,

---

David L. Cohen, Secretary

Approved:

---

Jack Ehlenberg, Chairman

To: Office of the City Clerk  
From: William H. Eady, Sr.,  
Director of Community  
Development  
Subject: Proposed annexation into the  
City of Daphne  
Date: March 25, 2005

## MEMORANDUM

At the regular meeting of the City of Daphne Planning Commission, March 24, 2005, eight members were present and one vacant. The vote was seven for and one against the annexation 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

STATE OF ALABAMA

COUNTY OF BALDWIN

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

**(Higbee Subdivision)**

**Lot 2**

The undersigned, **The Mitchell Company**, files this petition with the Clerk of the City of Daphne requesting the property hereafter described commonly referred to as **Higbee SUBDIVISION** 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 its petition:

1. **Description Of Property:** The description of the property which Petitioner requests 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. **Owner:** The Petitioner, **The Mitchell Company**, is the owner 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 upon annexing the said Property into the corporate limits of the City of Daphne. Please state the requested zoning, if other than R-1, or any other conditions which may apply upon annexation:

**R-3 High Density Single Family Residential**

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 \_\_\_\_\_,

Respectfully submitted,

Name of Corporation

By:

Its: \_\_\_\_\_

STATE OF ALABAMA  
COUNTY OF BALDWIN

I, the undersigned Notary Public in and for said State and County, hereby certify that \_\_\_\_\_ whose name as \_\_\_\_\_ of \_\_\_\_\_, 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 on the day same bears date.

GIVEN under my hand and official seal on this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

SEAL)

\_\_\_\_\_  
(NOTARY

NOTARY PUBLIC  
My commission expires:

STATE OF ALABAMA

COUNTY OF BALDWIN

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

( \_\_\_\_\_ )

The undersigned,  
, files this petition with the Clerk of the City of Daphne  
requesting the property hereafter described commonly referred to  
as \_\_\_\_\_ 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 its petition:

1. **Description Of Property:** The description of the property  
which Petitioner requests 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. **Owner:** The Petitioner, \_\_\_\_\_,  
is the owner 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 upon annexing the said Property  
into the corporate limits of the City of Daphne. Please state the  
requested zoning, if other than R-1, or any other conditions  
which may apply upon annexation:

\_\_\_\_\_  
\_\_\_\_\_

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 \_\_\_\_\_,

Respectfully submitted,

By:

STATE OF ALABAMA  
COUNTY OF BALDWIN

I, the undersigned Notary Public in and for said State and County, hereby certify that \_\_\_\_\_ whose name 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 on the day same bears date.

GIVEN under my hand and official seal on this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

SEAL)

\_\_\_\_\_  
(NOTARY

NOTARY PUBLIC  
My commission expires:



**ORDINANCE NO. 2005-**

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

**The Mitchell Company**

**(Property located at the Northwest corner of Whispering Pines Road and County Road 13)**

**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 March 24, 2005 and a affirmative recommendation was **approved** for the City Council to consider said request for annexation and said property **shall be zoned R-3, High Density Single Family Resident , zone**; and,

**WHEREAS**, after proper publication, a public hearing was held by the City Council on May 2, 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

LOT 2, HIGBEE SUBDIVISION

EXHIBIT "A"

BEGINNING AT THE SOUTHEAST CORNER OF STRATFORD GLEN, PHASE ONE, ACCORDING TO PLAT RECORDED ON SLIDE NO. 2062-A OF THE PROBATE COURT RECORDS OF BALDWIN COUNTY, ALABAMA, RUN N 00E 04' 49" W THE EAST BOUNDARY OF SAID STRATFORD GLEN, PHASE ONE, AND ALONG THE EAST BOUNDARY OF STRATFORD GLEN, PHASE ONE B, AS RECORDED ON SLIDE NO. 2086-B AND THE EAST BOUNDARY OF STRATFORD GLEN, PHASE TWO, AS RECORDED ON SLIDE NO. 2101-C OF SAID PROBATE COURT RECORDS OF BALDWIN COUNTY, ALABAMA, A DISTANCE OF 1296.44 FEET TO A POINT; THENCE RUN S 89E 58' 38" E 1936.41 FEET TO A POINT; THENCE RUN S 00E 14' 46" E 1295.67 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF WHISPERING PINES ROAD (60' ROW); THENCE ALONG SAID NORTH RIGHT OF WAY LINE OF WHISPERING PINES ROAD RUN WEST 1940.16 FEET TO THE POINT OF BEGINNING CONTAINING 57.601 ACRES MORE OR LESS AND LYING IN SECTION 9, TOWNSHIP 5 SOUTH, RANGE 2 EAST, BALDWIN COUNTY, ALABAMA.

**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**

PLEASE Publish in the Bulletin Legal Section on Wednesday April 6, 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 May 2, 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, MMC

**PROPOSED ORDINANCE:**

**ORDINANCE NO. 2005-**

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

**The Mitchell Company**

**(Property located at the Northwest corner of Whispering Pines Road and County Road 13)**

**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 R-3, High Density Single Family Resident , zone**; and,

**WHEREAS**, after proper publication, a public hearing was held by the City Council on May 2, 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.

