

**CITY COUNCIL BUSINESS MEETING AGENDA**  
**1705 MAIN STREET, DAPHNE, AL**  
**JULY 6, 2010**  
**BUSINESS MEETING**  
**6:30 P.M.**

**1. CALL TO ORDER**

**2. ROLL CALL/INVOCATION /  
PLEDGE OF ALLEGIANCE**

- 3. APPROVE MINUTES:** Council meeting minutes / June 21, 2010  
Special Called Council meeting minutes / June 30, 2010

**SWEARING IN OF POLICE OFFICERS:** Dale Linder / Garret Roebuck

**PRESENTATION:** Tiger II Planning Grants Program / Resolution 2010-67

**4. REPORT STANDING COMMITTEES:**

**A. FINANCE COMMITTEE / Boulware**

**B. BUILDINGS & PROPERTY - Lake**

Review minutes / June 11<sup>th</sup>

**MOTION:** Authorize the Mayor to enter into an agreement for Drainage & Utility Easement  
With Elite Development

**C. PUBLIC SAFETY - Burnam**

**D. CODE ENFORCEMENT/ORDINANCE COMMITTEE - Palumbo**

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

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

**A. Board of Zoning Adjustments – Jones**

Review minutes / May 6<sup>th</sup>

Review minutes / May 17<sup>th</sup>

**B. Downtown Redevelopment Authority – Barnette**

**C. Industrial Development Board – Yelding**

**D. Library Board – Lake**

**MOTION:** Authorize the Mayor to enter into an agreement to place a sculpture at the Daphne  
Public Library

**E. Planning Commission – Barnette**

Review minutes / May 27<sup>th</sup>

**F. Recreation Board - Burnam**

**G. Utility Board - Scott**

Review minutes / May 26<sup>th</sup>

**6. REPORTS OF OFFICERS:**

**A. Mayor's Report**

a.) Special Events Permit / S.E.E.D.S. / Mama Mia Cook Off / November 13, 2010 / @City Hall

**B. City Attorney's Report**

**C. Department Head Comments**

**7. PUBLIC PARTICIPATION:**

**8. RESOLUTIONS & ORDINANCES:**

**RESOLUTIONS:**

- a.) Extension of Promotional Weekends for Advertising. . . . . /Resolution 2010-65
- b.) Authorize the City Attorney to Begin Condemnation Proceedings. . . . . /Resolution 2010-66
- c.) Acceptance of Donation of Property / Whispering Pines & County Road 13 / Richard Higbee. . . . . /Resolution 2010-67
- d.) Tiger II Planning Grant Program . . . . . /Resolution 2010-68

**ORDINANCES:**

**1<sup>ST</sup> READ**

- a.) Amending the Personnel Handbook / Exposure Control Plan. . . . . /Ordinance 2010-38

**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\_\_ \_\_

COUNCILMAN BOULWARE

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

**JUNE 21, 2010  
CITY COUNCIL MEETING  
1705 MAIN STREET  
DAPHNE, AL  
6:30 P.M.**

**1. CALL TO ORDER**

Council President Palumbo called the meeting to order at 6:37 p.m.

**2. ROLL CALL/INVOCATION/PLEDGE OF ALLEGIANCE**

Invocation was given by Mr. Willie Robison.

**COUNCIL MEMBERS PRESENT:** Bailey Yelding; John Lake; Greg Burnam arrived at 7:00 p.m.; Ron Scott; Derek Boulware; August Palumbo.

Also present: Mayor Small; David Cohen, City Clerk; Rebecca Hayes, Assistant City Clerk; Jay Ross, City Attorney; Melvin McCarley, Interim Public Works Director; Margaret Thigpen, Civic Center Director; Kim Briley, Finance Director; Vickie Hinman, Human Resource Director; James White, Fire Chief; David Carpenter, Police Chief; David McKelroy, Recreation Director; Adrienne Jones, Planning Director; Richard Merchant, Building Official; Tonja Young, Library Director; Richard Merchant, Building Official; Jane Robins, Mayor’s Assistant; Al Guarisco, Village Point Foundation; Willie Robison, BZA.

**3. APPROVE MINUTES**

**MOTION BY Councilman Yelding to adopt the Council meeting minutes meeting held June 7, 2010 with amending Utility minutes to read “small work places”. *Seconded by Councilman Scott.***

**AYE** Yelding, Lake, Scott, Boulware, Palumbo

**NAY** NONE OPPOSED

**ABSTAIN** Barnette

**MOTION CARRIED**

**MOTION BY Councilwoman Barnette to adopt the Special Called Council meeting minutes meeting held June 14, 2010. *Seconded by Council Scott.***

**AYE** Yelding, Barnette, Lake, Scott, Boulware, Palumbo

**NAY** NONE OPPOSED

**MOTION CARRIED**

**MOTION BY Councilwoman Barnette to adopt the Council Work Session minutes meeting held June 14, 2010 with amending the minute to include comment: “Mayor Small stated that if someone has two 96 gallon cans, and no recycle cans he thinks that that person should endure an extra landfill charge. He said it does not cost anything to recycle. Councilwoman Barnette stated that she is willing to support that. Mayor Small stated that recycling is free, but it will cost you more if you want to only put garbage out. Councilwoman Barnette stated that she is willing to look at a proposal for that. Mayor Small said that if someone has two 96 gallon cans, and no recycle cans he thinks that that person should endure an extra landfill charge. He said it does not cost anything to recycle. Councilwoman Barnette stated that she is willing to support that. Mayor Small stated that recycling is free, but it will cost you more if you want to only put garbage out Councilwoman Barnette stated that she is willing to look at a proposal for that.”**

*Seconded by Councilman Scott.*

**AYE Barnette, Lake, Scott, Boulware, Palumbo**

**NAY NONE OPPOSED**

**ABSTAIN Yelding**

**MOTION CARRIED**

### **PUBLIC WORKS DIRECTOR INTERVIEWS**

Council President Palumbo stated that one of the candidates for the Public Works Director position will be out of town for the interviews on June 23<sup>rd</sup>. Council needs to decide what they want to do reschedule, proceed with the two candidates who can make it, and then decide what they want to do with the third candidate, Mr. Smith.

Council discussed rescheduling the meeting so all three could be present.

**MOTION BY Councilman Scott to call a Special Called meeting for June 28, 2010 to interview candidates for the Public Works Director position. *Seconded by Councilwoman Barnette.***

**AYE Yelding, Barnette, Lake, Scott, Boulware, Palumbo**

**NAY NONE OPPOSED**

**MOTION CARRIED**

Council President Palumbo asked Mrs. Hinman to notify the candidates of the date change for the interview.

**MOTION BY Councilwoman Barnette to cancel the Special Called Council scheduled for Monday, June 14, 2010 at 6:30 p.m. *Seconded by Councilman Yelding.***

Council what would they would do if one of the candidates cannot make the June 28, 2010 interview.

Council President Palumbo asked Mrs. Hinman if she would contact the candidates while they proceed with the meeting to see if they can make it on June 28<sup>th</sup>, and report back to council, and then they would proceed with a motion.

**Councilwoman Barnette withdrew her motion. Councilman Yelding withdrew his second.**

**RESOLUTIONS: 2010-63 AND 2010-64 / THE SPECIAL CARE FACILITIES FINANCING AUTHORITY / REFINANCING BONDS**

Mr. Ross explained that because of the economy and the failure of the bank holding the bonds they are having to refinance their existing bonds. Even though Westminster Village is located in Spanish Fort at the time they did the bonds there was not a city of Spanish Fort so they came to Daphne, and that is why the resolutions are before council tonight. The Internal Revenue requires the resolutions, and there is no liability on the part of the City of Daphne.

*Councilman Burnam arrived at 7:00 p.m.*

**MOTION BY Councilman Lake to suspend the rules to consider Resolutions 2010-63 and 2010-64. *Seconded by Councilwoman Barnette.***

**ROLL CALL VOTE**

<b>Yelding</b>	<b>Aye</b>	<b>Scott</b>	<b>Aye</b>
<b>Barnette</b>	<b>Aye</b>	<b>Boulware</b>	<b>Aye</b>
<b>Lake</b>	<b>Aye</b>	<b>Palumbo</b>	<b>Aye</b>
<b>Burnam</b>	<b>Aye</b>		

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

**MOTION BY Councilman Lake to suspend the rules for Ordinance 2009-21 Section 25. Seconded by Councilman Boulware.**

**ROLL CALL VOTE**

<b>Yelding</b>	<b>Aye</b>	<b>Scott</b>	<b>Aye</b>
<b>Barnette</b>	<b>Aye</b>	<b>Boulware</b>	<b>Aye</b>
<b>Lake</b>	<b>Aye</b>	<b>Palumbo</b>	<b>Aye</b>
<b>Burnam</b>	<b>Aye</b>		

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

**MOTION BY Councilman Lake to waive the reading of Resolutions 2010-63 and 2010-64. Seconded by Councilwoman Barnette.**

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

**MOTION BY Councilwoman Barnette to adopt Resolutions 2010-63 and 2010-64. Seconded by Councilman Lake.**

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

Council President Palumbo requested that Mr. Ross send a letter to all the bond counsels that come through the city to make them aware of the ordinance. He asked Mr. Ross to get with the City Clerk to get the names of the entities that have financing through the city.

**4. REPORT OF STANDING COMMITTEES:**

**A. FINANCE COMMITTEE – Boulware**

The minutes for the June 14<sup>th</sup> meeting are in the packet. There are several resolutions that will be considered later in the meeting.

**Treasurers Report / May 31, 2010**

**MOTION BY Councilman Yelding to approve the Treasurers Report ending May 31, 2010 with a balance of \$21,006,880.96. Seconded by Councilwoman Barnette.**

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

**JUNE 21, 2010**  
**CITY COUNCIL MEETING**  
**1705 MAIN STREET**  
**DAPHNE, AL**  
**6:30 P.M.**

**Sales and Use Tax Collections / April 30, 2010**

Sales and Use Tax Collected for April 2010	- \$ 809,588
Sales and Use Tax Budgeted for April 2010	- \$ <u>787,606</u>
Over Budget (for April)	- \$ 21,982

YTD Budget Collections Variance – Over Budget - \$ 107,593

**Lodging Tax Collections, April 30, 2010**

The Lodging Tax Collections report shows \$41,531.05 collected for April 2010.

The next meeting will be June 14<sup>th</sup> at 4:00 p.m. in the Executive Conference room.

Council asked when they might receive the budget.

Mr. Briley said by August.

**B. BUILDINGS AND PROPERTY COMMITTEE – Lake**

No report.

**C. PUBLIC SAFETY COMMITTEE – Burnam**

The minutes for the June 9th meeting are in the packet. No action by council is required by council. The next meeting will be July 14<sup>th</sup> at 4:30 p.m. in the Executive Conference room.

Councilwoman Barnette stated that she has asked the City Clerk to research ordinances that other municipalities have for the potential feasibility of golf cart usage within city limits. She said that the Mayor brought this up a couple of years ago. She said they will be working on what the feasibility is, and exploring that and bringing it to the Public Safety Committee for review, and then to the Ordinance Committee.

**D. CODE ENFORCEMENT/ORDINANCE COMMITTEE – Palumbo**

The committee met and is considering proposed changes to the Animal Control Ordinance by Lt. Yelding and his staff. Mr. Bussey is working on the ordinance. The next meeting will be July 14<sup>th</sup> after the Public Safety meeting.

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

The Beautification is currently reviewing proposed changes to the Animal Control Ordinance brought by Lt. Yelding and his staff. The next meeting will be July 14<sup>th</sup> after the Public Safety meeting.

Councilwoman Barnette asked that the Beautification Committee update their letterhead with current members. Council would also like a list of members with their districts they represent to see where they need members.

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

**A. Board of Zoning Adjustments – Mrs. Jones**

Mr. Willie Robison reported that the next meeting will be July 1<sup>st</sup> with one setback appeal.

**B. Downtown Redevelopment Authority – Barnette**

No report.

**C. Industrial Development Board – Yelding**

No report.

**D. Library Board – Lake**

No report.

**E. Planning Commission – Barnette**

The Planning Commission meeting will be Thursday at 6:00 p.m. in the council chambers. They will continue to work on the Land Use Ordinance, and they will consider the items from the work session.

**F. Recreation Board – Burnam**

The minutes for the May 12<sup>th</sup> meeting are in the packet.

**G. Utility Board – Scott**

The next meeting will be June 30<sup>th</sup> at 5:00 p.m. in the council chambers.

Council President asked Councilman Scott to bring up at the Utility Board meeting the possibility of including an insert from the city with the bills mailed out educating the public regarding recycling. This seems the easiest way to get information out to the public.

**6. REPORTS OF THE OFFICERS:**

***A. Mayor's Report***

Mayor Small discussed the rights-of-way at Whispering Pines Road and Pollard Road. He said that they now have three that are resolved. They still have the issue of the northwest corner that needs to be addressed. The contractor is ready to move forward, and if they are not careful they will wind up having to spend money with the contractor while he moves and comes back on sight for mobilization and demobilization. It could cost the city quite a bit of money if council does not move on this issue. Negotiation has gone on for quite some time. Mayor Small said that at one time he had offered double to try to resolve it, but it was turned down. They were given a number, and they went back to negotiate a lower number, but was informed that the owner's number was a solid number which is way too high. He highly suggests that the city does not get tied up in something like that, and set a precedent for buying rights-of-way in the future. H thinks they need to allow the City Attorney to move forward with the means that needs to be done, and then that will at least get the rights-of-way, and then they can work out the terms and negotiation on the backend, and that will give the city the free right to move forward with the project.

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Mr. Ross said that that would work.

Council President Palumbo asked Mr. Ross to prepare the resolution, and they will put it on the next agenda.

Councilwoman Barnette asked if they were talking about condemnation.

Council President Palumbo said yes.

Councilwoman Barnette asked if they could have more information. She that council had asked for more information the last time this was discussed.

Mayor Small said that this involves .024 acres.

Councilman Lake suggested binding arbitration where there are three appraisals, and take the highest average of the three. He said that they will probably pay more in legal fees than what they would be paying for the property. He said that if they could settle this amicably it would be to the city's advantage.

Mr. Ross said that the only down side to arbitration is what if the party does not like what he gets, and this owner decides not to follow through on it then the city will have no legal recourse to force him or her to consent to it. There is a process for condemnation set up by Sate Law that goes through probate court and a value is set, and then if the person is unhappy with the value the property it still comes into the public domain, then it becomes a question of valuation at subsequent hearings. The Mayor has worked very hard with this particular owner, but cannot get him to budge.

Councilman Yelding asked how much property is involved with the other three corners?

Mayor Small said that the two corners on the east side are probably twice to three times as much, and the property on the southwest corner was quite a bit more property, and she settled with what was offered which came from the tax records, and she was happy with that amount. The property in question was \$800 to start with, and he has offered them \$1,600, but they are stuck on \$6,000 or \$6,200. He actually hired somebody to negotiate, because the mayor could tell that the owner did not want to negotiate with him, so he got someone whose job is to acquire rights-of-way, and she has worked with him considerably, but are stuck at the \$6,000 or \$6,200.

Mr. Ross stated that it will take a few months to get it to probate court to get the value determination set, and once they get that from the court the city can move forward.

Mayor Small stated that he needed some direction.

Councilwoman Barnette stated that at the next meeting they could discuss their options whether it is binding arbitration, condemnation or settling, and whatever information that they need to make that decision.

**JUNE 21, 2010  
CITY COUNCIL MEETING  
1705 MAIN STREET  
DAPHNE, AL  
6:30 P.M.**

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Mayor Small asked if that will be at the Special Called meeting?

Councilwoman Barnette said she thinks that is what they are saying. It will be on the agenda for a first read.

Mr. Ross said that it is a resolution not an ordinance.

Mayor Small reported to council that they have been successful in acquiring the right-of-way at County Road 13 and Whispering Pines Road for the turn lane coming from the high school heading south towards the middle school that goes through the pecan field that was donated. He does have a resolution prepared by legal counsel, and he would like to get that on the agenda for the Special Called meeting as well. The county has offered to do that particular turn lane for the city, and it may require some funds from the city. He said at one meeting they felt like they could do it all, and then at another meeting they felt like they could only expend \$30,000, and it might require \$15,000 from the city. That will take care of all the school traffic, especially that comes south after school, as well, prior to school with parents pulling up to the school to drop off their children and coming back. He said that the traffic does back up all the way to Sehoy. He said that he spoke to Commissioner Bishop today at a meeting in Orange Beach, and they are going to meet Wednesday to discuss this further. He said that at this particular time he does not have a time and date when the county will move forward with this, but his goal is to try to get it before school starts.

Council President Palumbo requested that the Mayor give the resolution to the City Clerk to be on the agenda for the Special Called meeting on June 30<sup>th</sup> along with the condemnation resolution.

Mayor Small stated that the young lady that had been interning with the city lost her boyfriend in a tragic motorcycle accident a week ago Sunday. It has been very tough on her, and he asked everyone to keep her in their prayers. She did a very good job interning, and he thinks all the department heads would give her high marks. Mayor Small said that they have a card in his office for everyone to sign, and he would like to collect a donation to go to the South Alabama football team in his honor. He asked council to again consider letting the businesses have banners on the weekends since the economy is so slow at this time. He said that businesses were hurting.

Council President Palumbo asked that this be placed on the Work Session agenda.

Councilman Scott stated that because of the oil spill businesses are really hurting, and if this is put off until the work session that will be the middle of July, and then by the time it is voted on it will be the end of August. He said he would like to see this put on the July 6<sup>th</sup> agenda for a vote in order to give the business some relief.

Council President Palumbo said that they can do that.

Councilman Yelding said that he thought the sidewalks that had been allocated to the schools should have taken place by now. He asked the Mayor for an update.

The City Clerk said that the city is not going to bid the project out that the State Highway Department is going to bid it out. Under their new guidelines for the school grants they will bid it out and administer the entire process, because it is a 100% grant they are going to control it completely.

Council President Palumbo asked the City Clerk to pull the resolution that was done last year regarding the relaxation of the banner weekends for merchants, and have the information available to put on the council agenda. Last year many, many took grave liberties with the sign ordinance because of the banners. He said he wants to help the merchants, but he will only be in favor if there is strict enforcement of the sign ordinance other than relaxation of the banner weekend.

***B. City Attorney Report***

He received the Attorney General's Opinion regarding TimberCreek and the BZA. The Attorney General has opined that TimberCreek setback lines did not amend the city's ordinance, and hence adjustment to the city's ordinance can only be amended or relaxed by the Board of Adjustment. The bottom line was the City of Daphne's Board of Adjustments has the authority hear requests for variances to setbacks established by city's zoning ordinance, but not the setbacks established by the recorded plat of TimberCreek Subdivision. Thus, owners seeking a setback of less than 30 feet must obtain a variance from the Board of Zoning Adjustment.

Council President Palumbo stated that it also specifies that the more restrictive 50 foot TimberCreek setback prevails over the 30 foot setback of the city.

Mr. Ross said it does indeed do that, but the city does not have the right to enforce the more restrictive covenant, although that lies between to two property owners. The city can't enforce TimberCreek's restrictive covenants.

Council President Palumbo stated the way he understands it that both property owners will have to go before both bodies.

Mr. Ross stated yes if they want to get less than 30 feet.

Councilwoman Barnette stated that to her the AG opinion did not answer their question, because the question was between the 30 feet and the 50 feet, because right now the majority of the property owners are coming in at 40 foot requests. What the Architectural Review Board does is not the city's concern, because they do not enforce their covenants, but to date they have been requiring a request for a 40 foot setback, because of the recorded plat, to come before the BZA, and she interprets this the way that Mr. Palumbo does that at 40 foot only the Architectural Review Board hears it, but the recorded plat specifically lists it at 50 feet, and the zoning has been changed as such, so they do not really have an answer to their question from this opinion.

Mr. Ross asked to let him look at it tomorrow, and they can discuss it in more detail.

Councilwoman Barnette stated that she feels that this has not gotten them anywhere, because it is missing the point of where they were.

There is a need for council to go into Executive Session to discuss a personnel matter.

Council President Palumbo stated that they will do that at the conclusion of resolutions and ordinances. He asked Mr. Ross how much time the session will take.

Mr. Ross said that he hoped not more than 20 minutes, because they will have to make some decisions.

***C. Department Head Comments***

***David Carpenter – Police Chief*** – reported that they have filled the two officer positions, and they will be to be sworn in at the July 6<sup>th</sup> council meeting. There was a home invasion a couple of weeks ago in the Lake Forest area where they had five suspects involved, and they have arrested three and identified a fourth. The victim knew some of the suspects so it is an isolated incident and not something that is going on regularly.

***James White – Fire Chief*** – reported that everything is running smoothly, and they continue to work on projects.

***David McKelroy – Recreation Director*** – reported that Men's softball leagues start Monday and Tuesday, Wet-N-Wild Wednesday, Co-ed softball plays on Thursday, Friday June 25 - Dixie Youth Minor league (age 9-10) at Lott Park, Friday thru Wednesday, Dixie Boys District Tournament - 13 year olds at Westside in Mobile 14 year olds at Fairhope and USFA girls softball at Trione, Friday, Saturday and Sunday. He will be attending National Playground Safety Inspector course in Sevierville, TN 6/28 - 7/1 with Dwayne Coley. The 4th of July Fireworks will be at Trione after dark.

***Margaret Thigpen – Civic Center Director*** – reported that John will return to work on July 27<sup>th</sup>, and the vacant position has been filled.

***Tonja Young – Library Director*** - reported that attendance for the summer reading program has been great. The next meeting will be July 16<sup>th</sup>.

***Vickie Hinman – Human Resource Director*** – reported that June 28<sup>th</sup> was not good for Mr. Smith, but all three candidates can make it on June 30<sup>th</sup> for the interviews. She also reported that the Benefits Fair was a success, and she thanked everyone that helped with the fair. She also thanked Mr. Ross for donating the grand prize.

**MOTION BY Councilman Barnette to change to date of the Special Called Council meeting for June 28, 2010 to June 30, 2010. Seconded by Councilman Yelding.**

**ALL IN FAVOR**

**NAY NONE OPPOSED**

**MOTION CARRIED**

Councilman Scott stated that they never took a vote on canceling the meeting on June 23<sup>rd</sup>, and so he called for that question.

**MOTION BY Councilman Lake to cancel the Special Called Council meeting scheduled for June 23, 2010. *Seconded by Councilwoman Barnette.***

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

**7. PUBLIC PARTICIPATION**

*Mr. Willie Robison – 560 Stuart Street* – agreed with Councilwoman Barnette’s comments on the Attorney General’s Opinion. Also with property assessments going down he is against giving the property owner what he wants for the property for the round-about.

**8. RESOLUTIONS, ORDINANCES, ORDERS AND OTHER BUSINESS**

**RESOLUTIONS:**

- a.) Amend Resolution 2009-116 / Additional Allocations to Hutchinson, Moore & Rauch / CBG Engineering ...../Resolution 2010-58
- b.) Bid Award: County Road 64 CDBG Sewer / Nordan Contracting ...../Resolution 2010-59
- c.) Prepaid Travel / David McKelroy / Dwayne Coley ...../Resolution 2010-60
- d.) Declaring Certain Personal Property Surplus ...../Resolution 2010-61
- e.) Grant Administration Services, Energy Efficiency & Conservation Grant (Daphne Utilities Board) ...../Resolution 2010-62

**MOTION BY Councilwoman Barnette to wave the reading of Resolutions 2010-58, 2010-59, 2010-60, 2010-61 and 2010-62. *Seconded by Councilman Yelding.***

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

**MOTION BY Councilwoman Barnette to adopt Resolution 2010-58. *Seconded by Councilman Scott.***

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

MOTION BY Councilwoman Barnette to adopt Resolution 2010-59. *Seconded by Councilman Yelding.*

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

MOTION BY Councilwoman Barnette to adopt Resolution 2010-60. *Seconded by Councilman Burnam.*

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

MOTION BY Councilwoman Barnette to adopt Resolution 2010-61. *Seconded by Councilman Scott.*

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

**MOTION CARRIED**

MOTION BY Councilwoman Barnette to adopt Resolution 2010-62. *Seconded by Councilman Boulware.*

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

**ORDINANCES:**

2<sup>ND</sup> READ

- h.) Amending Job Classification Schedule / Grounds Supervisor. . . . . /Ordinance 2010-36
- i.) Capital Reserve Appropriation: Whispering Pines Road-Phase I:  
Utilities Relocation . . . . . /Ordinance 2010-37

MOTION BY Councilman Scott to waive the reading of Ordinances 2010-36 and 2010-37. *Seconded by Councilman Lake.*

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

**MOTION BY Councilman Scott to adopt Ordinance 2010-36. *Seconded by Councilman Lake.***

**AYE** Yelding, Lake, Burnam, Scott, Boulware, Palumbo

**NAY** Barnette

**MOTION CARRIED**

**MOTION BY Councilman Scott to adopt Ordinance 2010-37. *Seconded by Councilwoman Barnette.***

**AYE ALL IN FAVOR**

**NAY NONE OPPOSED**

**MOTION CARRIED**

**8. COUNCIL COMMENTS**

*Councilman Lake* said that it was the Employee Safety Committee that suggested that David McKelroy and Dwayne Coley go to the playground equipment safety class.

*Councilman Scott* said that there is a link on the city's website to the county website where citizens can get good information regarding the oil spill.

*Councilman Boulware* said that he appreciates Mr. Scott keeping them filled in on what is going on with the oil spill. He acknowledged David Green who is running for District Attorney.

*Council President Palumbo* said that the Jubilee Breeze is out, and urged citizens to pick up a copy at City Hall. He thanked the editor, Jane Robbins, for doing a good job with the magazine.

**MOTION BY Councilman Scott to enter into Executive Session to discuss the good name and character of an employee. *Seconded by Councilman Yelding.***

**The City Attorney certified that this is a valid basis to go into executive Session pursuant to the requirement of the Open Meetings Act. The meeting will last for 20 minutes.**

**ROLL CALL VOTE**

**Yelding**            **Aye**  
**Barnette**        **Aye**  
**Lake**             **Aye**  
**Burnam**         **Aye**

**Scott**             **Aye**  
**Boulware**       **Aye**  
**Palumbo**        **Aye**

**AYE ALL IN FAVOR**

**NAY NONE OPPOSED**

**MOTION CARRIED**







**JUNE 30, 2010  
SPECIAL CITY COUNCIL MEETING  
1705 MAIN STREET  
DAPHNE, AL  
6:30 PM**

## TIGER II PLANNING GRANTS PROGRAM

**Brief Description:**

Tiger II is a competitive national grant program included in the FY2010 Appropriations Act.

**Available Funds:**

\$35 million is available through USDOT and \$40 million through HUD to fund creative planning projects that are not typically funded through conventional federal grant programs.

**Approach:**

The program seeks a better alignment between HUD and USDOT to improve the balance between land use planning, transportation, housing and economic development: a more holistic approach to getting better projects, outcomes, results and making better use of federal dollars.

### Key Elements Impact-Collaboration-Innovation

**Impact:** Regional

**Participants:** Baldwin County & Tri-City Area (Daphne, Spanish Fort, Fairhope)

**Innovative Ideas:** Stormwater management regulations per watershed, Future transportation routes, County Road 13 Access Management plan, and an Alternative transportation master plan.

Expectations:

Proposed Project	Estimated Cost	*20% Match	Equal Split (4-ways)
Stormwater Management Regulations	\$100,000	\$20,000	\$5,000
Future Transportation Corridor	\$91,000	\$18,200	\$4,550
County Road 13 Access Management Plan	\$98,000	\$19,600	\$4,900
Alternative Transportation Plan	\$89,000	\$17,800	\$4,450
<b>Total Cost</b>	<b>\$378,000</b>	<b>\$75,600</b>	<b>\$18,900</b>

\*This area is classified as a rural area and as such the 20% match may not apply. Verification required from HUD/DOT grant administrators.

**2010 Deadlines:**

Pre-application *July 26*

Application Deadline *August 23*

Notice of Funding after *September 15*

**Minimum Requirements:**

- Commitment from each agency
- In-kind services
- Possibly a financial investment of \$18,900

**ADDITIONAL INFORMATION:**

<http://www.hud.gov/offices/adm/grants/nofa10/huddotnofa.pdf>

TIGER II Planning Grants Program Regional Meeting held June 30, 2010.

Initially proposed by Christopher Baker, AICP

Project Team: HMR, Neel-Schaffer, WAS-Design

**The Eastern Shore Project Area**  
**TIGER II Planning Grants**  
**Program Proposal**





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# Tiger II

## Planning Grants Program





## TRAVEL ON THE EASTERN SHORE

Designated routing has been put in place on the Eastern Shore in order to accommodate the large volume of travel requests in Fairhope, Daphne, and Spanish Fort. Allowing travel along the Eastern Shore through out the day.

### EASTERN SHORE EXPRESS (CHARGE BY MILEAGE)

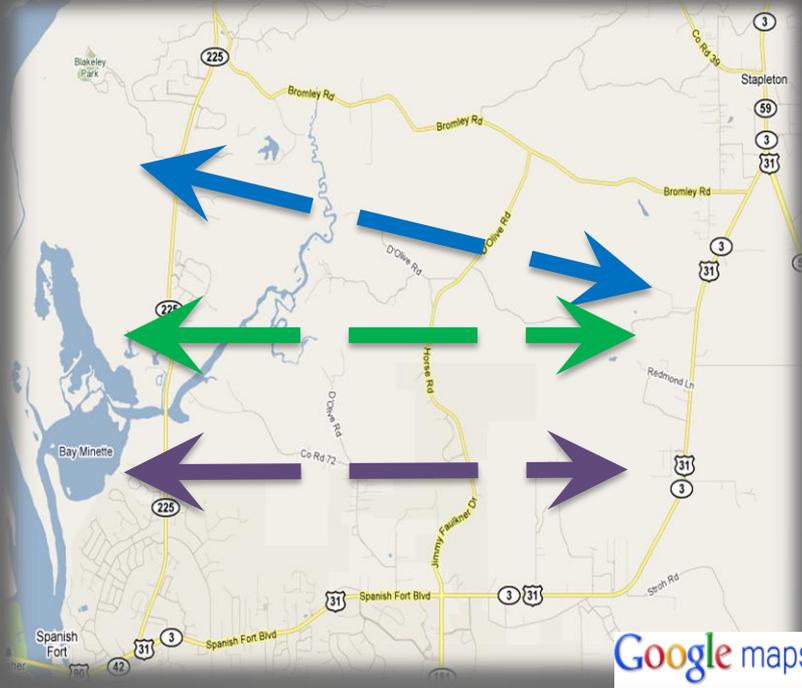
- Reservations are required 24 hours in advance of travel.
- Failure to cancel will result in trip charge.

SOUTH BOUND GOING TOWARD FAIRHOPE	TIME PICK-UP BEGINS	NORTH BOUND GOING TOWARD SPANISH FORT
SPANISH FORT	8:00 AM	
DAPHNE	8:30 AM	POINT CLEAR
	8:45 AM	FAIRHOPE
MONTROSE	9:15 AM	MONTROSE
FAIRHOPE	9:30 AM	DAPHNE
POINT CLEAR	10:00 AM	SPANISH FORT
SPANISH FORT	11:45 AM	FAIRHOPE
DAPHNE	12:15 PM	MONTROSE
MONTROSE	12:30 PM	DAPHNE
FAIRHOPE	1:00 PM	SPANISH FORT
SPANISH FORT	4:00 PM	FAIRHOPE
DAPHNE	4:15 PM	MONTROSE
MONTROSE	4:30 PM	DAPHNE
FAIRHOPE	4:45 PM	SPANISH FORT



# Alternative Transportation Master Plan

# CR 13 Access Management



Spanish Fort  
Future East/West Corridor



# WELCOME

## Tiger II Planning Grants Program Regional Meeting



## What is the Tiger II Planning Grant Program?

- ❖ Included in the FY 2010 Appropriation Act
- ❖ Competitive nationwide program for planning funded by \$35M USDOT and \$40M HUD
- ❖ Seeks to fund creative planning projects not funded by other conventional programs



## What is the purpose of the Tiger II Planning Grant Program?

- ❖ To fund creative planning projects that tangibly benefit the nation, metropolitan area or region.
- ❖ It seeks to fund to transportation corridors, create transportation options, and foster reform in planning to create affordable, economically vital, and sustainable communities, with a cleaner environment.
- ❖ It may also fund master plans, corridor plans, and similar strategies designed to create walkable, mixed-use, transit-oriented and affordable communities for all income levels.



## What is the purpose of the Tiger II Planning Grant Program?

- ❖ The grant program seeks to better align transportation, housing, economic development, and land use planning between the funding agencies.
- ❖ This is because the agencies are seeking to encourage and reward more holistic planning efforts that result in better projects built with federal dollars.








## Project Team

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- ❖ **Engineers – Surveyors – Land Planners**  
Daphne, Alabama  
*Christopher Baker, AICP, Director of Planning*
- ❖ **Multi-disciplined Engineering and Planning**  
Mobile, Alabama  
*Jonathan Kiser, P.E., PTOE, PTP*  
*Gorman Schaffer P.E., Executive Vice-President*
- ❖ **Landscape Architects – Land Planners**  
Foley, Alabama  
*Chad Watkins, RLA, LEED AP, President*  
*Troy R. Strunk, RLA, Vice-President*







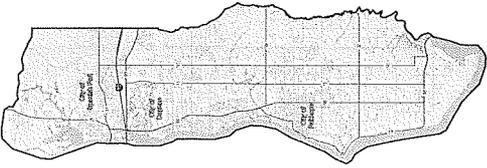




## Regional Project Participants

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- ❖ City of Spanish Fort
- ❖ City of Daphne
- ❖ City of Fairhope
- ❖ Baldwin County



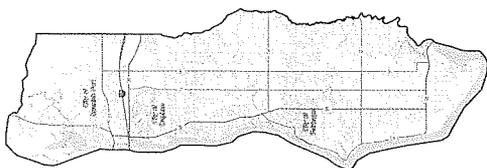





## Project Tasks

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- ❖ Stormwater Management Regulations by watershed
- ❖ Future Transportation Routes
- ❖ County Road 13 Access Management Plan
- ❖ Alternative Transportation Master Plan








## Stormwater Regulations by Watershed

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- ❖ Stormwater is one of the most publically debated issues
- ❖ Stormwater does not recognize political boundaries
- ❖ Appropriate stormwater management protects fragile eco-systems, public infrastructure, and public and private property






## Stormwater Regulations by Watershed

- ❖ Project seeks to create regulations based on watershed boundaries...up to 10 throughout the study area
- ❖ Stormwater regulations would be tailored to each watershed and what it can accommodate and receive
- ❖ It "levels the playing field" from a regulatory and private property perspective





## Future Transportation Planning

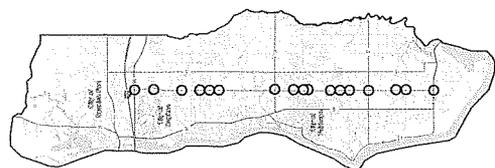
- ❖ Based on existing traffic data, growth models, and future land use plans of the jurisdictions, the project will:
  - ❖ Evaluate North / South surface transportation needs in study area
  - ❖ Evaluate East / West surface transportation needs in study area
- ❖ Traffic models will be developed to evaluate existing conditions and prioritize future corridors and improvements





## CR 13 Access Mgt.

16.1 mile corridor






## Future Transportation Planning

- ❖ Proposed corridors for the needed improvements will be evaluated based on:
  - ❖ Topography
  - ❖ Natural features such as wetlands and drainage ways
  - ❖ Other factors including impacts to existing development and infrastructure
- ❖ Preliminary cost estimates for construction will be prepared for capital budgeting and grant purposes



**Spanish Fort**  
**Future East/West Corridor**

Google maps





**Alternative Transportation**  
**Master Plan**

- ❖ Trail System Opportunities
- ❖ "Complete Streets" Opportunities
  - ❖ Bikeways
  - ❖ Sidewalks
  - ❖ Safe Crossings
- ❖ Public Transit Opportunities

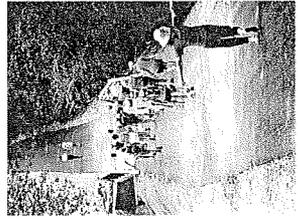




**Trail Systems**

Utilizing green infrastructure to enhance connectivity

- ❖ Create and use linear parks and trails
  - ❖ Often located along natural landscape features
- ❖ Connect neighborhoods to
  - ❖ Schools
  - ❖ Shopping Areas
  - ❖ Recreation areas
  - ❖ Other points of activity
- ❖ Provide valuable greenspace for
  - ❖ Conservation
  - ❖ Recreation
  - ❖ Alternative Transportation

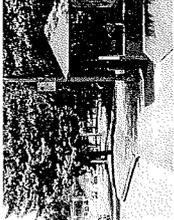
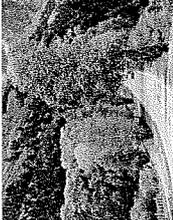





**Complete Streets**

Optimizing gray infrastructure to enhance connectivity

- ❖ Identify opportunities to enable safe access for all users
  - ❖ Pedestrians
  - ❖ Disabled
  - ❖ Bicyclists
  - ❖ Motorists
  - ❖ Transit riders
- ❖ Propose solutions for existing street modifications
- ❖ Propose guidelines for future street development







# Public Transit Opportunities

Connecting development density to activity centers

- ❖ Examine current and future land use patterns
- ❖ Examine current transit systems (BRATS, etc.) and future needs
- ❖ Synthesize future transit opportunities with all proposed alternative transportation solutions

**TRAVEL ON THE EASTERN SHORE**  
 Connecting development density to activity centers  
 Eastern Shore  
 Eastern Shore Research Institute  
 Eastern Shore

ROUTE	TIME	NUMBER OF STOPS
1	7:00 AM - 7:30 AM	10
2	7:30 AM - 8:00 AM	10
3	8:00 AM - 8:30 AM	10
4	8:30 AM - 9:00 AM	10
5	9:00 AM - 9:30 AM	10
6	9:30 AM - 10:00 AM	10
7	10:00 AM - 10:30 AM	10
8	10:30 AM - 11:00 AM	10
9	11:00 AM - 11:30 AM	10
10	11:30 AM - 12:00 PM	10
11	12:00 PM - 12:30 PM	10
12	12:30 PM - 1:00 PM	10
13	1:00 PM - 1:30 PM	10
14	1:30 PM - 2:00 PM	10
15	2:00 PM - 2:30 PM	10
16	2:30 PM - 3:00 PM	10
17	3:00 PM - 3:30 PM	10
18	3:30 PM - 4:00 PM	10
19	4:00 PM - 4:30 PM	10
20	4:30 PM - 5:00 PM	10
21	5:00 PM - 5:30 PM	10
22	5:30 PM - 6:00 PM	10
23	6:00 PM - 6:30 PM	10
24	6:30 PM - 7:00 PM	10
25	7:00 PM - 7:30 PM	10
26	7:30 PM - 8:00 PM	10
27	8:00 PM - 8:30 PM	10
28	8:30 PM - 9:00 PM	10
29	9:00 PM - 9:30 PM	10
30	9:30 PM - 10:00 PM	10
31	10:00 PM - 10:30 PM	10
32	10:30 PM - 11:00 PM	10
33	11:00 PM - 11:30 PM	10
34	11:30 PM - 12:00 AM	10
35	12:00 AM - 12:30 AM	10
36	12:30 AM - 1:00 AM	10
37	1:00 AM - 1:30 AM	10
38	1:30 AM - 2:00 AM	10
39	2:00 AM - 2:30 AM	10
40	2:30 AM - 3:00 AM	10
41	3:00 AM - 3:30 AM	10
42	3:30 AM - 4:00 AM	10
43	4:00 AM - 4:30 AM	10
44	4:30 AM - 5:00 AM	10
45	5:00 AM - 5:30 AM	10
46	5:30 AM - 6:00 AM	10
47	6:00 AM - 6:30 AM	10
48	6:30 AM - 7:00 AM	10
49	7:00 AM - 7:30 AM	10
50	7:30 AM - 8:00 AM	10
51	8:00 AM - 8:30 AM	10
52	8:30 AM - 9:00 AM	10
53	9:00 AM - 9:30 AM	10
54	9:30 AM - 10:00 AM	10
55	10:00 AM - 10:30 AM	10
56	10:30 AM - 11:00 AM	10
57	11:00 AM - 11:30 AM	10
58	11:30 AM - 12:00 PM	10
59	12:00 PM - 12:30 PM	10
60	12:30 PM - 1:00 PM	10
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66	3:30 PM - 4:00 PM	10
67	4:00 PM - 4:30 PM	10
68	4:30 PM - 5:00 PM	10
69	5:00 PM - 5:30 PM	10
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85	1:00 AM - 1:30 AM	10
86	1:30 AM - 2:00 AM	10
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92	4:30 AM - 5:00 AM	10
93	5:00 AM - 5:30 AM	10
94	5:30 AM - 6:00 AM	10
95	6:00 AM - 6:30 AM	10
96	6:30 AM - 7:00 AM	10
97	7:00 AM - 7:30 AM	10
98	7:30 AM - 8:00 AM	10
99	8:00 AM - 8:30 AM	10
100	8:30 AM - 9:00 AM	10

BRATS Schedule






# Project Cost






# Tiger II

## Planning Grant Funding

- ❖ Identify project costs
- ❖ All of the identified project tasks are eligible for up to 100% funding
- ❖ Potential priority for future funding






# Grant Cost for Participants









## Application Process

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- ❖ Jurisdiction buy-in
- ❖ Format grant strategy
- ❖ Formalize project scope
- ❖ Write grant
- ❖ Submit formal application
- ❖ Dates






## Summary of the Tiger II Planning Grant Application

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- ❖ Regional needs
- ❖ Regional cooperation
- ❖ Collaborative task creation with jurisdictional planning staff
- ❖ Submit Tiger II Grant Application






## Questions/Comments

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*Thank you for your time*

Christopher Baker, AICP, HMR Engineers  
 cdb@hmengineers.com

Jonathan Kiser, P.E., Neel-Schaffer  
 jonathan.kiser@neel-schaffer.com

Chad Watkins RLA, LEED AP, WAS Design  
 c.watkins@was-design.com



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# Tiger II

## Planning Grants Program





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SPANISH FORT	8:00 AM	
DAPHNE	8:30 AM	POINT CLEAR
	8:45 AM	FAIRHOPE
MONTROSE	9:15 AM	MONTROSE
FAIRHOPE	9:30 AM	DAPHNE
POINT CLEAR	10:00 AM	SPANISH FORT
SPANISH FORT	11:45 AM	FAIRHOPE
DAPHNE	12:15 PM	MONTROSE
MONTROSE	12:30 PM	DAPHNE
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SPANISH FORT	4:00 PM	FAIRHOPE
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35



# Alternative Transportation Master Plan

# CR 13 Access Management



Spanish Fort  
Future East/West Corridor

**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**

**Buildings & Property Committee Meeting**  
**Friday, June 11, 2010, 10:00am**  
**Daphne City Hall**

**Committee**

Councilman John Lake  
Councilman August A. Palumbo  
Mayor Fred Small  
Richard Merchant, Building Inspector  
Frank Barnett, Maintenance Supervisor  
Margaret Thigpen, Civic Center Director

**Committee Minutes (Summary)**

Present: Councilman John Lake, Mayor Fred Small, Frank Barnett, Maintenance Supervisor, Margaret Thigpen, Civic Center Director, Jane Robbins, Al Guarisco, Selena Vaughn

Meeting began around 10:45am.

**Lambert Property at May Day Park:** Ms. Selena Vaughn presented to the committee the idea of expanding the May Day Park with the recent property that has come up for sale, the Lambert Property. Village Point is always looking to preserve and improve access to the water especially for the growing community. The committee was handed aerial views, real estate listing and appraisal. May Day Park is 200 ft. and this would increase the park another 100 ft. Listing price is \$1.3 and the appraisal is \$1.1 with the appraisal being about 1 year old and possibly decreasing in today's climate. Village point is asking the city to explore this option. They do suggest a privacy fence and massive landscaping.

General Comments:

**Brian Dekle** – 2 houses involved with this option, been on college avenue 20+ years; College Ave and He is against the expansion: 1.) Built with Federal funds so not reserved for Daphne residents. 2.) Daphne residents have been chased out by crime, etc... This will continue to go on with especially with expansion.

**Councilman Lake** stated that this is correct that non-residents can use this park. Councilman Lake suggested a implementation of a parking fee which in turn would go to possibly fund a parking attendant and would possibly cut down on the mischief going on at May Day Park.

**Lee Van Damp** of College Ave - Against expanding the park therefore expanding the capacity.

**Judy Sholtus** of Captain O’Neal – Concerned about the children in that there is no security, horrible bathrooms and not a good lay out for a playground set up. Judy is concerned about the traffic, loud music and the potential for parking in front of her house should a parking permit be implemented. Would rather see money spent on security as opposed to buying this property to add on to May Day Park.

**Rebekah Conaly** – Against this expansion. Rebekah lives next door and has seen and found remnants of the after hour activity in her yard. If people are going to use the park then they need to respect the neighborhood. She has called the police but has seen no presence.

**Mr. Woodruff** of College Ave. – In favor of expanding. If the park expands and incorporates band stand, etc... then the park will be visited by the desirable. He has never felt threatened while visiting there. Would really like the land from May Day Park to Bayside be purchased.

**Robin Calvert** of Captain O’Neal – If we add more green space, who is going to take care of it for we aren’t taking care of our current parks now. Why haven’t the police been present?

**Councilman Lake** encouraged the citizens of this area to call the police and if no response, then call their councilman or councilwoman and/or the Mayor. Police do have a tough job and Councilman Lake is not sure they are aware of how big the problem is at May Day Park.

**Councilwoman Barnette** does not support this potential expansion. Councilwoman Barnette says that between Bayside and May Day, the people of this area are being squeezed out.

**Councilman Lake** thanked Councilwoman Barnette but doesn’t like the word squeezed out for that is clearly not the objective. Councilman Lake explained that he helped start the Village Point Foundation and its primary purpose is to preserve the Bayfront property and accessibility to the community.

**Wayne Mogel** – Against this proposed real estate purchase to expand the May Day Park.

Against the expansion but very much against finding out about city business via the rumor mill.

Rumor 1 – Purchase of the Lambert Property

Rumor 2 – Nicholson Center is going to be torn down.

**Councilman Lake** mentioned that the Nicholson center has just had a new A/C system installed so there are no plans to tear this building down.

This purchase will make a bad situation even worse.

The question was asked as to how they can stay informed of matters that directly affect them as opposed to hearing them by way of the rumor mill.

**Mayor Small** found out about the purchase of this property when it went on the agenda that his assistant puts together and the Nicholson center being torn down is news to him.

**Councilwoman Barnette** reminded all committee attendees that the purpose of these committee meetings is to bring forth ideas. The website is a great place to get agenda information, meeting notices, etc...

**Councilman Lake** mentioned D'Olive Bay use to be one of the best bass fishing areas in the state and nation for that matter and due to the mismanagement of the water this is not the case today.

The question was asked as to the procedure from this point forward in regard to the proposal of expanding May Day Park and Councilman Lake said that they have heard the comments and are not going to make any recommendations to the council. The only way this would be presented to the council is if the Village Point Foundation takes this proposal to the council as a whole however he doesn't see them doing that. If anything else happens Councilman Lake suggests they contact Councilwoman Barnette.

**Councilman Lake** is in favor of expansion of Bayfront not, May Day Park.

The question was asked about paying federal funds back and **Mayor Small** addressed this. He has looked into paying back the federal funds that built May Day Park however he has been told this is a bad idea and for one main reason, if we pay back these federal funds that built May Day Park, this could hurt us later down the road in getting in further federal funds.

**Approval of the Minutes of May** – Motion made by Mayor Small and seconded by Councilman Lake.

**Permanent Drainage Easement for Caroline Woods:** David Diehl, engineer for development Caroline Woods, spoke as the situation relating to this development. The current drainage design exits onto the sports complex area – caused erosion. Engineering development services working on the drainage design for storm water that comes across their property. Design will catch the water through a concrete enlate pipe and let it out at ground level and the only way to do that is to do it on the city property. Need an easement from the city to construct this pipe. HMR has already looked at

the plan and are in support of it. **Mayor Fred Small made a motion that this proposal goes to City Council for approval. John Lake seconded - motion passed.**

**Councilman Lake** mentioned that he doesn't see a problem with this but wants them to make sure that this will not conflict with the Parks and Recreation design. **Councilman Lake** also requests that they get with Parks and Recreation and let them know exactly what they are doing so that if they need to modify their design and they can do so. **Councilman Lake** asked **Mayor Small** if he saw a problem with this request and the **Mayor** did not. He is in fact very familiar with this project. **Mayor Small** asked Jason if he was going to bring this pipe directly down or step it down, Jason replied that it will step down. Jason also informed the committee they have worked with the Parks and Recreation plan and do not in any way hinder their current design.

Councilman Lake

#### **Civic Center – Margaret Thigpen**

**Ordinance** - Margaret re-presented the revised ordinance to Councilman Lake and Mayor Small for Bay front and Civic Center. Bay front Ordinance denotes a change from Park to Pavilion for this is confusing to our clients. Also the name of the pavilion should be Richard Scardamallia Bayfront Pavilion and we will denote this on our website unless otherwise directed.

**Logos** – New logos are being used.

**Greenroom** - The Greenroom refurbishment; we have laminate left so the idea is to lay this in the green room and use our left over carpet in one of the dressing rooms. Councilman Lake asked about the upholstery of the couches and Margaret indicated that there is not a school that does this in a 50 to 100 mile radius. Councilman Lake asked about the Department of Corrections. Margaret will double check with Deni and if not this avenue will be explored. Margaret mentioned that she discussed with Frank the fact that there is not enough laminate flooring to do the entire green room. Margaret mentioned the whole purpose behind seeking to use the laminate in the green room is because it is more durable than carpet. Frank explained that this is the same product that was used on the stage and is easy to work with. Richard Taylor has given a quote of \$700.00 labor and \$500.00 supplies for a total of roughly \$1,273.61 for this project. This of course does not allow for any changes to the sub floor and won't know that until the carpet is pulled up. Frank mentioned the advantage to the material Mr. Taylor quoted on is that it is easily replaceable. Frank mentioned that he hasn't done any comparison pricing and Councilman Lake replied that with this project being under \$15,000, he doesn't think he needs to. The Mayor made a motion to send to Finance Committee however the motion was changed to moving forward with a cap of \$1,500.00.

**Table Legs** – Margaret mentioned that the table legs at the Civic Center being duck taped due to the spring loaded lock has sprung. Frank mentioned that there is no way to retro fit the spring loaded lock therefore Margaret is trying to see if we can just get a replacement leg piece and not have to replace the entire leg. These tables are at least 11 years old. Mayor Small did mention that tables are on the capital improvement 5 year plan. Margaret mentioned that the real challenge is that if a client pulls on these tables in an effort to move them they stand a chance to collapse which is a huge liability.

**Taste of the Eastern Shore** – Margaret mentioned that this is on the work session due to some concern with the date being changed and the decision to go from a band to a DJ. This decision was a unanimous decision of the committee. They are trying Saturday night and have polled several restaurants and either night is good however they need to know now and that the volunteers do not have to take off of work to decorate and get ready for the event. The decision to change from a band to a DJ was in an effort to save money on the event and put more money into Daphne High School. Mayor Small mentioned that over the past years the Civic Center did all the work and since last year the school has really stepped up and puts a lot of work into this event with the policy in place that if your organization does not participate in selling tickets, set up etc... then you can't participate next year therefore your organization doesn't receive any funds. Mayor Small's suggestion is to have a council member represented on this committee in an effort to really get a good understanding of what is going on and to give input. Councilman Lake indicated his concern in moving this event from Friday night to Saturday night and the fact that the weekend is always busy for any and all restaurants and ask that should this not work this year to move it back to what we know works. Mayor Small also explained that the date was moved due to the fact that the school board moved the start of school and there is a football game Friday, August 20<sup>th</sup>. Councilman Lake is worried about getting as much participation in all areas due to the changes. As far as the band, Councilman Lake doesn't really remember the band for it is about the camaraderie

**Zydeco 2011** – Margaret mentioned that the preliminary numbers put us in the red \$5000.00 which is a huge difference than in the past. Councilman Lake felt that the participation numbers were low due to the media coverage of the oil spill therefore Councilman Lake requests we contact them for a sponsorship next year. Margaret also mentioned that she felt other hindrances were an event in Gulf Shores, the on again off again element and the format change. Margaret would like to get from council ASAP if they desire to hold this event next year so that the wheels for 2012 can begin spinning now.

**Line Dancing Cancellation** – Margaret mentioned that she forwarded a memo outlining the economics behind this event and backing her decision to discontinue. Margaret mentioned that she and David, Parks and Rec., have made every effort to work with the instructor in possibly moving these classes to the recreation department. Councilman Lake agreed with Margaret's decision and feels this should be a Parks and Rec. event.

**Civic Center Sign - Frank Barnett** – Frank mentioned that he was asked to get quotes on the sign slated for the Civic Center. He got costs from 3 vendors, 2 responded directly for Frank and Mr. Armstrong brought his today so Frank has not had a chance to review. Mayor Small mentioned that the Civic Center, Parks and Rec. and the Library have no way to advertise and because of this the Mayor has given over some other advertising options throughout the city. The money is encumbered and all they have to do is approve and move forward, not need to go to finance.

Councilman Lake stated that this digital sign is much more appropriate than the plastic coca-cola or Pepsi signs. Councilman Lake mentioned that he did at one time speak out against the sign and now he is supportive. Mayor Small mentioned that the sign would be built into the original wall and looks very tasteful. Councilman Lake also mentioned that with heading into Hurricane season and the center often being used as a relief center, this sign will be advantageous in directing people. **Mayor Small asked Frank to look over the quotes and give his opinion on which is the better one and bring it back to July's B & P Meeting. Councilman Lake agreed with this direction.**

Monthly Reports – Mayor Small mentioned that Richard is not able to at the B&P meeting due to running his office in the absence of staff. He has been given a temp as of today and he is training her.