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LOT 2, HIGBEE SUBDIVISION

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**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**



PLEASE Publish in the Bulletin Legal Section on Wednesday, April 13, 2005

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 May 2, 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, MMC

**PROPOSED ORDINANCE:  
ORDINANCE NO. 2005-**

**FOR THE ANNEXATION OF CERTAIN PROPERTY TO THE CORPORATE  
LIMITS  
OF THE MUNICIPALITY OF THE CITY OF DAPHNE, ALABAMA  
The Mitchell Company  
(Property located at the Northwest corner of Whispering Pines Road and County  
Road 13)**

**BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE  
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**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 R-3, High Density Single Family Resident , zone**; and,

/END SYNOPSIS



**UTILITY BOARD MEETING  
DAPHNE UTILITIES  
CITY COUNCIL CHAMBERS**

**January 25 February 23, 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 Planning and Engineering Manager

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 for the Regular Board Meeting on December 15 January 25, 2004 2005**

Mr. Johnston made a the motion to approve the minutes with noted corrections to page 3, Mayor Small and page 4, Feasibility Study.. Ron Mr. Scott seconded the motion.

The motion carried unanimously.

**UTILITY BOARD MEETING  
DAPHNE UTILITIES  
CITY COUNCIL CHAMBERS**

**January 25February 23, 2005**

**6:00 P.M.**

Page 2

**Approval of Minutes for the Special Board Meeting on February 10, 2005**

Mr. Johnston made the motion to approve the minutes with noted corrections to the Agenda, sentence number 4, February 10, 2005. Mr. Scott seconded the motion.

The motion carried unanimously.

**UTILITY BOARD MEETING  
DAPHNE UTILITIES  
CITY COUNCIL CHAMBERS**

**January 25February 23, 2005**

**6:00 P.M.**

Page 3

**Engineer Report: Hutchinson, Moore & Rauch, Ray Moore**

Mr. Moore updated the Board on the current Utility projects, highlighting the Adams Avenue Sewer and Fire Protection project along with the Well No. 5 Upgrade.

Mr. Segalla asked Mr. Moore to contact Mr. Bill Eady, at the Planning Commission, for clarification on the requirements for the modifications to Well No. 5 building and fencing, and report his findings at the next Regular Board meeting.

**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 25February 23, 2005**

**6:00 P.M.**

Page 4

**Engineer Report: David Volkert & Associates, Melinda Immel, Tim Patton**

DWSRG: Ms. Immel reported that a meeting was held with the ADEM representative, Michael Barilone, and confirmed that the deadline date for the permit is December 2005. Ms. Immel stated that as long as we have a signed bid and are into construction, ADEM will accept we are proceeding.

Mr. Patton informed the Board of the status of the SRF application and funding.

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.

Mr. Johnston inquired about the status of the Dauphine Acres Sewer assessment. Ms. Immel said that the previous City Council had voted to not assess.

Engineer Report: Hutchinson, Moore & Rauch, Ray Moore

Mr. Scott asked Volkert & Associates to give him a written history about Dauphine Acres Sewer assessment so that he can bring re-address this issue with the current City Council.

*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**

Sewer Non Connection: Mr. Rigas stated that a list of addresses for no connects had been forwarded to Mr. Bill Eady, in the Planning Commission, for identification of the parcel numbers.

Mr. Segalla suggested a “reply by date” be required on all time sensitive correspondence for tracking purposes.

**UTILITY BOARD MEETING  
DAPHNE UTILITIES  
CITY COUNCIL CHAMBERS**

**January 25 February 23, 2005**

**6:00 P.M.**

Page 5

**Grease and Sewer Ordinance:**

Mr. Rigas announced that draft copies of the Grease and Sewer Ordinance were sent out to a number of people for their inputs, and he had received back their comments.

Mr. Rigas informed the Board that an electronic copy will require updating and that he and Debbie Martin will be working on the update. After the electronic copy is updated it will be sent to J. Ross.

Mr. Segalla asked that a due date of March 4, 2005 be assigned to the completion and return of the final draft to J. Ross.

Website: Mr. Clayton updated the Board on Website development and the use of inside resources for the development of Daphne Utilities website.

Mr. Segalla asked that the Board members personal email address be removed from the website and a Daphne Utilities email address be created for the Board members.

**Rotary Club:** Mr. Stark Irvine, President of the Rotary Club spoke before the Board. Mr. Irvine stated that the Rotary is a local Civic club, as well as a National and International organization. The Rotary Club sponsors and host the Daphne Easter Egg Hunt, a Rotary 10K Run, and they also work with local schools providing Scholarships and promoting Leadership programs within the schools. They have adopted the Boys and Girls Club of Daphne with financial support for their "I'm Perfect Program", which encourages children to go to school. They contributed nationally to various programs which help other countries.

Mr. Segalla inquired into the current Rotary membership total and if more than one person from an organization can be a member. Mr. Irvine responded that there are currently about fifty members to the local Rotary and only one person from an organization can be a member.

Mr. Segalla requested that any decisions regarding the Rotary Club, be made when all Board Members are present.

**Maintenance:** Tim Jones presented a Cost Comparison of Area Garages and the City Garage as well as a Fuel Consumption Analysis.

**GIS Report:** Mr. Rigas stated that he is working with the City to combine the GIS effort.

**UTILITY BOARD MEETING  
DAPHNE UTILITIES  
CITY COUNCIL CHAMBERS**

**January 25 February 23, 2005**

**6:00 P.M.**

Page 6

**City / Daphne Utilities Central Plant:** Mr. Rigas informed the Board, that he had met with the Mayor to discuss the combined City / Daphne Utilities building and was advised by the Mayor to meet with the Architect Jeff Hudson and discuss the needs of Daphne Utilities.

**Highway 90 Sewer Line Proposal:** Mr. Rigas presented maps of the Broad Bend Growth Corridor of Highway 90 to Malbis for the sewer line proposal and informed the Board of funding options available.

Tap Fee Proposal and Natural Gas Agreement: Differed to Executive Session.

**Timber Creek Rebate:** Mr. Rigas stated that Teresa Logiotatos is researching the records to determine the status.

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 25February 23, 2005**

**6:00 P.M.**

Page 7

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**

**Highway 13 Force Main - Ottawa Springs:**

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 Scott made a the motion to approve award the contract for the utility work that is needed for the Ottawa springs subdivision force main to Narrow Gap Construction LLC in the amount of \$32,275,the letter sent to Pat Collins from the Board regarding the Tap Fee Request with noted corrections, Major SmallMr. Johnston seconded the motion.

The motion carried unanimously.

**Water Tower Lease Negotiations:** Mr. Taylor briefed the Board on the negotiations with Verizon and Clear Wire.

**Nicholson Center Variance for Sewer Connection:** Mr. Segalla asked that the Nicholson Center be differed until the next Regular Board meeting.

**UTILITY BOARD MEETING  
DAPHNE UTILITIES  
CITY COUNCIL CHAMBERS**

**January 25February 23, 2005**

**6:00 P.M.**

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**UTILITY BOARD MEETING  
DAPHNE UTILITIES  
CITY COUNCIL CHAMBERS**

**January 25February 23, 2005**

**6:00 P.M.**

Page 9

**Finance Manager's Report**

Ms. Logiotatos presented the December January Financialsfinancials.

**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 25February 23, 2005**

**6:00 P.M.**

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**Deputy Director's Report**

Mr. Clayton reported on the various activities of the Departments, the report is made a part of the minutes.

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.

Deloris Brown informed the Board about the Rebecca Williamson who is the person replacing Debbie Martin in Accounts Receivable.

**Director's ReportPlanning / Engineer Manager Report**

Malbis Sewer Project: 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 Stud for Combining GIS Activities with the City; Project Administrator for City Sewer Projects; which is attached and made part of the minutesMr. Rigas reported that plans are in the final phase and are out for contract pricing..

**Public Participation**

None

**Executive Session**

Mayor SmallMr. Johnston made the motion to go into Executive Session at 8:207:34 pm. Mr. Scott seconded the motion.

**UTILITY BOARD MEETING  
DAPHNE UTILITIES  
CITY COUNCIL CHAMBERS**

**January 25February 23, 2005**

**6:00 P.M.**

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The motion carried unanimously.

Mayor SmallMr. Scott made a the motion that the Board reconvene the Regular Meeting at approximately 9:008:10 p.m. Mr. PattersonMr. Johnston seconded the motion.

The motion carried unanimously.

**UTILITY BOARD MEETING  
DAPHNE UTILITIES  
CITY COUNCIL CHAMBERS**

**January 25February 23, 2005**

**6:00 P.M.**

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Mr. JohnstonMr. Scott made a the motion to adjourn the Board meeting at approximately 9:028:12. Mr. PattersonMr. Johnston seconded the motion.

The motion carried unanimously.

Mr. Segalla adjourned the Board meeting at approximately 9:028:12 p.m.

Approved

Respectfully Submitted By

---

Robert Segalla  
Chairman of the Board

---

Debbie Martin  
Recording Secretary

Approved

Respectfully Submitted By

---

Robert Segalla  
Chairman of the Board

---

Debbie Martin  
Recording Secretary

**CITY COUNCIL MEETING  
MAYOR'S REPORT**

**NOTES:**

PRESIDENT:  
JIM BYARD, JR.  
MAYOR, PRATTVILLE

EXECUTIVE DIRECTOR:  
PERRY C. ROQUEMORE, JR.  
MONTGOMERY



# Alabama League of Municipalities

Official Publication: Alabama Municipal Journal

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MONTGOMERY, ALABAMA 36102  
TELEPHONE (334) 262-2566

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MONTGOMERY, ALABAMA 36104  
FAX (334) 263-0200

*Serving Alabama's Home-Town Governments and Home-Town Officials*

March 11, 2005

TO: All Mayors and Clerks

FROM: League Headquarters

SUBJECT: Voting Delegate, Annual Convention Business Meeting

ENCLOSURE: Voting Delegate Designation Form

The annual convention of the Alabama League of Municipalities will be held May 21-24, 2005, in Huntsville, at the Von Braun Center. The annual business session will be held at 3:00 P.M. on Tuesday, May 24, at the Huntsville Hilton.

The League Constitution contains the following provision pertaining to voting powers at the annual convention business session:

"Each member municipality shall have one vote in the Convention proceedings of the League, such vote to be cast by the delegate authorized by the governing body of such town or city. The League shall send to the mayor of each member municipality a form to be used by the municipal governing body to designate the municipality's voting delegate, first alternate voting delegate and second alternate voting delegate. In order for the municipality to be eligible to cast its vote during convention proceedings, the official delegate designation form must be returned to the League Headquarters not later than fifteen (15) days prior to the first day of the Annual Convention."