**Museum** - Mayor Small mentioned that Daphne Robins that lives right next to the museum and a tree that has been struck by lightning and is dead and overhangs the museum. She wants the tree down in an effort to make sure there is no damage to the museum. She doesn't mind paying ½ to take it down. Mayor Small would like to get an arbor to come out and really look at the tree and give a suggestion on what is the best way to take the tree down.

Al Guarisco asked about the report on the additional bracing down at Bayfront. Mayor Small mentioned that the price for this project is \$4000.00 which includes material and labor. Mr. Guarisco asked about the boat launch and Mayor Small mentioned that the contractor will be called back out to work on the gravel and possibly move this gravel to the launch area. Ms. Vaughn mentioned that we quite possibly need to mow further on the north end however the pins need to be located to see exactly where the city property goes. Ms. Vaughn also wants to proceed with the landscaping around the gazebo but is not sure about the budget. Councilman Lake suggested she work with the Beautification Committee.

Barnett reported on the following items:

- Will start taking down old insulation from under Bayfront – will need to put something back up and has obtained one quote for the foam type insulation.
- Museum windows are in very bad shape. Prices for new windows are \$1700 for each window and there are 12 in the museum. Very concerned about this issue.

The committee request that Council as a whole direct David Cohen, the City Clerk to look at grants – have clerk talk to the Mobile Historic Society for anything that might be available to help with the museum.

John Lake mentioned that he will no longer be able to meet at this time of the morning and will need to look at other times and/or day for the committee to meet.

12:15 adjourned.



# MEMORANDUM

To: Office of the Mayor,  
Attn: Ms. Jane Robbins  
Building & Properties Committee

From: Adrienne D. Jones,  
Director of Community Development

Subj: Caroline Woods Subdivision, Phase  
Two - Elite Development, L.L.C.  
Request for permanent easement at  
the southeast corner of the Daphne  
Sport's Complex property

Date: May 13, 2010

At the regular meeting of the City of Daphne Planning Commission, April 22, 2008, seven members were present and the vote carried unanimously for the affirmative recommendation of the above-mentioned dedication of a permanent easement from the City of Daphne to the developer, Elite Development, L.L.C., of Caroline Woods Subdivision, Phase Two.

Upon receipt of said documentation, please place on the agenda for the Friday, June 4, 2010 meeting for a recommendation from the Buildings & Properties Committee to the City Council.

A copy of the permanent drainage and utility easement agreement prepared by the City Attorney, Ms. Missty Gray, Ross, Jordan & Gray, is attached.

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

Thank you,

ADJ/jd

cc: file

attachment(s)

Copy of easement agreement

STATE OF ALABAMA

COUNTY OF BALDWIN

**DRAINAGE AND UTILITY EASEMENT AGREEMENT**

This Drainage and Utility Easement Agreement (“Agreement”) is dated and entered into on this the \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between **CITY OF DAPHNE, ALABAMA** (“Grantor”), An Alabama Municipal Corporation, and **ELITE DEVELOPMENT, L.L.C.** (“Grantee”), an Alabama Limited Liability Company; and

**WHEREAS**, the Grantee desires to acquire an easement for drainage of Caroline Woods Subdivision, for the purpose of construction and/or installation of drainage pipe to control storm water drainage from Caroline Woods Subdivision, repair and/or upkeep to drainage pipe and operation and maintenance of such drainage pipe; and

**WHEREAS**, the Grantor is willing to and hereby does grant unto the Grantee an easement for the aforesaid purposes to the property hereinafter described and under the terms and conditions set forth herein below; and

**NOW THEREFORE**, for and in consideration of the sum of Ten and 00/100 (\$10.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor, **CITY OF DAPHNE, ALABAMA**, An Alabama Municipal Corporation, does hereby grant, bargain, sell and convey unto the said **ELITE DEVELOPMENT, L.L.C.**, the Grantee, its successors and/or assigns, a non-exclusive perpetual water drainage right-of-way and easement through, upon, over, under, across and along the following described parcel of real property located in Baldwin County, Alabama and a right and easement to construct, operate and maintain

a drainage pipe on and/or under the soil of a strip of land and real property located in Baldwin County, Alabama, to-wit:

20' DRAINAGE EASEMENT, more particularly described as follows: Commence at an iron pin marker at the Southwest Corner of Lot 27 of the Northern Division of Jackson's Oak Subdivision, as shown on map or plat thereof recorded at Map Book 3, Page 28, and Page 29, and also, Map Book 4, Page 36 and Page 37, Probate Records, Baldwin County, Alabama, and run thence South 00 degrees 07 minutes 50 seconds West, for a distance of 1319.47 feet; thence run South 00 degrees 12 minutes 17 seconds West, for a distance of 83.16 feet for a Point of Beginning; continue thence South 00 degrees 12 minutes 17 seconds West, for a distance of 22.28 feet; thence run South 64 degrees 02 minutes 00 seconds West, for a distance of 98.02 feet; thence run North 25 degrees 58 minutes 00 seconds West, for a distance of 20.00 feet; thence run North 64 degrees 02 minutes 00 seconds East, for a distance of 107.85 feet to the Point of Beginning. Tract contains 0.05 acres, more or less.

**The Grantor** hereby grants unto the Grantee the following rights, privileges and interests in and to the area and property hereinabove described and the Grantee and Grantor hereby agree to the following terms and/or conditions of said easement:

1. Grantor does hereby grant, bargain, sell and convey unto the Grantee, its successors and/or assigns, an easement through, upon, over, under, across and along the Easement Property, for the purpose(s) of drainage and/or control of storm water from Caroline Woods Subdivision and all rights and privileges necessary or convenient for the full enjoyment and use of said Easement Property, including the right to construct and maintain drainage pipe and the right of necessary and reasonable ingress and egress by the agents and employees of the Grantee, its successors or assigns, over and across said parcel of land, to said strip and over and across said strip for the purpose of constructing, inspecting, repairing and/or maintaining said drainage structure; and
2. Grantee shall have all specific rights of ingress and egress, consistent with this Easement Agreement, for the operation and maintenance of said drainage activities, and for the installation and/or servicing and maintaining of said facilities; and
3. Grantee agrees that all construction, operation, maintenance or any other activities associated with this Easement Agreement which may disturb the Easement Property or the Grantor's use of said property, shall, except in the event of an emergency, be coordinated with the Grantor so

as to minimize any disruption to the Grantor and/or its use of such property; and

4. The Grantor reserves for itself and its successors and/or assigns the right to use the Easement Property for any uses and/or purposes which are not inconsistent with the purposes of this Easement and which will not disturb or interrupt the use of the Easement Property by the said Grantee; and

5. The Grantor agrees not to construct any improvements which would obstruct the passage of drainage water from Caroline Woods Subdivision; and

6. The Grantor agrees that the Grantor will, at its sole expense, maintain the Easement Property in the same manner and condition as it maintains the property adjoining the Easement property and the Grantor shall not allow refuse, debris, vegetation, or other obstruction to accumulate or collect in or on the Easement Property; and

7. By acceptance hereof, Grantee does agree that at such times as it enters onto said land, that any and all lands disturbed in the utilization of the rights hereby granted will be restored to a condition substantially the same as existed immediately prior to said disturbance, all at no direct cost to the Grantor; and

8. Grantee understands it is its sole responsibility and liability to maintain any and all structures and drainage facilities placed in, on, under or above said easement; any and all repairs shall be the sole responsibility of the Grantee and its successors and/or assigns; any maintenance required shall be performed by the Grantee, its successors and/or assigns; and any damage caused by the drainage from Caroline Woods Subdivision shall be the liability of the Grantee, its successors and/or assigns; and

9. The Grantee understands that the Grantor has plans to develop the property in the future and relocation of this easement may be a condition of that development, by acceptance of this Easement the Grantee, its successors and/or assigns, acknowledge and agree that should the relocation of this easement be necessary, in the sole discretion of the Grantor, for the future development of said land owned by the Grantor, the Grantee shall cause such drainage pipe and/or facilities to be relocated and all costs of such relocation of easement shall be the responsibility of the Grantee, its successors and/or assigns; and

10. Grantor reserves the right to use and enjoy said land provided that the Grantor shall not substantially excavate (not to exceed a depth of two (2)

feet), construct or permit to be constructed on or above said land any obstruction that may interfere with the rights hereby granted without the prior consent of the Grantee in writing; and

11. Grantor represents, covenants and warrants that it has a good and indefeasible estate in fee simple to the Easement Property granted herein, and that it has good right to grant this Easement and that the same is free and clear of all liens and/or encumbrances; and

12. Grantor and Grantee agree that the burdens, benefits and covenants contained herein are intended to and shall be deemed to run with the land and shall be binding upon and inure to the benefit of the respective successors and/or assigns of the parties hereto; and

13. Grantee agrees to indemnify and hold the Grantor, its officers, agents, employees, affiliates, successors and or assigns, harmless from any and all claims, demands, suits, actions, causes of action, judgments or decrees, and any and all court costs and attorneys' fees, for death, bodily injury or property damage asserted by any party, including the Grantor, resulting from or arising out of the use of the Easement or failure of or insufficiency of any drainage equipment or pipes placed within said Easement by the Grantee or any drainage placed upon the Easement by Caroline Woods Subdivision or the Grantee or any of its employees, agents or successors and/or assigns.

**IN WITNESS WHEREOF**, the parties hereto have executed this Drainage

Easement Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**CITY OF DAPHNE, ALABAMA**  
An Alabama Municipal Corporation

BY: \_\_\_\_\_

**FRED SMALL**  
AS: MAYOR

ATTEST:

\_\_\_\_\_  
DAVID COHEN, City Clerk, MMC

**ELITE DEVELOPMENT, L.L.C.**

**BY:** \_\_\_\_\_

**AS ITS:** \_\_\_\_\_

STATE OF ALABAMA  
COUNTY OF BALDWIN

I, the undersigned, a Notary Public, in and for said county in said state, do hereby certify that \_\_\_\_\_, as \_\_\_\_\_ of **ELITE DEVELOPMENT, L.L.C.**, an Alabama Limited Liability Company, has signed the foregoing conveyance, and who is known to me, acknowledged before me on this day, that being informed of the contents of said conveyance, he as such Officer and with full authority executed the same voluntarily and as an act of the Company.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
NOTARY PUBLIC:  
My Commission Expires:

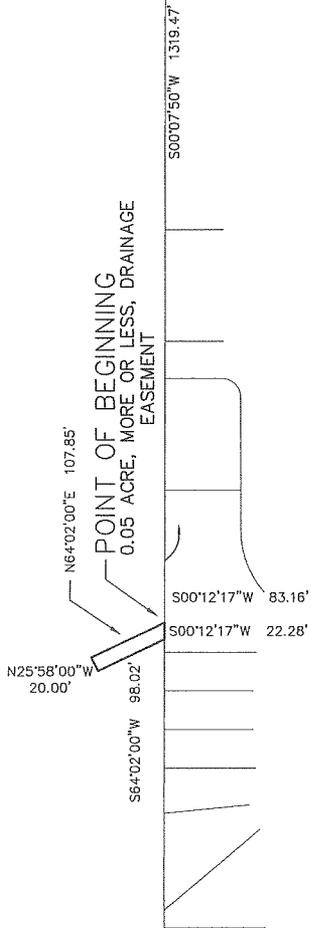
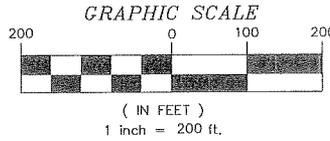
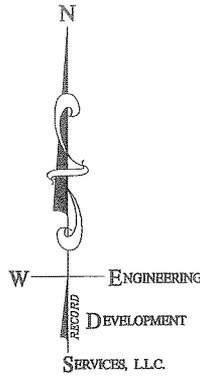
THIS INSTRUMENT PREPARED BY:  
MISSTY C. GRAY  
**ROSS, JORDAN & GRAY, P.C.**  
Post Office Box 210  
Mobile, Alabama 36601  
(251) 432-5400 (telephone)  
(251) 432-5445 (facsimile)  
misty@rossandjordan.com

## DESCRIPTION FOR A 20 FOOT WIDE DRAINAGE EASEMENT

Commence at an iron pin marker at the Southwest Corner of Lot 27 of the Northern Division of Jackson's Oak Subdivision, as shown by map or plat thereof recorded at Map Book 3, Page 28, and Page 29, and also, Map Book 4, Page 36, and Page 37, Probate Records, Baldwin County, Alabama, and run thence South 00 degrees 07 minutes 50 seconds West, for a distance of 1319.47 feet; thence run South 00 degrees 12 minutes 17 seconds West, for a distance of 83.16 feet for a Point of Beginning: continue thence South 00 degrees 12 minutes 17 seconds West, for a distance of 22.28 feet: thence run South 64 degrees 02 minutes 00 seconds West, for a distance of 98.02 feet; thence run North 25 degrees 58 minutes 00 seconds West, for a distance of 20.00 feet; thence run North 64 degrees 02 minutes 00 seconds East, for a distance of 107.85 feet to the Point of Beginning. Tract contains 0.05 acres, more or less. (Description composed from office records).

PROPERTY IS LOCATED IN FRACTIONAL SECTION 8 AND GRANT SECTION 19, TOWNSHIP 5 SOUTH, RANGE 2 EAST, BALDWIN COUNTY, ALABAMA.

POINT OF COMMENCEMENT  
THE SOUTHWEST CORNER OF LOT 27, NORTHERN DIVISION OF JACKSONS OAK SUBDIVISION



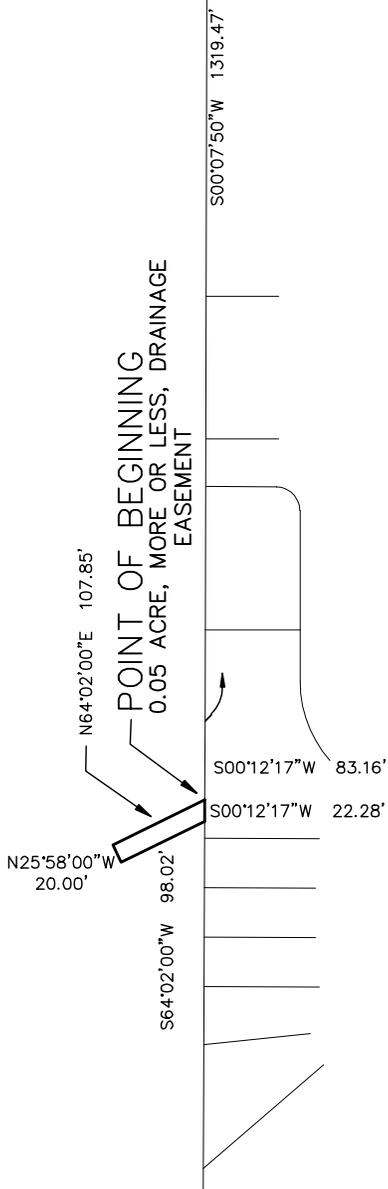
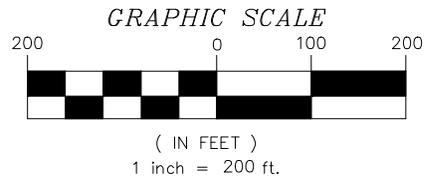
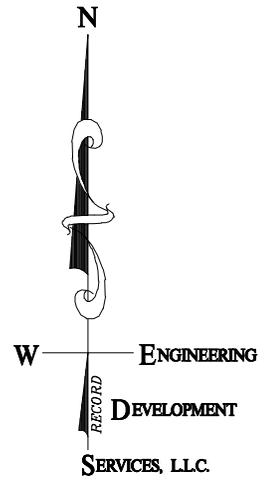
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<b>SKETCH TO ACCOMPANY DESCRIPTION</b>  <b>CAROLINE WOODS</b>	DATE: SEPTEMBER 17TH, 2008
	SCALE: 1" = 200'
<b>ENGINEERING DEVELOPMENT SERVICES, L.L.C.</b> <small>Engineering • Planning • Surveying • Construction Management</small> <small>27154 Pollard Road • Daphne, Alabama 36526</small> <small>P.O. Box 1395 • Daphne, Alabama 36526</small> <small>(251) 826-2122 • Fax (251) 826-8259</small> <small>engds@bellsouth.net</small>	DRAWN BY: CHS, JMS JR.
	CHECKED BY: CMA, JMS JR.
	SECTION 8, T-5-S, R-2-E BALDWIN COUNTY, ALABAMA
	PROJECT# 071108
	REF.# 040514, 051112E
	DWG.# 071108-NEW-PARCLS.DWG
	SHEET NO. 1 OF 1

PROPERTY IS LOCATED IN FRACTIONAL SECTION 8 AND GRANT SECTION 19, TOWNSHIP 5 SOUTH, RANGE 2 EAST, BALDWIN COUNTY, ALABAMA.

POINT OF COMMENCEMENT  
THE SOUTHWEST CORNER OF LOT 27, NORTHERN DIVISION OF JACKSONS OAK SUBDIVISION



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**SKETCH TO ACCOMPANY DESCRIPTION**

**CAROLINE WOODS**

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DRAWN BY: CHS, JMS JR.

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SECTION 8, T-5-S, R-2-E  
BALDWIN COUNTY, ALABAMA

PROJECT# 071108

REF.# 040514, 051112E

DWG.# 071108-NEW-PARCLS.DWG

SHEET NO. 1 OF 1

**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  
SPECIAL CALLED MEETING OF MAY 6, 2010 - 6:00 P.M. DRAFT  
COUNCIL CHAMBERS, CITY HALL

---

The Chairman stated the number of members present constituted a quorum and the special called meeting of the Board of Zoning Adjustment was called to order at 6:03 p.m. Let us have roll call.

**Call of Roll:**

Members Present:

Billy Mayhand, Vice Chairman  
Willie Robison, Chairman  
Jeri Hargiss, Secretary  
Glen Swaney

Members Absent:

Jim Moss  
Barry Taylor  
Frank Lamb

Staff Present:

Adrienne D. Jones, Director of Community Development  
Pat Houston, Recording Secretary

Staff Absent

Tony Hoffman, BZA Attorney

The Chairman stated there are four of present here tonight so anything voted on tonight will take four affirmative votes. Is that correct?

Ms. Jones stated correct.

The Chairman stated next item on the agenda is the approval of the April 1st, 2010 meeting minutes. If you all have read the minutes, the Chair will entertain a motion to approve the minutes as written.

**Approval of Minutes:**

The minutes of the April 1, 2010 Special Call meeting were considered for approval.

A **Motion** was made by **Mr. Swaney** and **Seconded** by **Ms. Hargiss** to **approve the minutes as written.**

**The Motion carried unanimously.**

**New Business:**

**Appeal #2010-05 First Eastern Shore Missionary Baptist Association**

**CITY OF DAPHNE  
BOARD OF ZONING ADJUSTMENT MINUTES  
SPECIAL CALLED MEETING OF MAY 6, 2010 - 6:00 P.M. DRAFT  
COUNCIL CHAMBERS, CITY HALL**

---

The Chairman stated next is new business on the agenda, Appeal #2010-05 First Eastern Shore Missionary Baptist Association to allow an existing church, place of worship and incidental uses to operate. The property is located at 1005 Main Street and it is in an R-1, Low Density Single Family Residential Zone. Ms. Jones, would you mind walking us through this?

Ms. Jones displayed a Power Point Presentation of 1005 Main Street showing the sign at the existing building, the residents on both sides and the Masonic Lodge directly next door. Ms. Jones stated okay, the subject property is located on Main Street as you stated and the sign also mentions the auditorium and Camp Julie Nelson. It is an existing facility. What is being requested is a special exception and in this case it is a use that is permitted in a residential district by special exception. It is zoned R-1 and it is a church and I would say other place of worship and it has other facilities that are incidental to a place of worship. It is five acres and only the front half is developed at this time. There is a pool and I do not think that it is currently in use, but there is a pool on site and an accessory building in the back. Again the back half is not developed at this time and my recommendation would be approval.

The Chairman stated okay. Thank you. Is anyone here to speak in favor of this appeal? If you would step up to the podium and give us your name and address for the record because this is being recorded.

Mr. Boykin stated thank you very much, my name is Dwight Boykin.

The Chairman stated thank you, sir. You want to have a special exception on this for what purpose?

Mr. Boykin stated yes, sir. There are a couple of items of background. The First Eastern Shore Baptist Missionary Association is a group of sixty-three churches and we have been in operation for one hundred and twenty-one years and we have outgrown our facility and we would like to update it. It has been needing an update for some time, and in trying to do so we found out that we are zoned R-1 and we need this exception. Our operation will be no different from what we have done for many years on the property. Right now in order to carry out our major functions we have to go one of our larger member churches, but we would like to carry out our functions right there.

Mr. Swaney stated are you currently using this church?

Mr. Boykin stated we are currently using it. We have about four business meetings a year and we hold a camp for boys and girls during the year also using the rear building, and there are so other smaller functions that happen there.

The Chairman stated does anyone else have any questions for Mr. Boykin?

**CITY OF DAPHNE  
BOARD OF ZONING ADJUSTMENT MINUTES  
SPECIAL CALLED MEETING OF MAY 6, 2010 - 6:00 P.M. DRAFT  
COUNCIL CHAMBERS, CITY HALL**

---

Mr. Swaney stated what are incidental uses? Are they meetings and that type of things?

Mr. Boykin stated yes, sir. We have different types of auxiliaries of our organization that meet there also. Women Auxiliary and Layman Group and they have meetings there.

Mr. Swaney stated thank you.

The Chairman stated thank you very much. Appreciate it. Is there anyone here in opposition to this appeal? If you would sir step up to the podium and give us your name and address for the record and speak into the microphone please.

Mr. Green stated my name is David Green and I think the word opposition is a little harsh. I live at 315 Beall Lane adjacent to the property, and I have another neighbor here who is actually closer to the property than me.

The Chairman stated in favor or not in favor of.

Mr. Green stated I am not in favor of. The reason I am not in favor of is because this property runs from the street, a large portion down Beall Lane, almost half way down Beall Lane and it does not have a wide footage on the frontage of the street. It is in essence narrow in comparison to what their property is. It is narrow and long and it is adjacent to at least eight or nine other properties, and the reason being because it is so long. The remark was made that this would be something that they had to grow into and get larger. It is my concern that there would be parking lots or more noise or more congestion because all of a sudden there is going to be an increase of more than what is presented of what is going to be done there. At present it works, but if it increases and it is multiplied it may not work. I think it is set up as a church and it is indicated that there is a camp involved and I do not know what that means, but I guess the bottom line is the fact that I think the development as far as any direction farther probably should have some limitations and there should be some R-1 zoning still contained in there because there are eight or nine property owners that have property that is adjacent to it and it is presently zoned R-1, so I am not sure that it should be changed. It ought to stay the way it is. Thank you.

The Chairman stated yes, sir. Have you talked with any of your neighbors with your concerns?

Mr. Green stated well I have one that is here with me right now that is really close by, but as far as me talking to my neighbors directly I have not because number one the only thing that we got was a letter from the City and the letter just said that there was going to be a zoning change and that is all it says. It does not show the depth of the property. It does not show what is intended to be done. It is pretty incomplete. So I guess basically that is my problem with it.

**CITY OF DAPHNE  
BOARD OF ZONING ADJUSTMENT MINUTES  
SPECIAL CALLED MEETING OF MAY 6, 2010 - 6:00 P.M. DRAFT  
COUNCIL CHAMBERS, CITY HALL**

---

Mr. Green stated because it is zoned R-1 and that is the way it is and it is grandfathered in to do what it does and that is what it should continue to do.

Mr. Swaney stated so your concern is about the potential expansion of this property?

Mr. Green stated yes, sir. I mean right now as I pointed out this property is not very wide in comparison. It is very deep. When you are talking about five acres it is long. I know it takes up eight or nine different properties along there that it is adjacent to and the person that is the property owner to the right of it owns fifty-five acres, and that is Mr. Jenkins. I am surprised that Mr. Jenkins is not here because he would have more vested interested because at one time he was going to develop that into R-1 and he decided not to do that. So I guess that my concern is future use and it is not a developable property that would not be a disturbance to those residents that are already in that area. At present it works, if it is expanded further down it probably will not work.

The Chairman stated anyone else have any questions for Mr. Green?

Mr. Swaney stated I would like to go back and ask the gentleman a question.

The Chairman stated Reverend Boykin would you mind coming back up?

Mr. Swaney stated I am wondering what potential expansion you are talking about?

Mr. Boykin stated what our organization is seeking now is an auditorium that will seat about five hundred people.

Mr. Swaney stated five hundred.

Mr. Boykin stated yes.

Mr. Mayhand stated are you talking about a new place or expanding the existing one?

Mr. Boykin stated it would have to be a new place.

Mr. Mayhand stated what would happen to the one that is there now?

Mr. Boykin stated the front building would be removed. There are two buildings on the property. The front one near Main Street would have to be demolished.

The Chairman stated Ms. Jones, could you go back to the pictures of the buildings?

Ms. Jones stated yes, sir.

**CITY OF DAPHNE  
BOARD OF ZONING ADJUSTMENT MINUTES  
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Mr. Swaney stated do you have any preliminary dimensions of your new structure?

Mr. Boykin stated no, sir we do not. Just as soon as we found out that we were not zoned we did not spend any funds to get anything drawn up in the event that this would not happen.

Mr. Swaney stated you would be required to provide parking, and of course, as they indicated before the lot is extremely narrow and you will have to have setbacks to all of the above if you will. Where would you locate your new structure? Back around the pool or farther?

Mr. Boykin stated what we have actually talked about was backing it up all the way back to the rear building, and doing away with the pool for now. Doing away with that pool and constructing the new building in front of that dormitory that is what the second building is, it is a dormitory.

The Chairman stated I have been by there many times and was by there recently. How far back is that second building? You said you are going to do away with the pool.

Mr. Boykin stated may I step back and get my pad?

The Chairman stated sure.

Ms. Jones stated also in your packet you have a survey of the lot.

The Chairman stated it is narrow and long.

Ms. Jones stated it shows you where the existing buildings are.

Mr. Boykin stated it is roughly three hundred and sixty-five feet off of Main Street.

The Chairman stated okay, without me looking at the very small print on my copy of that. How deep is the entire piece of property?

Mr. Boykin stated the entire property is five hundred and nineteen feet from Main Street back.

Mr. Mayhand stated and the width is?

Mr. Boykin stated it is varying width, but at the street it is one hundred twenty-five point eight feet and at the widest point it is one hundred and forty-four feet.

Mr. Swaney stated Ms. Jones, what restrictions would the Reverend and his group have to meet to construct a five hundred person meeting place?

Ms. Jones stated well, they would definitely have to be approved by the Planning Commission through the site plan review process and

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because it is a non-residential use adjoining a residential zoning district they would have to also install buffers or fencing or something to that effect to mitigate the impact of farther expansion against the existing residential properties.

Mr. Mayhand stated will they be susceptible to the current codes and setbacks?