In accordance with the League Constitution, a copy of the official Voting Delegate Authorization Form, which should be used by your municipal governing body to designate the official voting delegate and alternates eligible to cast the municipality's vote during the business session of the convention, is being sent to each mayor. An additional copy is being sent to each clerk, but only one completed form should be returned by each League member municipality.

**Please have the enclosed form completed and returned to the League by May 6, so that your city or town will be eligible to cast its vote at the convention.**

We look forward to seeing a good delegation from your municipality in Huntsville.

THIS FORM MUST BE RETURNED TO THE ALABAMA LEAGUE OF MUNICIPALITIES NOT LATER THAN MAY 6, 2005, IN ORDER FOR THE MUNICIPALITY NAMED BELOW TO BE ELIGIBLE TO HAVE ITS DESIGNEE CAST A VOTE AT THE OFFICIAL BUSINESS SESSION OF THE LEAGUE ON TUESDAY, MAY 24, 2005, at 3:00 P.M. AT THE HUNTSVILLE HILTON.

**VOTING DELEGATE AUTHORIZATION FORM**

The following person(s)\* is authorized to cast the municipality's vote at the business session of the annual convention of the Alabama League of Municipalities on May 24, 2005:

\_\_\_\_\_  
**Voting Delegate (PLEASE PRINT)**

\_\_\_\_\_  
**1st Alternate Voting Delegate**  
(to vote only in absence of Voting Delegate)

\_\_\_\_\_  
**2nd Alternate Voting Delegate**  
(to vote only in absence of 1st Alternate Voting Delegate)

\*\*\*\*\*

**\* THE LEAGUE CONSTITUTION REQUIRES THAT  
VOTING DELEGATES AND ALTERNATES BE ELECTED  
MUNICIPAL OFFICIALS**

\*\*\*\*\*

Signed by \_\_\_\_\_

Title \_\_\_\_\_

City/Town \_\_\_\_\_

Date \_\_\_\_\_

**CITY ATTORNEY'S REPORT**

**NOTES:**

**DEPARTMENT HEAD'S COMMENTS**



# Public Participation

Mr. Koen,

People to People Student Ambassadors  
would like to meet the Mayor & Council  
on Monday April 4th, 2005. There will be  
(4) High School Ambassadors and (4) 5th & 6th  
Grade Ambassadors traveling to Australia  
& Europe.

John Y. Singleton  
928-5745

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

**NOTES:**

RECOMMENDATIONS

**COUNCIL COMMENTS:**

**CITY OF DAPHNE  
ORDINANCE NO: 2005-04**

**AN ORDINANCE AUTHORIZING OVERTIME COMPENSATION FOR SALARIED EMPLOYEES and  
SETTING FORTH ADMINISTRATIVE PAY POLICY  
DURING DECLARED EMERGENCIES**

**WHEREAS**, the City Council of the City of Daphne, Alabama desires to promote the health, welfare, and safety of the citizens of the City of Daphne while fairly compensating the employees of the City of Daphne; and

**WHEREAS**, the City Council of the City of Daphne, Alabama has determined that in order to promote and maintain a peaceful community and the order of justice within the City of Daphne, it shall be necessary to compensate salaried employees for hours of work performed in excess of their normal 40 hour work week in times of emergencies existing in the City of Daphne and/or within the limits of police jurisdiction thereof as so declared by the Governor of the State of Alabama and ratified by the Mayor of the City of Daphne and/or such other competent authority; and

**WHEREAS**, the City Council of the City of Daphne, Alabama desires to promote the health, welfare, and safety of the citizens of the City by so ordering the authorization of emergency overtime pay for salaried employees during such declared emergencies affecting the City of Daphne.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA AS FOLLOWS:**

**SECTION I: DEFINITIONS: FOR THE PURPOSES OF THIS ORDINANCE THE FOLLOWING DEFINITIONS WILL APPLY.**

(a) **Salaried-exempt Employee:** An employee whose job duties are of such a nature that they are covered by exemptions of the overtime provisions of the Fair Labor Standards Act.

(b) **Administrative Pay:** Administrative Leave With Pay as approved by the Mayor and provided to employees during declared states of emergencies as described in this ordinance.

**SECTION II: COMPENSATION OF SALARIED-EXEMPT EMPLOYEES FOR OVERTIME WORK PERFORMED DURING STATES OF EMERGENCY AFFECTING THE CITY OF DAPHNE, ALABAMA.**

(a) In the event of an emergency affecting the City of Daphne as declared by the Governor of the State of Alabama and ratified by the Mayor of the City of Daphne and/or such other competent authority, the Mayor may utilize salaried employees to aid the City during normal and extended work hours. In this event, salaried employees will be considered non-exempt (hourly) employees beginning when such state of emergency is declared and ending when such state of emergency is lifted. Exempt employees shall receive compensation at the rate of one and one-half (1 ½) times their "calculated hourly wage" for **each hour worked** in excess of 40 hours per week. "Calculated hourly wage" shall be determined by dividing the salaried employee's annual salary by 2080. Exempt employees will not receive overtime pay for work during any portion of the pay period that is not during a declared state of emergency (ie: a maximum of 8 hours will be recognized for work days not falling within the time of the declared emergency).