Ms. Jones stated yes. We have a section in the ordinance which talks about semi-public buildings and they would have to fall under those regulations.

The Chairman stated and putting the cart before the horse or whatever. They must get a special exception before they can go to the Planning Commission and not the other way around.

Ms. Jones stated correct.

The Chairman stated because we have gone that route before. Okay. Thank you. Anyone else have any questions? Thank you, Reverend Boykin. Oh, excuse me, I forgot. Did you say that you presently still have your camp there?

Mr. Boykin stated yes, we operate a week at a time. The boys one week and the girls the next.

The Chairman stated about how many do you normally have at the camp?

Mr. Boykin stated I am going to have to refer to the gentleman with me. About 60 per week.

The Chairman stated okay. One of the things that concerns me is the incidental uses that you will be doing there. I believe Mr. Green was concerned about that also, and Mr. Swaney, on your incidentals.

Mr. Boykin stated now the incidental things that happen there are just the various meetings, smaller meetings, and when I say meetings I am talking business meetings of the auxiliaries of our association, and that is what we use the current building for now.

The Chairman stated what is your present membership now? You said would be building for five hundred.

Mr. Boykin stated sixty-three churches, and we are gauging that number upon the amount of people that attend when we have our religious services at our member churches.

The Chairman stated okay.

Mr. Mayhand stated I need to get something clear in my mind.

Mr. Mayhand stated right now it is just being used four or five times a year?

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Mr. Boykin stated excuse me. I may not have made that clear. The meetings of the main body of the association, and the other auxiliaries, the layman and such, so there are more meetings than that.

Mr. Mayhand stated once approved will there be weekly church services?

Mr. Boykin stated no.

Mr. Mayhand stated this would just be a meeting place of sort.

Mr. Boykin stated yes. If it pleases the Board, the man that runs our Association is here, our moderator, Reverend Montgomery Portis, I am a Vice Moderator, so perhaps he can better answer your questions.

Reverend Portis stated yes, sir.

The Chairman stated if you would state your name please.

Mr. Portis stated Montgomery Portis. The meetings that we are talking about are our Association meetings, they are annual sessions. The women have an annual session in the month of June, the laymen in May, and the congress in July. The max number that normally attends those meetings that we are saying is about five hundred people. Throughout the year there are just a number of meetings of the different people that are in the Association, which will be less than one hundred people that come primarily four or five times a year.

Mr. Mayhand stated in the future if there was a new building what would, if anything, expand other than the number of people attending these particular meetings that you are talking about now?

Mr. Portis stated nothing, sir. It would be the same. Just instead of going to the different churches as we do now because of the lack of space it would just be there at the Association building.

Mr. Swaney stated you would undoubtedly be required to provide a parking lot for five hundred people cars.

Mr. Portis stated yes, sir.

Mr. Swaney stated with that narrow lot I do not quite see how you would be able to do all of that. Anyway, I understand what you are after.

Mr. Portis stated as said, we are looking to set the main auditorium back farther.

Mr. Swaney stated and put the parking in front of that building?

Mr. Portis stated yes, sir.

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The Chairman stated for five hundred people that is an awful lot of parking space you would have to have with the average space of a vehicle. It would entail a large amount of asphalt being hauled there.

Mr. Portis stated yes, sir.

The Chairman stated thank you. Anyone else wish to speak? Once again speak loudly and give us your name and address, please.

Mr. Barnes stated my name is Raymond Barnes and I live in the residence next to Camp Daphne. I am not aware of what is going on, therefore, I would like to ask the person who is in charge if they would summarize in a form so that we would have something on paper to at least know something about what is going on. I do not know. I received this just today and so I would like to be aware of what is suppose to take place. Thank you.

The Chairman stated yes, sir. Thank you, Mr. Barnes.

Mr. McConico stated good evening, my name is Jeris McConico, and I am just going to agree with my neighbor right here, agree with everything he just said. That place has been there for a long time, you know. It kind of use to be our second grade class over there that is where I went to school at, but I am just going to go with what Mr. Green said you know. Basically, I agree with everything he just said.

Mr. Swaney stated you have a problem with the expansion too?

Mr. McConico stated yes I probably will have a problem with that. I would kind of like to keep it as it is. Because it is adjacent up to my daddy's property and it is adjacent up to 317 Beall Lane so you all are catching me both ways, and I am a neighbor of Mr. Barnes right there too for a long time that use to be my Agriculture teacher.

The Chairman stated thank you, Mr. McConico. Anyone else?

Mr. Green stated I would like to address you one more time. I think my frustration is what this individual addressed also. What we did is we got a piece of paper and it said that there would be a variance and that is about it. So we have not seen anything that shows survey plots and we have not seen any intentions and we know very little about it. I think if you really think about it, when they portray it and it is portrayed as if it is a church, but it is an organization that is going to meet. So I am not even sure what it is anymore. I am not even sure it complies with that anymore. You know I do not know, but I think again my biggest strong point is the fact that it is zoned R-1, it should stay R-1. If it goes the other way it is going to be a disturbance not to me directly, but that man is right next door, and that man is right next door to it too, and also there are eight or nine other people.

Mr. Green stated and if any other development ever takes place Mr. Jenkins can probably forget about developing his property so that is the only point that I think I make is that we have not been given much

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detail so that is a problem, and the fact that it is already R-1. The precedent has been set, and it has been there for years, and the fact that it does work and there is noise at different times, but it stays under control and they seem to do what the do. It works, but if it gets bigger, larger, five hundred people is astronomical, the noise alone is tremendous. They would have to build a building that has insulation in it just to keep the noise down. Any kind of function at all with any kind of music would be a nuisance and a noise disturbance. So I guess the point is that it should stay R-1. So thank you.

The Chairman stated thank you, sir. Ms. Jones, on special exceptions there are certain things like ingress, egress, compatibility with the neighborhood, and things like that, and parking also are some of the things that you consider under special exceptions?

Ms. Jones stated let me go to that Section and while I am turning I would like to say that the zoning of this property would not change. The zoning will remain R-1. It is just them having to come into compliance.

The Chairman stated we do not have the authority to change the zoning anyway, that would be the Council.

Ms. Jones stated right. They are trying to come into compliance with the zoning regulations for an existing use. Also, it would give them the ability to expand, but also keep in mind that any expansion would be regulated through the Planning Commission and also through the zoning regulations. While I am turning pages would you go ahead and give Mr. Barnes a synopsis of what is going on.

The Chairman stated Mr. Barnes, in regards to your question they want to expand their present facility and build a new one to accommodate five hundred people. They want to expand behind it to where they can have the day camp. They do have the day camp now with one week for the boys and one for the girls the next week. So to me it looks like the main thing they want to do is build a new facility that would seat five hundred people. They would have to expand the parking to accommodate five hundred people and that is a synopsis of what they want to do.

Mr. Barnes stated thank you.

Ms. Jones stated in Article 13-1 it states the following public and semi-public uses may be permitted within residential districts by special exception when it is established through site plan review that the location, design, and proposed activities will not adversely affect the public health, safety, morals, and general welfare of the surrounding neighborhood.

Ms. Jones stated and again, if it is found that a variance would be needed on the parking they would have to come back before this Board for anything that is different from the zoning regulations require.

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Mr. Swaney stated well I have to confess that I do not believe that I have enough detail as to what is contemplated down the road to vote yes.

The Chairman stated Ms. Jones, if, I am not saying it would be, but if the appeal is denied they can not come back before the BZA for one year. Is that correct?

Ms. Jones stated that is correct. For the same request.

The Chairman stated for the same request, but if they at this time withdraw their appeal to get more details as Mr. Swaney has stated we do not have enough information to be able to make a decision that would be semi intelligent much less an intelligent one. Then they can come back before a year without having to wait even though it is the same request if they withdraw their appeal tonight. Right? They would have to go back through the process.

Ms. Jones stated I would say as long as you give them direction on what you want to see on the next time that they came, then yes.

The Chairman stated okay. Mr. Swaney do you have anything that you would like to share as to what they possibly might do that could help us?

Mr. Swaney stated to my mind I would have to see the plot plan blown up, layouts, the parking, the building, and all the accessory structures just to feel comfortable with that narrow lot being used for an expanded purpose.

The Chairman stated anyone else?

Mr. Mayhand stated yes, I would just like to make a statement. I know the area and I know the property. I know that it has been there for a long time and I also know the individuals that live around that place. It has served its purpose well and I think it could continue to do so, as is, because if you are talking about adding that presence in that neighborhood, it would really adversely affect the people that live there. I think the way that it is now is very adequate.

The Chairman stated I concur with that and I would like to add something to it. Where I have my church membership we had a church next door to us that had sound constantly coming out of the walls and at times it really bothered the neighbors around it because it was extremely loud. Our facility even with the doors shut we could still hear the sound coming from inside there. I am concerned with the neighbors in the neighborhood not knowing enough about this, as to how it would affect them.

The Chairman stated as Mr. Swaney and Mr. Mayhand both have said, I would like to see a more conclusive idea and plan as to what you want to do. It has served the community very well for many, many years there, but I do have a problem with the expansion of it. If you would like to withdraw your appeal and come back at a later date with

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something more conclusive, I can not tell you what to do I am just talking to myself here, where you can talk to your neighbors around you, Mr. Jenkins, Mr. McConico, Mr. Barnes, Mr. Green, Ms. Duke and others that live down Beall Lane there and see what you might be able to come up with that would be acceptable to everybody there, but it has served well for many, many years. So if you would like to continue with your appeal we can have a vote on it or if you would like to withdraw it and come back at a later date.

Mr. Boykin stated sir we would like to continue with our appeal.

The Chairman stated the Chair will entertain a motion and any motion must be made in the affirmative.

**A Motion was made by Mr. Swaney and Seconded by Mr. Mayhand to approve Appeal #2010-05, First Eastern Shore Missionary Baptist Association, for a special exception to the existing church, place of worship and incidental uses to operate at 1005 Main Street.**

Upon roll call vote, **the appeal was denied.**

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

The Chairman stated the appeal is denied. You have fifteen days to notify the Community Development Department in writing of your plans to appeal to the Circuit Court of Baldwin County. You have the right to appeal to the Circuit Court. Thank you, sir. We appreciate your time tonight.

Mr. Boykin stated thank you.

**New Business:**

**Appeal #2010-06 Homes by Hons**

The Chairman stated next on the agenda is Appeal #2010-06, Homes by Hons, a variance request to allow a purposed new home to encroach the front setback line by twenty-feet. The property is located at Lot 67, in the Timbercreek Subdivision, Phase 7, which is an R-3, High Density Single Family Residential Zone. The appeal is by Hons Builders. Is there someone from Hons that wishes to address the Board? Excuse me Mr. Hons, I boo booed. I need Ms. Jones to take us through this and explain everything first.

Ms. Jones displayed a Power Point Presentation of Lot 67 in Phase 7, of the Timbercreek Subdivision. She stated I will take you through a quick synopsis. Basically what is being requested tonight is they want to establish a thirty-foot front setback in lieu of required fifty-foot front setback requirement established by the plat. The reason for the request would be delineated wetlands and topography. You all

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should have a letter in hand from EcoSolutions, the environmental mediation, management and planning agency, who delineated the wetlands for the applicant. Here I have highlighted the contents of the letter and it states, "This letter is to serve as support for the variance request on behalf of Hons Timbercreek Lot 67. A wetland delineation was conducted by EcoSolutions, Inc. on March 8, 2010. The site was flagged and the points mapped utilizing GPS to an accuracy of three feet. The requested twenty-foot front setback variance is required to minimize further impacts to the wetlands within an impaired watershed. We have attached a fact sheet developed by the Southeast Watershed Forum which highlights the value of wetlands and the importance of wetland buffers." The note at the bottom is an excerpt Southeast Watershed Forum Fact Sheet which says what is a wetland buffer and it gives you the definition. It says a wetland buffer is an area beginning at the edge of wetland vegetation and extending to the adjacent land use. This map was provided by EcoSolutions and it shows you the delineated wetlands that have been cleared and farther wetlands on the bottom of the property, and it shows a layout of the house on the north end and where the thirty, forty and fifty-foot setbacks would fall. I have this slide because the Planning Commission has forwarded a recommendation for an amendment to the Land Use and Development Ordinance that says in Article 18-3 of that proposal it talks about protecting wetlands and the quote is for any delineated wetlands areas a thirty-foot wide vegetated non-disturbed buffer zone shall be provided around the wetlands. These buffers shall be shown on the plat or site plan, field verified by the design engineer, flagged prior to project implementation and protected during all construction phases. So what I am saying here is that the Planning Commission by virtue of this proposal for the Land Use Ordinance is also in favor of protecting wetlands with a thirty-foot wide non-disturbed buffer. Here are your options and they are many. First question is does hardship exist? I think the answer would be yes because of the wetlands as well as the topographic. Should the delineated wetlands be disturbed? My answer is not unless absolutely necessary, but if so, it should be minimal. Some things that could be considered is adjust the building layout, remove the deck or reduce the size of the garage or approve the thirty-feet in lieu of the fifty-feet front setback or deny it or approve a forty-foot setback in lieu of the fifty-foot front setback which would also call for a combination with the adjustment of the building layout. My recommendation is that you select an option that you think is appropriate that would create the least amount of impact to the wetlands. That is all I have.

Mr. Swaney stated very well done.

The Chairman stated thank you. Appreciate that. Mr. Hons.  
Mr. Hons stated my name is Jason Hons with Hons Builders. I am here representing Hons Builders and the homeowner that I have a contract with to build this house. When I started this house in January I brought a contract with the people and I found that over in time as we built on three or four hundred lots through mine and my dad's time of building houses that we have never had wetlands not located on a plat. We moved forward, we purchased the lot and it has been City of Daphne

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policies to not have wetlands on a plat or actually on a lot that is on a plat because it keeps people from these problems. These lots fell through the hole a little bit on that so we submitted everything to Timbercreek, we submitted a land disturbance permit, during the land disturbance we found, located these wetlands. We first turned to EcoSolutions thinking that would be the right thing to do. They ran soil test and told us they delineated it and told us where everything was. We find it a hardship we did not know about because most of the time it is sitting on the plat. We would never even have purchased it, and neither would the homeowner want us to build in this area. We have made changes and then submitted things to the ARB. We have been pushed into the here to actually go for this variance. I want to point out one thing. When we first submitted our stuff to the ARB we were at a fifty-foot setback, that is what the homeowners wanted to be at, we did not have any reason to go forward and we never knew that we needed to be at a thirty or to request a thirty until we actually disturbed the land, and that is kind of where we lay at this point. I can tell you that the homeowners would love to be at fifty, just like everybody else in the main part of Timbercreek, but sitting in the spot that they are being pulled back and you see right now that it is right at the edge at the very top part there, and that is where the spring is. It is free flowing spring and it has not stopped since the day that we disturbed it. So right there where the porch is going over is where everything would stop at thirty. I know we are going to have some arguments tonight and you know I was pushed into this position to ask for a variance and was told that this is where I needed to be. I have gotten arguments on both sides saying that Timbercreek is where I should have asked for a variance, so I am in a very hard place because I found this all out within about the last two days. I will say that I working on behalf of these people because they want to live in Timbercreek just like all of the other families in Timbercreek. They definitely want to have a nice life there and to build this neighborhood up.

Mr. Swaney stated may I ask a question?

Mr. Hons stated yes, sir.

Mr. Swaney stated I see by your map here that some of the adjacent property owners are forty-foot setbacks. Do you know of anybody in that particular area that you are talking about building who has a thirty-foot setback?

Mr. Hons stated no, I do not. That is the thing. In looking at the map the people actually to the east are in violation.

Mr. Hons stated we found out from EcoSolutions that the people to the east are in violation, at this point, because they did not contact someone like EcoSolutions when they went and damaged those wetlands. You know the one thing that I want to point out is the ARB, I have been there. I have been on POA's and I know the responsibility they are for and it is to uphold the value of everybody else's home. It is also to uphold the value of the environment and to go impact that wetland that is a watershed down there, at the bottom of that hill is

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a creek. I have got the stuff from the ADEM Inspection Report and it shows you pictures of the creek. So impacting that area, at this point, we are already working with EcoSolutions to go in there and replenish what we have damaged. Not knowing that we had wetlands there a guy was on a tractor and he was out there clearing and so we are going to have to go in there and work with EcoSolutions and kind of make the wetlands like they were as much as we can. We are working with EcoSolutions and the City of Daphne. Ashley Campbell is who we are working with from the City of Daphne. Now the argument, and I understand the ARB's argument, and I do understand consistency. They want to be consistent with everybody that is having to deal with this, but I do believe that since we took precautions, called EcoSolutions and did the right thing to have somebody do this evaluation, I think that you will see that we are making the right judgment call to just impact a very little bit of this. Some of all the other people did not do what we are doing and that is why I think if they would have you probably would have seen them being pushed to thirty-feet or thirty-five. I understand the argument with the consistency, but I think when it comes to it we are not taking down the value of the home by scooting it up. We are actually sustaining the environment and that is the huge thing here, we are being pushed by the Corp of Engineers and ADEM and I have been working with them. I guess my question is I am trying to work with ARB and I am trying to be very diplomatic about this because I am going to have to deal with ARB the whole time. So I am asking this, if for some reason it is at thirty, let us say that you all grant me at thirty-five and they come back with thirty-seven, I mean I am still good at that part right? If I do thirty-five and they come back and say and I am trying to see how to put this. I guess I am trying to make everybody happy is what I am trying to do, and I am in a bad spot right here.

The Chairman stated Mr. Hons just a minute. Ms. Jones, we are dealing with thirty-feet tonight right?

Ms. Jones stated that is correct.

The Chairman stated not thirty-five.

Mr. Swaney stated I do want to commend your efforts thus far though for the wetlands and so forth.

Mr. Hons stated thank you.

Ms. Jones stated whatever you decide would be appropriate.

Ms. Jones stated would be written on the letter and provided to Hons and the Building Inspection Department.

The Chairman stated thank you.

Mr. Swaney stated are you prepared to speak about the house plan itself tonight?

Mr. Hons stated yes I can.

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Mr. Swaney stated you indicated that this was not a spec house, but one being built for a particular buyer.

Mr. Hons stated it is a contract.

Mr. Swaney stated I, in view of the presentation by the department, which was very well done, and again this particular slide shows it. Why do you have a thirty-four foot garage?

Mr. Hons stated the homeowner wants a three car garage.

Mr. Swaney stated a three car garage in line?

Mr. Hons stated yes.

Mr. Swaney stated oh okay.

Mr. Hons stated and you know that is of course if we had known about the wetlands we could have made these, I mean everything has to be engineered in the City of Daphne, you have to get a stamp of approval. If we had known about these wetlands beforehand we definitely would have probably made a change at that point.

Mr. Swaney stated I could not help but run a few dimensions and calculated a little bit. In that I made a calculation that would indicate the total distance to the wetlands I believe is something like a hundred and thirteen feet and your house is some sixty-four not including the deck. In other words did I not see that?

Ms. Jones stated it is on the rendering that was provided by EcoSolutions.

Mr. Swaney stated okay. In that the wetlands were one hundred and thirteen you house is sixty-four not including the deck which leaves me with what, roughly forty-feet from the front setback line? Well, anyway my calculations are possibly probably wrong, but I did wander about the length of that garage.

Mr. Hons stated I have got the plans. Actually they are out in my truck.

The Chairman stated Mr. Hons.

The Chairman stated you said the deck is right at the edge of the delineation where the bales are. Is that correct? I went to the property and walked down to the wetlands there.

Mr. Hons stated yes, sir. I have some pictures here.

The Chairman stated so could you do without a deck? Could they do without a deck?

Mr. Hons stated I mean.

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The Chairman stated there are some in there without decks.

Mr. Hons stated they could. Since they have a walk out basement I mean they would have a living room that they therefore would not be able to walk outside from their living room. Commonly, I mean over thirty something houses, well twenty-four houses this year everybody has some kind of covered back porch or patio. All they want to be able to do is to walk out of their living room unto that deck. It is not a huge deck it is only twelve-feet deep. So that just gives them enough room to have a little picnic table and be able to walk around a little bit. You know the width is not a problem so I would feel for the resale value, for the value of the home I would feel that every person that we have sold a house to has had to have a back deck, back porch, back patio or something covered. So that would bring down the value of the home.

The Chairman stated okay. Thank you.

Ms. Jones stated I have a question. Is there enough room on this side, and I think that is where the kitchen is. Could it be redesigned to have a door coming out of the kitchen to have some little patio in that area? Are there other design options? That is my question.

Mr. Hons stated yes, madam. At this point though, I wrote a contract with these people in January, I submitted everything to the ARB the first week, actually around February 16th and we just now getting approval for the ARB as long as everything went, from my understanding, let me see, April 8<sup>th</sup> is when I got the approval so right now I am backed up in a corner between this variance and paying out money every single month because this is a contract. I purchased this lot for the homeowners and that is normally how we do it. At this point if we went back to the drawing board we are looking at another month and a half before we can start and their kids are starting in the fall. They have already been pushed back and my contract is already short three months from the time that I thought that I was going to be able to start on a normal occasion. We could have totally redesigned the house, but this is the house that these folks wanted. If we knew the wetlands where there we would have definitely had something different done. We probably would have never even built on that lot. I would have pushed them somewhere else, and it would have been a lot smoother process.

Mr. Hons stated I am in a very hard place. You know times are hard in the housing market and I have worked my tail off to stay in the business when other folks could not. It has been tough and I am trying to give the people what we started out with and what I am contracted on for that house on that lot. I am truly between and rock and a hard place on that. I have some pictures of the back of the house without the porch and it should help out with what you do not see in there.

Mr. Swaney stated the back of the house you plan to build?

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Mr. Hons stated yes, sir. There you can see the back board, the property pins and you can also see where the wetlands start. The spring is right at the top of that crest.

The Chairman stated just behind those bales there.

Mr. Hons stated where you see those four pins, is without the deck. So without those twelve-feet you would be right at those bales of hay area.

The Chairman stated anything else?

Mr. Hons stated I think that is it. Like I said thirty is just perfect when we are talking ADEM and impacting the wetlands. We would be completely out of it and we would not have anything that is over. Thirty five is impacting it a little bit and I think forty puts the house at the edge of the hay bales and the full extension of the twelve feet is going to be over the wetlands in the spring. They have the basement and when they walk out onto that basement they are going to be walking out pretty much unto a stream of water and that is why we are trying to stay up out of there. Thank you all for your time.

The Chairman stated thank you.

Ms. Jones stated can we keep your pictures until tomorrow so we can make copies for our files? And a quick question. You say that there are springs on the property. Where? Is it shown on this picture?

Mr. Hons stated the springs are right at the edge on the other side of those hay bales. That is what makes these wetlands.

Ms. Jones stated thank you.

The Chairman stated that is where it starts, where it is dark right down in there.

Ms. Jones stated okay. Thanks.

Mr. Hons stated that is exactly right.

The Chairman stated is there anyone that wishes to speak unfavorably for this appeal?

Mr. Pittman stated good evening, I am James Pittman, I am a lawyer here in Daphne. I represent Timbercreek. You all recall we were here a number of months ago. You all will recall that there is a disagreement between the City of Daphne and Timbercreek that arises out of the fact, that as I understand it, Daphne's front yard, well in this context, you alls front yard setback is thirty-feet and Timbercreek is more restrictive. It is fifty-feet. Even though for years Timbercreek considered and granted sometimes and did not grant sometimes variances. Recently the City of Daphne has taken the position that by virtue of there being a reference to our fifty-foot front setback on these plats that that comes within the per view of your Board. When we

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were here a few months ago one of the arguments that I made unsuccessfully was that we need to be careful because we may be opening Pandora's Box. Tonight we have seen the first thing come out of that Box. If this lot were not in Timbercreek we would not be here tonight on this because thirty-feet is clearly allowed by Daphne's regulations in an R-3 zone. This particular piece is on a street name Pine Run that has been reviewed for variance requests by the Timbercreek ARB numerous times over the years. Now there have been some similarly situated adjacent landowners that have said you know what it is going to cost us some extra money to build at fifty-feet, we are willing to do that. There have been requests for a variance to the Timbercreek Architectural Board on some of these adjacent lots with the exact same issues, the exact same considerations. Timbercreek has never allowed a variance more than forty-feet. My recollection when we were here a few months ago was that you all were graciously considerate of Timbercreek input and the fact that it has more restrictive covenants that these gentlemen who give a lot of their time on a weekly and monthly basis, I have dealt with all of these gentlemen for years and had that pleasure. They meet every week or every couple of weeks depending on how many submissions there are, but they have had opportunities to consider the same kind of submissions. On this particular property there was a submission at a fifty-foot front setback, which does not need a variance, and Timbercreek gave a letter saying you are approved at a fifty-foot front setback, and to their credit they said, but you have got to get whatever permits are required of you through Daphne, ADEM, the powers that be, but you also have to get our approval. After this a prospective purchaser, prior to Mr. Hons and his company purchasing the property, submitted a variance to the Timbercreek ARB for a forty-foot front setback and these gentlemen considered and they approved it. I would like to approach you and just ask you all to take a look at this. I apologize this is the only copy that I have. What I am asking you all to look at is the kind of street we desire. Because you all, as is typical, ask a lot of the same questions that these guys ask every time they consider one of these requests, which is the three car garage. This plan on the screen is not, that I assume is the Daphne's office typical square box, but once you see this you will see that the actual plan deviates from this. This plan contemplates a three car garage. There is not a single three car garage anywhere up or down Pine Run. All of those homes have a two car garage, so the question was posed are there any alternatives.

Mr. Pittman stated if the house was modified from a three car garage to a two car garage, which most of us have, then it would be able to come well within the forty-foot variance that has been approved by Timbercreek. The other modification that could be made is if you look at this plan you will see that the twelve-foot deep deck is right at the point at which the wetlands come closest to the purposed structure. So I would submit to you all that if a forty-foot variance, which has been allowed by Timbercreek, but because of their fear that hey if we let these people, we make a special exception to what we have always done, we are already catching flax and concern from the adjacent landowners. If you all approve thirty or thirty five-feet then unfortunately it puts them in a position where they have got to

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consider do we need to take legal action under our private restrictions irrespective of what Daphne allows to obtain an injunction that does not allow Mr. Hons to exceed that forty-foot setback. Yes sir.

Mr. Swaney stated question. From what you are saying I gather that Timbercreek says forty-foot period. Is that correct?

Mr. Pittman stated yes, sir. We are fine with forty-feet. So the other possible way that we could still make this work is if you take that deck, and Ms. Jones asked a good question, which was could you move it to the side. There is a ten-foot side setback so I do not know we may encroach on that if it was moved to the side, but I would submit to you all that you could move it east or west where the wetlands come farther from the purposed structure and you could still move the home backwards and still have the twelve-foot deck overlooking the green space to the back. You know, as I mentioned there is no other house on this entire street that has a three car garage. There is no other house and they all have the same spring issue, the same wetland issue that have not been able to make it work with forty-feet. Now just so you all know and I want to say this, I know Mr. Hons, I know his company, I am a small business owner too, and I am appreciative of his predicament and he just wants to move forward with building this house. We have told him look if there is a way for you to amend it tonight to forty-feet you do not have any opposition from us. If you can table it, and we will go back out there we will try and look at it. If you can show us that this lot has got a hardship that the one to the left and the right or those other ones on the street that have been able to live with the forty-foot variance do not have then we will reconsider our position. I appreciate his position which is time is money, and this Board does not meet for another thirty days, and if I table this for thirty days I may lose my contract or I may get sued by these people I have got a contract with. Who knows? So you know, we do not want to get cross ways with Mr. Hons and we do not want to get cross ways with you all. It is my legal opinion, and I realize that Mr. Hoffman is not here tonight, that even if you all grant the thirty-foot variance to Mr. Hons, he still has got to comply with our regulations. If he does not then we are going to be forced to take legal action. I know these gentlemen well enough to know that they do not like getting me involved or paying me any more than they have to. Mr. Pittman stated I wish they got me involved sometimes a little more than they do, but they do not and that is because they are smart business people and they are frugal and Trustees of the people in Timbercreek money.

The Chairman stated may I interrupt you and ask a quick question?

Mr. Pittman stated certainly.

The Chairman stated just a few weeks ago there were a group of concerned homeowners from Timbercreek that appeared before the Daphne City Council and they also appeared before the Baldwin County Commission and one of the things I remember that was a concern of

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theirs on that service road was the disturbance of wetlands. Do you remember that?

Mr. Pittman stated yes, sir, because I was at both meetings.

The Chairman stated okay. It was the disturbance of wetlands. With the disturbance of wetlands here would they be concerned about it? With the house disturbing the wetlands?

Mr. Pittman stated that is a very valid question. Absolutely. They are concerned with environmental issues and wetlands and all of those kinds of things. Now, it is my understanding that at forty-feet there is not any law or regulation whatsoever that Mr. Hons or his company would be violating. Everybody on this entire street has dealt with these same issues and they have been able to make it work at forty-feet like I said. Some of them are saying you know I would rather spend the extra money to be fifty-feet away from the street, and it may cost me a little bit, and I may have to put in a french drain, and I may have to do some things to fix this, I may have to remediate wetlands or what have you. So we are concerned with that and it is a very valid point that you made. I guess what I would submit to you all is that I think these people would not be inconvenienced by going from a three car garage to a two car garage or moving a twelve-foot deck twenty or thirty feet to the left or right on an un-built house that we can just as easily move a door that twenty, thirty feet so they can get rearward of their home and be overlooking that pretty green space and these springs and these wetlands.

The Chairman stated okay. Also, across the street from this lot I believe one of the houses over there is sitting a little closer to the road than some of the others. I could be wrong in that, but it is across the street. It seems to be out farther. I understand what the continuity is in that you want that look when you look down through there, that you do not have one like that and one like this. The checker board look, but it seemed to be just a little farther out.

Mr. Pittman stated Mr. Allhands has indicated that he disagrees and I know that he took the time today to go through and come up with data of every house on that street.

Mr. Pittman stated he can tell you which ones are at fifty-feet, and which ones are at forty-feet, and he can also tell you that none of them are within forty-feet.

The Chairman stated it was just eyeballing.

Mr. Pittman stated and part of this is my fault because I tell these guys the rule of the day is consistency. Stick to the rules. You make one exception and you have got to make an exception for all and if you decide to make an exception then you have got to apply that exception evenly. The exception that has been applied sparingly, as sparingly as possible and still allowing a land owner to go forward is forty-feet. So we would all ask that you consider either denying the request or allowing a forty-foot variance, which the Timbercreek ARB and the

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folks that its membership have elected and appointed to enforce its regulations think that it is most necessary for Mr. Hons to be still be able to make use of the property. Thank you.

The Chairman stated thank you. Anyone else wishes to speak?

Mr. Allhands stated hi, I am Stu Allhands. I am a member of the Timbercreek ARB. I am here to maybe answer some questions that you might have. The south side of Pine Run is sloppy and steep, probably one of the reasons why those are the lots that remain to be built within the subdivision. They are the tough lots. There are, as we speak tonight, if you can just kind of see where Pine Run rotates up to the right, just past that point you pick up solid houses going on up towards the front of the subdivision, but from that radius down there are thirty eight total residential lots. Of those thirty-eight total residential lots fourteen of them have homes that are situated at fifty-feet of setback, eleven homes are situated at forty-feet of setback, and thirteen lots remain vacant.

Mr. Swaney stated are there any lots unbuildable?

Mr. Allhands stated I could not answer that question, Glen. Sir, I do not know. I hope there is not. I mean they have been platted into the City of Daphne as buildable R-3 lots. I would certainly hope that they do not prove to be unbuildable. I will say that the builder to the east of this lot, Dewayne Smith, has got a couple of homes or construction that required some pretty expensive french drainage. To the west Clarence Petain, who is a bricking contractor, we gave him a ten-foot variance to move forward from a spring and he still had to do some french draining around the back of his house, but was able to accomplish it. Farther west from that is Mr. Agostinelli that probably ran up the red flag when he applied for a fifty-foot setback and we granted it. He plowed in there and uncovered a real hornet nest of wetlands and Ashley Campbell was involved with it. I spoke with Ashley this afternoon I said how is Mr. Agostinelli's project going and she said it came out beautifully. He had to spend a lot of money, he had to involve some mitigation, but he has repaired the wetlands that he damaged, believe me had truck loads and truck loads of gravel.

Mr. Allhands stated I do not expect Mr. Hons to have to deal with all of that. I just feel that if Mr. Agostinelli had come back to the ARB and asked for forty-feet instead of the fifty-feet that he originally applied for we would have been in favor of that. He chose to build it fifty-feet for whatever reason, but that being said I ask about the encroach of the deck at the forty-foot line. Would that involve any necessity for mitigation? I asked Ashley this afternoon would it involve any necessity for mitigations or encroachments that would not be allowed. She said no. The encroachment, if anything, would be so slight it may not and this is just may, may not require involvement of the Army Corp at that point. The thought that I have got water running out from underneath my feet from my walkout lower level can be solved with a french drain, and it is not a major engineering problem. I just think that the look of Timbercreek has always been about space, houses set back from the streets, sidewalks on both sides of the street,

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fifty-foot setbacks wherever possible, and we have done a pretty darn good job of holding that line. So I would recommend, highly recommend that you approve the forty-feet. I think it is consistent with what is going on in my neighborhood, and it would be doable for Mr. Hons he could precede with his building that I am sure he sorely wants to do, get his clients in there and get this place built out and everybody will be happy. Any questions?

Ms. Jones stated how many houses on Pine Run south side did you say that you guys have already granted variances on?

Mr. Allhands stated we have granted variances on eleven.

Ms. Jones stated of those eleven how many were based on hardship of topography, slope, wetlands or springs?

Mr. Allhands stated all on slope, and this was Adrienne, all before your time. Back in the day they came to use and we approved it and they took the approval to the inspection people and were able to pull a permit on that.

Ms. Jones stated what I was trying to establish was that their hardship was slope.

Mr. Allhands stated with the exception of Mr. Petain. Mr. Petain came to us with a request because he said I have got a wet spot in the back down by this big tree and I need to move forward off of the wet spot. At that point in time and Adrienne that was probably four years back to my recollection. Clarence came to us and it was not identified as a wetlands. It was just I have got a spring back there and I need to move forward of this thing. I need to come up to forty-feet. Can we do that? Sure. Sure because we are not going to encroach upon your thirty.

Ms. Jones stated thank you.

The Chairman stated thank you, sir.

The Chairman stated anyone else wish to speak?

Mr. Strange stated I am John Strange and I was the Chair of the POA for several years, on it for six and I have been on the ARB for a number of years as well. I think that there are three things I would like to just point out. Number one is the procedure which is followed so far has been that we have looked at this property, we have granted a forty-foot variance. A ten-foot variance to forty-feet and that we did not, if I am correct Stu, none of us knew anything about a request for thirty-feet until Stu happen to turn left instead of right when he went for his daily walk day before yesterday and encountered people beginning to dig at this lot and said what is going on was informed that there was a variance going to be heard tonight for thirty-feet. I think that we all need to be very concerned about the question of whether or not Timbercreek residents can in fact maintain their covenants and restrictions and protect those, and the way which we

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have to protect is our ARB has to review to see whether or not people are attempting to change those rules. That is a really important point. We were here some time ago and I personally raised the issue of do you want to become the ARB for Timbercreek and I do not think that anybody said that they wanted to become the ARB for Timbercreek, that they in fact wanted to be BZA for the City of Daphne, and I think that is a very important issue that is here tonight. It is underlying. It does not have anything to do with Mr. Hons. It has to do with do we protect our covenants and restrictions. Now number two is that in that protection process what we do is that we talk with the builders on a regular basis and in fact consult with them even outside of regular meeting dates. Say they run into a problem they bring it up and discuss it. Stu, Larry and I have all been involved in that on many occasions. We go back out to the place, we look at it, we talk about it, we say okay what if you try this or try that or try another thing, and that is a very important part of the whole process, but I will guarantee you that we will not volunteer our time on that and try to help to work with people if somebody else is going to do it for us. If you all want to do it for us then that is fine. We do not get paid. You all do not get paid. We are equal in that regard, but it does take a lot of time. I think that probably you would rather have us do that sort of daily working with developers than take it on yourself, but it is something that needs to be done in order to efficiently carry out that process. Number three the question was asked whether or not we are supportive of protecting the wetlands. Absolutely and I will tell you what, it there is one issue that will really get people involved as you have already seen, it would be are we destroying our wetlands, and that is why we spend a lot of time talking to people saying okay what are the options, do you have to have x, y, or z, can you move it one way or another in order to protect those particular wetlands. Now we do not go out when somebody buys a lot and say hey you better check this, this. We do not go out when they submit the original plans, but we do include in our instructions that we are approving it subject to your ability to comply with ADEM regulations and any other regulations that result from wetlands and other activities, and if they do not then you have to come back and see us as well.

Mr. Strange stated I think that is a very important part of this whole process. I want to just ask Mr. Robison a question because I did not understand exactly just what you were getting at. You said a minute ago are you just eyeballing the houses from one to the other.

The Chairman stated no, no. When I went over there and walked that piece of property I drove down the street and went down almost as far as you can go down, looked around and turned around and came back. I just happen to see a house that looked as if it might be a little farther out than the others and that is what I said about the eyeballing of it.

Mr. Strange stated oh, you were eyeballing it. I thought you were asking if we eyeballed them.

The Chairman stated no. I said that is just me eyeballing to Mr. Pittman.

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Mr. Strange stated you know the rules are that you cannot go any farther than X. Some people choose not to go that far and we do not say you have to go exactly fifty-feet or if you go sixty that would make a little jog, but I will guarantee you nobody that we know has violated our restrictive covenants nor have they violated any variances that we have given. You can get a little difference in the positioning of it based on people not coming up as close to the street as they are allowed to even with our covenants and restrictions. There is no way you can enforce you have to go to fifty in order to keep it exactly alike.

The Chairman stated I have a hypothetical and attorney's deal in hypothetical in a court of law quite often. Do you know of any case where it would be an unnecessary hardship to where there is no way possible that it could be the forty-foot setback that you would ever agree to a thirty-five or a thirty seven-foot setback? Or would you keep the person from being able to build after they bought the property?

Mr. Strange stated I cannot make a decision of that sort until we have got all of the facts in front of us and then you look at the facts and ultimately you have to make a decision. There have been some cases where people have said it just will not work we need to put two lots together in order to make it work. So we have allowed that to be the case and that is a solution or maybe we may have to put a different house on there.

Mr. Pittman stated that is a good question and tonight I told Mr. Hons that as appreciative as I am and I know that this is time sensitive for him. If he wanted to table his application tonight, we would get back out there tomorrow, this weekend, I will make time, whenever need be to let us go back out there and let us pull a tape and do all of those things.

Mr. Pittman stated and if he can show us that he is at thirty-five, thirty-six, thirty-seven or thirty-eight and ADEM or the Corp tells us that you cannot in any way shape or form encroach on this, and I do not think they are going to tell us that, then we will reconsider absolutely. I mean these folks they paid for their property and their lots just like everybody else so the last thing they want to do is make somebody that has invested that kind of time and money, is have an unbuildable lot. So every property is fact specific. They have looked at this lot. They believe that this can be done at forty-feet without any hardship, but if Mr. Hons can show that this lot is unlike any other lot in Timbercreek or any of the other lots on Pine Run and as their legal counsel I would tell them that you need to look at it and if he can show you that this lot is fact specific and different than the others then you all should consider doing that and the reason that I would tell them that and that they would do it anyway is because if they do not and they make it unbuildable then they potentially open themselves up to somebody saying hey your private restrictions have now just worked an inverse condemnation of taking on our property. So Timbercreek you have got to pay me for it. Well they

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do not want to do that and they want somebody to be able to use their lot. So you know are there scenarios that that could be possible. Of course, fortunately it is not this one and it is not any other in Timbercreek so far.

The Chairman stated thank you. Mr. Hons do you have anything that you would like to add to that?

Mr. Hons stated I guess the biggest thing, I have been listening to the guys, and I have just been put into a bad situation and I am trying to work it out for everybody and make everybody happy. Hopefully it is not going to be impossible. The one thing that I would like to bring up is the people that he is talking about that have built adjacent to the property that have gotten variances, the people that I know of that is in the curb, and also Mr. Agostinelli, I can tell you that those people did not know what they were getting into when they broke ground. Mr. Agostinelli did not and the two that have actually, Tom Hutchinson over at EcoSolutions said that there were violations of wetlands over there because they have centipede sod out there growing in the wetlands, so I can guarantee you they did not know what they were getting themselves into. The one thing I will bring up is I am dealing with a slope, I am dealing with a wetlands, and I am dealing with a spring. So to me if you will just look at the comparison of those folks up there that has gotten forty I am dealing with three different hardships. I feel like you know we talked about the porch being moved to the right or the left, well ask yourself would you like to walk out on your porch from your living room or your kitchen. I mean it is more suitable, in my opinion, I have built a lot of spec homes over the years and I have never walked off just the kitchen to a porch. It has been straight out of the living room. The kitchen might have a porch, but it has been out of the living room because that is where everybody gathers. I think the value is what we have really got to pay attention to of the environment.

Mr. Hons stated and we have got to look at the value of these people homes also. We cannot limit them to have value in their home.

The Chairman stated I have a question. I believe Mr. Allhands talked about the garage and if I am not mistaken a couple of months ago I believe it was Mr. Allhands that said we would like for everyone in Timbercreek to have a three car garage, some do not, but we would like for everyone to have a three car garage. I think that is the way I heard it, I could have been wrong.

Mr. Allhands stated may I respond to that.

The Chairman stated yes, sir. I thought that is what I heard, but I could be wrong.

Mr. Allhands stated we were talking about our approving or supporting a home that was being constructed on D'Olive Ridge and Pulpwood, a corner lot. The guy wanted a three car garage. Along D'Olive Ridge a three car garages are more prevalent than they are in this particular phase, that does not mean, please do not crucify me if we go out there

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and find a three car garage, but to the best of my recollection and I walk the neighborhood religiously with my dog, I do not believe you will find any three car garages on the south side of Pine Run, maybe even nothing on the north side of Pine Run through that area. There are some. Yeah it is a desirable thing if you have got room to do it I just think this situation here may not be that place. It does not make it any less than the surrounding houses because of it.

The Chairman stated okay. Mr. Hons would a two car garage be acceptable to your buyers?

Mr. Hons stated one thing I would like to just bring up, believe me I have used every scenario with these homeowners. They wrote a contract for three, I am sure that these guys can put themselves in the position when they got their home built or when they bought their home they wanted it a certain way as their contract said. I have already tried to run that scenario by them and they pretty much refused in the census of we signed a contract with you. The one thing I would like to bring up is I think everybody can admit these people have two kids and they are going to buy a car for these kids because their two boys are sixteen and seventeen years old. Their comment to me was since they only have twenty three-feet on that right side of a turning radius it would be better if they parked their car, it would look better to the neighborhood, I think, if everybody can admit does it look better if a car is parked outside a garage or on the side of a street or is it better if it is pulled into the garage out of the way. I think that brings value to a neighborhood because I have seen neighborhoods that only have a real small two car garage and guess where the two people park. They park right out there in the driveway or they park in front of the street. These people want to be able to put that car that they are buying for their two boys and pull it into where it is not in the way, and it is out of plain view.

Mr. Hons stated I think that adds value to the neighborhood. I am over a couple of POA's and people parking on the street or in the driveway just does not look as good. There is probably something in the covenant restrictions that want people to park in the garage. I have not completely found that, but in most cases they want you to park in the garage.

The Chairman stated so there is nothing that you can do to move it back to forty-feet or to somewhere near forty-feet or get with Mr. Pittman, these gentlemen, and whomever else on the ARB to work out a solution to be in compliance?

Mr. Hons stated I would love to. I would love to get with them. They are telling me, in their agreeing, that if we all went out there and it could be within that setback without touching the wetlands that they would agree that that would be find. I am hearing two different things. I am hearing something that Mr. Stu is actually saying and also what EcoSolutions is telling me. I mean Ashley has never told me Jason you are okay. If that was the case I would taken forty and ran with it already. I mean what I have been told is do not impact the wetlands and I wish that they were here to represent us tonight so we

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all could ask them questions, but everybody has been telling me do not impact those wetlands that that is the main thing that we are trying to avoid. I am in agreement if we can go out there and push it to the limit and it is at thirty-seven I am good with that, but I think that if everybody walks out there and sees actually where the spring is, I mean we have already done it. If I could be at forty right now, these people would love to be at fifty-five. They would love for their house to be way off the road. They are going to have more road noise the closer they are in. We have been out there, I mean we have had a full month that it has been sitting out there wide open. Time is of the essence. I am all about going out there and meeting, showing everybody and prove my point. I have already waited three months for these folks and I am on one side of these guys trying to make them happy, and I am on the other side trying to make the ARB happy.

The Chairman stated have you and the ARB even been out there together? Have you all looked at the property together?

Mr. Hons stated no, sir.

Mr. Allhands stated no, sir. I do not want to put words in their mouth, I am just one guy but we have got an ARB Committee and we would like to review that. The position of the ARB going in tonight is that we believe forty will work. Talking with Ashley Campbell this afternoon, solidifies in my mind at least that forty does not create a significant encroachment. So slight with the forty that just from the porch that it would be easy to engineer around and would probably not require involvement of the Corp of Engineers. So we are talking about degrees of encroachment. If I had my way I would rather that we do not encroach at all if we can avoid it and in this case preserve the look of the neighborhood which is forty minimum on that side of the street. Mr. Allhands stated hold that line for the betterment of the entire neighborhood and the trade off is we encroach three or four feet into a wetlands with a twelve foot wide porch that we can create a french drain underneath to relieve the spring, I do not see that that is a major concern. I really do not.

The Chairman stated thank you. Mr. Mayhand.

Mr. Mayhand stated I just want to make a statement. Correct me if I am wrong. Our setback is thirty-feet. Now as I see it we should not even be discussing this because you are not bothering our setbacks for an R-3 zone.

Mr. Pittman stated we agree. You were not here the night we discussed that, but we agree. We do not think that this is you all fight to fight. This is an issue for the ARB.

Ms. Jones stated you were not here that night. We need to bring you up to speed.

Mr. Mayhand stated okay, bring me up to speed then.

**CITY OF DAPHNE  
BOARD OF ZONING ADJUSTMENT MINUTES  
SPECIAL CALLED MEETING OF MAY 6, 2010 - 6:00 P.M. DRAFT  
COUNCIL CHAMBERS, CITY HALL**

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Ms. Jones stated it is on the recorded plat for Timbercreek, several phases. The setbacks are listed on the plat.

Mr. Swaney stated let me add to that comment also. We feel that as the BZA we are the only Board that can grant a variance of the setback. Is that correct?

Ms. Jones stated that is correct. (Tape stopped)

The Chairman stated we have discussed this at great lengths tonight. If need be we can carry this appeal and revisit it at a later date with a special call meeting in order to give Mr. Hons and the ARB and all other parties involved a few days to do an onsite inspection to come up with an agreeable solution before we vote. We as a Board can do that. Now I will say to Mr. Hons the ball is in your court. What would you like to do?

Mr. Hons stated that is fine with me.

The Chairman stated we will set another meeting date to vote on this appeal and give you an opportunity to come in agreement with the ARB.

Mr. Hons stated if that is the case then that is what I would like to do.

The Chairman stated Ms. Jones is that correct?

Ms. Jones stated I think so, unless you want to go ahead and set a date for that meeting on tonight. If you want to go ahead and establish a date and it will kind of push them to get this done.

(New tape started)

The Chairman stated can you all get together on this within a week?

Mr. Pittman stated we were just talking about that. What I was purposing to these gentlemen is that maybe we could possibly meet out there onsite tomorrow. One of the things Mr. Allhands suggested is that he would like Ms. Campbell from the City to be there and also if Ms. Jones would like to be there and any of you as well. If that works with Mr. Hons schedule we will try to meet out there tomorrow when Ms. Campbell might be available. The ARB can convene on Tuesday and we then we can advise you on Mr. Hons position however you would like.

Mr. Allhands stated if I am able to pull enough ARB members from the neighborhood to meet onsite we may be able to get a quorum together tomorrow afternoon to make a decision at that point in time at least, but it is important to us that Ashley Campbell be there. Because we need her input on just what constitutes significant encroachment that is the question that I have got in my mind. Just what is significant encroachment?

Mr. Pittman stated we will make it happen.

CITY OF DAPHNE  
BOARD OF ZONING ADJUSTMENT MINUTES  
SPECIAL CALLED MEETING OF MAY 6, 2010 - 6:00 P.M. DRAFT  
COUNCIL CHAMBERS, CITY HALL

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The Chairman stated will we know something so we can have our special call meeting next Thursday?

Mr. Pittman stated yes, sir.

The Chairman stated Ms. Jones do you have anything on your agenda for next Thursday at 6:00 p.m.?

Ms. Jones stated does it have to be 6:00 p.m.?

The Chairman stated well it can be later.

Ms. Jones stated can it be earlier?

The Chairman stated or earlier? Ms. Hargiss? Mr. Swaney?

Mr. Swaney stated I cannot be here. I have a conflict on that day.

The Chairman stated it cannot be the fifteenth or sixteenth I have prior engagements.

Ms. Jones stated what about the seventeenth?

The Chairman stated we have a conflict with that.

Ms. Jones stated the twentieth. Okay. So what are you going to do tonight? Table it.

The Chairman stated we will not use that word. We will recess until the twentieth and adjourn tonight is the best way to do it.

Ms. Jones stated 6:00 p.m.

The Chairman stated we will recess until May 20<sup>th</sup> at 6:00 p.m.

Mr. Swaney stated we probably should be that in the form of a motion.

The Chairman stated is there anyone here in opposition to this appeal? If not, the Chair will entertain a motion.

**A Motion was made by Mr. Mayhand and Seconded by Ms. Hargiss to reconvene on May 20<sup>th</sup> at 6:00 p.m. to render a decision on this appeal.**

**The Motion carried unanimously.**

**Adjournment:**

**A Motion was made by Mr. Mayhand and Seconded by Mr. Swaney to adjourn.**

**The Motion carried unanimously.**

There being no further business the meeting was adjourned at 8:22 p.m.

Respectfully submitted by:

\_\_\_\_\_  
Pat Houston, Recording Secretary

APPROVED: July 1, 2010

\_\_\_\_\_  
Willie Robison, Chairman

/ph

**CITY OF DAPHNE  
BOARD OF ZONING ADJUSTMENT MINUTES  
SPECIAL CALL MEETING OF MAY 17, 2010 - 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 special called meeting of the Board of Zoning Adjustment was called to order at 6:00 p.m. Let us have roll call.

**Call of Roll:**

Members Present:

Jeri Hargiss, Secretary  
Glen Swaney  
Willie Robison, Chairman  
Billy Mayhand, Vice Chairman

Members Absent:

Barry Taylor  
Frank Lamb  
Jim Moss

Staff Present:

Adrienne D. Jones, Director of Community Development  
Pat Houston, Recording Secretary

Staff Absent:

Tony Hoffman, BZA Attorney

The Chairman stated next item on the agenda since we have no new business is Appeal #2010-06 Homes by Hons.

**New Business:**

N/A

**Old Business:**

**Appeal #2010-06 Homes by Hons**

The Chairman stated tonight we are here to render a decision on Appeal #2010-06 Homes by Hons, a variance request to allow a purposed new home to encroach the front setback line by twenty-feet. The property is located at Lot 67, in the Timbercreek Subdivision, Phase 7, which is an R-3, High Density Single Family Residential Zone. I believe Mr. Hons, and Timbercreek ARB and the HOA met and came to an agreement on this matter. We have a letter their attorney, Mr. Pittman that they he would go with the ten-foot setback encroachment. Is that correct? A forty-foot front setback line.

Mr. Hons stated a ten-foot encroachment on the fifty-foot front setback line leaving a forty-foot front setback.

Mr. Swaney stated you are in agreement with that?

**CITY OF DAPHNE  
BOARD OF ZONING ADJUSTMENT MINUTES  
SPECIAL CALL MEETING OF MAY 17, 2010 - 6:00 P.M.  
COUNCIL CHAMBERS, CITY HALL**

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Mr. Hons stated yes, sir.

The Chairman stated we have the letter from Mr. Pittman, their attorney, to Ms. Jones stating that they confirm with Mr. Hons and that they would let this letter serve as notice that Timbercreek has no further objections of Mr Hons amended application seeking a ten-foot variance to the fifty-foot front yard setback as shown on the Timbercreek plat.

The Chair will entertain a motion and it must be made in the affirmative.

**A Motion was made by Mr. Swaney and Seconded by Mr. Mayhand to amend Appeal #2010-06 to approve a ten-foot encroach to the fifty-foot front yard setback in lieu of the original twenty-foot requested encroachment.**

**The Motion carried unanimously.**

The Chairman stated the appeal is approved as amended. Mr. Hons you may pick up your paperwork in the Planning Department in the morning around 9:00 a.m. You do know where that is?

Mr. Hons stated yes, sir.

The Chairman stated if there is no other business the Chair will entertain a motion to adjourn.

**Adjournment:**

**A Motion was made by Mr. Mayhand and Seconded by Ms. Hargiss to adjourn.**

**The Motion carried unanimously.**

There being no further business the meeting was adjourned at 6:05 p.m.

**Respectfully submitted by:**

CITY OF DAPHNE  
BOARD OF ZONING ADJUSTMENT MINUTES  
REGULAR MEETING OF MAY 17, 2010 - 6:00 P.M.  
COUNCIL CHAMBERS, CITY HALL

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\_\_\_\_\_  
Pat Houston, Recording Secretary

**APPROVED:** July 1, 2010

\_\_\_\_\_  
Willie Robison, Chairman

/ph

June 18, 2010

Dear Daphne Public Library and City of Daphne,

I'm delighted to be working with the Daphne Public Library on a sculpture project that compliments the addition and expansion of the Library. I wanted to follow up with a letter of confirmation – so that I may officially begin production of the sculpture.