**SECTION III: ADMINISTRATIVE PAY DURING STATES OF EMERGENCY AFFECTING THE CITY OF DAPHNE, ALABAMA**

Administrative time granted by the Mayor to City employees during declared emergencies will not be counted as *hours worked* in the calculation of hours eligible for overtime compensation. Employees who work on days declared as administrative time will receive administrative time pay as authorized by the Mayor as an addition to pay for the hours actually worked. Such administrative pay will be paid at the

regular rate of pay.

**SECTION IV: CONFLICT WITH OTHER ORDINANCES**

Any Ordinance heretofore adopted by the City Council of the City of Daphne, Alabama which is in conflict with this Ordinance is hereby repealed to the extent of such conflict.

**SECTION V: SEVERABILITY**

The provisions of this Ordinance are severable. If any provision, section, paragraph, sentence, or part thereof shall be held unconstitutional or invalid, such decision shall not affect or impair the remainder of the Ordinance, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence, and part thereof separately and independently of each other.

**SECTION VI: EFFECTIVE DATE**

This Ordinance shall be in full force and effect upon its adoption by the City Council of the City of Daphne.

**APPROVED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, **2005**.

**THE CITY OF DAPHNE**

\_\_\_\_\_  
**GREG BURNAM, COUNCIL PRESIDENT**

Date & Time Signed: \_\_\_\_\_

\_\_\_\_\_  
**FRED SMALL, MAYOR**

Date & Time Signed \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
**DAVID COHEN, CITY CLERK, MMC**

**ORDINANCE NO.: 2005-10**



**AN ORDINANCE TO AMEND THE LAND USE AND  
DEVELOPMENT ORDINANCE FOR  
INFORMATION AND DIRECTIONAL SIGN PROVISION**



**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DAPHNE AS FOLLOWS:**

**SECTION 1: AMENDMENTS**

**THAT** the provisions of **ORDINANCE 2002-22, ARTICLE XXXIII, SECTION 33.9** be and are hereby deleted and replaced as follows:

**MUNICIPAL IDENTIFICATION OR DIRECTIONAL SIGNAGE**

(a) That in any business park, office park, commercial park, and/or municipal facility(ies) (as distinguished from retail shopping centers for which such shall be specifically prohibited), information/directional signs may be permitted subject to the following:

That information/directional signs shall be permitted at locations as more specifically referenced herein, subject to prior licensing approval by the Code Enforcement Officer;

(ii) That information/directional signs may be placed at a primary entrance to such business park, office park, commercial park, and/or municipal facility(ies);

That information/directional signs may be placed on public right-of-ways, on public places, and/or private property which private property may be common area servicing the business park, office park, or commercial park located within the park;

(iv) That each information/directional sign may be single or double faced, and shall not exceed fifteen (15) feet in total height from ground level, which height shall include the City's identification logo with color to match to the existing logo at the top of the sign. Such information/directional sign shall not have a total area in excess of fifty (50) square feet, excluding the City logo and shall not contain more than twelve (12) 8 inch panels, with each panel to be six (6) feet long. Each individual directional sign panel shall not include the City's identification logo. Each information/directional sign shall be appropriately landscaped with circumference of not less than three (3)

**CITY OF DAPHNE ORDINANCE NO.: 2005-\_\_\_\_\_**

**Page 2**

\_\_\_\_\_ feet around the base of the sign with bedding and appropriate seasonal planting.

That each individual information/directional sign panel shall list only those users located within such business park, office park, commercial park, and/or municipal facility and shall be designed to provide directional assistance to travelers or otherwise only to identify users located within such business park, office park,

and/or commercial park.

That the City shall have final approval for the location, material, content, color, and design of the signs and individual panels, whether the information/directional sign is located on public or private property.

That when the informational/direction sign is to be located on public property, the City shall be responsible for the erection, operation, content, and maintenance of each sign. The City may impose fees and enter into such written agreements for one (1) year intervals with interested businesses for the construction, installation and maintenance of such information/directional sign.

That when the informational/direction sign is to be located on private property, all costs for construction, installation, design, and maintenance shall be incurred by the applicant.

That information/directional signs shall not be considered a sign of any user, including users who own the land upon which the information/directional sign is located for purposes of determining the maximum number of signs, as otherwise permitted under Section 33-11 et. seq. of this Ordinance.

That such information/directional signs shall not be located in such a manner as to materially impede the view of any street or highway intersection, nor shall such sign be located so as to prevent free ingress or egress from any door or window for fire escape route.

## **SECTION 2: ISSUANCE OF PERMITS AND APPROVAL**

(a) That the City Clerk's Office and/or Code Enforcement Officer shall establish suitable forms and documentation to authenticate the issuance of such permit as approved by the City from time-to-time. Such permit for the placement of such sign shall be for a one (1) year interval subject to renewal annually from the initial issuance with the permitting to be re-approved by the City Council. The City may deny

**CITY OF DAPHNE ORDINANCE NO.: 2005-\_\_\_\_\_**

### **Page 3**

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the re-issuance of the information/directional sign permit should the sign and surrounding landscaping not be maintained in a satisfactory fashion during the preceding year.

(b) That should a private owner of such sign allow the sign or landscaping to become in disrepair or to otherwise be unkept, the Code Enforcement Officer shall provide the permitted owner thirty (30) calendar days written notice to correct the deficiency to the satisfaction of the Code Enforcement Officer. Should the permitted owner not complete the remedial work within thirty (30) calendar days, the City may upon thirty (30) day notice thereafter revoke the permit of the owner and order the removal of the sign. Should the owner fail and/or refuse to remove the sign after the thirty (30) day time period, the City may enter upon the real property where the sign is situated for the limited

purposes to effectuate the removal of the sign, and the cost incurred by the City for removal shall be taxed against applicant.

## **SECTION 3: SIGN CONSTRUCTION**

All signage utilized in accord with the provisions of this Ordinance, shall be constructed in accordance with the following:

(a) That all upright posts shall be 8" x 8" treated wood, embedded in the ground a minimum of four (4') feet, surrounded by a minimum circumference of six (6") inches of 3,000 psi concrete.

(b) That all 2" x 12" treated wooded cross supports shall be pinned together and routed into the 8" x 8" wooden posts, then lag bolted into each post from the outside.

(c) That the City logo panel shall be constructed of sand blasted sign foam and painted pursuant to the standard color scheme of the logo.

(d) That all wooden posts and cross supports shall be painted black in color.

(e) That each individual sign panel shall be white plastic with appropriate colored lettering selected by the user.

#### **SECTION 4: REPEALER**

That any Ordinance(s) or parts thereof in conflict with the provisions of this Ordinance, in

**CITY OF DAPHNE ORDINANCE NO.: 2005-\_\_\_\_\_**

**Page 4**

so far as they conflict, are hereby repealed. All other portions of Ordinance 2002-22 not expressly referred to herein shall remain the same.

#### **SECTION 5: SEVERABILITY**

That the provisions of this Ordinance are severable. If any provision, section, paragraph, sentence or part thereof shall be held unconstitutional or invalid, such decision shall not affect or impair the remainder of the Ordinance, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence or part thereof separately and independently of each other.

#### **SECTION 6: EFFECTIVE DATE**

That this Ordinance shall become effective after the date of its approval and adoption by the City Council of the City of Daphne and publication as required by law.

**APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA this the \_\_\_\_\_ day of \_\_\_\_\_, 2005.**

**THE CITY OF DAPHNE**

**AN ALABAMA MUNICIPAL CORPORATION**

\_\_\_\_\_  
**GREG BURNAM**  
**Council President**

DATE/TIME SIGNED: \_\_\_\_\_

**FRED SMALL  
MAYOR**

DATE/TIME SIGNED: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_

**DAVID COHEN, CITY CLERK, MMC**

**CITY OF DAPHNE**  
**ORDINANCE NO. 2005-11**

**Zoning District Map**  
**Revision to Appendix H of the City of Daphne**  
**Land Use and Development Ordinance**

**WHEREAS**, the Planning Commission of the City of Daphne, at their regular meeting held on January 27, 2005, favorably recommended certain amendments to the Zoning District Map approved and adopted by Ordinance 2001-33 referenced in Appendix H "Exhibit A" of the Daphne Land Use & Development Ordinance No. 2002-22 and amended by Ordinance No. 2003-06; and

**WHEREAS**, said amendments are necessary due to various rezoning and annexation requests, which have been approved since the adoption of Ordinance No. 2002-22 and amended by Ordinance No. 2003-06; and

**WHEREAS**, due notice of said proposed zoning map amendments has been provided to the public as required by law through publication and open display at the City of Daphne Public Library and City Hall; and

**WHEREAS**, a public hearing regarding the proposed Zoning District Map amendments was held by the City Council March 21, 2005; and

**WHEREAS**, the Mayor and City Council of the City of Daphne after due consideration believe the amendments to said Zoning District Map as requested by the Planning Commission are proper and in the best interest of the City.

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

**SECTION I. ZONING DISTRICT MAP**

The Zoning District Map referenced hereto as "Exhibit A" shall be the official zoning map of the City of Daphne, Alabama.

**SECTION II. AMENDMENT**

Ordinance 2002-22 and 2003-06 are hereby amended to the extent that the adopted Zoning District Map

referenced in Appendix H of "Exhibit A" and the revision to said map adopted on December 3, 2001 by Ordinance Number 2001-33, conflicts with the Revised Zoning District Map referenced as Exhibit A.

**SECTION III. REPEALER**

Any Ordinance(s) or parts of Ordinance(s) conflicting with the provisions of this Ordinance are hereby repealed insofar as they conflict.

**SECTION IV. EFFECTIVE DATE**

This Ordinance shall take effect and be in force from and after the date of its approval by the City Council of Daphne and publication as required by law.

**ADOPTED AND APPROVED BY THE CITY COUNCIL OF DAPHNE, ALABAMA, ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2005.**

**CITY OF DAPHNE**

\_\_\_\_\_  
**Greg Burnam**  
**Council President**

Date & Time Signed: \_\_\_\_\_

\_\_\_\_\_  
**Fred Small**  
**Mayor**

Date & Time Signed: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
**David Cohen**  
**City Clerk, MMC**

**CITY OF DAPHNE**  
**ORDINANCE NO. 2005-12**

**Olde Towne District Map**  
**Revision to Appendix I of the City of Daphne**  
**Land Use and Development Ordinance**

**WHEREAS**, the Planning Commission of the City of Daphne, at their regular meeting held on January 27, 2005, favorably recommended certain amendments to the Olde Towne District Map approved and adopted by Ordinance No 2003-05 referenced in Appendix I "Exhibit B" of the Daphne Land Use & Development; and

**WHEREAS**, said amendments are necessary due to various rezoning requests, which have been approved since the adoption of Ordinance No. 2002-22 and Ordinance No. 2003-05; and

**WHEREAS**, due notice of said proposed Olde Towne District Map amendments has been provided to the public as required by law through publication and open display at the City of Daphne Public Library and City Hall; and

**WHEREAS**, a public hearing regarding the proposed Olde Towne District Map amendments was held by the City Council March 21, 2005; and

**WHEREAS**, the Mayor and City Council of the City of Daphne after due consideration believe the amendments to said Olde Towne District Map as requested by the Planning Commission are proper and in the best interest of the City.