To confirm the production and procedure of the assigned work:

- 1) The sculpture will be made from aluminum, steel and stone at no cost to the City of Daphne.
- 2) The name of the sculpture will be "Caged Content".
- 3) The artist will be responsible for delivering the work to the Daphne Library at no cost to the city of Daphne.
- 4) The City of Daphne, on behalf of the Daphne Public Library, will select the site for the permanent installation of the sculpture (on the grounds of the Daphne Public Library).
- 5) The City Council of Daphne will be responsible for providing funding (maximum amount \$500) to pour a concrete pad prior to the installation date and will have 4 workman on the facility grounds on the installation date – to help with installation.
- 6) The Daphne City Maintenance Department will be responsible for upkeep and maintenance of the sculpture (keeping area mown and well maintained).
- 7) The City of Daphne shall become owner of the sculpture and will be responsible for insurance and maintenance upon delivery, installation, and acceptance of the same.
- 8) The sculpture, which is valued by the artist at \$ 75,000, is intended to be a donation to the City, at no cost to the City, and the City accepts same only with the understanding that the same is to be a donation.

Typically a sculpture of this size requires a 4 month time for construction – so we should begin looking at dates in late Fall - 2010 for an installation date.

Again, I'm really looking forward to working with the community of Daphne on this project. I'll be happy to send photos of the sculpture, as the work progresses. If you have questions, please do not hesitate to give me a call. My phone number is 205.516.9976.

All my best,

Deedee

Deedee Morrison  
Sculptor  
2209 Sterlingwood Drive  
Birmingham, Al 35243

Accepted this day\_\_\_\_ of July, 2010 by City of Daphne and Daphne Public Library.

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Fred Small, Mayor

ATTEST:

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David L. Cohen City Clerk, MMC



THE CITY OF DAPHNE  
PLANNING COMMISSION MINUTES  
REGULAR MEETING OF MAY 27, 2010  
COUNCIL CHAMBERS, CITY HALL - 6:00 P.M.

DRAFT

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**CALL TO ORDER:**

The number of members present constitutes a quorum and the regular meeting of the City of Daphne Planning Commission was called to order at 6:00 p.m.

**CALL OF ROLL:**

**Members Present:**

Joe Lemoine  
Frank Martin, Secretary  
Victoria Phelps  
Ed Kirby, Chairman  
Larry Chason  
Cathy Barnette, Councilwoman

**Members Absent:**

Fred Small, Mayor  
Chief James "Bo" White

**Staff Present:**

Adrienne D. Jones, Director of Community Development  
Jan Dickson, Planning Coordinator  
Nancy Anderson, GIS Manager  
Missty Gray, Attorney  
\*Richard Merchant, Building Official

\* Arrived late

**Staff Absent:**

Jay Ross, Attorney  
Ashley Campbell, Environmental Programs Manager  
Erick Bussey, Associate Attorney

**Others Present:**

Danny Lyndall, Operations Manager/Utilities Board of the City of Daphne

**Others Absent:**

THE CITY OF DAPHNE  
PLANNING COMMISSION MINUTES  
REGULAR MEETING OF MAY 27, 2010  
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Rob McElroy, General Manager/Utilities Board of the City of Daphne

The first order of business is the call to order.

Chairman: Please let the record reflect Mayor Small and Chief White are not present.

The next order of business is approval of the minutes.

**APPROVAL OF MINUTES:**

The minutes of the April 22, 2010 regular meeting were considered for approval.

Chairman: A copy of the minutes was furnished to us previously. Do any of the Commissioners have any questions or comments? If there are no additions, deletions, or corrections at this time, the Chair will entertain a motion.

A **Motion** was made by Ms. Barnette and **Seconded** by Mr. Lemoine **to approve the minutes of the April 22, 2010 regular meeting, as submitted. The Motion carried. Mr. Kirby abstained due to his absence at the meeting.**

The next order of business is final plat review for the Italian Settlement Business Park, Phase One.

**NEW BUSINESS:**

**FINAL:**

**File SDF10-01:**

**Subdivision: Italian Settlement Business Park, Phase One**

**Zoning(s): B-1, Local Business**

Location: Southeast of the intersection of County Road 64 and Friendship Road

Area: 10.38 Acres ±, (10) lots

Owner: AJD Family Limited Partnership - Patsy Defillipi

Engineer: Hutchinson, Moore & Rauch - Christopher Baker

An introductory presentation was given by Mr. Christopher Baker, representing Hutchinson, Moore & Rauch, requesting preliminary plat

THE CITY OF DAPHNE

~~PLANNING COMMISSION MINUTES~~

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REGULAR MEETING OF MAY 27, 2010

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COUNCIL CHAMBERS, CITY HALL - 6:00 P.M.

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review of ten point three eight acre subdivision consisting of ten lots located southeast of the intersection of County Road 64 and Friendship Road. At the work session last week we discussed an expanded letter from the Belforest Water System, and we also having a note on the plat about directing the storm water drainage to Friendship Road. We have the letter, and the note has been added. With that, I will be happy to answer any questions you may have.

Chairman: Do any of the Commissioners have any questions or comments?

Ms. Barnette: I missed the site preview meeting, but I just have one more question. You discussed potentially adding sidewalks, and were there any decisions made on that?

Mr. Baker: We did discuss that at the site preview meeting and after further discussion with the owner, they are not agreeable to installing sidewalks out there. Fundamentally, that issue should have been brought up in during the approval of the preliminary plat. It is a little late in the game.

Ms. Barnette: That is a fair argument.

Chairman: Did we get the letter from Belforest Water?

Ms. Barnette: It still does not say what we want it to say.

Ms. Jones: But it is in the format that we requested though. Yes, we do have a letter from Belforest Water.

Chairman: But does it say they have sufficient fire flow? They do not certify to that.

Ms. Jones: Their letter does not say that.

Ms. Barnette: Belforest Water does not guarantee water pressure for fire protection. The cost associated must be incurred by the owner of the subdivision.

Mr. Baker: As the result of the review during the preliminary plat, we installed three fire hydrants out there in order to provide fire protection according to the City of Daphne fire code. We have complied

THE CITY OF DAPHNE

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with your regulations because we cannot make Belforest Water put that in their letter.

Chairman: I think in the future we are going to have to discuss more about what they are certifying they can do, but maybe not on this one since you have installed the fire hydrants. Did you add a main too?

Mr. Baker: There was an existing main there.

Chairman: So you just add the fire hydrants because there is only one farther down on Friendship Road.

Mr. Baker: There was one further down Friendship Road located on the West side.

Ms. Phelps: So they have been tested and the pressure is adequate?

Chairman: Yes. At this time it is, but in the future they cannot guarantee it will be.

Chairman: Do any of the Commissioners have any further questions or comments? If there is no objection, the Chair will entertain a motion.

A **Motion** was made by Ms. Barnette and **Seconded** by Mr. Lemoine **to approve the final plat for Italian Settlement Business Park, Phase One. The Motion carried unanimously.**

The next order of business is preliminary/final plat review for Orfner Subdivision.

**PRELIMINARY/FINAL:**

**File SDPF10-05:**

**Subdivision: Orfner**

**Zoning(s): Unzoned, Baldwin County District 7**

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Location: Southwest of U.S. Highway 90  
Area: 219.95 Acres ±, (2) lots  
Owner: Crossroads, L.L.C.- Clarence Burke  
Engineer: Engineering Development Services-David Diehl

An introductory presentation was given by Mr. David Diehl, representing Engineering Development Services, requesting preliminary/final plat review of a two hundred nineteen point nine five acre subdivision consisting of two lots located on southwest of U. S. Highway 90, and Plantation Hills Subdivision is located to the west of this. The forty-acre parcel located in the southwest corner is not a part of this subdivision. We want to cut out a five-acre parcel to sell to a contractor. I will be happy to answer any questions you may have.

Chairman: Do any of the Commissioners have any questions or comments?

Mr. Chason: Have you jumped all of the hurdles with Baldwin County? Have they reviewed this?

Mr. Diehl: They had a few comments to put a note on the plat and provide a copy of the title policy. This is some of their standard things they require. They have already granted a variance to us for the drive way to the parcel.

Mr. Chason: Mr. Chairman, at the work session we discussed this property being at the extreme boundary of our extraterritorial planning jurisdiction. I brought up at the work session that we should not have anything to do with something this far out, but we have to. Given that the County has reviewed it, my attitude is it is more their turf than ours.

Ms. Phelps: I concur. Do you have any idea who that contractor will be?

Mr. Diehl: It is Asphalt Services. He just builds road ways.

Mr. Chason: Mr. Chairman, I went out there to look at the property. It is adjacent to a sewer plant with a dirt pit on the other side.

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

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A **Motion** was made by Ms. Barnette and **Seconded** by Mr. Chason **to approve the preliminary/final plat for Orfner Subdivision. The Motion carried unanimously.**

The next order of business is preliminary plat review for Brookhaven Subdivision, Phases Two & Three.

**PRELIMINARY:**

**File SDP10-02:**

**Subdivision:** Brookhaven, Phase Two & Three

**Zoning(s):** *R-3, High Density Single Family Residential*

**Location:** Northwest of the intersection of Whispering Pines Road and County Road 13

**Area:** 30.9 Acres +, (83) lots

**Owner:** Feliciter Investment Group - Nathan Cox

**Engineer:** Rester & Coleman Engineers - Joel Coleman

An introductory presentation was given by Mr. Joel Coleman, representing Rester & Coleman Engineers, requesting preliminary plat review of a thirty-point nine-acre subdivision consisting of eighty-three lots located northwest of the intersection of Whispering Pines Road and County Road 13. The first unit is in place along the property to the south. We are proposing to construct this development in two phases consistent with the master plan and existing storm water drainage. I will be happy to answer any questions you may have.

Chairman: Is this the same master plan we had before and nothing has changed?

Mr. Coleman: Yes sir.

Chairman: Do any of the Commissioners have any questions or comments?

Ms. Phelps: What is the total number of R-3 parcels you have when you have completed the development? You do not know off the top of your head.

Mr. Coleman: I do not know off the top of my head.

Ms. Phelps: Do you know the total lots, Adrienne?

Mr. Chason: There are ninety-nine lots in the whole development.

THE CITY OF DAPHNE  
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COUNCIL CHAMBERS, CITY HALL - 6:00 P.M.

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Chairman: There are one hundred and thirty-five in the entire development.

Mr. Chason: Oh, I am sorry.

Mr. Coleman: I think the one hundred and thirty-five is right.

Ms. Barnette: I have a question. Are we applying any of the new changes?

Ms. Jones: No, only after the new regulations are approved.

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

**A Motion was made by Mr. Chason and *Seconded* by Ms. Barnette to approve the preliminary plat for Brookhaven Subdivision, Phases Two & Three. The Motion carried unanimously.**

Ms. Jones: Would you mind taking the Daphne Utilities Board first so the Zeolia Dale Family projects will be together?

Chairman: No. That will be fine. We will rearrange our agenda a little bit to do the Daphne Utilities Board first.

The next order of business is annexation review for the Luther and Sharon Milstead.

**ANNEXATION REVIEW:**

An introductory presentation was given by Mr. Danny Lyndall, the Operations Manager of the Utilities Board of the City of Daphne. On behalf of the owners, we are requesting annexation of a parcel into the City of Daphne consisting of nine point five acres with B-2, General Business, zoning. It is located on Well Road between Pollard Road and the Public Works facility. It is located at the extreme southwest corner of Trione Park.

Mr. Lyndall: We are under contract with the owners of the property to purchase it contingent upon this annexation with the zoning of B-2. It is our intention is to construct a service facility which would consist of a warehouse and lay down yard for our field crews. You have

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a drawing of what we would like to build on the site although it is very preliminary. What we would like to is to construct a V-shaped building in order to shield the lay down yard. As it is drawn now, the right side is a warehouse, and the left side is a covered storage area, and there will be parking located behind it. At Ms. Barnette's request, at the last meeting we will be looking at locating the facility at the extreme west side of the property with a large transition buffer area to allow the parking at our building to be used as overflow parking on the weekend for soccer games.

Mr. Lyndall: With that, I will answer any questions you may have.

Chairman: Do any of the Commissioners have any questions or comments?

Ms. Barnette: Mr. Chairman, I would like to thank the Board for considering the change so there is a buffer or transition from the Trione Park to this site, as well as, another parking area and access point. Another thing that I think we need to look at, and I am not opposed to the annexation is having a B-2 use in this area. I do not want to encourage access from Wilson Avenue. I do not want to see trucks traveling Wilson Avenue because it was not that wide of a road. I would like to see you restrict access to this property from the north and south direction on Pollard Road. Wilson Road is not really suitable for B-2 traffic. The only other thing is the B-2 use. Although we have B-2 in this area, but as long as we understand we are opening that area up for development without a readily accessible corridor. We just need to be condescent of the residential area on Wilson Avenue. It is very deep rooted residential, and I do not want to see it encroached on.

Mr. Lyndall: I agree with Ms. Barnette. Pollard Road is much better road for us to travel. Wilson Avenue is not suited for travel. We can restrict our employees from using that road, except when necessary. We can make that one of our protocol to restrict it from travel and to use Pollard Road only.

Ms. Barnette: I do not want you to restrict it, persay. I just want us to be aware that we are opening up a corridor which is very residential. We need to be aware of that as we make changes to our Land Use. We just need to make sure as we grew that we keep those that are here in mind.

Chairman: What we are doing here is sending a recommendation to City Council for annexation. Just be aware of that. Do any of the Commissioners have any further questions or comments? If there is no objection, the Chair will entertain a motion.

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A **Motion** was made by Ms. Barnette and **Seconded** by Mr. Lemoine *for the affirmative recommendation by the Planning Commission to the City Council of Daphne for the annexation review for Luther & Sharon Milstead located on Wilson Avenue with B-2, General Business, zoning. The Motion carried unanimously.*

The next order of business is annexation review for the Zeolia Dale Family.

**PETITIONS:**

**ANNEXATION REVIEW:**

Presentation to be given by Ms. Velma Dale Jackson, authorized agent for Ms. Velma Dale Jackson, Mr. James Dale, Mr. Nahman Dale, Mr. Edward Dale, Jr., Ms. Anna Brewer, Mr. William MsConnico, and Mr. Marion Dale, Jr., as ordered by Judge Charles Partin, Case No. CV-2004-000013.00 filed in the Circuit Court of Baldwin County, Alabama. Petitioner requests annexation of two parcels into the City of Daphne identified in the Baldwin County Revenue Commission records as Parcel Numbers 43-09-29-2-000-004.000 and 43-09-29-2-000-002.000 consisting of a total of nine point seven six acres, more or less, located east of U. S. Highway 98, north of Dale Road with B-2, General Business, zoning. The subject property is currently zoned RTF-4, Residential Single Family District, in Baldwin County District 16. Said owner of the subject property is the Zeolia Dale Family.

An introductory presentation was given by Ms. Velma Dale Jackson representing the Zeolia Dale Family. I am here concerning a request for the rezoning and annexation of the property located in Montrose, Alabama at the intersection of U. S. Highway 98 and Dale Road. The small portion of the property or one-third of the property is located outside of the city limits, and approximately two-thirds is located inside the city limits of Daphne. We are requesting annexation of the portion which is one third of the property in order for all of the property to be located inside the city limits of Daphne.

Ms. Jackson: We are requesting the annexation of the one-third portion of the property with B-2 zoning, and additional ask that the two-thirds which are already located in the city limits be rezoned to B-2 also. This would make the property uniformly a B-2 zoning.

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Chairman: Do any of the Commissioners have any questions or comments? I will start off. I noticed there is one piece of the property that must be a lot that was taken out of it or something.

Ms. Jackson: We sold one of the lots.

Mr. Chason: I know what you are saying by looking at the map.

Chairman: I apologize because I was not at the work session also.

Ms. Barnette: We are asking for all of the parcels to be rezoned to B-2 and annexed into the City of Daphne. Is that correct?

Ms. Jackson: One-third of the property is not in the city limits.

Ms. Barnette: Is that the back one-third?

Ms. Jackson: The lower portion is what we would like to annex into the city.

Chairman: The other parcel is already in the city.

Ms. Phelps: It is in the City of Daphne and has R-2 zoning.

Chairman: Just to the north of the property isn't it zoned B-2? Where Gold Mine Pawn Shop is located. So what we would need first is a recommendation to the City Council for annexation.

Ms. Phelps: Can you explain a little bit as to why you want to come in as B-2?

Ms. Jackson: In order to sell the property and to enhance the value of it.

Chairman: Do any of the Commissioners have any questions or comments?

Ms. Barnette: On the eastern most portion of the property, I am concerned about having B-2 there. Those residents that live there are primarily families. Do we know how they feel? Obviously, we will find out when we do public notice. Annexation does not require public participation so the property owners have not been officially

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notified. We do not know how they feel about this because the sign is not up yet.

Ms. Jones: The sign is supposed to be up. In the ad we ran in the newspaper, I also mentioned the annexation with the rezoning.

Ms. Barnette: I apologize. I am just concerned whether or not that should be a B-2 lot.

Chairman: I think what we need to do on that portion is at such time it comes for site plan review we will need to looking at buffering. It is kind of out of the way piece back there, but it does have access on Dale Road.

Ms. Jones: If you look at the Big Sandy piece of property, you restricted one hundred or one hundred and fifty feet border next to the residential zoning so the same thing could be done here.

Chairman: The buffer could be done at the time of the review of the site plan.

Ms. Phelps: That does not give me any level of comfort because I feel like we are creeping too far to the east with a B-2 zoning of an R, residential parcel. If we can, we need to make that recommendation regarding the site plan as we go forward.

Chairman: I think that is when you are going to have your ability to do the buffer.

Ms. Barnette: I am comfortable with that.

Chairman: Normally, we do not do public participation for annexation. Are you a family member?

Ms. Valrie: No. I am a resident of Dale Road. I live across the road from the larger portion of that land. I strongly object to the rezoning of that property to B-2 because my family, the ones that are here, and I live right across from that property. It has been residentially for the past sixty-five years that I have been in Montrose.

Chairman: Thank you. Do any of the Commissioners have any questions or comments?

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Ms. Barnette: I would like to reiterate that this rezoning will come with some buffering requirements so as we move forward we need to make clear those intentions. Unfortunately, it will be two pieces of property, but we have to make sure that we do not encroach too far into the residential property.

Chairman: With that being said, do any of the Commissioners have any questions or comments?

Ms. Jones: I would suggest that you have that in your motion as well. If you want to restrict access from Dale Road also go ahead and mention that and along the rear.

Chairman: Don't we run into a question there with contract zoning?

Ms. Jones: You can say it, and it will go into the minutes for the City Council.

Chairman: We can say it, but it cannot be part of the motion. We can say when this is developed there will be a strong look at the buffering between the business and residential property.

Ms. Phelps: Would you be willing to bring it into the city in two parts with the portion along U. S. Highway 98 as B-2? It is one parcel with the zoning line running through it now.

Ms. Phelps: There is zoning on the parcel which was previously zoned which would be better for the residents.

Chairman: With that being that if there is no objection, the Chair will entertain a motion.

**A Motion was made by Ms. Barnette and Seconded by Mr. Lemoine for the affirmative recommendation by the Planning Commission to the City Council of Daphne for the annexation review for the Zeolia Dale Family located east of U. S. Highway 98 north of Dale Road with B-2, General Business, zoning. The Motion carried unanimously.**

Ms. Phelps: May I ask Ms. Barnette to amend her motion to include the buffering requirements?

Ms. Barnette: I would rather not do that.

Ms. Jones: You still have to do the zoning amendment.

Chairman: We just did that.

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Ms. Jones: You just did the annexation. You have to do the rezoning of the northern portion now.

Chairman: Ok.

Ms. Jones: That will require a public hearing.

Chairman: I show this as one.

Ms. Jones: It is in on page three.

Chairman: Then I am missing a whole page or something. I have lost a page of the agenda I guess.

The next order of business is zoning amendment review for the Zeolia Dale Family.

**ZONING AMENDMENT:**

***Present Zoning: R-2, Medium Density Single Family Residential***

***Proposed Zoning: B-2, General Business***

**File Z10-01: Zeolia Dale**

***(Parcel No. 43-09-29-2-000-050.000, associated with the annexation review for the Zeolia Dale Family)***

Location: East of U. S. Highway 98, north of Dale Road  
Area: 12.82 Acres +  
Owner: Zeolia Dale  
Agent: Ms. Velma Dale Jackson

An introductory presentation was given by Ms. Velma Dale Jackson representing the Zeolia Dale Family. I am here concerning a request for the rezoning of the property located at the intersection of U. S. Highway 98 and Dale Road.

Chairman: Do any of the Commissioners have any questions or comments? He opened the floor to public participation. This is the northern portion. This is not the piece that is on Dale Road. With no adjacent property owners present, he closed public participation.

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Ms. Jones: Well, I will say the property owners look like they have questions.

Ms. Valrie: A large portion of that property is across from my house.

Chairman: Can you come up and state your name and address for the record?

Ms. Valrie: I am Ms. Valrie. I live at 7340 Dale Road. For the past forty-five years we have had our house there. I have lived in Montrose for the past sixty-five years and that has always been a residential area. After her parents died, they let the houses go down, and the land is an eye sore. They are letting the weeds grow up there. The property needs to be cleaned off. I object to the rezoning because it is located in a residential area. I certainly object to having it zoned business right across from our house.

Chairman: Let me explain one thing to you. The part we are discussing is not located on Dale Road. It is the portion to the north that is already in the city.

Ms. Valrie: Ok.

Chairman: I have taken notes of your comments from before. What we said is with any type of development that goes there, we will be looking at whatever buffering we will need to do on Dale Road because it is a residential zone. Do any of the Commissioners have any questions or comments? With that being that if there is no objection, the Chair will entertain a motion.

**A Motion was made by Ms. Barnette and Seconded by Mr. Lemoine for the affirmative recommendation by the Planning Commission to the City Council of Daphne for the rezoning for the Zeolia Dale Family from R-2, Medium Density Single Family Residential, to a B-2, General Business, zoning. The Motion carried unanimously.**

The next order of business is an administrative presentation for Lake Forest Property Owners' Association.

**ADMINISTRATIVE PRESENTATION:**

An introductory presentation was given by Mr. Steve Jernudd, the General Manager of the Lake Forest Country Club here to represent the Lake Forest Property Owners' Association, requesting authorization to improve an undeveloped right-of-way known as Ridgeway Drive located in a portion of Lake Forest Subdivision, Phases Eight and Twenty-Eight in

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order to obtain access to the Lake Forest Maintenance Facility. Subject property is owned by Friday Construction Company.

Chairman: Do any of the Commissioners have any questions or comments? This is the existing dirt road which is used as the access to the maintenance facility that needs to be improved for the fire department to have access. It is here because it lies in the City of Daphne, and it is a recorded right-of-way.

Ms. Phelps: This is also so they can obtain a legal certificate of occupancy on an existing building. That is the ultimate goal and so the fire department will have the proper fire fighting capabilities as well.

Ms. Barnette: Will the road be built to the City's standards?

Chairman: The City will not be asking for it to be accepted as a city street.

Ms. Barnette: So it is just going to be used as an access?

Chairman: Do any of the Commissioners have any questions or comments? If there is no objection, the Chair will entertain a motion.

**A Motion was made by Mr. Chason and Seconded by Ms. Phelps to grant permission to the Lake Forest Property Owners' Association to improve an undeveloped right-of-way known as Ridgeway Drive located in a portion of Lake Forest Subdivision, Phases Eight and Twenty-Eight in order to obtain access to the Lake Forest Maintenance Facility. The Motion carried unanimously.**

The next order of business is an administrative presentation for Lake Forest Drainage Improvements.

An introductory presentation was given by Mr. Tim Lawley, representing Hutchinson, Moore & Rauch, for the Lake Forest drainage improvements at Windsor Drive, Wedgewood Drive and Windsor Court. There have been drainage issues in this area, particularly, in the intersection.

Mr. Lawley: There were four or five houses south of this intersection, as well as, Mr. Murphy's that have had drainage problems. In order to detain this storm water runoff, we are proposing to do regrading, paving and modifications to an inlet. This will definitely help the other residents and Mr. Murphy located in this area. I will be more than happy to answer any questions you may have.

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Chairman: Do any of the Commissioners have any questions or comments?

Ms. Barnette: We have not had any discussions about this project, but is there a legal issue that needs to be addressed?

Ms. Gray: Actually, I was not aware that this was that piece of property.

Ms. Barnette: Well, any thoughts or worries about that at all before we move forward.

Mr. Lawley: All of the work that is going to be done on the property is located within the city right-of-way.

Ms. Gray: What is going to be done?

Mr. Lawley: The property will be regraded and the inlet top will be increased to the standard size to capture the water.

Ms. Gray: I think you will be fine to move forward as long as none of the work being done is located on the property between the property owners.

Ms. Phelps: All of the work is being done on the public right-of-way.

Chairman: Do any of the Commissioners have any questions or comments? If there is no objection, the Chair will entertain a motion.

**A Motion** was made by Ms. Barnette and **Seconded** by Ms. Phelps **to approve the Lake Forest drainage improvements at Windsor Drive, Wedgewood Drive and Windsor Court. The Motion carried unanimously.**

The next order of business is an administrative presentation for the Captain O'Neal Drive Drainage Improvements.

An introductory presentation was given by Mr. Andrew James, representing Volkert & Associates, for the Captain O'Neal Drive drainage improvements. This project was initiated after we had a severe storm and after the declaration for the City of Daphne to receive FEMA money for the project. There was a failed culvert the city maintained that caused the erosion and resulted in the repair of that structure. After discussion with FEMA we were able to obtain additional money from them for some mitigation. After receiving funding from the City Council, we obtain funds for the addition of

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sidewalks and some additional drainage. We have expanded from the initial repairs to upgrading that entire area. At this time we have already begun, and we are upgrading the project.

Chairman: Do any of the Commissioners have any questions or comments?

Ms. Barnette: Mr. Chairman, I know that you have not obtained one of the easements.

Mr. James: We can start since most of the project is located on someone else's property, and all of the remaining project is located on the city right-of-way. We will be recording a revised permanent drainage easement document after the project is over.

Ms. Barnette: Explain how the project is staked out now.

Mr. James: The contractor was trying to establish a stake out and tree removal.

Ms. Barnette: Are the ones indicated, the ones to be removed are saved?

Mr. James: There are a lot of trees that were not shown. One is a significant tree, and it will need to be saved. We do have a plan for replanting which will replace the trees to be removed.

Mr. Chason: Do the residents involved in this project know what it is all about and what trees will be removed?

Mr. James: I have met with one of the adjacent property owners to discuss the project, and I will be meeting with him Tuesday to go over it one more time. They are not opposed to the project.

Ms. Barnette: There is one of the property owners who may be.

Mr. James: There is an additional project that he is recommending, but that is not a part of our problem.

Chairman: Do any of the Commissioners have any questions or comments? If there is no objection, the Chair will entertain a motion.

A **Motion** was made by Ms. Barnette and **Seconded** by Ms. Phelps **to approve the Captain O'Neal Drive drainage improvements. The Motion carried unanimously.**

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The next order of business is an administrative presentation for the NRCS EWP projects for Worchester Drive and the utility right-of-way on County Road 13.