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

**SECTION I. ZONING DISTRICT MAP**

The Olde Towne District Map referenced hereto as "Exhibit B" shall be the official zoning map for the Olde Towne District of the City of Daphne, Alabama.

**SECTION II. AMENDMENT**

Ordinance 2002-22 and 2003-05 are hereby amended to the extent that the adopted Olde Towne District

Map referenced in Appendix I of "Exhibit B" and the revision to said map adopted on February 17, 2003 by Ordinance Number 2003-05, conflicts with the Revised Olde Towne District Map referenced as Exhibit B.

**SECTION III. REPEALER**

Any Ordinance(s) or parts of Ordinance(s) conflicting with the provisions of this Ordinance are hereby repealed insofar as they conflict.

**SECTION IV. EFFECTIVE DATE**

This Ordinance shall take effect and be in force from and after the date of its approval by the City Council of Daphne and publication as required by law.

**ADOPTED AND APPROVED BY THE CITY COUNCIL OF DAPHNE, ALABAMA, ON THE**  
\_\_\_\_\_ **DAY** \_\_\_\_\_, **2005.**

**CITY OF DAPHNE**

\_\_\_\_\_  
**Greg Burnam**  
**Council President**  
Date & Time Signed: \_\_\_\_\_

\_\_\_\_\_  
**Fred Small**  
**Mayor**  
Date & Time Signed: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
**David Cohen**  
**City Clerk, MMC**

**CITY OF DAPHNE**  
**ORDINANCE NO. 2005-13**

**Village Overlay District Map**  
**Addition of Appendix J of the City of Daphne**  
**Land Use and Development Ordinance**

**WHEREAS**, the Planning Commission of the City of Daphne, at their regular meeting held on January 27, 2005, favorably recommended adding the Village Overlay District Map approved and adopted by Ordinance No 2004-50 referenced in Appendix J “Exhibit C” of the Daphne Land Use & Development; and

**WHEREAS**, said additional map is necessary due to various rezoning requests, which have been approved since the adoption of Ordinance No. 2002-22 and Ordinance No. 2004-50; and

**WHEREAS**, due notice of said proposed Village Overlay District Map has been provided to the public as required by law through publication and open display at the City of Daphne Public Library and City Hall; and

**WHEREAS**, a public hearing regarding the proposed Village Overlay District Map was held by the City Council March 21, 2005; and

**WHEREAS**, the Mayor and City Council of the City of Daphne after due consideration believe the addition to said Olde Towne District Map as requested by the Planning Commission is proper and in the best interest of the City.

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

**SECTION I. VILLAGE OVERLAY DISTRICT MAP**

The Village Overlay District Map referenced hereto as “Exhibit C” shall be the official zoning map for the Village Overlay District of the City of Daphne, Alabama.

**SECTION II. AMENDMENT**

Ordinance 2002-22 is hereby amended to the extent that the adopted Village District Map referenced in Appendix J of “Exhibit C” and the addition to said map adopted on January 3, 2005 by Ordinance Number

2004-50.

**SECTION III. REPEALER**

Any Ordinance(s) or parts of Ordinance(s) conflicting with the provisions of this Ordinance are hereby repealed insofar as they conflict.

**SECTION IV. EFFECTIVE DATE**

This Ordinance shall take effect and be in force from and after the date of its approval by the City Council of Daphne and publication as required by law.

**ADOPTED AND APPROVED BY THE CITY COUNCIL OF DAPHNE, ALABAMA, ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2005.**

**CITY OF DAPHNE**

\_\_\_\_\_  
**Greg Burnam**  
**Council President**  
Date & Time Signed: \_\_\_\_\_

\_\_\_\_\_  
**Fred Small**  
**Mayor**  
Date & Time Signed: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
**David Cohen**  
**City Clerk, MMC**

**ORDINANCE NO. 2005- 15**

**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

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

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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**



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.

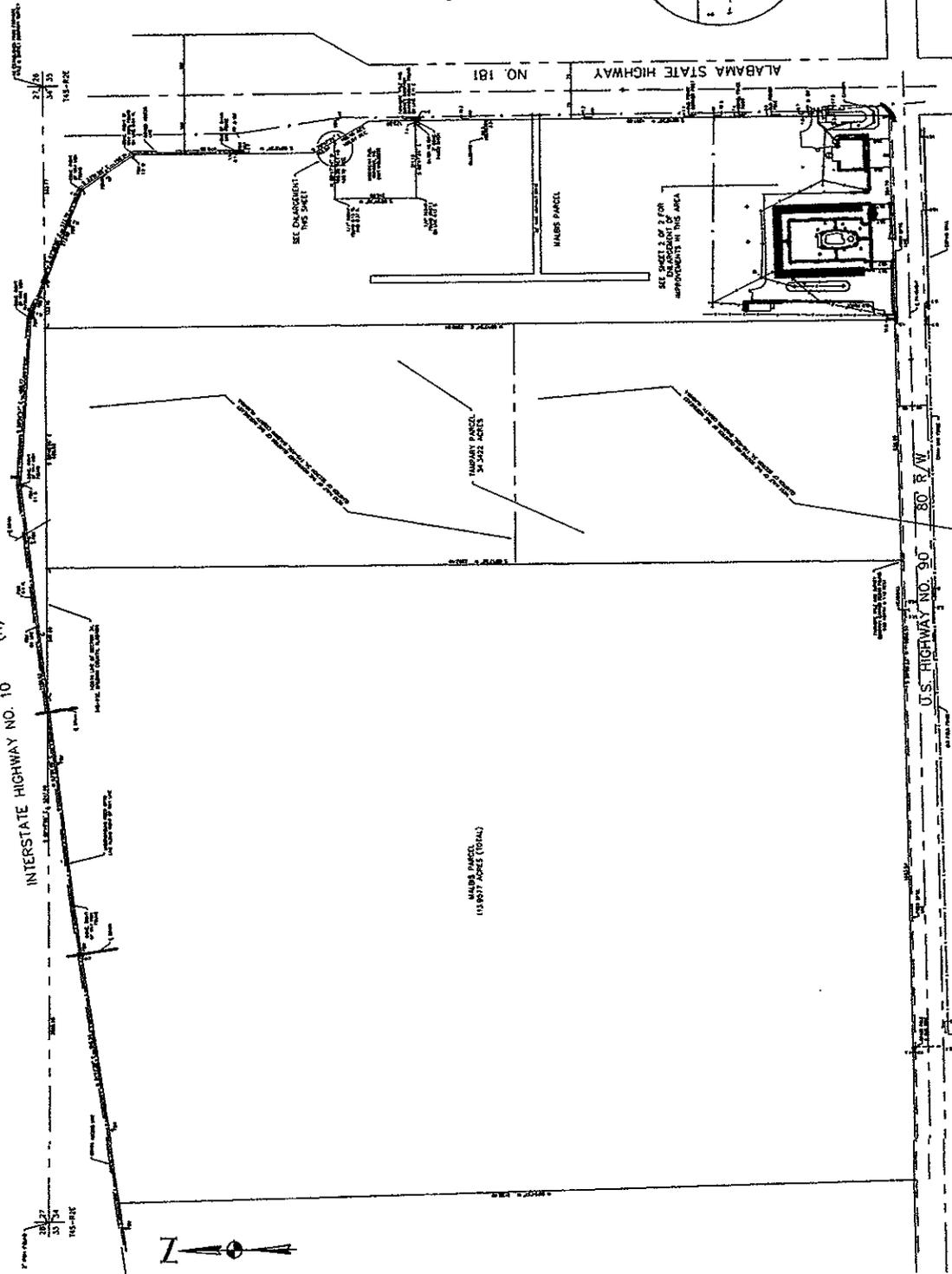
CRYSTAL SPRINGS, L.L.C., EXCHANGE INTERMEDIARY SERVICES,  
MALBIS PLANTATION, INC., CHRISTINE T. MARKS,  
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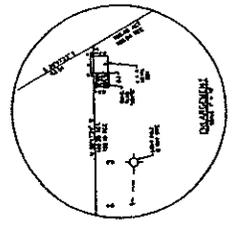
REFERENCE: EASTERN SHORE PARK

INTERSTATE HIGHWAY NO. 10 (R/W VARIES)



NO.	DATE	BY	DESCRIPTION
1	11/15/05	J. L. MALBIS	PRELIMINARY
2	11/15/05	J. L. MALBIS	REVISED
3	11/15/05	J. L. MALBIS	REVISED
4	11/15/05	J. L. MALBIS	REVISED
5	11/15/05	J. L. MALBIS	REVISED
6	11/15/05	J. L. MALBIS	REVISED
7	11/15/05	J. L. MALBIS	REVISED
8	11/15/05	J. L. MALBIS	REVISED
9	11/15/05	J. L. MALBIS	REVISED
10	11/15/05	J. L. MALBIS	REVISED

- NOTES:
1. ALL DIMENSIONS ARE IN FEET UNLESS OTHERWISE NOTED.
  2. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
  3. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
  4. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
  5. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
  6. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
  7. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
  8. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
  9. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
  10. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.



SHEET 1 OF 3

BOUNDARY SURVEY  
MALBIS PLANTATION PROPERTY  
BALDWIN COUNTY, ALABAMA

RYAN AND COLMAN  
SURVEYORS  
1000 W. UNIVERSITY BLVD., SUITE 100  
DOTHEN, ALABAMA 36924  
PHONE: 205-335-1111  
FAX: 205-335-1112

NO.	DATE	BY	DATE						
1	11/15/05	J. L. MALBIS							
2	11/15/05	J. L. MALBIS							
3	11/15/05	J. L. MALBIS							
4	11/15/05	J. L. MALBIS							
5	11/15/05	J. L. MALBIS							
6	11/15/05	J. L. MALBIS							
7	11/15/05	J. L. MALBIS							
8	11/15/05	J. L. MALBIS							
9	11/15/05	J. L. MALBIS							
10	11/15/05	J. L. MALBIS							

ANNEXATION

EXHIBIT "B"

ANNEXATION