Ms. Phelps: Mr. Chairman before we get started, I will be recusing myself and not participating in any discussion or voting on this matter because it directly impacts and is affecting my property.

An introductory presentation was given by Mr. Andrew James, representing Volkert & Associates, for the NRCS EWP projects for Worchester Drive and the utility right-of-way on County Road 13. I will start out by saying that Mr. Matt White, the adjacent property owner and representative for White-Spunner Realty, is here. I would ask you permission to allow him to come up and answer any questions you may have. We have been waiting for a long lengthy period to obtain the funding. Once the funding was approved, we obtained Dr. Greg Jennings which is a nationally recognized expert on stream restoration after the Corps of Engineers said the repair by NRCS was not acceptable. We are going to restore and repair the utility easements and the damage which occurred to the underlying portion of her property caused by a rain event. This is not an unusual situation near a watershed.

Chairman: Do any of the Commissioners have any questions or comments?

Ms. Barnette: We have used this design on other projects, and it has been fairly successful.

Chairman: This is what was used in Yancey Branch.

Ms. Barnette: We have done Yancey Branch as well.

Mr. Chason: For clarification, according to the ariel map we have part of the problem is the curve in the drainage area.

Mr. James: That is correct.

Mr. Chason: So part of what we need to do is to shift it to the north toward the White-Spunner project in order to straight it out.

Mr. James: That is correct.

Chairman: Want this address the water that is also coming from Worchester Drive?

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Mr. James: There are two access points.

Chairman: My point is that it will enhance both pieces of property.

Mr. Chason: I believe there is a time frame to obtain the easement in order to go forward with the project.

Mr. James: You said you had someone who would like to speak.

Chairman: Please state your name for the record.

Mr. White: My name is Matt White with White-Spunner & Associates. We are the owners of the eighty acres on the north side of the creek. Andy has done a super job of communicating with us about the project. We just wanted to make sure they would not incur any liability for it if something were to happen in the future. We have done that due diligence, and we are comfortable with the City moving forward with the project. We just have not seen a right-of-entry, easement or liability document. Mr. White: They would like relief from maintenance of the improvement and all of the liability to be on the city. We will be happy to look at those documents as soon as the City presents them to us. We will be happy to help them out. At the same time, we think the ownership and the use of the property should be commercial. That is what we bought the property for, and we want to initiate the process for rezoning. We will be revisiting you for that as well.

Chairman: As far as the project goes as soon as you see the documents, then you will be ready to sign off on it.

Mr. Chason: Mr. Chairman, can we break it down a little bit. You had liability concerns, maintenance concerns, and you wanted to know what kind of transfer. Exactly what concerns do you have?

Mr. White: That is a major watershed through there. Particularly because of the County Road 13 interchange if this thing floods out, they would not want any liability there.

Ms. Barnette: On the maintenance agreement with an NRCS project, the City has to monitor it for five years as a safeguard to ensure that the project has been worthwhile. There is a monitoring requirement. As you know already, the D'Olive Watershed working group has been developing a management plan to try to alleviate the impact in the future from all of the storm water input. With what we are doing here, as well as, what we do in the future, and how we develop this property here we do not want to further impair this watershed. I feel certain

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by granting the easement, Ms. Gray, by granting the easement to the City would absolve you of that liability. It is a permanent easement that is the City's responsibility for the city to maintain.

Mr. White: That is standard procedure. I have been told when they construct this project that they will enter through Ms. Phelps property.

Mr. Chason: Because it is a time sensitive issue and we make a recommendation to the City Council, I wanted to resolve the issue now as to not delay the project another thirty days. The attorney can draft the language for the documents and the easement. So are you saying that it is down to where you want to review and sign the documents?

Mr. White: Yes.

Ms. Barnette: I would like to say that we realize or I may speak for myself that County Road 13 is not necessary always going to be a residential area. We need to develop this area responsibly.

Chairman: Do any of the Commissioners have any questions or comments? If there is no objection, the Chair will entertain a motion.

A **Motion** was made by Mr. Chason and **Seconded** by Ms. Barnette **to approve the NRCS EWP projects for Worchester Drive and the utility right-of-way on County Road 13. The Motion carried. Ms. Phelps abstained.**

The next order of business is an administrative presentation for French Settlement Subdivision, Phases One A and B.

Mr. Chason: The next item on the agenda is for French Settlement Subdivision a project I am associated with. Please let the record reflect I will not be participating in any discussion or voting on this matter.

An introductory presentation was given by Mr. David Diehl, representing Central Progressive Bank, requesting the release of a one hundred and forty thousand dollar and a three hundred thousand dollar letter of credit for French Settlement Subdivision, Phases One A and B. The work has been done, and they are asking for the letters of credit to be returned to the bank.

Chairman: Do any of the Commissioners have any questions or comments?

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Ms. Jones: At the work session, we talked about the approval of the release contingent upon the City Council's acceptance of the streets and rights-of-way in Phases 1A and 1B. That will be going back to the City Council at the next meeting in June. It has already been to the City Council, but I was not present to tell them that it already has a maintenance bond in place. We have always had a maintenance bond for both phases. It is just a matter of it going through the process, and the City officially accepted the streets.

Chairman: So we are going to do a contingent upon acceptance?

Ms. Jones: I would like it that way so they would not have to come back to the next Planning Commission meeting.

Chairman: I have questioned contingencies before, but with this one I do not think I have a problem with. Do any of the Commissioners have any questions or comments? If there is no objection, the Chair will entertain a motion.

**A Motion** was made by Ms. Barnette and **Seconded** by Mr. Lemoine to **approve the release of the one hundred and forty thousand dollar and a three hundred thousand dollar letter(s) of credit for French Settlement Subdivision, Phases One A and B, contingent upon the acceptance of the streets and drainage by the adoption of a resolution by the Daphne City Council. The Motion carried. Mr. Chason abstained.**

The next order of business is an administrative presentation for an interpretation of the appropriate zoning district for fabrication of marble to create custom counter tops.

Presentation to be given by Mr. Dane Haygood, H Properties, requesting a determination by the Planning Commission as to whether or not a business, which cuts material such as granite or marble to produce custom counter tops would be an acceptable use in a B-2, General Business, zoning district. Article 13-3, Compliance with District Requirements, specifically states "In any case where a requested use is not specifically referred to in the Table of Permitted Uses, its status shall be determined by the Planning Commission by reference to the most clearly analogous use or uses that are specifically referred to in the Table of Permitted Uses. When the status of a use has been so determined by the Planning Commission, such determination shall thereafter have general application to all uses of the same type and shall be added to the Table of Permitted Uses."

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An introductory presentation was given by Mr. Dane Haygood, H Properties. I am here specifically seeking approval for a business which customizes granite counter tops 1410 U. S. Highway 98 in Suite K. Since this use is to be located in a B-2, General Business, zone and is not indicated in the Table of Permitted Uses, I am here to ask for an interpretation.

Chairman: I do not think we have a category that fits in the Table of Permitted Uses that fits exactly what you are proposing to do. I was not at the work session so you need to tell us exactly what it is and what you are proposing to do.

Mr. Haygood: This business is supposed to do what I call customize granite counter tops. They bring in slabs that are twenty-four foot depth and one hundred eight-foot lengths. They cut them with a wet saw the appropriate length with minimum noise and dust.

Chairman: If I look at this correctly, you will be in K and will not be located with the retail in the front.

Mr. Haygood: On the north side there is Daphne Utilities and a warehouse. The owner and the landlord is present and has witnessed a demonstration because he had concerns.

Chairman: So it will be located inside the building?

Mr. Haygood: Yes sir.

Chairman: Do any of the Commissioners have any questions or comments?

Mr. Chason: Mr. Chairman, I think it came down to what to do with it. He has done a pretty good job of recapping what we talked about. I think it centered around where did it fit in the Table of Permitted Uses. There was a lot of discussion whether or not it was like a cabinet shop or monuments. The concern was if we put it in the wrong category in B-2 it may end up somewhere which may not be appropriate. In the Table of Permitted Uses, there is an opinion that I would like to give about page 212. There are three items on page 212 which may fit under fabrication, and one is a roofing and sheet metal shop for cutting metal. There is a sawmill or planing mill. It would be my opinion that all three of those uses are permitted with Planning Commission approval in a B-2, General Business, zone and permitted by right in a C/I, Commercial and Industrial zone. It would be clear this gives the Planning Commission the latitude to approve this type of business. I would like to use that so it would always have to come to the Planning Commission for approval and would be permitted by right

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in C/I only. I thought those were appropriate because you talking about sawing and cutting, and that is what this is.

Mr. Martin: Under roofing, you could be cutting.

Mr. Chason: Right. What I would be proposing is that you add granite and marble customization to this category.

Chairman: If you were looking for something, this would fit.

Mr. Haygood: In researching this, the category for the City of Mobile was for customization or cutting of stone and included sandblasting. When I entered into this, I thought it should be allowed in a B-2 zone although I did understand Mr. Chason's concerns. It is very similar to statutes and monuments. A special exception would take it to the BZA, and that is not what we wanted to do.

Mr. Chason: Why don't we call it stone cutting?

Chairman: Why don't we set a real limit and call it stone, granite, and marble cutting and counter top customization with Planning Commission approval in a B-2, General Business, zone and permitted by right in a C/I, Commercial and Industrial, zone?

Ms. Jones: So you are saying it is analogous to plastic fabrication?

Mr. Chason: I think to all three.

Chairman: Those are all under manufacturing. There is a special heading under manufacturing. Do any of the Commissioners have any questions or comments? If there is no objection, the Chair will entertain a motion.

Ms. Jones: After you vote on the motion, then I have something else.

Ms. Barnette: Do we need to hear it first?

Ms. Jones: After the motion, then you need to give them approval in a B-2, General Business, zone.

**A Motion was made by Ms. Barnette and Seconded by Mr. Chason for the creation of a new category for the Table of Permitted Uses, for the use of the customization of marble, granite, and/or stone counter tops to be permitted in a B-2, General Business, zoning district with Planning Commission approval and in a C/I, Commercial/Industrial,**

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*zoning district by right and to grant Planning Commission approval for this application in a B-2, General Business, zoning district. The Motion carried unanimously.*

A Motion was made by Ms. Barnette and **Seconded** by Mr. Chason *to grant Planning Commission approval to permit the use of the customization of marble, granite, and/or stone counter tops in a B-2, General Business, zoning district located in Colonial Plaza, Phase Two, 1410 U. S. Highway 98, Suite K. The Motion carried unanimously.*

The next order of business is an administrative presentation regarding the placement of an ice vending machine on Daphne Avenue.

An introductory presentation was given by Mr. Randall Caldwell, the vendor's attorney, and Mr. Tim McInnis, the representative, regarding the placement of an ice vending machine located on the north side of Daphne Avenue. I am one of the owners of the Twice the Ice vending machine. We were asked to come to site preview to make a presentation regarding the ice vending machine. After that I had an opportunity to talk to Ms. Jones and Mr. Merchant to see what was happening. If I may, I would like to take a second and try to address some of those issues that exist today. The Planning Commission would like for us to present a site plan. We were not aware that the submission of a site plan was necessary. I believe as I understand it the question is are we vending machine or something else.

Mr. Caldwell: I do not know what that something else is. Historically, vending machines did not need to be approved as long as they met all of the building setbacks. This is the body who would have granted approval of the plan had gone through Community Development. In this case, a permit was issued without her department being involved.

Ms. Jones: Rather than going through a whole lot of what I think would be unnecessary, what I will say is the Building Official has issued a building department for this property without Planning Commission approval. We also have a first read of an ordinance for a moratorium for ice vending machines. He came in last week to submit an application for a site plan at another location which would not be consistent with the Ordinance since we do not address it right now. Having said that, if another has been approved, it has followed the same procedures as this one and the one at Veteran's Pointe. We are not looking to stop them. Once the moratorium in place, we will have an opportunity to develop regulations for the use. My reason for having you here was not to discuss whether or not you were in order or out of order. The reason was to have you here to ask what are you

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going to do next? Are you going to do landscaping? How are you going to dress it up? Are you going to do anything to make it more compatible with the Olde Towne District? You said you were going to do landscaping so we are asking can you do something to make this more compatible with the adjoining properties? Right now we do not have an Ordinance in place, and the Planning Commission has not made an official stance.

Ms. Barnette: I would like to back up. The Revenue Officer has reported to us that this site did not have a location. He said it was indicated to him and it was his interpretation that the operation was located in Foley. What he granted was an out of the city limits business license and not an approval and a business license for a facility. I do not think what that matters because it is not a break down of Community Development and the Building Department as it not understanding what the scope of the project was. We still need to address the Ordinance as far as the creation of a section for an ice vending machine, but there were multiple failures.

Mr. Caldwell: Again, at this point I am confused because how did we get to the point that our ice machine is on the ground, and we have a building permit?

Ms. Barnette: He issued you a building permit. The Revenue Officer said that he had no idea that you were putting a structure anywhere so he did not sign off on you doing that.

Mr. Caldwell: My question is how did we get a building permit if we were supposed to come in with a site plan. How did that happen?

Ms. Jones: What you are saying if we have to get a site plan. He is here. His determination was this was a vending machine, and vending machines do not go through site plan approval.

Mr. Caldwell: That was my question, and your department was not involved in it.

Ms. Jones: Yes. I would have liked to have done an administrative review of it. That is beside the point. I was not here. Here is my point. Whatever approvals you have for this machine or another machine that is not what I am here for. It is for you to explain or for you to tell us what you think would be appropriate out there to do something different.

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Ms. Phelps: I have some questions. I see that Richard Merchant, the Building Official, is back there. It is his interpretation of this as a vending machine that got us to this point. I have no idea why because a vending machine is something that can be rolled on a dolly and dispenses soda, chips and other things of that nature. This is more in along the line of a business. Basically, this is a movable object. An alarm should have gone off to say I have never seen anything like this. I don't even know if he saw it. That has got to be where we are. In my mind, this does not fit the standard definition of a quote on quote vending machine. It is the City of Daphne Ordinance so we do need to address this. It came to us through the back door, and you did everything that you thought you were supposed too. If something like this happens in the Building Department, it needs to be communicated to the Planning Department right away. We need to work together better as a City to solve these types of problems.

Mr. Caldwell: I am not the one who handled the application to the Building Department. That was my partner. I think he should share some information before we move on.

Mr. McInnis: Just to clarify one detail with this property, Adrienne and I had sat down back in November with a drawing of our site with all of the information on it. I have a little hand written note from her. After our meeting, she passed this note to Richard. A week later I had a call and went by the office to pick up a package. According to the note, it did not need Planning Commission approval. All we did was entered into the agreement, applied for the building permit, and received what we got back from Adrienne. Let's put this to rest. We have spent a lot of money on this, and all we did is put it on the ground.

Mr. Chason: Do you show her a picture of it?

Ms. Jones: No.

Mr. Chason: Dimensions?

Mr. McInnis: We have dimensions on the site plan.

Mr. Chason: Have you ever seen an ice vending machine in front of a 7-11?

Mr. McInnis: We have several of them?

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Mr. Chason: No. I am talking about an ice machine.

Mr. McInnis: That is not a vending machine.

Chairman: That is the problem. A vending machine is something that is not of this size. I look at a vending machine being something that is compatible with the other business use. I do not know that an ice vending machine being in the parking lot of a barber shop is appropriate. I am going to ask you something. Mr. Merchant, did you issue an electrical or a building permit?

Mr. Merchant: An electrical permit.

Chairman: When I went to your office, you had issued an electrical permit.

Mr. Richard Merchant, the Building Official: I wanted to clarify that. I keep getting that I approved a vending machine. I did not. I issued an electrical permit. There is another one in town at Veteran's Pointe. I brought it to Community Development, and I was told that I did not have to take it to the Planning Commission.

Mr. Merchant: One year later, everyone is saying Richard Merchant has approved it. I have not.

Chairman: That is the reason I asked. All you did is issue an electrical permit. Has there been a plumbing permit issued for it?

Mr. Merchant: It has a french drain that the condensation goes into.

Chairman: I understand what you are saying, but that machine is more than twice the size of the other machine. I went out there today and measured it.

Mr. Merchant: You have to understand if I ask Adrienne and she says no, then what am I supposed to do?

Chairman: Our problem now is to not let it happen again. Will you issue a permit for another one?

Mr. Merchant: No.

Mr. Chason: Mr. Chairman, the discussion has gotten off track from where it needs to be. I do not think the department heads did anything wrong. You have a franchise thing inside the City, and I guess you

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heard this is going to be a site plan issue. We are all just understanding what we have. Nobody is upset. We are happy, but I think we need some clarification from you. You need clarification from us. We need a site plan. Now we need clarification from you on landscaping and compliance with the Sign Ordinance. We will want you to go through the same process that an automobile dealer goes through when he wants to put a portable building to sell cars out of. This is not much bigger. We have some very scenic areas downtown. We cannot have these just dropping in on us. The other day when you were here you wanted to work with us and now you don't. Has something changed?

Mr. Caldwell: Everywhere we have gone, we have worked with the city for up to six months to one year to get it the way they wanted it. Just so you understand our side of it. We came to the City of Daphne, and we did what we thought was the right thing. We got a permit and a certificate of occupancy. We are at that point, and we are here. We want to be a good neighbor and work with you. With that said, I leave here and go to Mr. Merchant's office. He said let me tell you the rest of the story. Community Development said they were not involved in the process when the truth of the matter is they were.

Mr. Caldwell: We have the note right here to Richard that says, "It is not subject to Planning Commission approval, I am sure. It should require plot and plan approval by you for the issuance of a building permit." You have to understand we were told they were not involved in the process. We found out that yes they were. We just want to feel as if we are being treated fairly and honestly. You say they are not vending machines, but they are. Because of the function in making ice, there is absolutely no way you can define them any different.

Mr. Chason: I am not saying any of them are any different. I am not trying to do that. I am telling you we need a site plan. Let's forget how it happened and establish what we are going to do from now on such as the lettering. It will have to come into compliance. Everyone will do a site plan, and they will not be permitted at certain places. Let's go forward and quit worrying about what happened there.

Ms. Barnette: I would like to dress it up.

Chairman: You do not comply with the Sign Ordinance because it is on Daphne Avenue.

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Mr. Caldwell: Yes sir. We understand that, and that is no problem. We did not do that. It comes from the manufacturer like that. It is not something we did. We certainly will comply with that.

Chairman: I will agree. We will need to have some landscaping around it.

Mr. Caldwell: In every city that we are located in we do that.

Chairman: I do not see any here.

Mr. Caldwell: That is because we just got hooked up here.

Chairman: I want it to be understood that this Board is going to looking for something a little more aesthetically pleasing. We are very strict on signs. We are very proactive on landscaping, and we have landscaping for everything.

Mr. Caldwell: While I am here, I would like to also ask something. We have a second machine we have been working on for a long time to be located on U. S. Highway 98 at Uncorked. We would like to get that machine approved because there is a moratorium coming, and you will be drafting some new ordinances. We have no issue with that. We will comply with them although we have a machine on its way.

Mr. Caldwell: We have a contract where we have to put in a certain number of machines. We have ten of them and nine of them are in. This is our final machine. That machine costs us one hundred thousand dollars. It is sitting in a truck shop in Summerdale, Alabama. My question is this, is the City going to approve this one, the one on Daphne Avenue, and the one at Veteran's Pointe with keeping with consistency.

Mr. Chason: How would you do that if you are going to make modifications to this? If you have not shown us what you are going to do here, then how could we approve what you are going to put up on Interstate 10? How are you going to do that?

Mr. Caldwell: I do not want to offend anything. I am a diplomat, but my response to that would be we are not legally obligated to do anything to that machine. With that said, we want to do business with you.

Ms. Barnette: You do not have a legal obligation to have a business license. We as the City of Daphne do not have the legal obligation to give you a business license for this facility as you represented it.

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Mr. Caldwell: At the second location?

Ms. Barnette: At the second location. In fact, there is a possibility of revoking the first business license, but I am not proposing that at any means. You said we are going to do what we want to do because the City cannot stop us. The City can stop you. There was not an approval from the Revenue Officer as far as there being a physical structure. He was not told. There were a number of confusions. We are trying to move forward, but you have to move forward for the City to move forward. You could be on the City Council agenda with the second read and say we will do a site plan and get approval.

Mr. McInnis: Just so we can move forward. It comes back to the work session last week. Mr. Caldwell paraded in with a number of questions. Every city has a different set of regulations and rules. In going forward with this, Adrienne and I sat down with this. We are here to work with the City. Do not misconstrue it, but look at it from our eyes. We went through the same exact list to get permitting and here we are.

Ms. Barnette: No matter what was done in the past, it will not be applied in the future.

Mr. McInnis: If we do a site plan, rendering, and do a landscape plan, can we move ahead.

Ms. Jones: On this one, I told him that I had talked to someone in November of last year. That was you, but I could not find a number or anything. On the last part of my note, what does that say?

Mr. McInnis: It should require plot, site plan and building permit application.

Ms. Jones: Did it say anything about landscaping?

Mr. McInnis: No ma'am. It says site plan.

Ms. Jones: That would have been administrative approval.

Chairman: That is what I am saying. There was never a building permit issued. They issued an electrical permit.

Ms. Jones: I agree.

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Ms. Phelps: It is a complicated process. In my opinion, that fits the definition of an ancillary building, not a vending machine. As we move forward with these, we need to address the proper location so they are not just placed in any location.

Chairman: Do any of the Commissioners have any questions or comments? Do you understand? Do you have any questions? If not, thank you.

The next order of business is public participation.

**PUBLIC PARTICIPATION:**

Chairman: Is there anyone who would like to address the Planning Commission?

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

**ATTORNEY'S REPORT:**

Ms. Gray: No report.

The next order of business is commissioner's comments.

**COMMISSIONER'S COMMENTS:**

Chairman: Do any of the Commissioners have any questions or comments?

Mr. Chason: I feel this last issue is easy enough to resolve. I do not think that Adrienne and Richard did not do anything wrong. They do a wonderful job and no one has an ulterior motive.

Ms. Phelps: Off at the skate park, there is an off-premise sign that has advertising and a phone number. I would like to have it checked to see if it is in compliance.

Chairman: That would be Lonnie Jones, the Code Enforcement Officer.

Mr. Lemoine: I am a little bit confused about the ice vending machine. There is a lot of conversation about it, but there is a building behind it that should be torn down. To the right of it, there is a landscaping business that has another building out there. I wonder if they got any permits. They have another building with a fence around it. They have turned this ice machine into a monster as far as I am concerned. I think they came in to get some direction from us. If I

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was in that type of predicament, I do not know what I would do. We did not give them very good guidance for something they had approved.

Mr. Martin: They cannot doll it up. If it were at a truck stop, then I would not have a problem with it, but it is in a residential area.

The next order of business is the director's comments.

**DIRECTOR'S COMMENTS:**

Ms. Jones: I have emailed comments to you saying we need to have a meeting. I have given you a copy of institutional, present use and past use, along with the annexation petition. Also, I have presented to you a draft of regulations for C2, Outdoor Amusement, and C-3. Also, regulation for ice vending machines or as ice processing plant. I need a date for us to have a special meeting to discuss these and give them to the City Council with the other recommendations we have given them. These are items the City Council has given you to review. There have been a couple of issues that have clouded the Ordinance. If we resolve them, it may help them to move forward. Since we are unable to set a date, you may email your comments and questions to me.

Mr. Chason: What are we trying to do?

Ms. Jones: Get feedback from you and put it in the form of a motion at some point.

**ADJOURNMENT:**

Chairman: Do any of the Commissioners have any questions or comments? If there is no objection, the Chair will entertain a motion to adjourn.

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

**There being no further business, the meeting was adjourned at 8:00 p.m.**

***Respectfully submitted by:***

Jan Dickson, Planning Coordinator

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**APPROVED:** June 24, 2010

Mr. Kirby, Chairman

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# Daphne Utilities

## APPROVED MINUTES

### Utilities Board Meeting

City of Daphne Council Chambers ♦ May 26, 2010 ♦ 5:00 p.m.

#### I. CALL TO ORDER

The May 26, 2010 regular Board meeting for the Utilities Board of the City of Daphne was held and called to order by Chairman Robert Segalla, at 5:01 p.m.

#### II. ROLL CALL

**Members Present:** Robert Segalla, Chairman  
Ron Scott, Vice Chairman  
Fred Small, Mayor – 5:05 pm  
Fenton E. Jenkins

**Others Absent:** Lon Johnston, Secretary Treasurer

**Others Present:** Jerry Speegle – Board Attorney  
Rob McElroy – General Manager  
Danny Lyndall – Operations Manager  
Teresa Logiotatos – Finance Manager  
Deloris Brown – Human Resources Manager  
Lori Scharles – Executive Assistant  
Melinda Immel – Volkert & Associates  
Doug Bailey – HMR

**Others Absent:** Drew Klumpp – Administrative Services Manager

#### III. PLEDGE OF ALLEGIANCE

The Chairman led the Board and meeting attendees in the Pledge of Allegiance.

#### IV. APPROVAL OF MINUTES

##### a. *Utilities Board Minutes from April 28, 2010:*

The Chairman inquired if there were any corrections noted for the Minutes from the April 28, 2010, Utilities Board meeting. No corrections, additions and/or deletions were noted.

**MOTION BY Ron Scott to approve the Minutes for April 28, 2010; Seconded by Fenton Jenkins.**

**AYE: JENKINS, SCOTT, SEGALLA    ABSENT: JOHNSTON, SMALL    ABSTAIN:    MOTION CARRIED**

##### b. *Utilities Board Minutes from May 5, 2010, Special Meeting:*

The Chairman inquired if there were any corrections noted for the Minutes from the May 5, 2010, Special Utilities Board meeting. No corrections, additions and/or deletions were noted.

**MOTION BY Ron Scott to approve the Minutes for May 5, 2010, Special Utilities Board meeting; Seconded by Fenton Jenkins.**

**AYE: JENKINS, SCOTT, SEGALLA    ABSENT: JOHNSTON, SMALL    ABSTAIN:    MOTION CARRIED**

**V. Old Business**

**a. Central Services Building (Property Investigation) – Update**

Mr. McElroy advised the negotiations to the paperwork have been concluded. Mr. Speegle informed the Board that the contract is contingent on zoning and annexation which is in the approval process. Mr. McElroy notified that he made a presentation at a work session of the Planning Commission with no negative feedback; Danny Lyndall will be attending a Planning Commission meeting with no objections expected, and final drawings will be distributed afterward. Mr. Scott asked if an environmental study will be conducted. Mr. McElroy answered that discussions are underway with the engineer regarding this.

**b. Spanish Fort Sewer Franchise issues – no current information was reported.**

**c. Items in Abeyance:**

- 1. **Gas Franchise Agreement** – No current information was reported.
- 2. **19 Acres – Daphne Utilities property** – Ron Scott reminded the Board and staff of the donation agreement with the City of Daphne.

**(5:05 pm – Mayor Small arrived.)**

Mr. McElroy stated that a lease agreement had been discussed and ready to move forward with this. Mr. Scott suggested that Mr. Speegle and City Attorney Mr. Jay Ross collaborate on this agreement. (Return this item to Old Business agenda items, per Chairman Segalla.)

**3. Sewer Cut-off** – No current information was reported.

**VI. New Business**

**a. Approval of RESOLUTION 2010-05 - CORPORATE AUTHORIZATION FOR BRYANT BANK ACCOUNT (Board Action)**

**MOTION BY Mayor Fred Small to approve Resolution 2010-05 – CORPORATE AUTHORIZATION FOR BRYANT BANK ACCOUNT; Seconded by Ron Scott.**

**AYE: JENKINS, SCOTT, SEGALLA, SMALL      ABSENT: JOHNSTON      ABSTAIN:      MOTION CARRIED**

**b. Presentation of Audit -**

Mike Andreoli with Robertson, Andreoli & Covington, P.C. presented to and reviewed with the Board the Financial Statements with Independent Auditors’ Report for years ended September 30, 2009 and 2008.

**VII. BOARD ATTORNEY’S REPORT**

Mr. Speegle had nothing further to add to his report.

**VIII. FINANCIAL REPORT**

Teresa Logiotatos addressed the Board advising them the financials are on par for a normal month. She highlighted the decrease in the gas revenue. She had nothing further to review.

**IX. GENERAL MANAGER’S REPORT**

**a. GM Report**

Mr. McElroy pointed out for the Board the EPA award received and are planning an awards luncheon with governmental dignitaries present.

Deloris Brown informed the Board that Tommy Mitchell, the Gas Supervisor, will be retiring after serving 25 years.

**b. Operations Report**

Danny Lyndall had nothing further to add to his report.

Melinda Immel of Volkert & Associates had nothing further to add to her report.

Ray Moore from HMR updated the Board on the Highway 64 South Sewer (Behind Target).

**X. Board Action – addressed under New Business**

- XI. **PUBLIC PARTICIPATION – None**
- XII. **BOARD COMMENTS – Mr. Ron Scott commented on the Central Services layout.**
- XIII. **ADJOURNMENT–**

***MOTION BY Mayor Small to adjourn the meeting. Seconded by Mr. Scott.***

**AYE: JENKINS, SCOTT, SEGALLA, SMALL    ABSENT: JOHNSTON    ABSTAIN:    MOTION CARRIED**

The meeting adjourned at 5:29 p.m.

**CITY COUNCIL MEETING  
MAYOR'S REPORT**

**NOTES:**

## CITY OF DAPHNE SPECIAL EVENTS PERMIT

<b>ORGANIZATION:</b>	<i>S.E.E.D.S.</i>
<b>CONTACT PERSON:</b>	<i>Denise D'Oliveira</i>
<b>ADDRESS:</b>	<i>P.O. Box 460 Daphne, AL 36526</i>
<b>PHONE NUMBER: (HOME)</b>	<i>626-9966</i>
<b>PHONE NUMBER: (BUSINESS)</b>	<i>626-7333</i>
<b>CELL NUMBER:</b>	<i>605-8777</i>
<b>DATE OF SPECIAL EVENT:</b>	<i>November 13, 2010</i>
<b>TYPE OF SPECIAL EVENT:</b>	<i>Mama Mia Cook Off</i>
<b>APPROXIMATE # OF PEOPLE &amp; CARS:</b>	<i>700</i>
<b>START TIME:</b>	<i>3:00 P.M.</i>
<b>STOP TIME:</b>	<i>10:00 P.M.</i>
<b>FACILITY/PARK TO BE USED:</b>	
<b>SPECIAL REQUESTS:</b>	<i>Set up Friday, November 12, 2010 &amp; 8:00 A.M. Saturday Morning November 13, 2010</i>
<b>DATE APPLIED FOR PERMIT:</b>	<i>June 15, 2010</i>
<b>APPROVAL</b>	
<b>COUNCIL:</b>	<i>7/06/10</i>
<b>POLICE: Chief David Carpenter</b>	<i>David Carpenter</i>
<b>FIRE: Chief James White</b>	<i>James White</i>
<b>PUBLIC WORKS: Melvin McCarley</b>	<i>Melvin McCarley</i>
<b>SPECIAL INSTRUCTIONS:</b>	
<b>DATE ROUTED:</b>	<i>June 15, 2010</i>
<b>NOTIFICATION OF APPROVAL:</b>	

**CITY ATTORNEY'S REPORT**

**NOTES:**

**DEPARTMENT HEAD'S COMMENTS**

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

**NOTES:**

RECOMMENDATIONS

**COUNCIL COMMENTS:**

**RESOLUTION 2010 - 65**  
**EXTENSION OF PROMOTIONAL WEEKENDS FOR ADVERTISING**

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

The allowance of promotional weekends for advertising, pursuant to Section 33-5(e)(2) of the City of Daphne Land Use Ordinance, is hereby extended to include each and every weekend through and until the end of September 2010.

All other aspects of the City of Daphne Land Use Ordinance shall remain in effect and be strictly enforced.

**APPROVED AND ADOPTED BY THE CITY COUNCIL, CITY OF DAPHNE, ALABAMA**  
on this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
**August A. Palumbo,**  
**Council President**

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

**ATTEST:**

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

**CITY OF DAPHNE  
RESOLUTION NO. 2010- 66**

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**A RESOLUTION TO AUTHORIZE THE CITY ATTORNEY TO  
BEGIN CONDEMNATION PROCEEDINGS**

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**WHEREAS**, the City desires to construct a traffic circle at Pollard Road and Whispering Pines intersection for the aesthetics and traffic safety along said roadways; and

**WHEREAS**, said roadways are located within the municipal limits of the City of Daphne; and

**WHEREAS**, aesthetics and improvements to traffic safety are within the health, safety, and welfare of the citizens of the City of Daphne and serves a public purpose; and

**WHEREAS**, the City of Daphne has offered the owners of the four parcels of real property located at said intersection compensation of appraised value in exchange for the City's ownership of necessary real property to construct said traffic circle; and

**WHEREAS**, the owner of the northwest parcel of said intersection has refused the City's offer of compensation; and

**WHEREAS**, the City desires to obtain the northwest parcel of said intersection through the legal method of condemnation,

**NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA**, as follows;

The City Council of the City of Daphne, Alabama, hereby directs the City Attorney to begin condemnation proceedings by the filing of a Complaint in the Probate Court of Baldwin County for condemnation against ORRIE SMITH, Jr., owner of real property located in Baldwin County, Alabama, and within the jurisdictional limits of the City of Daphne. Alabama, and described as:

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 8, TOWNSHIP 5 SOUTH, RANGE 2 EAST; THENCE RUN N-00°00'00"-W, 40.27 FEET TO A POINT; THENCE RUN S-90°00'00"-W, 39.79 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF WHISPERING PINES ROAD, AND THE POINT OF BEGINNING; THENCE RUN N-89°42'45"-E, ALONG SAID EAST RIGHT-OF-WAY LINE, 47.04 FEET TO A POINT; THENCE RUN N-53°32'01"-E, LEAVING SAID NORTH RIGHT-OF-WAY LINE 58.64 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF POLLARD ROAD; THENCE RUN S-00°11'42"-W, ALONG SAID WEST RIGHT-OF-WAY LINE 35.09 FEET TO THE POINT OF BEGINNING, LYING IN SECTION 8, TOWNSHIP 5 SOUTH, RANGE 2 EAST, CONTAINING 0.02 ACRES, MORE OR LESS.

and any and all individuals holding any right, title, or interest in said real property.

**ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2010.**

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**AUGUST A. PALUMBO,  
COUNCIL PRESIDENT**

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**FRED SMALL,  
MAYOR**

ATTEST:

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**DAVID L. COHEN,  
CITY CLERK, MMC**

**CITY OF DAPHNE**

**RESOLUTION NO.: 2010-67**

=====

**WHEREAS**, Richard S. Higbee hereby desires to grant, bargain, convey, and donate to the City of Daphne a certain parcel of real property and;

**WHEREAS**, the City of Daphne hereby accepts the herein described real property and;

**WHEREAS**, said property is located within the corporate limits of the City of Daphne, Baldwin County, Alabama and is described as follows:

Commencing at the Southeast corner of Section 9, Township 5 South, Range 2 East, Baldwin County, Alabama; thence run N-9000'00"-W, 39.97 feet to a point; thence run N-0000'00"-E, 30.45 feet to a point on the South right-of-way line of Whispering Pines Road, and the Point of Beginning; thence run N-8942'17"-W, along said South right-of-way line 101.11 feet to a point; thence run N-4541'37"-E, leaving said South right-of-way line 141.42 feet to a point on the West right-of-way line of Baldwin County Road 13; thence run S-0003'27"-W, along said West right-of-way line 99.30 feet to the Point of Beginning, containing 0.12 acres, more or less.

**NOW THEREFORE BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA** that the above described property is hereby accepted.

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

\_\_\_\_\_  
**AUGUST A. PALUMBO,  
COUNCIL PRESIDENT**

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

**ATTEST:**

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

STATE OF ALABAMA  
COUNTY OF BALDWIN

**RIGHT OF WAY DEED FOR PUBLIC ROAD**  
**FEE SIMPLE WARRANTY DEED**

**KNOW ALL MEN BY THESE PRESENTS**, for and in consideration of the benefit to the public and other good and valuable consideration given to the undersigned by the **CITY OF DAPHNE, ALABAMA**, An Alabama Municipal Corporation, the receipt and sufficiency of which is hereby acknowledged, and for the further consideration of the benefits accruing to the Grantor and to the public from the construction of a public road through or across my lands, I, **RICHARD S. HIGBEE**, an unmarried man, the undersigned Grantor has this day bargained and sold, and by these presents does hereby **GRANT, BARGAIN, SELL AND CONVEY** unto the **CITY OF DAPHNE, ALABAMA**, the following described property lying and being in Baldwin County, Alabama, and being more particularly described as follows:

Commencing at the Southeast corner of Section 9, Township 5 South, Range 2 East, Baldwin County, Alabama; thence run N-90°00'00"-W, 39.97 feet to a point; thence run N-00°00'00"-E, 30.45 feet to a point on the South Right-of-Way line of Whispering Pines Road, and the Point of Beginning; thence run N-89°42'17"-W, along said South Right-of-Way line 101.11 feet to a point; thence run N-45°41'37"-E, leaving said South Right-of-Way line 141.42 feet to a point on the West Right-of-Way line of Baldwin County Road 13; thence run S-00°03'27"-W, along said West Right-of-Way line 99.30 feet to the Point of Beginning, containing 0.12 acres, more or less.

Legal Description Prepared by:  
Hutchinson, Moore & Rauch, LLC  
2039 Main Street  
Daphne, Alabama 36526

GRANTOR DOES HEREBY REPRESENT AND COVENANT THAT THE HEREIN DESCRIBED REAL PROPERTY DOES NOT CONSTITUTE HOMESTEAD PROPERTY WITHIN THE MEANING OF TITLE 6-10-3, CODE OF ALABAMA, (1975).

TO HAVE AND TO HOLD unto the **CITY OF DAPHNE, ALABAMA**, its

successors and/or assigns in fee simple forever.

And for the consideration, aforesaid, I do for myself, for my heirs, executors, administrators, successors, and/or assigns covenant to and with the City of Daphne, Alabama, that I am lawfully seized and possessed in fee simple of said tract or parcel of land hereinabove described; that I have a good and lawful right to sell and convey the same as aforesaid; that the same is free of all encumbrances, liens, and claims, except the lien for ad valorem taxes which attached on October 1, last past, and which is to be paid by the Grantor(s); and that I will forever warrant and defend the title thereto against the lawful claims of all person whomsoever.

The Grantor herein further covenants and agrees that the purchase price or consideration above-stated is in full compensation to him for this conveyance, and hereby releases the City of Daphne, Alabama and all of its employees and officers from any and all damages to his remaining property contiguous to the property hereby conveyed arising out of the location, construction, improvement, landscaping, maintenance, or repair of any public road or highway that may be so located on the property herein conveyed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
RICHARD S. HIGBEE, GRANTOR

STATE OF ALABAMA  
COUNTY OF BALDWIN

I, the undersigned Notary Public, in and for said State and County, hereby certify that **RICHARD S. HIGBEE** the Grantor herein, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of said conveyance, he executed the same voluntarily on the day same bears date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
NOTARY PUBLIC  
Commission Expires: \_\_\_\_\_

THIS INSTRUMENT PREPARED BY:  
Missty C. Gray  
ROSS, JORDAN & GRAY, P.C.  
Post Office Box 210  
Mobile, Alabama 36601-0210  
(251) 432-5400 telephone  
(251) 432-5445 facsimile  
missty@rossandjordan.com

**City of Daphne  
RESOLUTION 2010-68**

**Application for TIGER II Planning Grant Program**

**WHEREAS**, the City of Daphne has been made aware of the availability of USDOT and HUD funding through the TIGER II Planning Grant program for certain planning projects; and

**WHEREAS**, the City of Daphne acknowledges the necessity of regional planning, participation, and regional collaboration between Daphne, Baldwin County, Spanish Fort and Fairhope in this grant application; and,

**WHEREAS**, the goal of the City's collaboration is to create regional planning programs and planning tools for use in guiding future land use development decisions regarding existing and future transportation management, stormwater and watershed management, and alternatives for pedestrian and vehicular transportation choices in the Eastern Shore region as well as in the City of Daphne; and,

**WHEREAS**, the City of Daphne also believes proactive planning is necessary to supplement the "2000-2020 Comprehensive Plan" adopted June 26, 2003 and to support the City's compliance effort with its MS4 permit as regulated by ADEM.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA** that:

1. The City of Daphne shall support a pre-application due no later than July 23, 2010 to be submitted by Baldwin County for the TIGER II Planning grant for the purpose of creating watershed based stormwater management regulations, a future transportation corridor study, an access management plan for County Road 13 and an alternative transportation plan; AND,
2. The Mayor is hereby authorized to execute an agreement and additional documents necessary for pre-application submittal on behalf of the City of Daphne.

**APPROVED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, THIS \_\_\_ DAY OF \_\_\_\_, 2010.**

\_\_\_\_\_  
August A. Palumbo,  
Council President

ATTEST:

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

\_\_\_\_\_  
Fred Small,  
Mayor

**CITY OF DAPHNE  
ORDINANCE NO.: 2010-38**

**A ORDINANCE TO AMEND CERTAIN  
PERSONNEL POLICIES AND PROCEDURES  
RELATED TO EXPOSURE CONTROL TO EMPLOYEES**

**WHEREAS**, the City Council of the City of Daphne, Alabama, did heretofore adopt Ordinance 2009-11 “The Employee Handbook” and subsequent revisions thereto; and

**WHEREAS**, the Public Safety Committee of the City of Daphne, Alabama at their regular meeting held on May 12, 2010, recommended favorably to the City Council of the City of Daphne to adopt the City of Daphne Exposure Control Plan; and

**WHEREAS**, the Exposure Control Plan establishes guidelines to help the worker prevent exposure incidents, identify workers prone to exposures, and implement procedures and practices that will promote a safe workplace; and

**WHEREAS**, the City Council of the City of Daphne, Alabama, has determined that it is in the best interest of the City Employee to provide all City of Daphne employees with information required to prevent the transmission of infectious disease in the workplace; and

**WHEREAS**, the City’s goal of this document is to reduce a significant risk of infection by either minimizing or eliminating the occupational exposure to blood borne pathogens and other infectious materials.

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

**SECTION ONE: EXHIBIT A (CITY OF DAPHNE EXPOSURE CONTROL PLAN)**

Adopt the City of Daphne Exposure Control Plan which is attached as Exhibit A.

**SECTION TWO: SEVERABILITY**

If any section, subsection, sentence, clause, phrase or portion of this Resolution is for any reason held to be invalid or unconstitutional by a Court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

**SECTION THREE: REPEALER**

All ordinances or parts thereof in conflict with the provisions of this Ordinance, to the extent they conflict, shall be and are hereby repealed.

**SECTION FOUR: EFFECTIVE DATE**

This ordinance shall take effect upon its adoption and publication as required by law.

**ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2010.**

CITY OF DAPHNE  
AN ALABAMA MUNICIPAL CORPORATION

\_\_\_\_\_  
**August A. Palumbo**  
**COUNCIL PRESIDENT**  
Date and Time Signed: \_\_\_\_\_

\_\_\_\_\_  
**FRED SMALL**  
**MAYOR**  
Date and Time Signed: \_\_\_\_\_

**ATTEST:**

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

## **CITY OF DAPHNE EXPOSURE CONTROL PLAN**

---

Subject: Exposure Control Plan

Purpose: This document establishes guidelines to help the worker prevent exposure incidents, identify workers prone to exposures, and implement procedures and practices that will promote a safe workplace.

### **I. Scope**

This plan is to provide all City of Daphne employees with information required to prevent the transmission of infectious disease in the workplace. The goal of this document is to reduce a significant risk of infection by either minimizing or eliminating the occupational exposure to blood borne pathogens and other infectious materials.

### **II. Exposure Determination**

An exposure is contact with blood, body fluids, tissue on airborne droplets by direct or indirect contact, chemicals.

### **III. Methods of Compliance**

- A. Universal Precautions - (a concept for infection control which considers blood and body fluids to pose a risk for transmission of blood borne infectious diseases) shall be observed when employees are exposed to blood or other potentially infectious or hazardous materials or equipment. Documented exposures to infectious diseases have not resulted from nasal secretions, septum, sweat, tears, urine, or vomit. Since any body fluid can transmit infectious diseases if it contains trace amounts of blood, employees are directed to treat **ALL** body fluids as infectious substances.
- B. Standard Operating Procedures and Work Practices - shall be re-evaluated, updated, and replaced on an annual basis or as need to ensure effectiveness as related to possible exposures.
- C. Handwashing
  1. Hand washing facilities are provided at all city buildings. When hand washing facilities are not immediately available, antiseptic hand cleaner and towels shall be utilized.
  2. Hands and other skin surfaces must be washed thoroughly as soon as possible if contaminated with a potentially infectious or hazardous material to which universal precautions apply. Hands should be washed after gloves are removed even though gloves appear intact. Hand washing should be completed using appropriate facilities such as a utility sink or

restroom sinks. *Hands **will not** be washed in sinks where food preparation occurs.*

3. Handwashing should be done with soap and warm water working up a lather, rubbing your hands together for at least 10 to 15 seconds. Hands should then be rinsed and dried with a disposable paper towel/towelet. The paper towel should be used to turn off the faucets. The towel will be discarded in a lined waste container in the restroom. When antiseptic cleaner is used at a scene, employees must wash their hands again where possible using the above procedures.
4. ***All employees shall wash their hands after using or cleaning restroom facilities and **before** any food is prepared or kitchenware is handled. This applies to all employees and the hand washing procedure above should be followed.***

D. Personal Hygiene

1. Eating, drinking, smoking, using of smokeless tobacco, or applying lip balm, and handling contact lenses are prohibited in work areas where there is a reasonable likelihood of occupational exposure.

E. Personal Protective Equipment (PPE)

1. Employees at risk will be provided with the minimum PPE such as disposable gloves, hepa-filter mask, eye protection. If major volumes of blood are present, the employee should avoid all contact with the blood and should don more protective clothing.
2. Disposable gloves must be worn when employees can anticipate hand contact with blood or other potentially infectious materials (e.g. when involved in emergency patient care). Where multiple patients are involved, the employee shall change gloves when moving to a different patient.
3. The employee must use PPE at all potentially hazardous areas. This should only be done when in the employee's professional judgment deems necessary. When the employee makes this judgment, the circumstances shall be investigated and documented to determine whether changes can be made to prevent such occurrences in the future.
4. Contaminated disposable items (e.g. gloves) must be disposed of in an approved container. For large volumes of contaminated materials (e.g. clothing), the materials should be placed in biohazard bags located at Fire Station #2. When there are bodily fluids in the roadway that may occur at an accident scene, the fluid should be flooded with bleach and washed out of the roadway. Contact the Fire Department for cleanup.

5. Laundering of Clothing and Cleaning of PPE
    - A. Uniforms issued to employees and non-uniform clothing worn by volunteering and other employees **are not considered protective clothing**. Contaminated uniform and non-uniform items should be handled by personnel wearing gloves and bagged in a leak proof plastic bag that is marked with a warning label. Soiled items may be decontaminated by laundering according to the manufacture's instructions. A mild solution of bleach should be added to the wash. All items to be cleaned at a designated area to be determined by Supervisors.
    - B. Boots and leather items may be scrub brushed with soap and hot water to remove the contamination. Once the item(s) has been cleaned, it should be placed in a well ventilated area to dry. The floor should then be cleaned using a bleach solution and the remaining liquid rinsed down the sanitary drain in the floor.
    - C. Employees whose uniform or other clothing is contaminated by a potentially infectious material shall change from the contaminated uniform or clothing into clean clothing as soon as possible. The contaminated clothing should be laundered per item # 6A described above.
    - D. Employees are directed to avoid handling personal items such as combs and pens while wearing contaminated gloves. Contaminated gloves should be removed as soon as possible and properly disposed of and the employee should wash hands as soon as possible as outlined above.
    - E. Resuscitation Equipment: Employees will not give direct mouth to mouth resuscitation to a non-breathing victim. Airway and BVM equipment will be utilized.
    - F. Durable equipment (such as face masks, etc.) must be thoroughly washed and cleaned with an approved disinfectant after each use. This will be done in accordance with item # 6B above.
  6. Housekeeping.
    - A. All equipment and work areas shall be cleaned and decontaminated after contact with blood or potentially infectious material. The area shall be cleaned with an appropriate disinfectant as soon as possible.
- F. Hepatitis B.
1. Hepatitis B vaccinations will be made available to all employees and volunteers who can possibly have an occupational exposure. The offer of

the vaccination will be made after receiving training regarding Hepatitis B. Employees may choose to decline the series of vaccinations by signing a waiver. This waiver shall include this statement 'the potential risks associated with contracting Hepatitis B have been explained and are understood by the employee'.

2. Employees who have previously received the complete Hepatitis B series, or who have received antibody testing proving to be immune to Hepatitis B, or the vaccine is for medical reasons shall not be required to receive the series.
3. Any employee who initially declines the series may at a later date decide to accept the vaccination and will be allowed to receive the series at that time.

G. Tuberculosis.

1. In the event a worker tests positive for TB, a chest x-ray will be done within 48 hours of the positive skin test.
2. Annually the worker(s) testing positive will be required to fill out the questionnaire provided which will be kept on file in lieu of annual testing. If a worker(s) chest x-ray is positive, medication and treatment will be provided to the employee at no charge to the employee.

H. Significant Exposure.

- 1) A significant exposure occurs when blood or other potentially infectious materials air borne or bloodborne come into direct contact with eyes, nose, mouth, into an open cut, or by needle puncture or exposure to potentially infectious airborne pathogens.
- 2) If an employee experiences a significant exposure, or experiences a situation where a significant exposure is likely to have occurred, the employee shall report the incident to the supervisor within as soon as possible after the incident. The employee shall complete a report describing the incident completely and an Accident Investigation form with the Supervisor. The Supervisor will complete the required Notice of Injury forms and send to the Human Resources Department.
- 3) The employee shall receive medical treatment as required for a medical examination and all follow-up treatment will remain confidential.
- 4) When applicable the source of exposure shall be located and tested as soon as possible.

- 5) The exposed employee's blood shall be collected as soon as feasible and tested after consent is obtained. If the employee consents to baseline blood collection but does not consent to Hepatitis B or HIV testing, then the sample shall be preserved for at least 90 days. If the employee elects to have the baseline sample tested within the 90 day period, then the testing shall be done as soon as feasible after the request.
- 6) Counseling shall be provided for the exposed employee when medically indicated as recommended by the U.S. Public Health Service. Included should counseling and evaluation of the illnesses.

H. Definitions.

- 1) Blood - The familiar red fluid in the body that contains [white](#) and [red blood cells](#), [platelets](#).
- 2) Body Fluid with Visible blood - Some infections that can be transmitted through contact with blood and body fluids include: [HIV](#), [Hepatitis A](#), [B](#), [C](#), Staph and Strep infections, Gastroenteritis-salmonella, and shigella, Pneumonia, Syphilis, TB, Malaria, Measles, Chicken Pox, Herpes, Urinary tract infections, and Blood infections. The greatest risks are from HIV and Hepatitis B and C.
- 3) Internal Body Fluids - A natural bodily fluid or secretion of fluid such as blood, semen, or saliva.
- 4) Vaginal Secretions: Vaginal discharge refers to secretions from the [vagina](#). Such discharge can vary in: Consistency (thick, pasty, thin); Color (clear, cloudy); Smell (normal, odorless, bad odor)
- 5) Chemical – A substance or agent which may cause an adverse effect or effects to biological systems.
- 6) Feces – Bodily waste.
- 7) Smoke – Breathing in the harmful gases, vapors, and particulate matter contained in smoke.
- 8) Unknown Substance – A solid or liquid in state of matter that cannot be identified.
- 9) Inhalation – The act of taking a substance into the body by breathing.

I. Training.

1. Training shall be provided by the City of Daphne to all employees with the potential for occupational exposure. This training shall be conducted

on an annual basis and new employees shall be offered this training as soon after being hired as feasible.

J. Record Keeping.

1. Medical Records.

A. Medical Records are confidential and are not released without an employee's expressed written consent to any person within or outside the department, except as required by law. Medical records shall be kept locked in a secure area.

B. Medical records must include a copy of the employee's Hepatitis B vaccination record including the dates of vaccination or copies of the refusal forms.

C. Medical records will be maintained in a file separate from the employee's personnel file. Medical records will be maintained according to the State of Alabama Archives Records Dispositions Authority.

2. Training Records.

A. The Human Resources Department will keep a record of all training provided its personnel. The training records will include the dates and content of the training and a roster of employees in attendance. The records will be maintained for a minimum of three years from the date of training.

K. Responsibility.

1. Employees:

A. It is the responsibility of the employee to be aware of the types of exposures related to his/her job. The employee is responsible for participating in training provided by the department and for using PPE provided by the Department as necessary.

2. Supervisors:

A. It is the supervisor's responsibility to monitor the activity of employees determined to be at risk to ascertain that the provisions of this policy are followed.

B. Any supervisor observing an infraction of this policy or observing a potentially hazardous condition involving blood or other potentially hazardous materials must report that condition to his or her supervisor.

C. Supervisors are also responsible for maintaining the appropriate level of personal protective equipment.

3. Department Administration:
  - A. It is the responsibility of the Department Administration to provide Personal protective equipment to those employees with potential occupational exposure.
  - B. The Human Resources Department shall review the exposure control plan annually. The exposure control plan shall be available to all employees and shall be posted in a conspicuous location within the Department.
  - C. The Human Resources Department will ensure that each significant exposure could have been avoided and an evaluation of the circumstances will be conducted to determine if policies, procedures, or protective equipment should be changed or amended to avoid future incidents.
  - D. The Human Resources Department will ensure that training to all Employees with occupational exposure is completed annually.
  - E. The Department Administration will be responsible for maintaining all medical and training records in the required manner.

By order of: