

**CITY COUNCIL BUSINESS MEETING AGENDA  
1705 MAIN STREET, DAPHNE, AL  
SEPTEMBER 7, 2010  
BUSINESS MEETING  
6:30 P.M.**

- 1. CALL TO ORDER**
- 2. ROLL CALL/INVOCATION /  
PLEDGE OF ALLEGIANCE**

- 3. APPROVE MINUTES:** Council meeting minutes / August 16, 2010  
Special Called Council meeting minutes / August 23, 2010

**PUBLIC HEARING:** Revisions to Zoning Map

**PRESENTATION:** City Hall Cistern Grant / Ashley Campbell

**MOTION:** That the service contract with the Daphne City Prosecutor executed on May 1, 2010 is terminated effective immediately upon 30 days written notice as provided by such contract

- 4. REPORT STANDING COMMITTEES:**
  - A. FINANCE COMMITTEE / Boulware**
  - B. BUILDINGS & PROPERTY - Lake**
  - C. PUBLIC SAFETY –**
  - D. CODE ENFORCEMENT/ORDINANCE COMMITTEE - Palumbo**  
Review minutes / August 11<sup>th</sup>
  - E. PUBLIC WORKS COMMITTEE / SOLID WASTE AUTHORITY - Yelding**

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

- A. Board of Zoning Adjustments – Jones**
- B. Downtown Redevelopment Authority – Barnette**  
Review minutes / July 26<sup>th</sup>  
Review minutes / August 23<sup>rd</sup>  
Appoint: Kennard P. Blame
- C. Industrial Development Board – Yelding**
- D. Library Board – Lake**
- E. Planning Commission – Barnette**  
Review minutes / July 22<sup>nd</sup>

Set Public Hearing date for **October 18, 2010** to consider:

- a.) Rezone: A & B-10, LLC / NE of the intersection of Whispering Pines Road and Parker Lane, N of Madison Place Subdivision, Phase Two, N of Caroline Woods, Phases One and Two and W of Daphne Business Park /  
Present Zoning: R-3, High Density Single Family District  
Requested Zoning: R-4, High Density Single Family District
  
- b.) Annexation: Richard S. Higbee / NW of the intersection of County Road 13 and Whispering Pines Road  
Present Zoning: RSF-2, Single Family District in Baldwin County District 15  
Requested Zoning: B-1, Local Business, and B-3, Professional Business,  
City of Daphne

**F. Recreation Board**

Appoint: Jan Mitemeyer

**G. Utility Board - Scott**

Review minutes / July 28<sup>th</sup>

**6. REPORTS OF OFFICERS:**

- A. Mayor’s Report
- B. City Attorney’s Report
- C. Department Head Comments

**7. PUBLIC PARTICIPATION:**

**8. RESOLUTIONS & ORDINANCES:**

**RESOLUTIONS:**

- a.) Auburn University Marine Extension & Research Center  
Southeast Rivers and Streams Fund Grant ...../Resolution 2010-81

**ORDINANCES:**

**2<sup>ND</sup> READ**

- a.) Amend Ordinance 1996-14 / City’s Drug & Alcohol Policy...../Ordinance 2010-51
- b.) Garbage Personnel & Operating – Through September 2010...../Ordinance 2010-53
- c.) Lodging Tax Appropriation: Improvements to Richard  
Scardamalia Pavilion Building...../Ordinance 2010-54
- d.) Civic Center HVAC Control System Upgrade...../Ordinance 2010-55
- e.) Amend Ordinance 2003-11 / Animal Control Ordinance ...../Ordinance 2010-56

**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

**AUGUST 16, 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 6:30 p.m.

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

Invocation was given by Mr. Lake.

**COUNCIL MEMBERS PRESENT:** Bailey Yelding; Cathy Barnette; John Lake; Kelly Reese; Ron Scott; Derek Boulware; August Palumbo.

Also present: David Cohen, City Clerk; Rebecca Hayes, Assistant City Clerk; Jay Ross, City Attorney; James White, Fire Chief; Kim Briley, Finance Director; Richard Johnson, Public Works Director; Vickie Hinman, Human Resource Director; Adrienne Jones, Planning Director; Margaret Thigpin, Civic Center Director; Richard Merchant, Building Official; David McKelroy, Recreation Director; Capt. Scott Taylor, Police Department; Anne Morris, Reference Librarian; Jane Robins, Mayor's Assistant;

Absent: Mayor Small; David Carpenter, Police Chief; Tonja Young, Library Director;

**SWEARING IN:** District #4 Councilman / Kelly D. Reese

Judge Carmen Bosch swore in Kelly D. Reese as the councilman for District #4.

**3. APPROVE MINUTES**

**MOTION BY Councilwoman Barnette to adopt the Council meeting minutes meeting held August 2, 2010. *Seconded by Councilman Scott.***

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

**MOTION BY Councilwoman Barnette to approve the Work Session minutes meeting held August 9, 2010. *Seconded by Councilman Scott.***

**AYE Barnette, Lake, Reese, Boulware, Palumbo                      ABSTAIN Yelding**

**MOTION CARRIED**

**MOTION BY Councilwoman Barnette to approve the Special Called Council meeting minutes meeting held August 11, 2010. *Seconded by Councilman Yelding.***

**AYE Yelding, Barnette, Lake, Boulware, Palumbo                      ABSTAIN Reese**

**MOTION CARRIED**

**AUGUST 16, 2010  
CITY COUNCIL MEETING  
1705 MAIN STREET  
DAPHNE, AL  
6:30 P.M.**

**PRESENTATION:** NEP/Watershed Coalition / Mrs. Swan

Mrs. Swan made a presentation stressing the need for better storm water management. She asked the council to agree to become a part of the Baldwin County Watershed Coalition to promote better management.

**MOTION BY Councilwoman Barnette to authorize the Mayor to execute the Memorandum of Understanding with the Baldwin County Watershed Coalition on behalf of the City of Daphne. Seconded by Councilman Scott.**

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

**MOTION:** Transfer \$1,000 from District #4 Training Fund to the Legislative Training Fund

**MOTION BY Councilwoman Barnette to transfer \$1,000 from the District #4 Training fund to the Legislative Training fund. Seconded by Councilman Scott.**

After discussing whether to take the funds from District #4 since Councilman Reese is new, and there might be some training that he would like to go through Councilwoman Barnette withdrew her motion. Councilman Scott withdrew his second.

**MOTION BY Councilwoman Barnette to transfer \$1,000 from District #5 Training fund to the Legislative Training Fund. Seconded by Councilman Scott.**

Councilman Reese stated for the record that he did not have any objection to the money being taken from his Training fund.

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

**DISCUSS:** Public Works Employee Plan

This is the situation when they were at this point in time last year they currently in Public Works were Solid Waste, and he understands that Solid Waste in a budgetary is accounted for in one way, but Solid Waste in an operation standpoint as a department of Public Works consists of frontline staff that collect trash which is your debris, limbs, grass clippings things of that nature, household garbage which is household waste as well as recycling, and this activity occurs every week, and these activities run concurrently during the week. At this time last year the department was under a mixed operation scheme. The curbside garbage collection was collected by different means 1) automated trucks 2) by rear loading

trucks that involved a driver and two (2) hoppers on the rear of the truck to physically get the garbage container to the back of the truck to be tipped into the rear loading compartment. As they approach the fiscal year '10 budget they had proposed 12 Solid Waste workers which have a senior classification with one of the positions being open. Also, they had a total of eight (8) Solid Waste workers with one of those positions open. When the budget was approved they were directed not to fill the open two (2) positions. One was a senior position and one was not. As they proceeded into the fiscal year they went to once a week pick up with full automatic trucks meaning household garbage could be collected with a total of four (4) trucks that required four (4) Solid Waste worker seniors. Now, of course, the trucks did not magically appear on October 1<sup>st</sup> it took a good bit of time until they had the trucks in hand, and that was approximately the beginning of the third quarter of fiscal year April 1<sup>st</sup>. Also, there were decisions made as part of outreach and continuing education with folks still putting household garbage in non-automatic containers, either bags on the street or a garbage container that they purchased at home improvement stores or things of that nature. So the decision was made that some of these Solid Waste workers positions would ride along with the automated trucks, one would get out and get the non-conforming container emptied so it could go into the automated truck, but to also do outreach to the citizens to explain to them that they have to use the container that is provided by the city, because the trucks cannot pick up non-conforming containers, and cannot pick up loose bags of garbage. This process went on for some period of time. But as council can see they had an excess of classifications of individuals in garbage that were classified as Solid Waste workers that had to be accommodated. The plan was instituted before his arrival, and was completed pretty much upon his arrival, and it was to find gainful employment for those individuals in other departments whether internal through the Solid Waste or external through Solid Waste. They are glad to report that, as of today, every one of those surplus Solid Waste workers have been placed somewhere else in the city either in Grounds Department in Public Works or in Parks and Recreation where there was a position of equal classification. So, today, as he speaks, as they operate in those three functions of Solid Waste they operate trash collection with four (4) Solid Waste seniors, they operate the household garbage once a week with four (4) Solid Waste worker seniors classifications, and the recycle program operates with three (3) senior positions, and three (3) Solid Waste worker positions. That is a minimum frontline staffing meaning that whenever an employee takes a day of vacation if they are in garbage or trash that either a crew leader or the supervisor climbs in the truck and operates it that day, because a Solid Waste worker senior means that they have the CDL license classification, and they can operate the vehicle whether it is a trash, garbage or recycling vehicle. In recycling they are in single stream operation they are using three (3) retired rear loading garbage trucks that require at a minimum crew one (1) driver who is a senior position and one (1) hopper who rides on the back. Those trucks bring the collected recycling materials to the recycle facility where it is tipped onto the floor and is placed into a larger container truck that once it is full is sold to the open market for a company to reclaim the individual components of that recycle product. The reason for the additional Solid Waste worker, and the senior is that the senior position can run all the routes of recycling and the Solid Waste worker is a backup on the hopper, and when they are not doing a backup role they are operating the recycle center to keep the product moving as it needs to move collecting and emptying the bins at the Public Works Department. As far as having a plan they had a plan the plan is complete. The additional, and there were actually four (4) positions that they ended up with that they had to place elsewhere, and they successfully placed three (3) of them with Parks and Recreation, and one (1) of them today is now in the Grounds Department so that process is complete.

Council President Palumbo requested Mr. Johnson to explain how this relates to Ordinance 2010-53 regarding garbage personnel and operating that is in the packet tonight.

Mr. Johnson stated that the budget anticipated a much quicker transition to once a week with fully automated trucks, and that transition took pretty much most of the first three quarters fiscal year. For those employees that started the budget year it took that three quarters to get them placed elsewhere. So, from that period of time the pay for those individuals kept coming out of the garbage budget, in essence, that \$59,000 appropriation is money that was spent as a cost of transition a reduction in force, and a transition of a mixed operation to a single automatic operation with one person running the one piece of equipment. So that is the employee personnel cost. The good news is that that is a static number it will not get any larger, because there are no individuals with the classification or position of Solid Waste worker assigned to garbage. So there is no one drawing out of that pay account. They have transitioned all those folks as of this day. The other part is an operating cost. One part of that operating cost which is almost \$8,000 consists of vehicle insurance. When they started the fiscal year they possessed two (2) recycle trucks and three (3) rear loading garbage trucks. They paid full insurance premiums on them at the start of the calendar year. At or about, approximately, the end of the second quarter they took possession two brand new automated garbage trucks which they then paid full insurance premiums on. The policy is that they keep vehicles insured until they are disposed of, and that takes a little bit of time. The two (2) recycling trucks were set out to pasture, so to speak, went through the process to be auctioned off, and he understands one (1) of them has been sold, and the other one is shortly to be sold. They as a city would not drop insurance on them until there is no possibility of a city employee operating them. So that means that when they relinquish title, and no longer hold title they no longer insure it. As he understands from Suzanne and Kim there is some reimbursement of that insurance expense for any unused premium period that would be left. Those premiums were paid and that is part of the operating expense, and the other part is fuel consumption in garbage collection. One of the activities of the budgeting that occurred leading into fiscal year '10 was an anticipation that the once a week garbage collection would occur much sooner than it actually did. It did not start operating as once a week until the start of the third quarter of the fiscal year, but the budget was planned as if it would start at the beginning of the fiscal year. So they basically budgeted based on savings for a whole year that they were only realized for a half year. As of August 4<sup>th</sup> that deficit for fuel was a little over \$11,000, and the appropriation requesting an additional amount of money to get them through September 30<sup>th</sup> the end of the budget year.

#### **4. REPORT OF STANDING COMMITTEES:**

##### **A. FINANCE COMMITTEE – Boulware**

The minutes for the August 9<sup>th</sup> meeting are in the packet.

**Treasurers Report / July 31, 2010**

**MOTION BY Councilman Scott to accept the Treasurers Report ending July 31, 2010 with a balance of \$19,900,022.51. *Seconded by Councilwoman Barnette.***

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

**Sales and Use Taxes: June 30, 2010**

Sales and Use Tax Collected for June 2010	- \$ 887,269
Sales and Use Tax Budgeted for June 2010	- \$ <u>846,847</u>
Over Budget (for June)	- \$ 40,616

YTD Budget Collections Variance – Over Budget - \$ 216,908

**Lodging Tax Collections, June 30, 2010**

The Lodging Tax Collections report shows \$79,822.84 collected for June 2010.

The next meeting will be September 13<sup>th</sup> at 4:00 p.m. in the Executive Conference Room

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

The minutes for the August 2<sup>nd</sup> meeting are in the packet. The next meeting will be September 7<sup>th</sup> at 5:00 p.m.

**C. PUBLIC SAFETY COMMITTEE –**

The minutes for the August 11<sup>th</sup> meeting are in the packet. Council President Palumbo stated that Chief White gave a presentation at the meeting, and asked Mrs. Barnette to briefly report on his presentation. Councilwoman Barnette stated that she and Councilman Yelding have been pretty vocal about the fact that a fire station needed to be full time staffed for the south end of the city, and Chief White has proposed a restructuring of the department to staff and develop Fire Station #1 that would be fully staffed at the Stanton Road facility. He is requesting the move of a couple of vehicles that are currently housed at north Main Street, and the addition of two (2) firefighters, and the rest could be re-allocated and re-utilized. So the committee did recommend to Chief White to put this proposal in the budget for the upcoming fiscal year. Chief White had utilized a lot of resources through the SAFER grant that the city was issued a couple of years ago, and moving individuals around to try to address the need. She said the final act that precipitated this plan was a call that took about 12 minutes for them to respond to a house fire. She said that every 30 seconds a house fire becomes fully involved which means it doubles in size, and 12 minutes is a long time for the fire department to respond, because it is coming from North Main Street. She is every excited, and she and Councilman Yelding will continue to lobby for this station, and they hope that council will give it full consideration at the budget cycle.

Councilman Yelding stated that Chief White stated that the fire was in Daphmont which is in south Daphne, and it took the department 12 minutes to get there. The house was fully engulfed by that time, and he was not satisfied with that at all. Chief White said that something needed to be done that there is no way that you can act properly when it takes you 12 minutes to get to a fire, and this is not acceptable.

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

There is an ordinance on the agenda for a 1<sup>st</sup> read amending the Animal Control Ordinance. The primary amendment is to give the Animal Control officers more authority in seizing vicious animals that have been determined to have committed dog bites or attacked other animals or people. This was given a favorable recommendation by the Public Safety Committee.

Council President Palumbo stated that the time has come to go to accepting credit cards in the city. He said that Mrs. Briley will have information on using credit cards at the September 7<sup>th</sup> meeting.

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

The minutes for the Beautification meeting are in the packet. The Public Works Committee met before the council meeting. The next meeting will be September 20<sup>th</sup> at 5:00 p.m. The meetings will be on the third Monday of the month at 5:00 p.m.

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

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

The board will meet September 2<sup>nd</sup> at 6:00 p.m. with one appeal.

**B. Downtown Redevelopment Authority – Barnette**

The Authority will meet next Monday at 4:45 p.m. She reported that Councilman Scott has someone that is interested in becoming a member, and two others have expressed interest also.

**C. Industrial Development Board – Yelding**

The minutes for the July 26<sup>th</sup> meeting are in the packet. The board met in July, and decided to meet quarterly. The next meeting will be the 4<sup>th</sup> Monday of September. They will only meet before that if there is something to consider.

**D. Library Board – Lake**

No report.

**E. Planning Commission – Barnette**

The Site Review meeting is Wednesday at 8:30 a.m., and the Planning Commission meeting will be August 26<sup>th</sup> at 6:00 p.m. in the council chambers.

**F. Recreation Board – Burnam**

The minutes for the July 7<sup>th</sup> meeting are in the packet. Council President Palumbo reported that Mr. Douglas Dugat is interested in becoming a member of the Recreation Board. Mr. Dugat was among those that they interviewed for the District #4 council seat.

**MOTION BY Councilman Yelding to appoint Mr. Douglas Dugat to the Recreation Board. Seconded by Councilwoman Barnette.**

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

**ABSTAIN Reese**

**MOTION CARRIED**

Council President Palumbo asked the City Clerk to contact Mr. Dugat and let him know he was appointed and when the meeting will be.

Councilman Scott asked for an update on the May Day Park boat ramp.

David Cohen, City Clerk, half the pilings have been completed as of today. There are roughly 11 pilings in the ground. He said it is a matter of putting it together like a jigsaw puzzle. Hopefully, they will be done in a week or two with the pilings, and they will start putting the caps and the panels in place. As soon as they get that done that will substantially complete the project.

**G. Utility Board – Scott**

No report.

**6. REPORTS OF THE OFFICERS:**

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

No report.

***B. City Attorney Report***

Mr. Ross stated that Mr. Starke Irvine delivered the deed for the land that was swapped on Bayfront Drive between him and the city giving it back to the city. He thanked Mr. Irvine for doing the right thing.

Council President Palumbo requested the City Attorney be prepared to give reasons why the city's insurance company denied a claim for a car that was damaged during the National Day of Prayer ceremony at City Hall at the September work session. Mr. Ross stated that the Attorney General's Opinion regarding the BZA was in the Alabama Journal that the League of Municipalities publishes. He said that he will get with Mrs. Jones to discuss this later this week. The Attorney General's office has assured him that they will look at it again.

Councilwoman Barnette requested a summary of outstanding litigation against the city.

***C. Department Head Comments***

***David McKelroy – Recreation Director*** - reported that the Dixie Youth baseball team won 2<sup>nd</sup> place in the tournament. Registration has begun for fall sports. They have 535 registered for soccer, 212 for football and 60 are registered for cheerleading. September 2<sup>nd</sup> starts Brown Bag by the Bay which will run through October 28<sup>th</sup> it will be from 11:30-1:30.

***Margaret Thigpin – Civic Center Director*** – reported that they are wrapping up the redo at Bayfront and the green room at the Civic Center. There are 275 tickets left for the Taste of the Eastern Shore. There are 32 vendors, and more are coming in daily.

***Vickie Hinman – Human Resource Director*** – reported that they have two (2) job postings one is for a Library Aid which will close tomorrow and the other is for a part-time Crossing Guard.

***Adrienne Jones – Planning Director*** – reported that at the Planning Commission meeting they will be considering the outdoor vending machines, the outdoor recreation zone, and Mr. Johnson’s recommendations.

Council President Palumbo stated that council will consider the last of the proposed revisions to the Land Use Ordinance at the September work session. He also asked Mrs. Hinman to send them a report on new hires and employees leaving every six (6) months.

***Ms. Kelli Rice – Smith, Duke & Buckalew*** - reported to council on the city audit giving the city a clean audit.

***Richard Johnson – Public Works Director*** – discussed the Director’s report with council. He reported that he is currently reviewing the estimates for the road projects, and his figures do not match the ones in the report. He said that he is not prepared to discuss it at this time, but he will be ready by the next work session.

Council will welcome Mr. Johnsons recommendations on priority of streets to be paved.

**7. PUBLIC PARTICIPATION**

***Mrs. Mickey Boykin – 207 Beal Lane – Daphne Museum*** – thanked council for repairing the air conditioning at the museum.

***Mr. Bob Foth – TimberCreek POA*** – spoke regarding paving of street in TimberCreek.

***Mr. Kevin Spriggs – Owner of Eastern Shore Motel*** – spoke regarding the recycling program, funding the Chamber of Commerce and the proposed revisions to the Land Use Ordinance.



MOTION BY Councilwoman Barnette to adopt Ordinances 2010-49 and 2010-50. *Seconded by Councilman Yelding.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilman Scott to suspend the rules to consider Ordinance 2010-52. *Seconded by Councilwoman Barnette.*

ROLL CALL VOTE

Yelding	Aye	Scott	Aye
Barnette	Aye	Boulware	Aye
Reese	Aye	Palumbo	Aye

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilman Scott to waive the reading of Ordinance 2010-52. *Seconded by Councilwoman Barnette.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilman Scott to adopt Ordinance 2010-52. *Seconded by Councilwoman Barnette.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilwoman Barnette to waive the reading of Ordinances 2010-57. *Seconded by Councilman Boulware.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilwoman Barnette to adopt Ordinance 2010-57. *Seconded by Councilman Boulware.*

AYE Yelding, Barnette, Reese, Boulware, Palumbo NAY Scott

MOTION CARRIED

**MOTION BY Councilwoman to set an interview date for the position of Municipal Judge for August 23, 2010 at 6:00 p.m. *Seconded by Councilman Scott.***

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

**ORDINANCES 2010-51, 2010-52, 2010-53, 2010-54, 2010-55 and 2010-56 WERE MADE 1<sup>ST</sup> READ.**

**8. COUNCIL COMMENTS**

*Councilwoman Barnette* welcomed Councilman Reese to the council.

*Councilman Scott* also welcomed Councilman Reese to the council.

*Councilman Boulware* welcomed Councilman Reese to the council, and said that he is sure that he will be an asset.

*Council President Palumbo* congratulated Councilman Reese on behalf of the council, and looks forward to working with him.

**10. ADJOURN**

**MOTION BY Councilwoman Barnette to adjourn. *Seconded by Councilman Scott.***

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

**There being no further business to discuss the meeting adjourned at 8:22 p.m.**

Respectfully submitted by,

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

Certification by Presiding Officer:

\_\_\_\_\_  
August A. Palumbo,  
Council President

**AUGUST 23, 2010  
 SPECIAL CITY COUNCIL MEETING  
 1705 MAIN STREET  
 DAPHNE, AL  
 6:00 P.M.**

**1. CALL TO ORDER**

Council President Palumbo called the meeting to order at 6:00 p.m.

**2. ROLL CALL**

**COUNCIL MEMBERS PRESENT:** Bailey Yelding; Cathy Barnette; John Lake; Kelly Reese; Ron Scott; Derek Boulware; August Palumbo.

Also present: David Cohen, City Clerk; Jay Ross; City Attorney; David Carpenter, Police Chief.

Absent: Mayor Small.

**3. INTERVIEWS FOR MUNICIPAL JUDGE**

Council interviewed the following applicants for the position of Municipal Judge:

1. Julian Buddy Brackin
2. William G. Chason
3. Brian A. Dasinger
4. Kenneth A. Hitson, Jr.
5. J. Bart McNeil
6. James H. Sweet

**ROUND ONE VOTE**

NAME	VOTES	TOTAL
Julian "Buddy" Brackin	<b>Yelding, Barnette, Palumbo</b>	<b>3</b>
William G. Chason	<b>Scott</b>	<b>1</b>
Brian A. Dasinger		<b>0</b>
Kenneth A. Hitson, Jr.	<b>Lake, Reese, Boulware, Palumbo</b>	<b>4</b>
J. Bart McNeil	<b>Lake, Reese, Boulware</b>	<b>3</b>
James H. Sweet	<b>Yelding, Barnette, Reese</b>	<b>3</b>

**AUGUST 23, 2010  
 SPECIAL CITY COUNCIL MEETING  
 1705 MAIN STREET  
 DAPHNE, AL  
 6:00 PM**

**TIE BREAKER VOTE**

<b>NAME</b>	<b>VOTES</b>	<b>TOTAL</b>
Julian Buddy Brackin	<b>Yelding, Palumbo</b>	<b>2</b>
J. Bart McNiel	<b>Lake, Reese, Boulware</b>	<b>3</b>
James H. Sweet	<b>Barnette, Scott</b>	<b>2</b>

Second round is between Mr. Kenneth Hitson, Jr. and Mr. J. Bart McNiel

**FINAL VOTE**

<b>NAME</b>	<b>VOTES</b>	<b>TOTAL</b>
Kenneth Hitson, Jr.	<b>Yelding, Barnette, Lake, Palumbo</b>	<b>4</b>
J. Bart McNiel	<b>Reese, Scott, Boulware</b>	<b>3</b>

Mr. Kenneth Hitson, Jr. is the new Municipal Judge.

<b>MOTION BY Councilwoman Barnette to adjourn. Seconded by Councilman Lake.</b>		
<b>AYE</b>	<b>ALL IN FAVOR</b>	<b>MOTION CARRIED</b>
<b>NAY</b>	<b>NONE OPPOSED</b>	

**There being no further business to discuss the meeting adjourned at 9:25 p.m.**

Respectfully submitted by,

**Certification of Presiding Officer:**

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

\_\_\_\_\_  
**August A. Palumbo, Council President**

**PUBLIC HEARING LIST FOR:  
SEPTEMBER 7, 2010**

- 1.) Revision to Zoning Map**

To: Office of the City Clerk  
From: Adrienne D. Jones,  
Director of Community Development  
Subject: Revised City of Daphne Zoning Map  
Date: July 23, 2010

MEMORANDUM

At the July 22, 2010 regular meeting of the City of Daphne Planning Commission eight members were present and the vote carried unanimously for a favorable recommendation of the acceptance and amendment thereof to correctly reflect the zoning of the parcels and districts and the removal the golf course designation.

Please prepare an ordinance and place on the appropriate agenda for action by the City Council.

Thank you,  
ADJ/jd

cc: file

**CITY OF DAPHNE, ALABAMA  
ORDINANCE NO. 2010-**

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

**WHEREAS**, the Planning Commission of the City of Daphne, Alabama at their regular meeting held on July 22, 2010 , favorably recommended to the City Council of the City of Daphne certain amendments to the Zoning District Map approved and adopted by the Daphne Land Use and Development Ordinance No. 2002-22, referenced in Appendix H "Exhibit A" thereof and amended by Ordinance No. 2003-06, Ordinance No. 2005-11, Ordinance No. 2005-42, Ordinance No. 2006-24, Ordinance No. 2006-73, Ordinance No. 2007-15, Ordinance 2007-48 and Ordinance 2008-56, Ordinance 2009-19, Ordinance 2009-60; and

**WHEREAS**, said amendments are necessary due to various rezoning and annexation requests which have been approved since the adoption of Ordinance No. 2002-22, Ordinance 2003-06, Ordinance No. 2005-11, Ordinance No. 2005-42, Ordinance No. 2006-24, Ordinance No. 2006-73, Ordinance No. 2007-15, Ordinance 2007-48, Ordinance 2008-56, Ordinance 2009-19 and Ordinance No. 2009-60; and

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

**WHEREAS**, a public hearing regarding the proposed Zoning District Map amendments was held by the City Council on September 7, 2010; and

**WHEREAS**, the City Council of the City of Daphne after due consideration and upon recommendation of the Planning Commission believe it in the best interest of the health, safety and welfare of the citizens of the City of Daphne to amend said Zoning District Map as recommended; and

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

**SECTION I: ZONING DISTRICT MAP**

The Zoning District Map referenced hereto as Exhibit "A" shall be the official zoning map of the City of Daphne, Alabama and shall be further designated in Appendix H of Exhibit "A" of the City of Daphne Land Use and Development Ordinance, as set forth in Ordinance No. 2002-22 and its amendments.

**SECTION II: REPEALER**

Ordinances No. 2002-22, Appendix H "Exhibit A", 2003-06, 2005-11, 2005-42, 2006-24, 2006-73, 2007-15, 2007-48, 2008-56, 2009-19 and 2009-60 are specifically repealed and any Ordinance(s), parts of Ordinance(s) or Resolution(s) conflicting with the provisions of this Ordinance are hereby repealed insofar as they conflict.

**SECTION III: EFFECTIVE DATE**

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

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

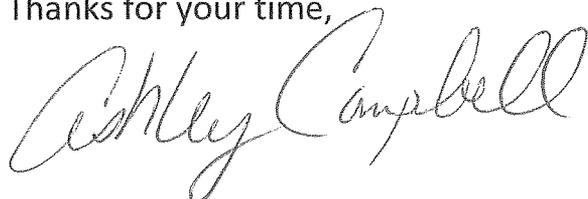
## City of Daphne City Hall Cistern Grant

On May 7, 2010, Councilman Gus Palumbo, serving on the Buildings and Property Committee, made a motion (see attachment A) for Ashley Campbell on behalf of the City to team with the *Auburn University Marine Extension & Research Center* (AUMERC) and make application (see attachment B) for the Southeast Rivers and Streams Fund Grant. The grant proposal included the installation of a Cistern and bio-retention garden near the rear entry door of City Hall and the implementation of several education outreach work shops at City Hall.

The City and AUMERC have been awarded the grant and tonight, we need the Council to make a motion in form of a resolution to:

1. Accept the Southeast Rivers and Streams grant which will include the City providing in-kind labor match for the installation of the Cistern (see photo and details on attachment E) and a bio-retention garden (see design, attachment G). All materials will be provided by the grant.
2. Approve the use of City Hall Council Chambers on four (4) different occasions for weekend Cistern and Rain Barrel education outreach seminars.
3. Approve the location (see attachment C), educational signage (see attachment D), and color for the Cistern (any variation of the attached color scheme sheet; page 3 of attachment E).
4. Review and comment on the list (see attachment F) of Bio-retention/Rain Garden Plants approved by local native species experts and City staff.

Thanks for your time,

A handwritten signature in black ink that reads "Ashley Campbell". The signature is written in a cursive, flowing style.

Ashley Campbell, CPESC  
Environmental Programs Manager

**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**

**Ordinance Committee**

*Wednesday, August 11, 2010*

*City Hall Council Chambers*

*5:30 p.m.*

*Councilman*

*Councilman Gus Palumbo*

*Councilman Derek Boulware*

**I. CALL TO ORDER/MEMBERS PRESENT**

Gus Palumbo and Derek Boulware  
David Cohen, Eric Bussey, and Vickie Hinman

**II. PUBLIC PARTICIPATION**

None

**III. ORDINANCE REVIEW/DISCUSSION**

**a. Animal Control Ordinance**

A discussion was held.

**Motion by Mr. Boulware    Seconded by Mr. Palumbo    To recommend to City Council**

**ALL IN FAVOR                      NONE OPPOSED                      MOTION CARRIED**

**b. Drug and Alcohol Policy Required by Alabama Department of Transportation**

A discussion was held.

**Motion by Mr. Boulware    Seconded by Mr. Palumbo    To recommend to City Council**

**ALL IN FAVOR                      NONE OPPOSED                      MOTION CARRIED**

**IV. OTHER BUSINESS**

A discussion was held with regard to the Weed Ordinance and the need to have on the agenda next month.

**V. ADJOURN**

**Motion by Mr. Boulware    Seconded by Mr. Palumbo    To Adjourn.**

**ALL IN FAVOR                      NONE OPPOSED                      MOTION CARRIED**



**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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THE CITY OF DAPHNE  
PLANNING COMMISSION MINUTES  
REGULAR MEETING OF JULY 22, 2010  
COUNCIL CHAMBERS, CITY HALL - 6:00 P.M.

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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:**

\*\*Fred Small, Mayor  
Joe Lemoine  
Frank Martin, Secretary  
Dan Gibson  
Ed Kirby, Chairman  
\*\*Larry Chason  
Victoria Phelps  
\*Cathy Barnette, Councilwoman  
\*\*Chief James "Bo" White

\* Ms. Barnette arrived at 6:06 p.m.

\*\* Chief White was excused at 7:15 p.m. Mayor Small was excused at 7:44 p.m. Mr. Chason was excused at 8:19 p.m.

**Staff Present:**

Adrienne D. Jones, Director of Community Development  
Jan Dickson, Planning Coordinator  
Nancy Anderson, GIS Manager  
Jay Ross, Attorney

**Staff Absent:**

Missty Gray, Attorney  
Erick Bussey, Associate Attorney  
Ashley Campbell, Environmental Programs Manager

**Others Absent:**

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

The first order of business is the call to order.

Chairman: Please let the record reflect all of the members are present.  
The next order of business is approval of the minutes.

APPROVAL OF MINUTES:

The minutes of the June 24, 2010 regular meeting were considered for approval.

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REGULAR MEETING OF JULY 22, 2010  
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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 Mayor Small and **Seconded** by Ms. Phelps *to approve the minutes of the June 24, 2010 regular meeting, as submitted. The Motion carried unanimously.*

The next order of business is the election of officers.

**NEW BUSINESS:**

**ELECTION OF OFFICERS-VICE CHAIRMAN:**

Chairman: He opened the floor to nominations. Mr. Lemoine was nominated for vice chairman. He closed the nominations.

A Motion was made by Mayor Small and **Seconded** by Mr. Chason *to nominate Mr. Lemoine as Vice Chairman. The Motion carried. Mr. Lemoine abstained.*

The next order of business is site plan review for Zaxby's Restaurant.

**SITE PLAN REVIEW:**

File S10-07:

Site: Zaxby's Restaurant

Zoning: B-2, General Business

Location: Northeast of the intersection of U. S. Highway 90 and Alabama Highway 181, Lot 1, Block B of Historic Malbis Subdivision, Phase One

Area: 1.52 Acres ±

Owner: Nick T. Catranis

Agent: L A Foods, L.L.C. - Leslie or Hudson Sandefur

Engineer: Carter Engineering - James Carter

An introductory presentation was given by Mr. Hudson Sandefur, one of the owners, requesting site plan review of a restaurant facility located northeast of the intersection of U. S. Highway 90 and Alabama Highway 181 on Lot 1, Block B of Historic Malbis Subdivision, Phase One. The plans were submitted last month. After receiving comments from the City of Daphne, and the plans were revised to address those items.

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

THE CITY OF DAPHNE  
PLANNING COMMISSION MINUTES  
REGULAR MEETING OF JULY 22, 2010  
COUNCIL CHAMBERS, CITY HALL - 6:00 P.M.

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Mr. Sandefur: The city engineer has reviewed and approved the plans as meeting or exceeding the City's requirements. The sign package has been approved by the Code Enforcement Officer. The plans have also been approved by Riveria Utilities and the Utilities Board of the City of Daphne. To our knowledge, all of the City's requirements have been met. We are excited about the project, and we think that it would be an asset to Historic Malbis. I will be happy to answer any questions you may have.

Mayor Small: Did you make some revision to your fence?

Mr. Sandefur: Yes sir. The height of the privacy fence required by the City and the Historic Malbis Property Owners' Association is six feet. After receiving comments back, we revised the fence to be constructed of brick, wood and eight feet in height. The brick columns are designed to match exactly and have the same pattern as the existing facility to the north.

Mr. Gibson: But the one adjacent to you is brick.

Mr. Sandefur: Yes sir.

Mr. Gibson: You only need to have twenty-four parking spaces to meet the City's parking requirements and you have forty-five. If you were to cut six spaces, you would still have plenty of parking, save some beautiful trees, and cut some of the pervious area. This site is either taken up by concrete, asphalt or building.

Mr. Sandefur: The property line goes into the access easement and part of it is the street and sidewalk. The impervious area requires an access or service road. We do not have any control over the fact that it is the front of the property and goes into a private street. The ones closest to the building are the only parking spaces we really have, except for the ones in the back. Zaxby's requires a certain amount of parking spaces before they will approve a site.

Mr. Gibson: They could not build all of the country if they were not flexible.

Mayor Small: Ms. Jones, does he meet the landscape requirements for tree replacement on the property?

Ms. Jones: Yes sir.

Mr. Chason: Why do you show the alignment with the service road rather than the drive which takes the ninety-degree turn and goes down the south side?

Mr. Sandefur: Because the Historic Malbis Property Owners' Association approved the location of the drive, and a precedent was set. The other reason is the driveway lines up with the Alabama Department of Transportation construction setback.

THE CITY OF DAPHNE  
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Mr. Chason: Are you telling me that the private drive violates the Alabama Department of Transportation setback?

Mr. Sandefur: I am not saying that at all. When our civil engineer drew our plans, he lined it up with the access road to the north.

Mr. Chason: I am concerned about residents from the subdivision being able to make the turn onto the service road and into your property. Is it possible to align it with that road also? It would avoid some of the confusion for the traffic at that intersection.

Mr. Sandefur: I think there is a way that can be done.

Mr. Chason: I do not know if we have the right to require that, but it would make your entrance look a little better.

Mr. Sandefur: I will have to ask if we make that modification will we have to go through the approval process again?

Mr. Chason: I think we could approve the project with the modification to put a radius curve in the service road so that it would line up with the private drive to the south.

Mr. Sandefur: As a matter of fact we did look at it, and it can be done. Again my concern is, if we make a change to the plans is it going to affect our approval tonight? Would we have to go back through the process again?

Mr. Chason: That is up to the Chairman, but I would not think so.

Chairman: There is a three-way intersection there so somebody is going to have to stop. Is there going to be a stop sign there?

Mr. Sandefur: I agree, but I do not know if that is my decision or the City of Daphne.

Chairman: They are all private drives.

Ms. Jones: Although they will need a stop sign for safety, the location should be determined by the Historic Malbis Property Owners' Association as part of their approval process. Technically you should not make a determination on that, but you could make a recommendation.

Mr. Chason: It is a public safety issue so let's reserve that for them.

Mayor Small: Are you going to continue the sidewalk in front of your property?

Mr. Sandefur: We plan to continue that section of the sidewalk to the south. May I show you a proposed revision to the access road which reflects the change you discussed? I am not here to submit any plan which would affect my approval process.

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Ms. Jones: I am aware an adjacent property owner had concerns about the driveway and has discussed it with his engineer so I asked him to bring it just in case.

Ms. Barnette: Has the storm water detention been certified?

Chairman: Our new city engineer signed off on it.

Ms. Barnette: So it has been accessed and cleaned out? All of the system to be installed will be underground is that not correct?

Ms. Jones: What Ms. Barnette is referring to is the detention pond in the Historic Malbis Subdivision.

Ms. Barnette: My questions is has the pond been maintained and is it functional? I would like to see a certification of that since you are utilizing that as a part of the common development.

Mr. Sandefur: My plans were stamped by an engineer which was sent to the City of Daphne along with a hydrology report for review, but at that time the City did not have an engineer.

Ms. Barnette: The Public Works Director.

Mr. Sandefur: His comment was the drainage design and storm water management system does meet or exceed the requirement for post-development discharge, and there are no requirements for treatment for the City of Daphne.

Ms. Barnette: There is if the development is located in an impaired water shed.

Mr. Sandefur: We have no problem doing that.

Ms. Jones: Ms. Campbell did make that comment, but she did not know who was responsible for the pond.

Ms. Barnette: I hope you do not think we are picking on you. For the past two years we have required a form designated the responsible party for the detention pond, but we do not have one for this.

Chairman: That is a requirement for a subdivision in a complete development, but this is a part of the overall development.

Ms. Barnette: I guess I disagree because we are adding to an existing site. It is functioning as what it was designed for, as well as, what will be added to it, and knowing that all of this would be an impervious lot, potentially not.

Chairman: I find it hard personally to hold up this site plan for something that deals with all of Historic Malbis. If we have a problem with the detention pond, then we will need to address it.

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Ms. Barnette: That would be our short fall I believe. It is one of our tools used to make an informed and responsible decision.

Ms. Jones: It would not be unreasonable, if the site plan were to be approved to make it a part of the contingency to ask them to get a signed form from the property owners' association.

Mayor Small: Mr. Chairman, can I ask someone in the audience about the detention pond?

Chairman: You have someone that has knowledge of the detention pond?

Mayor Small: There is. Mr. Spriggs, do you filter your storm water before it goes to the detention pond?

Mr. Kevin Spriggs: This subdivision was designed in 1997 by Rester & Coleman Engineers. We were told that the storm water drainage was designed to handle the residential subdivision, but not the commercial development. The development we presented had onsite storm water containment with restriction, but no filtration. At the back of the subdivision, the containment system is still in tact and the concrete system is still in place.

Mayor Small: Does the Malbis Plantation POA maintain the detention pond and does it function properly?

Mr. Spriggs: It appears to be functioning properly, but we have not engaged in any clean out activities.

Mr. Chason: Mr. Sandefur, do you have type of permission or easement to direct your storm water detention off site.

Mr. Sandefur: I had no knowledge that we were supposed to.

Mr. Chason: If you have underground detention shown on the plan, then I did not see it.

Mr. Gibson: All I could find on the plans is a reinforced concrete pipe.

Mr. Sandefur: Did Mr. Johnson issue you a second memo today?

Ms. Jones: Only the one that the Planning Commission has that I forwarded to your engineer.

Mr. Sandefur: Pages C-5 and C-6 show the underground storm water management system and how it ties into that culvert.

Mr. Chason: We have a manageable problem so we need an agreement from you to maintain the detention system on your property as the responsible party.

Mr. Sandefur: That sounds reasonable to me.

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Ms. Barnette: How many directional and welcome signs are allowed on the site regardless of size?

Chairman: This many are allowed, but a directional sign can be no greater in size than two square feet.

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 Mr. Chason and **Seconded** by Mayor Small *to approve the site plan for Zaxby's Restaurant, subject to the modification to the access road on the southwest corner of the property.*

Mr. Spriggs: Wished to be recognized in order to comment.

Chairman: We will do public participation later and allow you to speak.

Ms. Dickson: Did you wish to include in the motion contingent to the submission of the detention form also?

Mr. Chason: Yes.

An Amended Motion was made by Mr. Chason and **Seconded** by Mayor Small *to approve the site plan for Zaxby's Restaurant, subject to the modification to the access road on the southwest corner of the property and contingent upon the submission of a commercial site storm water maintenance agreement. The Motion carried. Ms. Barnette opposed.*

The next order of business is site plan review for Dick's Sporting Goods.

**File S10-08:**

**Site:** Dick's Sporting Goods

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

**Location:** Northeast of the intersection of U. S. Highway 90 and U. S. Highway 98, Jubilee Square Shopping Center

**Area:** 40.69 Acres  $\pm$

**Owner:** L-A Daphne, L.L.C. - Ron Carlson or John Abernathy

**Architect:** Herschman Architects - Don Alexander

**Engineer:** LAI Engineering - Wade Lowery

An introductory presentation was given by Mr. John Abernathy, representing L-A Daphne, L.L.C., and Mr. Don Alexander, representing Herschman Architects, requesting site plan review of a retail shopping facility located northeast of the intersection of U. S. Highway 90 and U. S. Highway 98 in Jubilee Square Shopping Center.

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Chairman: Do any of the Commissioners have any questions or comments? Before we get started, we received a communication from Academy Sports and Outdoors, and they would like read into the record. If you will indulge me for a minute, I would like to read this.

Ms. Jones: Can I ask you a question? Would that not be the same as public participation?

Chairman: I do not know.

Mr. Ross: It is up to the Chair. I do not see any harm in reading it.

Chairman: I do not think so. Ok, I am going to go ahead and read this. It is addressed to the Director of Community Development. The site location is Jubilee Square Shopping Center. The subject is Dick's Sporting Goods. "Dear Ms. Jones: I understand that the above matter is scheduled to be heard by the City of Daphne Planning Commission tomorrow, July 22, 2010 at 6:00 p.m. We are compelled by the referenced matter to state publicly that Academy Sports and Outdoors is still interested in developing a store and operation at this location. Indeed, we are currently pursuing litigation with the previous owner of this site (AIG Baker Daphne, L.L.C.) in order to preserve our rights and interest in this property. We are asking that you present this information at the Planning Commission meeting tomorrow. Please feel free to contact me with any questions or if you need additional information."

Mr. Abernathy: I am ready to present this, but I would like to address that.

Ms. Barnette: I do not think reading the correspondence would affect how decision on the site plan.

Chairman: I was just asked to read it into the record, and I did.

Mr. Abernathy: This is a site plan for the Jubilee Shopping Center to fill the vacancy shown as anchor "B" on the right side of the shopping center. Our request is to construct a forty-eight thousand square foot facility which will fit primarily in the footprint of Goody's and Books-A-Million. I will be happy to answer any questions you may have.

Ms. Barnette: We did not have any sign details in our packet, but it is shown on the site plan so I just wanted to make sure that it was clear we are not approving a pylon sign with this application.

Ms. Jones: The sign detail for the pylon sign is not a part of this application. The pylon sign will be presented at a later date by the owner/developer of the shopping center.

Chairman: The pylon sign was approved with the overlay district.

Ms. Barnette: The concept of the pylon sign was approved with the overlay district.

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Ms. Barnette: The pylon sign itself because we do not have the dimensions and the design has not been approved. We have the criteria for it, but the review and approval would have to come back to this body.

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

Mr. Chason: What is the outside sales area all about in the parking lot?

Mr. Abernathy: There is an area located in the front of the store in which they allow outside/seasonal sales.

Mr. Chason: Why are we being asked to approve that?

Mayor Small: Mr. Chairman, I think there was a rule or a covenant that they could not be any sales on the sidewalk or outside sales.

Mr. Abernathy: Well, if it is against the City's regulations.

Mayor Small: It did not have anything to do with the City. It was the shopping center. Is that correct?

Mr. Ross: It was in the contract or the agreement between the City and AIG Baker.

Mayor Small: Is that where it was?

Mr. Ross: That is where it starts.

Ms. Barnette: We have lost a tenant because of the lack of their ability to use the outside area for sales.

Mayor Small: My point was is it allowed here?

Chairman: You have to remember although Home Depot does it they are not a part of the shopping center.

Mr. Chason: I do not want to approve that aspect of this. That is another department as far as I am concerned. It is our job to review and approve the site plan. As far as approving an area in the parking lot for you to have seasonal sales, I do not think that is our role.

Mr. Abernathy: It will be Dick's Sporting Goods responsibility to make the application, but it my understanding they would be allowed such a permit.

Ms. Barnette: I agree with Mr. Chason, but it is not our purview. With regard to parking, can you show me there will be enough spaces left for the development?

Mr. Abernathy: The area is identified on the site plan to show we meet the parking requirements.

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Ms. Barnette: We have been working with the Department of Environmental Management to do a retrofit in this shopping center which is preliminarily identified within the yellow area or no build area on your site. As we move forward, there may be some alterations made in the parking area, and I want to make sure there will not be an issue there.

Mr. Abernathy: Certainly, we will be happy to work with the City of Daphne.

Ms. Barnette: The project will ascetically improve your project. I just wanted you to understand this is a two-year project in which we have been waiting for funding.

Ms. Phelps: I had a chance to go by the D'Iberville store. My request would be for you to put in an additional two murals behind glass on the outer to enhance the building.

Mr. Abernathy: For the record, I am not with Dick's Sporting Goods. I am with L-A Daphne representing Dick's Sporting Goods. If they do more, then it would take up the sales area and leave space for merchandise.

Ms. Phelps: We are not looking at the pylon sign tonight, but if you take a look at the other shopping center pylon sign that is a good representation of what we expect.

Mayor Small: Will there be any resurfacing or redoing the parking lot? I would like to address the need for the repair of the parking area on the north side of the property in front of Hobby Lobby's behind Coastal bank near U.S. Highway 90. I have asked numerous times for it to be repaired. I think probably we are in breach of contract because it says the owner will maintain the parking lot. There are several holes out there that are very significant. I think we need to have some guarantees on record tonight that this will be repaired within a few weeks.

Mr. Alexander: Mayor, I am aware of the area in need of repair on the north side of the property. The repairs have been made. I visited the site last week and again today prior to the meeting.

Mayor Small: You were ahead of me on that one. I had not been back out there to see if any repairs had been made.

Mr. Alexander: I have been there an hour and a half ago. Everything in the area was repaired last week.

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 Mr. Chason and Seconded by Ms. Phelps to approve the site plan for Dick's Sporting Goods, with the understanding the Planning Commission is not authorizing or providing any outside sales area or protecting any parking.**

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Mayor Small: Could we amend the motion to include our impervious area and storm water management plans we have designed into the shopping center?

An Amended Motion was made by Mr. Chason and **Seconded** by Ms. Barnette *to approve the site plan for Dick's Sporting Goods, with the understanding the Planning Commission is not authorizing and/or permitting any outside/seasonal sales area or protected parking, except that which relates to Jubilee Shopping Center Retrofit Project for the parking area. The Motion carried unanimously.*

Ms. Barnette: It was not a part of the motion, but again I would like to remind you the pylon sign is not a part of this application.

Ms. Phelps: Again, I really wish they would consider putting the murals in.

The next order of business is site plan review for Daphne Water Reclamation Facility/Waste Water Plant.

**File S10-10:**

**Site:** Daphne Water Reclamation Facility/Waste Water Plant

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

**Location:** Northeast of the intersection of North Main Street

**Area:** 7.2 Acres ±

**Owner:** Utilities Board of the City of Daphne - Rob McElroy,  
General Manager or Danny Lyndall, the Operations  
Manager

**Engineer:** Volkert & Associates - Melinda Immel

An introductory presentation was given by Ms. Melinda Immel, representing Volkert & Associates, requesting site plan review of a water reclamation facility and waste water plant located northeast of North Main Street. This facility is an existing two-story metal building consisting of laboratories, offices and a bio solid treatment area. This equipment will be replaced and the new process for treatment will make the odor go away. I will be happy to answer any questions you may have.

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 Mayor Small and **Seconded** by Ms. Barnette *to approve the site plan for Daphne Water Reclamation Facility/Waste Water Plant. The Motion carried unanimously.*

The next order of business is an administrative presentation of a revision to the City of Daphne zoning and street maps.

THE CITY OF DAPHNE  
PLANNING COMMISSION MINUTES  
REGULAR MEETING OF JULY 22, 2010  
COUNCIL CHAMBERS, CITY HALL - 6:00 P.M.

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**ADMINISTRATIVE PRESENTATION:**

An introductory presentation was given by Ms. Nancy Anderson, the GIS Manager, of a revision to the zoning and street maps with a list of changes have been made in the City. This is the second revision of the zoning map because it has not been approved by the City Council in one year due to a technicality. I would like to review the revisions to the zoning and street maps you will be recommending to the City Council. 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 am sorry, but I have a question. Did you say the City Council has not approved the zoning map for one year?

Ms. Anderson: The City Council has not approved the zoning map since July 2009. There was a hold up because there was an issue with the TimberCreek Subdivision.

Ms. Barnette: It was because the map had a golf course designation on there.

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 Mr. Lemoine for the affirmative recommendation by the Planning Commission to the City Council of Daphne for the adoption of the City of Daphne Zoning and Street Maps. The Motion carried unanimously.***

Chief White: He asked to be excused at 7:15 p.m.

The next order of business is an administrative presentation for proposed amendments to the Daphne Land Use and Development Ordinance.

An introductory presentation was given by Ms. Adrienne Jones, the Director of Community Development. I proposed to you Article 40, Self Service Vending Machines and Similar Uses, which contained fifteen subsections. The main concerns expressed were: which self service vending machines will be exempt, what will be the front of the facility, a requirement for tie downs similar to manufactured homes, an access panel as a matter of safety, and making sure there is a permitting process.

The Commission expressed concerns regarding the following: the compatibility of the machines with strip and shopping centers, locating self service vending machines along U. S. Highway 98, establishing a leased or designated boundary area within the proposed location with site plan requirements of access, parking and landscaping, and setting a maximum allowable size of a unit.

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Mr. Chason: I think Ms. Jones has it very close in the first draft after we make a couple of tweaks. When we get it into the final form, we will be able to move forward.

Ms. Barnette: Ms. Jones, how long was the moratorium for?

Ms. Jones: One year.

Ms. Barnette: We still have time to work on this a little more and present it separately before the moratorium expires.

Chairman: My question would be why would you provide additional parking for a vending machine you will be driving up to or provide a site plan for an existing development?

Ms. Jones: How about forming a committee to present a reasonable compromise to the proposal? Can I get a commitment from four of you to be on the committee?

A committee was formed consisting of the Chairman, Mr. Gibson, Mr. Lemoine and Ms. Phelps to review the proposed amendment and make present a proposal to the Planning Commission.

Mayor Small: If the vending machine meets our Ordinance, then you cannot deny them. If you deny them, then you have to give them a reason why they do not comply with the Ordinance so they may appeal to the Board of Zoning Adjustment and to Circuit Court. Is that not correct?

Mr. Ross: That is correct.

Mayor Small: He asked to be excused at 7:44 p.m.

The next order of business is an administrative presentation for proposed amendments to the Daphne Land Use and Development Ordinance.

An introductory presentation was given by Ms. Adrienne Jones, the Director of Community Development, of the proposed amendments to the Daphne Land Use and Development Ordinance regarding creating a C-2, Outdoor Amusement, zoning district.

No action was taken. A special meeting was set to discuss the proposal.

**A Motion was made Mr. Chason and Seconded Ms. Phelps to set a special meeting on Thursday, July 29, 2010 at 5:00 p.m. in the Council Chambers at City Hall to discuss the C-2, Outdoor Amusement, zoning district. The Motion carried unanimously.**

Mr. Chason: He asked to be excused at 8:19 p.m.

The next order of business is public participation.

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

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PUBLIC PARTICIPATION:

Chairman: Is there anyone who would like to address the Planning Commission?

Mr. Ouellette, President of the Madison Place Property Owner's Association: Tonight you reviewed and approved a site plan for Dick's Sporting Goods in the same location you had previously approved a site plan for Academy Sports and Outdoors. How can you do that?

Chairman: We had previously approved the district requirements for the Jubilee Retail Overlay District, but we have not approved a site for Academy Sports and Outdoors.

Mr. Ian Walters, a resident of TimberCreek Subdivision: He questioned the creation of the C-2, Outdoor Amusement, zoning district and how it would affect the rezoning of the existing golf courses.

Chairman: The golf courses will not be rezoned. The creation of the district will be for any developments proposed in the future.

Mr. Walters: How will I be notified of the date and time of the meeting?

Chairman: You are being notified of the date and time by attending this meeting. It is set for Thursday, July 29, 2010 at 5:00 p.m. in the council chambers at City Hall.

Mr. Spriggs: My name is Kevin Spriggs, and I am a business owner in Daphne. I think that public comments or participation should be allowed before the Commission takes action on a project. Allowing those question and/or comment gives you the opportunity to question the developer/owner or the engineer that designed the project. I believe a site plan submitted to the Planning Commission by an owner of a piece of property should not be held up because you have a concern regarding the storm water drainage system in the subdivision of which that person has no knowledge of. That is not economically viable for the City. If a storm water detention facility is not functioning properly, you should address that question or comment to the property owners' association, responsible party, and/or the owner/developer of the subdivision and not attempt to penalize the person who is proposing to develop a business in the City of Daphne on his property.

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

ATTORNEY'S REPORT:

Mr. Ross: No report, Mr. Chairman.

The next order of business is commissioner's comments.

COMMISSIONER'S COMMENTS:

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

THE CITY OF DAPHNE  
PLANNING COMMISSION MINUTES  
REGULAR MEETING OF JULY 22, 2010  
COUNCIL CHAMBERS, CITY HALL - 6:00 P.M.

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A Motion was made by Ms. Barnette and **Seconded** by Ms. Phelps *to amend the revised zoning map to reflect the current zoning of the TimberCreek and Lake Forest golf courses and to remove the golf course designation shown on the previous zoning maps. The Motion carried unanimously.*

The next order of business is the director's comments.

**DIRECTOR'S COMMENTS:**

Ms. Jones: We will be contacting the committee members to set a date to review the revision to the ordinance regarding self service vending machines and similar use ordinance. The special meeting is set for next Thursday. I wanted to say welcome to Mr. Gibson. I would like to thank the members for their attendance. It has been a long time since we have had all of the members present.

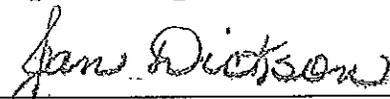
**ADJOURNMENT:**

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

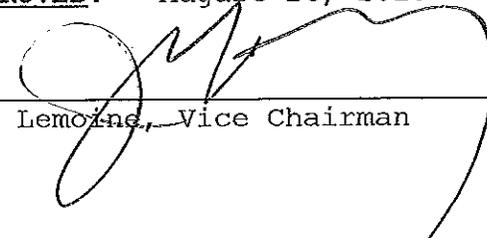
A Motion was made and **Seconded** *to adjourn. The Motion carried unanimously.*

*There being no further business, the meeting was adjourned at 8:35 p.m.*

*Respectfully submitted by:*

  
\_\_\_\_\_  
Jan Dickson, Planning Coordinator

**APPROVED:** August 26, 2010

  
\_\_\_\_\_  
Joe Lemoine, Vice Chairman

8/26/2010

CITY OF DAPHNE  
PLANNING COMMISSION AGENDA  
REGULAR MEETING OF AUGUST 26, 2010 REPORT   
COUNCIL CHAMBERS, CITY HALL - 6:00 P.M.

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1. CALL TO ORDER DATE: AUGUST 27, 2010

2. CALL OF ROLL ADJ/JD

3.. APPROVAL OF MINUTES:

*Review of minutes for the regular meeting of July 22, 2010. (APPROVED WITH ONE REVISION)*

4. NEW BUSINESS:

A. SITE PLAN REVIEW: (APPROVED)

1. File S10-11: (Revised Site Plan)

Site: 2<sup>nd</sup> Office Building on Lot A-2, Bellaton Phase Two

Zoning: B-1, Local Business

Location: Southwest of the intersection of Alabama Highway 181 and Bellaton Avenue

Area: 0.69 Acres ±

Owner: A & B, L.L.C. - John Avent or Joe Bullock

Engineer: Engineering Development Services - David Diehl

B. PETITIONS:

ANNEXATION REVIEW:

Presentation to be given by Mr. David Diehl, representing Engineering Development Services, requesting annexation of a nineteen point eight-eight acre parcel into the City of Daphne located northwest of the intersection of Whispering Pines Road and County Road 13 with B-1, Local Business, and B-3, Professional Business, zoning. The subject property is currently zoned RSF-2, Residential Single Family District, Baldwin County District 15. Richard S. Higbee, owner. (FAVORABLE RECOMMENDATION)

ZONING AMENDMENT: (FAVORABLE RECOMMENDATION)

Present Zoning: R-3, High Density Single Family Residential

Proposed Zoning: R-4, High Density Single Family Residential

File Z10-02: A & B-10, L.L.C. (Reference: Caroline Woods, Phase Three formally known as Madison Place Subdivision, Phase Three)

Location: Northeast of the intersection of Whispering Pines Road and Parker Lane, north of Madison Place Subdivision, Phase Two, North of Caroline Woods, Phases One and Two, west of Daphne Business Park, Phase Two

Area: 12.44 Acres ±

Owner: A & B-10, L.L.C. - John Avent or Joe Bullock

Engineer: Engineering Development Services - David Diehl

CITY OF DAPHNE  
PLANNING COMMISSION AGENDA  
REGULAR MEETING OF AUGUST 26, 2010 REPORT  
COUNCIL CHAMBERS, CITY HALL - 6:00 P.M.

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**C. PRELIMINARY/FINAL: (TABLED, REQUESTED BY APPLICANT)**

1. **File SDPF10-06:** (*Applicant requests to postpone hearing until September 23, 2010*)

**Subdivision:** Bowden Estates (*Resubdivision of Lot 6, Belforest Plantation*)

**Zoning(s):** RA, Rural Agricultural, Baldwin County District 15

**Location:** Northwest of County Road 54 East

**Area:** 12 Acres  $\pm$ , (4) lots

**Owner:** Katrina Bowden Meeker

**Surveyor:** P.H.L. Land Surveying - Phillip Lindsey

2. **File SDPF10-07: (APPROVED)**

**Subdivision:** The Resubdivision of Lot 1, Higbee (*associated with the annexation review for Mr. Richard S. Higbee*)

**Present Zoning(s):** RSF-2, Residential Single Family District, Baldwin County District 15

**Proposed Zoning(s):** B-1, Local Business, and B-3, Professional Business

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

**Area:** 19.88 Acres  $\pm$ , (2) lots

**Owner:** Richard S. Higbee

**Engineer:** Engineering Development Services - David Diehl

**D. ADMINISTRATIVE PRESENTATION:**

1. **Presentation to be given by Mr. Matt Kountz, representing Geo Surveying, requesting a re-plat review of Lots 239 & 240, Lake Forest Subdivision, Unit Eighteen to remove a common lot line in accordance with Article 11-5 of the Land Use and Development Ordinance. (APPROVED)**
2. **Presentation to be given by Ms. Adrienne Jones, the Director of Community Development, of the proposed amendments to the Daphne Land Use and Development Ordinance regarding creating a C-2, Outdoor Amusement, zoning district. (FAVORABLE RECOMMENDATION)**
3. **Presentation to be given by Ms. Adrienne Jones, the Director of Community Development, of the proposed amendments to the Daphne Land Use and Development Ordinance regarding stand-alone vending machine regulations. (UNFAVORABLE RECOMMENDATION)**

**SET A PUBLIC HEARING DATE**

**OCTOBER 18, 2010**

**TO CONSIDER:**

1. Rezone: A & B-10, LLC / NE of the intersection of Whispering Pines Road and Parker Lane, N of Madison Place Subdivision, Phase Two, N of Caroline Woods, Phases One and Two and W of Daphne Business Park /

Present Zoning: R-3, High Density Single Family District

Requested Zoning: R-4, High Density Single Family District

- 2.) Annexation: Richard S. Higbee / NW of the intersection of County Road 13 and Whispering Pines Road

Present Zoning: RSF-2, Single Family District in Baldwin County District 15

Requested Zoning: B-1, Local Business, and B-3, Professional Business, City of Daphne

To: Office of the City Clerk  
From: Adrienne D. Jones,  
Director of Community Development  
Subject: A & B-10, L.L.C.  
Zoning Amendment Review  
Date: August 30, 2010

## MEMORANDUM

**PRESENT ZONING:** R-3, High Density Single Family District, City of Daphne

**PROPOSED ZONING:** R-4, High Density Single Family District, City of Daphne

**LOCATION:** Northeast of the intersection of Whispering Pines Road and Parker Lane, north of Madison Place Subdivision, Phase Two, north of Caroline Woods, Phases One and Two and west of Daphne Business Park, Phase Two

**RECOMMENDATION:** At the August 26, 2010, regular meeting of the City of Daphne Planning Commission, seven members were present and the motion carried for a **favorable recommendation** for the above-mentioned zoning amendment with R-4 zoning.

Upon receipt of said documentation, please prepare an ordinance and place on the Tuesday, September 6, 2010 City Council agenda to set the public hearing for Monday, October 18, 2010.

Thank you,  
ADJ/jd

cc: file

attachment(s)

1. Petition
2. Legal description
3. Map of property
4. Adjacent property owners' list

**THE CITY OF DAPHNE**  
**PLANNING DEPARTMENT**  
**APPLICATION FOR ZONING AMENDMENT**

Application Number: Z10-02      Date Plat Submitted: 7/26/10

Date Presented: 8/26/10

Name of Owner: A & B -10, LLC

Address: 9499 BELLATON AVE DAPHNE, AL 36526 Telephone# 626-2122  
(Street or P.O. Box) (City) (State) (Zip Code)

Name of Authorized Agent, if other than owner: EDS L.L.C.

Address: 9499 BELLATON AVE DAPHNE, AL 36526 Telephone# 626-2122  
(Street or P.O. Box) (City) (State) (Zip Code)

Subdivision: TO BE KNOWN AS CAROLINE WOODS, PHASE THREE

Lot(s): \_\_\_\_\_ Unit \_\_\_\_\_

- Two (2) copies of legal description of the subject property.
- Two (2) copies of subdivision plat or site plan drawn to scale, (28" x 36").
- List of the names and mailing addresses for the adjacent property owners (Date Submitted: 07-26-10).

Meeting Dates:

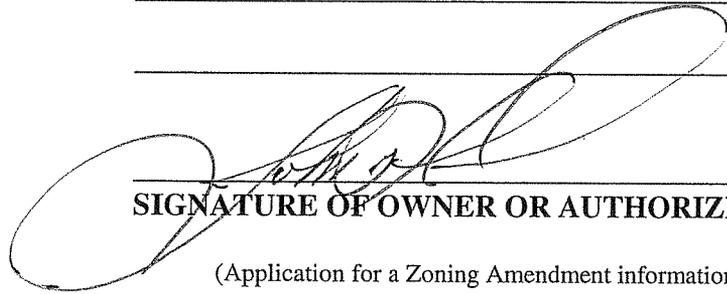
Planning Commission: August 24, 2010

City Council: \_\_\_\_\_

Reason(s) for requesting the Zoning Amendment:

TO DEVELOP PATIO GARDEN HOMES SIMILAR TO CAROLINE WOODS PHASE TWO

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

  
\_\_\_\_\_  
**SIGNATURE OF OWNER OR AUTHORIZED REPRESENTATIVE**  
(Application for a Zoning Amendment information shall be that of the owner of the subject property).

APPLICATION FOR ZONING AMENDMENT

STATE OF ALABAMA)  
COUNTY OF BALDWIN)  
CITY OF DAPHNE)

This is to certify that I (we) the undersigned am the owner(s) of said property and do hereby request the City of Daphne to grant a Zoning Amendment for said property for the reasons outlined herein:

1) Description of property for which amendment is requested:

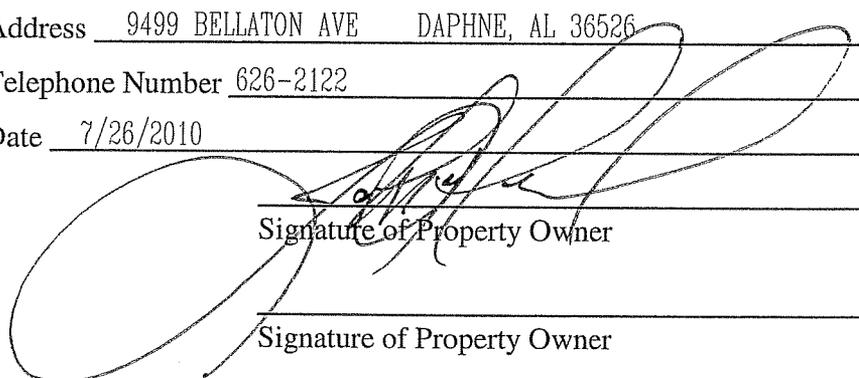
- a) Address \_\_\_\_\_
- b) Name of Subdivision TO BE KNOWN AS CAROLINE WOODS PHASE ~~TWO~~ THREE
- c) Lot numbers involved in change N/A
- d) Total acreage of change 12.44 AC.
- e) Recorded in Map Book N/A Page \_\_\_\_\_
- f) Owned in whole by the undersigned? YES
- g) If owned in part, name(s) of co-owner(s) :  
\_\_\_\_\_  
\_\_\_\_\_

2) Zoning change requested:

- a) Present classification of property R-3 SF
- b) Reclassification desired R-4 S.F.
- c) Character of neighborhood R-4 AND R-3 SINGLE FAMILY RESIDENTIAL

3) Certifications:

- a) Owner's Name A & B - 10 , LLC
- b) Address 9499 BELLATON AVE DAPHNE, AL 36526
- c) Telephone Number 626-2122
- d) Date 7/26/2010



\_\_\_\_\_  
Signature of Property Owner

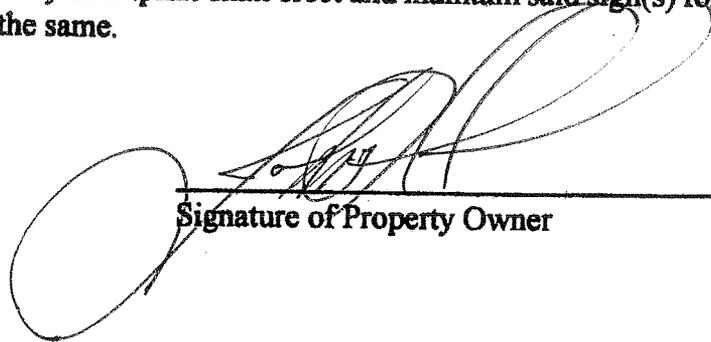
\_\_\_\_\_  
Signature of Property Owner

AGREEMENT

**...ALLOWING THE CITY OF DAPHNE TO POST PUBLIC NOTICE SIGNS ON THE PROPERTY FOR WHICH AN APPLICATION FOR A ZONING AMENDMENT HAS BEEN SUBMITTED TO THE CITY COUNCIL.**

I hereby agree to allow the City of Daphne to post on my property, for which an application for a zoning amendment has been submitted to the City Council, a sign or sign(s) notifying the general public of said request. I understand the City of Daphne shall erect and maintain said sign(s) for the prescribed period of time and remove the same.

7/20/10  
Date

  
Signature of Property Owner

**A & B-10, L.L.C**  
**ZONING AMENDMENT REVIEW**  
**NORTHEAST OF THE INTERSECTION OF**  
**WHISPERING PINES ROAD AND PARKER LANE,**  
**NORTH OF CAROLINE WOODS SUBDIVISION, PHASE TWO**  
**EXHIBIT "A"**  
  
**(CAROLINE WOODS SUBDIVISION, PHASE THREE)**

**LEGAL DESCRIPTION:**

COMMENCE AT THE NORTHWEST CORNER OF LOT NUMBER 12 OF CAROLINE WOODS SUBDIVISION, PHASE ONE, AS SHOWN BY MAP OR PLAT THEREOF RECORDED AT SLIDE 2423-C, PROBATE RECORDS, BALDWIN COUNTY, ALABAMA, FOR A POINT OF BEGINNING; THENCE RUN EASTERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 614.76 FEET, AN ARC DISTANCE OF 45.51 FEET, (CHORD BEARS SOUTH 87 DEGREES 58 MINUTES 43 SECONDS EAST FOR 45.50 FEET); THENCE RUN SOUTH 85 DEGREES 51 MINUTES 27 SECONDS EAST, A DISTANCE OF 79.53 FEET; THENCE RUN SOUTHEASTERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 25.00 FEET, AN ARC DISTANCE OF 39.27 FEET, (CHORD BEARS SOUTH 40 DEGREES 51 MINUTES 27 SECONDS EAST FOR 35.35 FEET); THENCE RUN SOUTH 78 DEGREES 58 MINUTES 58 SECONDS EAST, A DISTANCE OF 50.36 FEET; THENCE RUN NORTH 04 DEGREES 08 MINUTES 33 SECONDS EAST, A DISTANCE OF 92.25 FEET; THENCE RUN SOUTH 85 DEGREES 51 MINUTES 27 SECONDS EAST, A DISTANCE OF 152.00 FEET; THENCE RUN NORTH 04 DEGREES 08 MINUTES 33 SECONDS EAST, A DISTANCE OF 43.15 FEET; THENCE RUN NORTH 01 DEGREES 09 MINUTES 37 SECONDS EAST, A DISTANCE OF 73.81 FEET; THENCE RUN NORTH 00 DEGREES 03 MINUTES 54 SECONDS WEST, A DISTANCE OF 388.21 FEET; THENCE RUN NORTH 89 DEGREES 55 MINUTES 26 SECONDS WEST, A DISTANCE OF 1,319.93 FEET; THENCE RUN SOUTH 00 DEGREES 07 MINUTES 50 SECONDS WEST, A DISTANCE OF 365.76 FEET; THENCE RUN NORTH 89 DEGREES 54 MINUTES 03 SECONDS EAST, A DISTANCE OF 100.29 FEET; THENCE RUN SOUTH 78 DEGREES 46 MINUTES 58 SECONDS EAST, A DISTANCE OF 50.96 FEET; THENCE RUN NORTH 89 DEGREES 54 MINUTES 03 SECONDS EAST, A DISTANCE OF 576.12 FEET; THENCE RUN NORTH 76 DEGREES 51 MINUTES 49 SECONDS EAST, A DISTANCE OF 84.84 FEET; THENCE RUN SOUTH 89 DEGREES 57 MINUTES 25 SECONDS EAST, A DISTANCE OF 174.30 FEET; THENCE RUN SOUTH 00 DEGREES 04 MINUTES 34 SECONDS WEST, A DISTANCE OF 139.01 FEET; THENCE RUN SOUTH 24 DEGREES 01 MINUTES 42 SECONDS WEST, A DISTANCE OF 54.45' TO THE POINT OF BEGINNING. CONTAINING 12.44 ACRES, MORE OR LESS, AND LYING IN FRACTIONAL SECTION 8 AND GRANT SECTION 19 AND 38, TOWNSHIP 5 SOUTH, RANGE 2 EAST, BALDWIN COUNTY, ALABAMA.



A & B -10, LLC REZONING  
ADJ OWNERS  
WITHIN 300 FEET

A & B-10 L L C  
P O BOX 1395  
DAPHNE AL 36526

BALBACH, DEBORAH A  
27326 ELISE COURT  
DAPHNE AL 36526

BENCHMARK HOMES INC  
2936 MCVAY DR N  
MOBILE AL 36606

COOPER, W J ETAL COOPER, KAYLA  
7841 EAGLE CREEK DR WEST  
DAPHNE AL 36526

CROSON, JAMES E ETAL CROSON,  
BETTY B  
7802 WEST EAGLE CREEK DR  
DAPHNE AL 36526

DAPHNE CITY OF  
P O BOX 400  
DAPHNE AL 36526

DAPHNE COMMERCIAL LOT OWNER'S  
ASSOCIATIO  
24190 US HWY 98  
FAIRHOPE AL 36532

DUPLIN, ROB G  
7854 EAGLE CREEK DR WEST  
DAPHNE AL 36526

EAGLE CREEK HOMEOWNERS  
ASSOCIATION INC  
C/O CHERYL MOONEY P O BOX 1793  
DAPHNE AL 36526

EARTH INC  
P O BOX 220  
DAPHNE AL 36526

ELITE DEVELOPMENT COMPANY L L C  
P O DRAWER 1629  
FOLEY AL 36536

FOX, ROBERT P ETAL FOX, CHARLOTTE  
G  
7824 EAGLE CREEK DR W  
DAPHNE AL 36526

GILES, KIMBERLY A  
7815 EAGLE CREEK DR WEST  
DAPHNE AL 36526

HALLEMANN, A J ETAL HALLEMANN,  
JOLEEN C  
7812 WEST EAGLE CREEK DRIVE  
DAPHNE AL 36526

HUR, JUNG  
5281 E WINDSOR RD #8  
GLENDALE CA 91205

KIRBY, JERRY ETAL KIRBY, SHAWNA  
157 COUNTRY CLUB DR  
DAPHNE AL 36526

MABIRE, JONATHAN B  
27311 ELISE CT  
DAPHNE AL 36526

MAVERICK CAPITAL L L C  
416 TRAVIS ST SUITE #715  
SHREVEPORT LA 71101

MOONEY, BILLY T ETAL MOONEY,  
CHERYL A  
7846 EAGLE CREEK DR WEST  
DAPHNE AL 36526

OUTLAW, FREDERICK G ETAL OUTLAW,  
AMANDA  
7860 EAGLE CREEK DR W  
DAPHNE AL 36526

SBS INVESTMENTS L L C  
3280 DAUPHIN STREET SUITE B125  
MOBILE AL 36606

VANNOY, JASON L ETAL VANNOY, KATIE  
7840 EAGLE CREEK DR  
DAPHNE AL 36526

WHEATLEY, JUDY L  
7774 EAGLE CREEK DR W  
DAPHNE AL 36526

WORLD COURT L L C  
27548 WORLD COURT  
DAPHNE AL 36526

ORDINANCE NO. 2010 - \_\_\_\_\_

**Ordinance to Rezone Property Located Northeast of the intersection of Whispering Pines Road and Parker Lane (18.44 Acres)  
A & B-10, L.L.C.**

WHEREAS, the owners of certain real property within the City of Daphne, Alabama, have requested that said property be rezoned from R-3 High Density Single Family District, to R-4 High Density Single Family District, to said property is located, Northeast of the intersection of Whispering Pines Road and Parker Lane being more particularly described as follows:

**Legal Description:**

COMMENCE AT THE NORTHWEST CORNER OF LOT NUMBER 12 OF CAROLINE WOODS SUBDIVISION, PHASE ONE, AS SHOWN BY MAP OR PLAT THEREOF RECORDED AT SLIDE 2423-C, PROBATE RECORDS, BALDWIN COUNTY, ALABAMA, FOR A POINT OF BEGINNING; THENCE RUN EASTERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 614.76 FEET, AN ARC DISTANCE OF 45.51 FEET, (CHORD BEARS SOUTH 87 DEGREES 58 MINUTES 43 SECONDS EAST FOR 45.50 FEET); THENCE RUN SOUTH 85 DEGREES 51 MINUTES 27 SECONDS EAST, A DISTANCE OF 79.53 FEET; THENCE RUN SOUTHEASTERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 25.00 FEET, AN ARC DISTANCE OF 39.27 FEET, (CHORD BEARS SOUTH 40 DEGREES 51 MINUTES 27 SECONDS EAST FOR 35.35 FEET); THENCE RUN SOUTH 78 DEGREES 58 MINUTES 58 SECONDS EAST, A DISTANCE OF 50.36 FEET; THENCE RUN NORTH 04 DEGREES 08 MINUTES 33 SECONDS EAST, A DISTANCE OF 92.25 FEET; THENCE RUN SOUTH 85 DEGREES 51 MINUTES 27 SECONDS EAST, A DISTANCE OF 152.00 FEET; THENCE RUN NORTH 04 DEGREES 08 MINUTES 33 SECONDS EAST, A DISTANCE OF 43.15 FEET; THENCE RUN NORTH 01 DEGREES 09 MINUTES 37 SECONDS EAST, A DISTANCE OF 73.81 FEET; THENCE RUN NORTH 00 DEGREES 03 MINUTES 54 SECONDS WEST, A DISTANCE OF 388.21 FEET; THENCE RUN NORTH 89 DEGREES 55 MINUTES 26 SECONDS WEST, A DISTANCE OF 1,319.93 FEET; THENCE RUN SOUTH 00 DEGREES 07 MINUTES 50 SECONDS WEST, A DISTANCE OF 365.76 FEET; THENCE RUN NORTH 89 DEGREES 54 MINUTES 03 SECONDS EAST, A DISTANCE OF 100.29 FEET; THENCE RUN SOUTH 78 DEGREES 46 MINUTES 58 SECONDS EAST, A DISTANCE OF 50.96 FEET; THENCE RUN NORTH 89 DEGREES 54 MINUTES 03 SECONDS EAST, A DISTANCE OF 576.12 FEET; THENCE RUN NORTH 76 DEGREES 51 MINUTES 49 SECONDS EAST, A DISTANCE OF 84.84 FEET; THENCE RUN SOUTH 89 DEGREES 57 MINUTES 25 SECONDS EAST, A DISTANCE OF 174.30 FEET; THENCE RUN SOUTH 00 DEGREES 04 MINUTES 34 SECONDS WEST, A DISTANCE OF 139.01 FEET; THENCE RUN SOUTH 24 DEGREES 01 MINUTES 42 SECONDS WEST, A DISTANCE OF 54.45' TO THE POINT OF BEGINNING. CONTAINING 12.44 ACRES, MORE OR LESS, AND LYING IN FRACTIONAL SECTION 8 AND GRANT SECTION 19 AND 38, TOWNSHIP 5 SOUTH, RANGE 2 EAST, BALDWIN COUNTY, ALABAMA.

WHEREAS, the Planning Commission of the City of Daphne on August 26, 2010 has considered said request and set forth an affirmative recommendation to the City Council of the City of Daphne that said property be rezoned; and,

WHEREAS, after proper publication, a public hearing was held by the City Council on Monday, October 18, 2010 concerning the requested rezoning.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, that said property described above is hereby rezoned from R-3 High Density Single Family District, to a R-4 High Density Single Family District, and that the zoning ordinance and zoning map be amended to reflect the said zoning change.

ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA,  
THIS \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
**August A. Palumbo,**  
**Council President**

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

**ATTEST:**

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

To: Office of the City Clerk  
From: Adrienne D. Jones,  
Director of Community Development  
Subject: Mr. Richard S. Higbee  
Annexation Review  
Date: August 30, 2010

## MEMORANDUM

**PRESENT ZONING:** RSF-2, Single Family District, in Baldwin County District 15

**PROPOSED ZONING:** B-1, Local Business, and B-3, Professional Business, City of Daphne

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

**RECOMMENDATION:** At the August 26, 2010, regular meeting of the City of Daphne Planning Commission, seven members were present and the motion carried for a **favorable recommendation** for the above-mentioned petition for annexation with B-1 and B-3 zoning.

Upon receipt of said documentation, please prepare an ordinance and place on the Tuesday, September 6, 2010 City Council agenda to set the public hearing for Monday, October 18, 2010.

Thank you,  
ADJ/jd

cc: file

attachment(s)

1. Petition
2. Legal description
3. Map of property

STATE OF ALABAMA

COUNTY OF BALDWIN

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

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

The undersigned, Richard S Higbee, files this petition with the Clerk of the City of Daphne requesting the property hereafter described commonly referred to as \_\_\_\_\_ Higbee Property to be annexed into the City of Daphne, a municipal corporation incorporated under the laws of the State of Alabama, and submits the following in support of its petition:

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

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

3. Owner: The Petitioner, Richard S Higbee, is the owner of the Property hereby sought to be annexed into the corporate limits of the City of Daphne.

4. Specific Conditions: This Petition is conditioned upon the adoption of an ordinance, which shall include specifically the conditions requested below upon annexing the said Property into the corporate limits of the City of Daphne. Please state the requested zoning, if other than R-1, or any other conditions which may apply upon annexation:

B-1 Zoning for 6.5 Acres

B-3 Zoning for 13.38 Acres

\_\_\_\_\_

\_\_\_\_\_

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

DATED this 18 day of August,  
2010.

Respectfully submitted,

By: Richard S. Hight

STATE OF ALABAMA  
COUNTY OF BALDWIN

I, the undersigned Notary Public in and for said State and County, hereby certify that RICHARD S. HIGBEE whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he as such officer and with full authority, executed the same voluntarily on the day same bears date.

GIVEN under my hand and official seal on this the 18 day of August, 2010.

Masha LaCoste (NOTARY SEAL)  
NOTARY PUBLIC  
My commission expires: 11-18-2012

**RICHARD S. HIGBEE  
ANNEXATION REVIEW  
NORTHWEST OF THE INTERSECTION OF  
WHISPERING PINES ROAD AND COUNTY ROAD 13  
EXHIBIT "A"**

**(RESUBDIVISION OF LOT 1, HIGBEE SUBDIVISION)**

**LEGAL DESCRIPTION:**

**(TO BE KNOWN AS LOT B-1- B-1, LOCAL BUSINESS, ZONING)**

**COMMENCE** AT THE NORTHEAST CORNER OF LOT 1, HIGBEE SUBDIVISION, AS SHOWN BY MAP OR PLAT THEREOF, SLIDE 2191-D, PROBATE RECORDS, BALDWIN COUNTY, ALABAMA; THENCE RUN SOUTH 00 DEGREES 14 MINUTES 58 SECONDS EAST, A DISTANCE OF 236.64 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTHERLY ALONG SAID LINE, A DISTANCE OF 958.54 FEET; THENCE RUN SOUTH 44 DEGREES 52 MINUTES 16 SECONDS WEST, A DISTANCE OF 141.12 FEET; THENCE RUN SOUTH 89 DEGREES 59 MINUTES 30 SECONDS WEST, A DISTANCE OF 382.47 FEET; THENCE RUN NORTH 00 DEGREES 14 MINUTES 58 SECONDS WEST, A DISTANCE OF 176.51 FEET; THENCE RUN NORTH 89 DEGREES 45 MINUTES 02 SECONDS EAST, A DISTANCE OF 252.46 FEET; THENCE RUN NORTH 00 DEGREES 14 MINUTES 58 SECONDS WEST, A DISTANCE OF 880.00 FEET; THENCE RUN NORTH 89 DEGREES 45 MINUTES 02 SECONDS EAST, A DISTANCE OF 230.00 FEET TO THE POINT OF BEGINNING. CONTAINING 6.5 ACRES, MORE OR LESS.

**(TO BE KNOWN AS LOT B-3 - B-3, PROFESSIONAL BUSINESS, ZONING)**

COMMENCE AT THE NORTHEAST CORNER OF LOT 1, HIGBEE SUBDIVISION, AS SHOWN BY MAP OR PLAT THEREOF, SLIDE 2191-D, PROBATE RECORDS, BALDWIN COUNTY, ALABAMA; SAID POINT BEING THE POINT OF BEGINNING; THENCE RUN SOUTH 00 DEGREES 14 MINUTES 58 SECONDS EAST, A DISTANCE OF 236.64 FEET; THENCE RUN SOUTH 89 DEGREES 45 MINUTES 02 SECONDS WEST, A DISTANCE OF 230.00 FEET; THENCE RUN SOUTH 00 DEGREES 14 MINUTES 58 SECONDS EAST, A DISTANCE OF 880.00 FEET; THENCE RUN SOUTH 89 DEGREES 45 MINUTES 02 SECONDS WEST, A DISTANCE OF 252.46 FEET; THENCE RUN SOUTH 00 DEGREES 14 MINUTES 58 SECONDS EAST, A DISTANCE OF 176.51 FEET; THENCE RUN SOUTH 89 DEGREES 59 MINUTES 30 SECONDS WEST, A DISTANCE OF 190.04 FEET; THENCE RUN NORTH 00 DEGREES 14 MINUTES 43 SECONDS WEST, A DISTANCE OF 1295.54 FEET; THENCE RUN SOUTH 89 DEGREES 58 MINUTES 38 SECONDS EAST, A DISTANCE OF 672.41 FEET TO THE POINT OF BEGINNING. CONTAINING 13.38 ACRES, MORE OR LESS.

# RICHARD S. HIGBEE ANNEXATION REVIEW EXHIBIT "B"

**ZONED R-3  
(USE: INSTITUTIONAL)**

JUBILEE CHURCH INC ATTN:  
ROCHELLE MURRELL  
24823 CO RD 71  
ROBERTSDALE AL 36567

**POINT OF COMMENCEMENT**

(BASIS OF BEARINGS)  
(OBS S89°58'38"E 672.41') (REC 672.47')

**POINT OF BEGINNING  
B-3 PARCEL**

**POINT OF BEGINNING  
B-1 PARCEL**

S89°45'02"W 230.00'  
N89°45'02"E 230.00'

**B-3**

13.38 AC  
PROPOSED ZONING: B-3

**B-1**  
6.50 AC  
PROPOSED ZONING: B-1

**ZONED R-1  
(USE: INSTITUTIONAL)**

BALDWIN CO BD OF EDUCATION  
2600-A NORTH HAND AVE  
9AY MINETTE AL 36567

**DAPHNE MIDDLE SCHOOL**

MERCY MEDICAL  
P O BOX 1050  
DAPHNE AL 36526

PARKER, WILLIAM DEAN  
27235 CO RD 13  
DAPHNE AL 36526

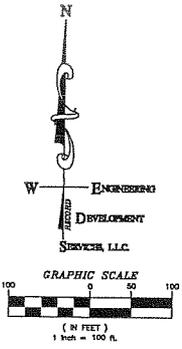
MILLER, STEPHEN A ETAL MILLER,  
JANEEN P  
27174 CO RD 13  
DAPHNE AL 36526

COCHRAN, SHARON PARKER  
27174 CO RD 13  
DAPHNE AL 36526

PARKER, DEAN, ETAL PARKER,  
CORY COCHRAN  
P O BOX 1303  
DAPHNE AL 36526

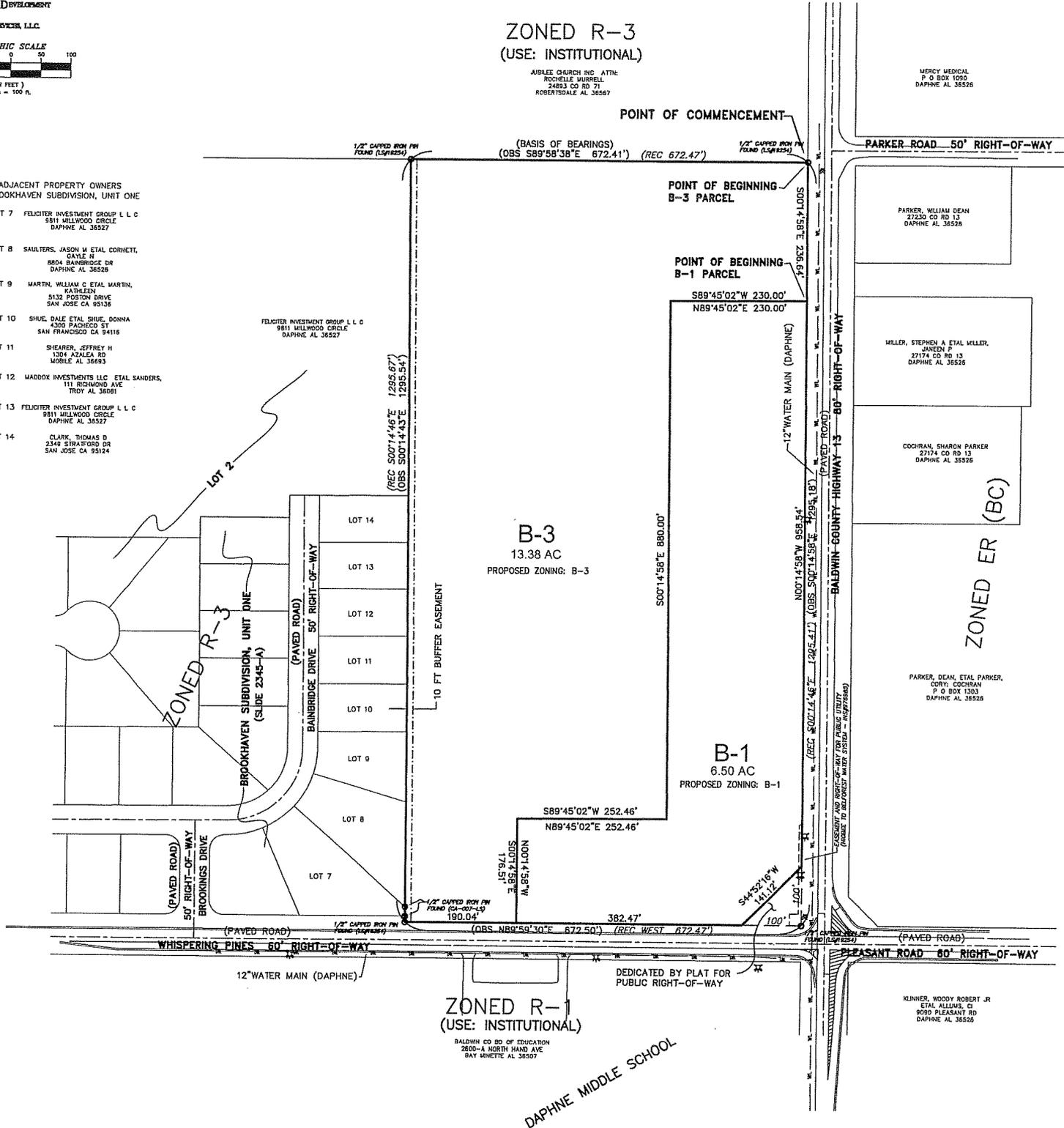
KINNER, WOODY ROBERT JR  
ETAL, ALLIEN, CI  
9090 PLEASANT RD  
DAPHNE AL 36526

**ZONED ER (BC)**



ADJACENT PROPERTY OWNERS  
BROOKHAVEN SUBDIVISION, UNIT ONE

- LOT 7 FELCITER INVESTMENT GROUP L L C  
9811 MILLWOOD CIRCLE  
DAPHNE AL 36527
- LOT 8 SAULTERS, JASON W ETAL CORNETT,  
GAYLE N  
8604 BANBRIDGE DR  
DAPHNE AL 36526
- LOT 9 MARTIN, WILLIAM C ETAL MARTIN,  
KATHLEEN  
5132 POSTON DRIVE  
SAN JOSE CA 95136
- LOT 10 SHUE, DALE ETAL SHUE, DONNA  
4309 PACHECO ST  
SAN FRANCISCO CA 94116
- LOT 11 SHEARER, JEFFREY H  
3204 AZALEA RD  
MOBILE AL 36683
- LOT 12 MADDOX INVESTMENTS LLC ETAL SANDERS,  
111 RICHMOND AVE  
TROY AL 36081
- LOT 13 FELCITER INVESTMENT GROUP L L C  
9811 MILLWOOD CIRCLE  
DAPHNE AL 36527
- LOT 14 CLARK, THOMAS D  
2348 STRAIFORD DR  
SAN JOSE CA 95124



**ORDINANCE NO. 2010-**

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

**Higbee Property**

**(Located on Northwest of the intersection of County Road 13 and Whispering Pines Road)**

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

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

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

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

**WHEREAS**, said petition has been presented to the Planning Commission of the City of Daphne on August 26, 2010 and a affirmative recommendation was **approved** for the City Council to consider said request for annexation and said property **shall be zoned B-1, Local Business and B-3, Professional Business**; and,

**WHEREAS**, after proper publication, a public hearing was held by the City Council on October 18, 2010 concerning the petition for annexation; and,

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

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

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

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

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

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

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

**“Exhibit A”**

**LEGAL DESCRIPTION:**

**(TO BE KNOWN AS LOT B-1- B-1, LOCAL BUSINESS, ZONING)**

**COMMENCE** AT THE NORTHEAST CORNER OF LOT 1, HIGBEE SUBDIVISION, AS SHOWN BY MAP OR PLAT THEREOF, SLIDE 2191-D, PROBATE RECORDS, BALDWIN COUNTY, ALABAMA; THENCE RUN SOUTH 00 DEGREES 14 MINUTES 58 SECONDS EAST, A DISTANCE OF 236.64 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTHERLY ALONG SAID LINE, A DISTANCE OF 958.54 FEET; THENCE RUN SOUTH 44 DEGREES 52 MINUTES 16 SECONDS WEST, A DISTANCE OF 141.12 FEET; THENCE RUN SOUTH 89 DEGREES 59 MINUTES 30 SECONDS WEST, A DISTANCE OF 382.47 FEET; THENCE RUN NORTH 00 DEGREES 14 MINUTES 58 SECONDS WEST, A DISTANCE OF 176.51 FEET; THENCE RUN NORTH 89 DEGREES 45 MINUTES 02 SECONDS EAST, A DISTANCE OF 252.46 FEET; THENCE RUN NORTH 00 DEGREES 14 MINUTES 58 SECONDS WEST, A DISTANCE OF 880.00 FEET; THENCE RUN NORTH 89 DEGREES 45 MINUTES 02 SECONDS EAST, A DISTANCE OF 230.00 FEET TO THE POINT OF BEGINNING. CONTAINING 6.5 ACRES, MORE OR LESS.

**(TO BE KNOWN AS LOT B-3 - B-3, PROFESSIONAL BUSINESS, ZONING)**

COMMENCE AT THE NORTHEAST CORNER OF LOT 1, HIGBEE SUBDIVISION, AS SHOWN BY MAP OR PLAT THEREOF, SLIDE 2191-D, PROBATE RECORDS, BALDWIN COUNTY, ALABAMA; SAID POINT BEING THE POINT OF BEGINNING; THENCE RUN SOUTH 00 DEGREES 14 MINUTES 58 SECONDS EAST, A DISTANCE OF 236.64 FEET; THENCE RUN SOUTH 89 DEGREES 45 MINUTES 02 SECONDS WEST, A DISTANCE OF 230.00 FEET; THENCE RUN SOUTH 00 DEGREES 14 MINUTES 58 SECONDS EAST, A DISTANCE OF 880.00 FEET; THENCE RUN SOUTH 89 DEGREES 45 MINUTES 02 SECONDS WEST, A DISTANCE OF 252.46 FEET; THENCE RUN SOUTH 00 DEGREES 14 MINUTES 58 SECONDS EAST, A DISTANCE OF 176.51 FEET; THENCE RUN SOUTH 89 DEGREES 59 MINUTES 30 SECONDS WEST, A DISTANCE OF 190.04 FEET; THENCE RUN NORTH 00 DEGREES 14 MINUTES 43 SECONDS WEST, A DISTANCE OF 1295.54 FEET; THENCE RUN SOUTH 89 DEGREES 58 MINUTES 38 SECONDS EAST, A DISTANCE OF 672.41 FEET TO THE POINT OF BEGINNING. CONTAINING 13.38 ACRES, MORE OR LESS.

ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE,  
ALABAMA on this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
**August A. Palumbo**  
**Council President**  
Date & Time Signed: \_\_\_\_\_

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

ATTEST:

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

**DOWNTOWN REDEVELOPMENT AUTHORITY  
DAPHNE, AL  
1705 MAIN STREET  
JULY 26, 2010  
5:15 P.M.**

**1. CALL TO ORDER/ROLLCALL**

Councilwoman Barnette called the meeting to order at 5:30 p.m.

**Members Present:** Doug Bailey, Ronald Nero, Casey Zito, Laurie Gorowsky, Kelly Hughes.

**ABSENT:** Mary Beth Mantiply

**2. History of Daphne Downtown Redevelopment**

Councilwoman Barnette gave a brief history of how the Daphne Downtown Redevelopment was established.

**3. Brainstorming Ideas**

Members introduced themselves, and each member shared the common goal of showcasing Daphne’s rich history while maintaining character, and encouraging growth. The members agreed to pursue the following ideas:

1. Work with Eastern Shore Chamber of Commerce to promote downtown merchants better through the Jubilee Festival. A Committee was established with Casey Zito as Chair, Doug Bailey, Ronald Nero and Kelly Hughes as merchant liaison.
2. “A Night in Olde Towne” to bring citizens out to enjoy the area
3. Review Master Plan for area, and identify short-term and long-term goals.

**MOTION BY Casey Zito to establish an “Olde Towne Daphne” Facebook page where merchants can link, and the Authority can promote the area. *Seconded by Doug Bailey.***

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

Councilwoman Barnette will provide the committee a copy of the Master Plan for Main Street at next meeting.

**4. NEXT MEETING**

The next meeting will be August 23<sup>rd</sup> at 4:45 p.m.

**5. ADJOURN**

The meeting adjourned at 6:30 p.m.

**DOWNTOWN REDEVELOPMENT AUTHORITY**  
**DAPHNE, AL**  
**1705 MAIN STREET**  
**AUGUST 23, 2010**  
**4:45 P.M.**

**DRAFT**

**1. CALL TO ORDER/ROLLCALL**

Councilwoman Barnette called the meeting to order at 5:00 p.m.

**Members Present:** Doug Bailey, Ronald Nero, Casey Zito, Laurie Gorowsky, Mary Beth Mantiply.

**ABSENT:** Kelly Hughes

**2. Adopt Minutes / July 26, 2010**

**MOTION BY Casey Zito to adopt the July 26, 2010 meeting minutes. *Seconded by Doug Bailey.***

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

Consensus of the members was for a draft of the minutes to be placed in the council packet for council review except when the members feel it best to place approved minutes in the packet.

**3. Elect Officers**

**Chairman**

**MOTION BY Doug Bailey to elect Casey Zito as Chairman of the Downtown Redevelopment Authority. *Seconded by Mary Beth Mantiply.***

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

**Vice Chairman**

**MOTION BY Laurie Gorowsky to elect Mary Beth Mantiply as Vice Chairman of the Downtown Redevelopment Authority. *Seconded by Ronald Nero.***

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

**Secretary/Treasurer**

**MOTION BY Ronald Nero to elect Doug Bailey as Secretary/Treasurer for the Downtown Redevelopment Authority. *Seconded by Mary Beth Mantiply.***

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

**1705 MAIN STREET  
AUGUST 23, 2010  
5:00 P.M.**

**DRAFT**

**4. UPDATE / JUBILEE FESTIVAL**

Casey has not met with Darrelyn Bender to discuss promoting the Olde Towne merchants during the Jubilee Festival due to conflicting schedules. She said it would be too late for this year's festival, because everything has been planned by this time.

Cathy Barnette stated that Ted Byrne is working with the Olde Towne Daphne Association to create an Olde Towne Map with merchants and history. She said she will see if they can get a partial map by the time of the festival. Casey will talk with Darrelyn about having a handout highlight DRA and downtown merchants.

**5. UPDATE / FACEBOOK PAGE**

Kelly was not present to give her report. Cathy reported that Kelly will have something ready to promote by the Jubilee Festival for inclusion on the handout to be passed out at the Chamber information booth.

**6. DEBUT OF MASTER PLAN**

Members viewed the two conceptual plans for Main Street designed by Kent Broom which create a sense of place. Doug Bailey offered to scan the file for DRA. The City will seek permission from Mr. Broom to do so.

**7. FUTURE PLANS**

Members discussed expanding "Mistletoe on Main", and also discussed organizing a "Night in Olde Towne" event for November. They will decide on a format at the next meeting, and Kelly can query the merchants for ideas. Members felt it would be good if the merchants came to the next meeting.

**4. NEXT MEETING**

Members agreed to move the time of the meetings to 5:00 p.m. The next meeting will be September 27<sup>th</sup> at 5:00 p.m.

**5. ADJOURN**

**MOTION BY Doug Bailey to adjourn the meeting. Seconded by Ronald Nero.**

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

The meeting adjourned at 5:45 p.m.

**RESUME FOR**  
**DOWNTOWN REDEVELOPMENT AUTHORITY**

**Kennard P. Balme**

28880 Canterbury Rd., Daphne, AL 36526  
Cell: (904) 315-2782 • Email: kbalme60@gmail.com • Home: (251) 644-7816

**SUMMARY OF GOAL AND QUALIFICATIONS**

Seeking product or brand marketing position with customer-focused, retail products company. Worked effectively on brand development, product management, new product launches, product training and product planning. Responsible for pricing, gross margin realization and sell-through to end-user. Excellent written and public presentation skills. .

**AREAS OF STRENGTH**

Understanding Customer Needs And Requirements • Setting Strategic And Tactical Directions • Presentation Skills • Implementation • Budget Management • Seasoned Professional

**EXPERTISE**

- Developed product, promotion, introduction requirements
- Created detailed budget and action plans
- Retail and wholesale promotion campaign implementation
- Brand strategy development and media implementation
- Competitive pricing analysis and price setting

**PROFESSIONAL EXPERIENCE**

**St. Johns County Florida Library** **2005 –**  
**2009**

*Library Assistant I*

Duties include public access computer proctor, patron contact through circulation activities, collection monitoring of anthropology materials, monthly shelf-reading responsibilities.

**2004**

*Sales, Lighthouse Toyota*

Sold new and used cars to prospects on part-time basis. Made personal sales quota. Sold Scion brand as well as Toyota brand. Introduced high-end used car offering.

**Carrier Corporation**  
– 2004

1966

*Strategic Account Manager (2003 – 2004)*

Introduced an air conditioning upgrade program to home builders in south Florida. Networked with A/C contractors, home builders and design center personnel. Created sales materials. Trained customers.

*Branch General Manager (2001 – 2003)*

Directed \$30MM Carrier wholesale distribution operation in north Florida. Held sales and share of market after 9/11. Managed over 30 employees: sales, clerical, warehouse, inside engineering, parts store; multiple brands; 200 plus customers.

*Regional Sales Manager (1989 – 2001)*

Sales and program responsibility for independent and factory owned distribution customers. Grew sales, share of market, pretax. Managed multiple brands.

*VP Marketing Communications (1985 – 1989)*

Directed and implemented national consumer campaigns in all media, collateral print, publicity, promotions, B to B, and retail. Directed major national agencies in multi-brand environments. Built brand awareness campaigns and local lead generation. Supervised staffs of over 100 people in various US locations. Responsible for \$70MM+ budgets.

*Director of Advertising and Promotion (1981 – 1985)*

Directed and implemented national consumer campaigns in all media, collateral print, publicity, promotions, B to B, and retail. Directed major national agency and local agencies in multi-brand environments. Built brand awareness campaigns and local lead generation. Supervised staff of 20 people in various US locations. Responsible for \$20MM+ budgets.

*Marketing Management*

*Field Sales, Advertising, Promotions*

**EDUCATION**

Ohio State University  
**BS, Management**

University of Wales, Lampeter  
**Environmental Anthropology, graduate studies**

**VOLUNTEERING**

Docent at World Golf Hall of Fame, St. Augustine, FL  
Old Methodist Church of Daphne Museum, volunteer

**Becky**

---

**From:** barnette2@bellsouth.net  
**Sent:** Monday, August 23, 2010 10:59 PM  
**To:** Becky Hayes  
**Subject:** Fw: Daphne Recreation Board

Can you put him on for rec board consideration?

Sent from my BlackBerry® smartphone with SprintSpeed

---

**From:** Swimtnt123@aol.com  
**Date:** Mon, 23 Aug 2010 15:23:17 EDT  
**To:** <barnette2@bellsouth.net>  
**Subject:** Daphne Recreation Board

Cathy,

My name is Jan Mitemeyer and I would like to be considered for the vacant position on the Daphne Recreation Board.

I have owned and operated TNT Swimming since 2004 and have since fostered a mutual working relationship with the Bounds Family YMCA, bringing the Y much needed revenue.

During my years with TNT, I have arranged and coordinated expert speakers for our team families, including our annual nutrition seminars, in - house swim clinics that feature Olympic and NCAA champions, as well as local sports and community leaders.

On a regional level, I have organized parent volunteers within TNT to host the 2006 and 2008 Southeastern Swimming Fall Meeting & Hall of Fame Swimposium, and am currently in the process of coordinating the event again this year.

Finally, as a result of my efforts, I have been invited to speak at the 2010 World Swimming Coaches Clinic a the end of this month and will present and will present a Power Point presentation entitled, "Thriving in a Small Market; Making Your Team Special."

I believe that my experience, enthusiasm and energy would contribute greatly to the mission of the Daphne Recreation Board and I look forward to your reply.

Best Regards,  
Jan Mitemeyer  
Head Coach, TNT Swimming  
251-599-1019

## **RESUME FOR DAPHNE RECREATION BOARD**

**JAN CHARLES MITTEMEYER  
304 CAMERON COURT  
DAPHNE, ALABAMA 36526  
PHONE; 251-625-4046**

**MAY 2004 – PRESENT  
HEAD COACH – TNT SWIMMING, INC.  
DAPHNE, ALABAMA**

### **Directs Team Communication**

- \* Team Handbook
- \* Team Web Site Content and Design
- \* Monthly Newsletters
- \* Email Updates
- \* Coach / Parent Meetings
- \* Update Display Boards
- \* Update Family File Folders
- \* Media and School Communications

### **Coordinates Competition Program**

- \* Establish Competition Policies and Procedures
- \* Determines Competition Schedules
- \* Process Meet Entries and Results

### **Direct Swim Training Program**

- \* Determine Standards for Training Level Advancement
- \* Establish and Communicate Training Policies and Procedures
- \* Evaluate and Determine Swimmer Training Level Placement

### **Athlete Development**

- \* Formulate Short and Long Term Goals and Objectives
- \* Devise, Teach and Reinforce Techniques
- \* Motivate Individuals to Achieve Goals
- \* Recognize Achievements

### **Parent Education**

- \* TNT Parent Handbook
- \* Monthly Parent Meetings

**May 2000 – 2004  
HEAD COACH – BALDWIN MOBILE AQUATIC CLUB  
DAPHNE, ALABAMA**

**AUGUST 1998 – MARCH 2000  
HEAD COACH – EAGLE SWIM TEAM  
REISTERSTOWN, MARYLAND**

**AUGUST 1996 – 1998  
HEAD COACH – MARINERS SWIM CLUB  
BALTIMORE, MARYLAND**

**AUGUST 1982 – JUNE 1996  
HEAD COACH – CCCC SWIM TEAM  
LAPLATA, MARYLAND**

**PROFESSIONAL HIGHLIGHTS**

**Program Development**

- \* Founded TNT Swimming Team
  - Develop multi – level training program
  - Coordinates schedules and budgets
  - Recruit and retain parent volunteers
  - Oversees fundraising and team travel

**Athlete Development**

- \* Developed National and Junior National qualifiers
- \* More than 50 LSC Zone Team qualifiers
- \* State and LSC record holders
- \* National Top 16 Ranked Swimmers in every age group and stroke
- \* USA Swimming All Time Top 100 Times Rankings

**Professional Recognition**

- \* Elected to LSC Zone Team coaching coaching staff 5 consecutive years
- \* Invited to join 2010 ASCA World Clinic Faculty
- \* Certified Level 4 Coach by the ASCA

**Professional Certifications**

- \* Level 4 ASCA Certification
- \* ARC Coaches Safety Training
- \* ARC CPR/First Aid

**Professional Affiliations**

- \* USA Swimming Inc. Coach Member
- \* American Swimming Coaches Association

**References**

- \* Available upon request



# Daphne Utilities

## APPROVED MINUTES

### Utilities Board Meeting

City of Daphne Council Chambers ♦ July 28, 2010 ♦ 5:00 p.m.

#### I. CALL TO ORDER

The June 30, 2010 regular Board meeting for the Utilities Board of the City of Daphne was held and called to order by Chairman Robert Segalla, at 5:00 p.m.

#### II. ROLL CALL

**Members Present:** Robert Segalla, Chairman  
Lon Johnston, Secretary Treasurer  
Fred Small, Mayor  
Fenton E. Jenkins

**Others Absent:** Ron Scott, Vice Chairman

**Others Present:** Jerry Speegle – Board Attorney  
Rob McElroy – General Manager  
Danny Lyndall – Operations Manager  
Rebecca Williamson – Accounting Assistant  
Cedric Goodloe – HR Benefits Coordinator/Payroll  
Janice Daniel – Customer Service Representative  
Lori Scharles – Executive Assistant  
Tim Patton – Volkert & Associates  
Doug Bailey – HMR

**Others Absent:** Teresa Logiotatos – Finance Manager  
Drew Klumpp – Administrative Services Manager  
Deloris Brown – Human Resources Manager

#### III. PLEDGE OF ALLEGIANCE

The Chairman led the Board and meeting attendees in the Pledge of Allegiance.

Chairman Segalla thanked Jennifer Brannon for the updated Employee Directory.

#### IV. APPROVAL OF MINUTES

##### a. *Utilities Board Minutes from June 30, 2010:*

The Chairman inquired if there were any corrections noted for the Minutes from the June 30, 2010, Utilities Board meeting. No corrections, additions and/or deletions were noted.

**MOTION BY Mayor Fred Small to approve the Minutes for June 30, 2010; Seconded by Lon Johnston.**

**AYE: JENKINS, JOHNSTON, SEGALLA, SMALL ABSENT: SCOTT ABSTAIN: MOTION CARRIED**

**V. Old Business**

**a. Central Services Building (Property Investigation) – Update**

Danny Lyndall updated the Board on the annexation presentation to the City of Daphne and noted few questions from the City Council and expected no delays for approval at the next City Council meeting.

**b. Spanish Fort Sewer Franchise issues**

Mr. McElroy informed the Board that he had been discussing the past and recent details of Spanish Fort Sewer Franchise with Mr. Speegle. Mr. Speegle notified that while he was not involved in the negotiating of this proposed franchise agreement but was representing Daphne Utilities Board in litigation with Spanish Fort over the stopping of the gas pipeline construction when Spanish Fort proposed a gas franchise agreement and a sewer franchise agreement. He explained that while he was not involved in the board discussions or approval of those agreements, his opinion at the time was that the agreements were not fair. He further explained that the Board entered into the gas franchise agreement but not the sewer franchise agreement and that the law is clear that if existing utility lines in an area that incorporates into a municipality, the utility provide can continue to maintain those lines without the requirement of a franchise agreement. He stated that new lines could typically require such an agreement. Mr. Speegle requested the Board's sense of direction in discussing with the Spanish Fort Mayor of possibly entering into some form of franchise agreement or to continue to operate our existing lines without a franchise agreement. Chairman Segalla contemplated as to why we would want to add a cost if in fact we legally wouldn't have to. Mr. Speegle remarked that it may be an issue of sewer lines that have been installed in Spanish Fort since incorporation without a sewer franchise agreement in place with Spanish Fort allowing those lines to be operated. Chairman Segalla commented that a feasibility review of the lines might be in order. Mr. Speegle responded that there may not be any liability to Spanish Fort even for new lines due to the fact that there is no agreement in place. He asked the Board's opinion of disposing of all the sewer lines to another utility provider. Chairman Segalla requested comments from other Board members and defer to Mr. McElroy, Mr. Lyndall and sewer staff for investigation for financial viability and stability of the lines. Mr. McElroy advised that Baldwin County Sewer has requested information of the system. Mayor Small asked Mr. Speegle if there is a statute that Spanish Fort could revert for the franchise agreement. Mr. Speegle stated if legal opinions on potential litigation would be best discussed in executive session, but that Daphne Utilities does not have a franchise agreement with Spanish Fort and Daphne Utilities doesn't owe them anything but no specific research has not been done on this particular issue.

**c. 19 Acres - Daphne Utilities property**

Mr. McElroy had no new updates on this issue. Chairman Segalla reminded that 15 of the 19 acres is to be preserved

**d. Items in Abeyance:**

1. **Gas Franchise Agreement** – No current information was reported.
2. **Sewer Only Cutoff Policy** – Janice Daniel stated that 8 people are scheduled for disconnect and 7 new letters had been recently sent out.

**VI. New Business - no new business**

**VII. BOARD ATTORNEY'S REPORT**

Mr. Speegle had nothing further to add to his report.

**VIII. FINANCIAL REPORT**

Rebecca Williamson highlighted for the Board the opening of a new customer deposits account with Bryant Bank. No other comments were made.

**IX. GENERAL MANAGER'S REPORT**

**a. GM Report**

Mr. McElroy referred to Danny Lyndall for the announcement of recent awards. Mr. Lyndall advised the Board that the Alabama Water Pollution Control Association awarded Daphne Utilities a best operated plant award for Water Quality and an award of excellence for the Wastewater Treatment Plant and Water Distribution System. Mr. Lyndall also commented on the Daphne Utilities Tapping Team's achievement at the annual American Water Works Association placing in the top 10 of all teams participating.

**b. Operations Report**

Danny Lyndall had nothing further to add to his report.

Tim Patton of Volkert & Associates updated the Board on the Biosolids Facility Upgrades Project bids that were received and recommended that the project be awarded to the low bidder, The Creel Company, Inc.

***MOTION BY Mayor Fred Small to approve The Creel Company as the low bidder for the Biosolids Facility Upgrades; Seconded by Lon Johnston.***

**AYE: JENKINS, JOHNSTON, SEGALLA, SMALL ABSENT: SCOTT ABSTAIN: MOTION CARRIED**

Doug Bailey from HMR updated the Board on the Highway 64 South Sewer that the contracts have been received from the City Attorney and a preconstruction meeting will be scheduled soon.

- X. **BOARD ACTION** – previously addressed under Operations Report.
- XI. **PUBLIC PARTICIPATION** – None
- XII. **BOARD COMMENTS** – None
- XIII. **ADJOURNMENT**–

***MOTION BY Mayor Small to adjourn the meeting. Seconded by Lon Johnston.***

**AYE: JENKINS, JOHNSTON, SEGALLA, SMALL ABSENT: SCOTT ABSTAIN: MOTION CARRIED**

The meeting adjourned at 5:21 p.m.

**CITY COUNCIL MEETING  
MAYOR'S REPORT**

**NOTES:**

**CITY ATTORNEY'S REPORT**

**NOTES:**

**DEPARTMENT HEAD'S COMMENTS**

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

**NOTES:**

RECOMMENDATIONS

**COUNCIL COMMENTS:**

**Resolution 2010-81**

**Auburn University Marine Extension & Research Center  
Southeast Rivers and Streams Fund Grant**

**WHEREAS**, the City of Daphne did make application through and with Auburn University for a Southeast Rivers and Streams Fund Grant; and

**WHEREAS**, such grant does provide funding for a cistern and bio-retention garden near the back entry door of City Hall; and

**WHEREAS**, furthermore, the match required for the grant is in-kind labor.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Daphne, Alabama, that

- 1) the City does hereby accept the Southeast Rivers and Streams grant for the installation of a cistern and bio-retention garden near the back entry of City Hall; and
- 2) the City will provide in-kind labor for such grant; and
- 3) the City Hall Council Chambers will be made available on four different occasions for weekend outreach seminars promoting cistern and rain barrel education.

**APPROVED AND ADOPTED** by the City Council of the City of Daphne this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
**August Palumbo, Council President**

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

**ATTEST:**

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

**CITY OF DAPHNE  
ORDINANCE NO. 2010-51**

---

**AN ORDINANCE TO AMEND ORDINANCE NO. 1996-14 CONCERNING THE  
CITY’S DRUG AND ALCOHOL POLICY**

---

**WHEREAS** the City Council of the City of Daphne has determined that certain amendments to the City’s drug and alcohol policy currently in effect are necessary to effectuate and implement regulations mandated by the Alabama Department of Transportation for workplace drug and alcohol testing programs; and

**WHEREAS** the City Council of the City of Daphne has determined that such amendments are in the interest of the public health, safety and welfare of the citizens of the City of Daphne.

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

**SECTION I:** That Section VI (E) of the City’s Drug and Policy, labeled as “Exhibit A” of Ordinance 1996-14, is hereby repealed in its entirety and replaced with the following:

**SECTION VII (E): COLLECTING AND TESTING PROCEDURES**

**E. Collecting and Testing Procedures**

The City, TPA, and the laboratory have developed and will maintain a procedure for collecting, shipping and accessing urine and alcohol specimens in compliance with Federal Regulations, as amended. The City, TPA, and the laboratory will utilize a standard Urine Custody and Control Form for all employee drug testing and a standard Breath Alcohol Testing Form for all employee alcohol testing. A tamper-proof sealing system, identifying numbers, labels, and sealed shipping containers will also be used for urine sample transportation.

The City has adopted the direct observation procedures as set out in Section 40.25 of the Department of Transportation regulations, as amended. An employer or medical representative at the collection site may directly observe an employee provide the specimen where there is reason to believe that an individual may alter or substitute the specimen or when the requirements of Section 40.25 (e)(2) have been met.

Observed Collections are required in the following circumstances:

- a. Anytime the employee is directed to provide another specimen because the temperature on the original specimen was out of the accepted temperature range of 90°F-100°F;
- b. Anytime the employee is directed to provide another specimen because the original specimen appears to have been tampered with;
- c. Anytime a collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen;
- d. Anytime the employee is directed to provide another specimen because the laboratory reported to the MRO that the original specimen was invalid and the MRO determined that there was not an adequate medical explanation for the result;
- e. Anytime the employee is directed to provide another specimen because the MRO determined that the original specimen was positive, adulterated or substituted, but had to be cancelled because the test of the spilt specimen could not be performed;
- f. The employee who is being observed will be required to raise his or her shirt, blouse, or dress/skirt, as appropriate, above the waist; and lower clothing and underpants to show the collector, by turning around that they do not have a prosthetic device.

The City of Daphne does not maintain, nor make provisions for, a "2<sup>nd</sup> Chance" policy.

All employees will also be required to execute the Drug and Alcohol Policy Consent / Release form.

**SECTION II:** That the definition of "Refusal to Submit to an Alcohol or Controlled Test" in Section III of the City's Drug and Policy, labeled as "Exhibit A" of Ordinance 1996-14, is hereby repealed in its entirety and replaced with the following:

**SECTION III: DEFINITIONS**

**Refusal to Submit to an Alcohol or Controlled Substances Test**

Refusal to submit to testing shall include any or all of the following:

- Failure to provide an adequate amount of breath during testing without a valid medical explanation after he or she has received notice of the requirement for urine testing; or
- Engaging in conduct that obstructs or interferes with the testing process; or
- Failure or refusal to execute the required forms provided in conjunction with the receipt of this policy or which are a part of the testing; or
- Failure to be readily available for post-accident testing; or
- Failure to report to, and undergo alcohol and prohibited substances testing, at a collection site as required; or
- Failure to appear for any test (except for pre-employment) within a reasonable time, as determined by the employer; or
- Failure to remain at the testing site until the testing process is complete; or
- Failure to provide a urine specimen for any required drug test; or
- Failure to permit the observation or monitoring of the specimen collection when required to do so; or
- Failure to provide a sufficient amount of urine when directed and there is no adequate medical explanation for the failure; or
- Failure to take a second test when directed to do so by the employer or collector; or
- Failure to undergo a medical examination when directed to do so by the MRO or employer; or
- Failure to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector); or
- Failure to follow the observer's instructions during an observed collection including instructions to raise clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process; or
- Possess or wear a prosthetic or other device that could be used to interfere with the collection process; or
- Admit to the collector or MRO that you adulterated or substituted the specimen.

**SECTION III:** That Section VI (G) of the City's Drug and Policy, labeled as "Exhibit A" of Ordinance 1996-14, is hereby repealed in its entirety and replaced with the following:

**SECTION VI (G):   RETEST**

**G. Retest**

Where a split specimen has been collected, an employee may request a retest of the split specimen within 72 hours of notification of the final test result. Where

only one sample is submitted for testing, the employee may request the MRO to conduct a retest of the original sample within 72 hours after notification of the final test result.

Following a negative dilute drug test result the employee/applicant will be required to undergo another test. Should this second test result in a negative dilute result, the test will be considered a negative and no additional testing will be required unless directed to do so by the MRO.

**SECTION IV:** That Section VI (A) of the City’s Drug and Policy, labeled as “Exhibit A” of Ordinance 1996-14, is hereby repealed in its entirety and replaced with the following:

**SECTION VI (A): GENERAL GUIDELINES**

**A. General Guidelines**

The City of Daphne and the laboratory shall rely on the guidance of the Federal Department of Transportation, Procedures for Transportation Work Place Drug Testing Programs, 49 C.F.R. Parts 40.1 through 40.39, as amended, and on the further guidance of the of the OTETA provided in 49 C.F.R., §§ 40.51 to 40.83 (1994), as amended.

The City reserves the right to utilize blood, hair, breath, saliva or urinalysis testing procedures. Only urinalysis and breath tests will be utilized in the pre-employment and random testing. All initial “positive” urine specimens will be confirmed by gas chromatography / mass spectrometry.

Testing will be performed at the Federal minimum rate for drug and alcohol.

**SECTION V: AMENDMENT TO EMPLOYEE HANDBOOK**

The City of Daphne Employee Handbook shall be amended to reflect the policy provisions and amendments to the City of Daphne Drug and Alcohol Policy enacted by this Ordinance upon its adoption as provided by law.

**SECTION VI: CONFLICT WITH OTHER ORDINANCES**

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

**SECTION VII: SEVERABILITY**

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

**SECTION VIII: EFFECTIVE DATE**

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

**ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA ON THIS THE \_\_\_\_\_ day of \_\_\_\_\_, 2010.**

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

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**AUGUST PALUMBO  
COUNCIL PRESIDENT**

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**FRED SMALL  
MAYOR**

**ATTEST:**

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**DAVID L. COHEN,  
CITY CLERK, MMC**

**ORDINANCE 2010-53**

**GARBAGE PERSONNEL & OPERATING - THROUGH SEPTEMBER 2010**

**WHEREAS**, Ordinance 2009-52 approved and adopted the Fiscal Year 2010 Budget on October 19, 2009; and

**WHEREAS**, subsequent to the adoption of the Fiscal Year 2010 budget, the City Council has determined that certain appropriations are required and should be approved and made a part of the Fiscal Year 2010 budget; and

**WHEREAS**, the garbage budget was cut in the anticipation of a reduction in costs when services were decreased to one day per week; and

**WHEREAS**, transitional cost were incurred implementing the once a week garbage pickup and the reduction in operating costs will not be realized until next fiscal year.

**NOW, THEREFORE**, BE IT ORDAINED by the City Council of the City of Daphne, Alabama, that: the Fiscal Year 2010 Budget is hereby amended to include a General Fund appropriation in the amount of \$ 80,798 for personnel (\$59,146 and related operating requirements (\$21,652) required by the Garbage Department through Fiscal 2010.

**APPROVED AND ADOPTED** by the Mayor and City Council of the City of Daphne, Alabama, this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
**August Palumbo, Council President**

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

**ATTEST:**

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

**ORDINANCE 2010-54**

**Lodging Tax Appropriation  
Improvements to Richard Scardamelia Pavilion Building: Subfloor Repair**

**WHEREAS**, Ordinance 2009-52 approved and adopted the Fiscal Year 2010 Budget on October 19, 2009; and

**WHEREAS**, subsequent to the adoption of the Fiscal Year 2010 budget, the City Council has determined that certain appropriations are required and should be approved and made a part of the Fiscal Year 2010 budget; and

**WHEREAS**, Lodging Tax funds may be used for the purchase, development, and maintenance of beachfront property; and

**WHEREAS**, certain improvements are needed for the Richard Scardamelia Pavilion Building Subfloor to ensure the integrity of the building and the safety of the occupants.

**NOW, THEREFORE**, BE IT ORDAINED by the City Council of the City of Daphne, Alabama, that the Fiscal Year 2010 Budget is hereby amended to include a Lodging Tax appropriation in the amount of \$30,000 for Subfloor repairs and insulation to the Richard Scardamelia Pavilion Building.

**APPROVED AND ADOPTED** by the Mayor and City Council of the City of Daphne, Alabama, this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
**August Palumbo, Council President**

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

**ATTEST:**

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

**ORDINANCE 2010-55**

**Civic Center HVAC Control System Upgrade**

**WHEREAS**, Ordinance 2009-52 approved and adopted the Fiscal Year 2010 Budget on October 19, 2009; and

**WHEREAS**, subsequent to the adoption of the Fiscal Year 2010 budget, the City Council has determined that certain appropriations are required and should be approved and made a part of the Fiscal Year 2010 budget; and

**WHEREAS**, the adopted budget did not include an appropriation for an HVAC HVAC Control System Upgrade for the Civic Center; and

**WHEREAS**, the Civic Center could save up to 10%-20% or more on energy costs as a result of implementing the new HVAC Control System Upgrade.

**NOW, THEREFORE**, BE IT ORDAINED by the City Council of the City of Daphne, Alabama, that: the Fiscal Year 2010 Budget is hereby amended to include an appropriation in the amount of \$35,924 for the Civic Center HVAC Control System Upgrade.

**APPROVED AND ADOPTED** by the Mayor and City Council of the City of Daphne, Alabama, this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
**August Palumbo, Council President**

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

**ATTEST:**

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

**CITY OF DAPHNE  
ORDINANCE NO. 2010-56**

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**AN ORDINANCE TO AMEND ORDINANCE NO. 2003-11 CONCERNING  
ANIMAL CONTROL WITHIN THE CITY OF DAPHNE**

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**WHEREAS** the City Council of the City of Daphne has determined that certain amendments to the animal control ordinance currently in effect are necessary to effectuate and implement more efficient means of animal control within the City of Daphne; and

**WHEREAS** the City Council of the City of Daphne has determined that such amendments are in the interest of the public health, safety and welfare of the citizens of the City of Daphne.

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

**SECTION I:** That Section II of Ordinance 2003-11 is hereby repealed in its entirety and replaced with the following:

**SECTION II: DEFINITIONS**

*Animal.* The term shall mean any nonhuman, animate being which is endowed with the power of voluntary motion to include, but not limited to: Mammals, i.e. dogs, cats, horses, hogs, cows, sheep, goats, rabbits, etc.; reptiles; birds; salamanders; toads; frogs; sharks; snakes; rays; bony fishes; and amphibians.

*Animal shelter.* The place designated or used as such by the city for the maintenance and operation of a pound.

*Animal Control Officers.* All enforcement officers assigned to the City of Daphne Animal Shelter.

*At large.* Any animal which is off the property of its owner or person in charge and not carried by said person, kept in an effective closure or under control or restraint by such person by means of a leash in such a way as to prevent its free movement, and so as to prevent said animal from freely charging or attacking persons or animals.

*Bitten.* Seized with teeth or jaws such that the skin of the person or thing seized has been nipped or gripped or has been wounded or pierced and there has been probable contact of saliva with the break or abrasion of the skin.

*Caged.* Confinement in a container, which may include a vehicle but not its trunk, in such a way that the free movement of such animal is restrained and so as to prevent the animal caged from biting or attacking a person or animal.

*Cat.* All members of the domestic feline family.

*City of Daphne Animal Shelter.* The location designated or used as such by the City for a place of confinement of animals held pursuant to the authority of this Ordinance.

*Corral.* Any uncovered, enclosed parcel of land where large animals are kept.

*Dog.* All members of the domestic canine family.

*Dogs Presumed to be vicious.* Any dog which is known by the owner or person in charge to habitually chase moving vehicles or charge persons on the public streets and other public ways shall be presumed to be vicious, whether or not such dog has actually bitten or attacked a person or other animal.

*Domesticated Animal.* Shall mean, but is not limited to rabbits, squirrels, raccoons, pot-bellied pigs or any other animal used as a pet.

*Fowl.* Chicken, turkey, ducks, geese, guineas or other domestic fowl.

*Livestock.* Horses, mules, donkeys, oxen, sheep, goats, cows, buffaloes and swine, or any one of them.

*Owner.* means any person, firm, corporation, organization, or department having a right of property in the animal, or who keeps or harbors the animal, or who has it in his care, or acts as its custodian, or who permits the animal to remain on or about any premises occupied by him or her.

*Person in Charge.* Any person who feeds a dog or cat not owned by him or her or who otherwise cares for the animal. This definition shall not include individuals who perform humane acts for the health and safety of an animal on a one time or temporary basis.

*Vicious and dangerous animal.*

- (1) Any dog with a known propensity, tendency or disposition to attack unprovoked, to cause injury to, or otherwise threaten the safety of human beings or domestic animals.

- (2) Any dog which because of its size, physical nature or vicious propensity is capable of inflicting serious physical harm or death to humans and which constitutes a danger to human life or property if it were not kept in the manner required by this chapter.
- (3) Any dog which, without provocation, attacks or bites or has attacked or bitten a human being or domestic animal.
- (4) Any dog owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting.

The terms “potentially dangerous” and “vicious” shall not apply to dogs used by law enforcement officials for legitimate law enforcement purposes, nor dogs used as certified guide dogs for the blind, hearing dogs for the deaf nor aid dogs for the handicapped nor shall it apply to licensed kennels, humane society shelters, animal control facilities, or veterinarians.

**SECTION II:** That Section V of Ordinance 2003-11 is hereby repealed in its entirety and replaced with the following:

**SECTION V: DOG, CAT, OR DOMESTICATED ANIMAL AT LARGE**

**A. GENERAL PROHIBITION**

No owner or person in charge of a dog, cat or domesticated animal shall permit the dog, cat or domesticated animal to be at large at any time within the City of Daphne.

**B. OWNER LIABILITY**

If the owner of any dog, cat or domesticated animal carelessly manages said dog, cat or domesticated animal or permits said animal to be at large, and another person, without fault suffers damage thereby, such owner shall be liable for damages.

**SECTION III:** That Section XXI (B) of Ordinance 2003-11 is hereby repealed in its entirety and replaced with the following:

**SECTION XXI: MINIMUM PENALTIES**

**B. SCHEDULE OF FINES:**

Any person found guilty of the provisions of this Ordinance as referenced herein, the minimum fines shall apply as follows:

<u>INFRACTION</u>	<u>FINE</u>	
Allowing dog to defecate another's property	1 <sup>st</sup> offense within a twelve month period	\$15
	2 <sup>nd</sup> offense within a twelve month period	\$25
	3 <sup>rd</sup> offense within a twelve month period	\$50
Animal restrained by leash or restraining device less than six (6) feet long	1 <sup>st</sup> offense within a twelve month period	\$15
	2 <sup>nd</sup> offense within a twelve month period	\$25
	3 <sup>rd</sup> offense within a twelve month period	\$50
Cat at large/ destruction damage to property (no tag)	1 <sup>st</sup> offense within a twelve month period	\$15
	2 <sup>nd</sup> offense within a twelve month period	\$25
	3 <sup>rd</sup> offense within a twelve month period	\$50
Cat at large/ destruction damage to property (with tag)	1 <sup>st</sup> offense within a twelve month period	\$10
	2 <sup>nd</sup> offense within a twelve month period	\$25
	3 <sup>rd</sup> offense within a twelve month period	\$50
Cruelty to animals	1 <sup>st</sup> offense	Court
	2 <sup>nd</sup> offense	Court
	3 <sup>rd</sup> offense	Court
Dog on runner less than twenty (20) feet long	1 <sup>st</sup> offense within a twelve month period	\$15
	2 <sup>nd</sup> offense within a twelve month period	\$25
	3 <sup>rd</sup> offense within a twelve month period	\$50
Dog at large (with tag)	1 <sup>st</sup> offense within a twelve month period	\$10
	2 <sup>nd</sup> offense within a twelve month period	\$25
	3 <sup>rd</sup> offense within a twelve month period	\$50
Dog at large (no tag)	1 <sup>st</sup> offense within a twelve month period	\$15
	2 <sup>nd</sup> offense within a twelve month period	\$25
	3 <sup>rd</sup> offense within a twelve month period	\$50
Failure to Restrain	1 <sup>st</sup> offense within a twelve month period	\$15
	2 <sup>nd</sup> offense within a twelve month period	\$25
	3 <sup>rd</sup> offense within a twelve month period	\$50

Fowl at large	1 <sup>st</sup> offense within a twelve month period	\$15
	2 <sup>nd</sup> offense within a twelve month period	\$25
	3 <sup>rd</sup> offense within a twelve month period	\$50
Failure to quarantine	1 <sup>st</sup> offense within a twelve month period	Court
animal that has bitten	2 <sup>nd</sup> offense within a twelve month period	Court
Failure to notify	1 <sup>st</sup> offense within a twelve month period	Court
authorities of bite	2 <sup>nd</sup> offense within a twelve month period	Court
Failure to obtain rabies	1 <sup>st</sup> offense within a twelve month period	\$15
vaccination	2 <sup>nd</sup> offense within a twelve month period	\$25
	3 <sup>rd</sup> offense within a twelve month period	\$50
Failure to attach rabies tag	1 <sup>st</sup> offense within a twelve month period	\$15
	2 <sup>nd</sup> offense within a twelve month period	\$25
	3 <sup>rd</sup> offense within a twelve month period	\$50
Failure to attach tag	1 <sup>st</sup> offense within a twelve month period	\$15
(dog/cat)	2 <sup>nd</sup> offense within a twelve month period	\$25
	3 <sup>rd</sup> offense within a twelve month period	\$50
Failure to license	1 <sup>st</sup> offense within a twelve month period	\$15
(dog/cat)	2 <sup>nd</sup> offense within a twelve month period	\$25
	3 <sup>rd</sup> offense within a twelve month period	\$50
Failure to surrender	1 <sup>st</sup> offense	Court
Dangerous/Vicious animal	2 <sup>nd</sup> offense	Court
Failure to confine dog/cat	1 <sup>st</sup> offense within a twelve month period	\$25
in heat	2 <sup>nd</sup> offense within a twelve month period	\$50
	3 <sup>rd</sup> offense within a twelve month period	\$100
Keeping a dangerous and		
Vicious animal	See Section J	

**ORDINANCE 2010-56      AMEND ANIMAL CONTROL ORDINANCE      PAGE 6**

Failure to provide adequate	1 <sup>st</sup> offense within a twelve month period	\$25
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shelter/ food and or water	2 <sup>nd</sup> offense within a twelve month period	\$50
	3 <sup>rd</sup> offense within a twelve month period	Court
Interfering/ opposing	1 <sup>st</sup> offense within a twelve month period	Court
Animal Control Officer	2 <sup>nd</sup> offense within a twelve month period	Court
	3 <sup>rd</sup> offense within a twelve month period	Court
Keeping prohibited	1 <sup>st</sup> offense within a twelve month period	\$25
livestock in city limits	2 <sup>nd</sup> offense within a twelve month period	\$50
	3 <sup>rd</sup> offense within a twelve month period	Court
Keeping prohibited	1 <sup>st</sup> offense within a twelve month period	\$25
fowl in city limits	2 <sup>nd</sup> offense within a twelve month period	\$50
	3 <sup>rd</sup> offense within a twelve month period	Court
Livestock at large	1 <sup>st</sup> offense within a twelve month period	\$15
	2 <sup>nd</sup> offense within a twelve month period	\$25
	3 <sup>rd</sup> offense within a twelve month period	\$50
Noisy animals	1 <sup>st</sup> offense within a twelve month period	\$15
	2 <sup>nd</sup> offense within a twelve month period	\$25
	3 <sup>rd</sup> offense within a twelve month period	\$50
Operating illegal horse stable	1 <sup>st</sup> offense within a twelve month period	Court
	2 <sup>nd</sup> offense within a twelve month period	Court
Promoting animal fighting	1 <sup>st</sup> offense	Court
	2 <sup>nd</sup> offense	Court
Refusing to allow inspection	1 <sup>st</sup> offense within a twelve month period	Court
	2 <sup>nd</sup> offense within a twelve month period	Court

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Tamper with animal trap/	1 <sup>st</sup> offense within a twelve month period	Court
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removing animal from trap/interfering with ACO in setting/servicing trap	2 <sup>nd</sup> offense within a twelve month period	Court
	3 <sup>rd</sup> offense within a twelve month period	Court
Unsanitary living condition- fowl/livestock	1 <sup>st</sup> offense within a twelve month period	\$25
	2 <sup>nd</sup> offense within a twelve month period	\$50
	3 <sup>rd</sup> offense within a twelve month period	Court
Unsanitary/inhumane living condition (any animal)	1 <sup>st</sup> offense within a twelve month period	\$50
	2 <sup>nd</sup> offense within a twelve month period	\$100
	3 <sup>rd</sup> offense within a twelve month period	Court
Dangerous and vicious animal at large	1 <sup>st</sup> offense	Court
	2 <sup>nd</sup> offense	Court
	3 <sup>rd</sup> offense	Court

**SECTION IV: ADDITION OF SECTION XXIV**

Ordinance 2003-11 is hereby amended to include the following additional section concerning vicious animals.

**SECTION XXV: VICIOUS ANIMALS**

**A. Harboring**

No person shall own or harbor any animal for the purpose of animal fighting, or train, torment, badger, bait or use any animal for the purpose of causing or encouraging said animal to attack human beings or domestic animals when not provoked.

No person shall sell, offer for sale, breed, buy or attempt to buy any vicious animal within the city.

**B. Registration of Dogs**

The tag and a certificate of registration or license shall be of such form and design and shall contain such information as the City shall prescribe and shall be issued to the owner or keeper upon payment of the registration fee. The registration fee for all

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neutered and spayed dogs shall be \$0.00 and the registration fee for all un-neutered and un-spayed dogs shall be \$5.00.

The owner or person in charge shall at all times, keep the tag affixed to said dog or cat. It shall be unlawful for any owner or person in charge of an animal to fail to

comply fully with all of the requirements of this section by failing to register a dog or a cat. It shall also be unlawful for any person, except the owner or person in charge and upon its own premises, to remove a tag from a dog or cat tagged under the provisions of this section or to place a tag upon a dog or cat for which said tag was not issued, to procure a tag from the City by fraud or misrepresentation, or to disfigure or alter the words or figures upon a tag.

If a tag becomes lost or mutilated it shall be replaced with a tag or decal marked “duplicate” upon payment of the fee of \$3.00. No duplicate tag or decal shall be issued unless the dog or cat has been inoculated for rabies within twelve (12) months of the date of issuance of the duplicate tag.

In addition to the information listed above, if an animal is vicious or presumed to be vicious, as defined herein or as is determined at a hearing for such purpose, then the owner shall provide two identification color photographs of the animal clearly showing the color, any markings and approximate size of the animal.

#### C. Insurance

All owners or keepers of a vicious dog or dog presumed to be vicious, as previously defined or as shall be determined to be vicious after judicial review, shall provide proof of liability insurance in a single incident amount of at least \$100,000.00, specifically covering any damage or injury which may result from the ownership, keeping or maintenance of such animal.

The policy shall contain a provision requiring the City to be named as an additional insured for the sole purpose of being notified by the insurer of any cancellation, termination or expiration of the liability insurance policy.

#### D. Investigation of Vicious Dogs

When any person claims that an animal is vicious, he or she shall make a sworn statement setting forth the name of the animal’s owner, the location where the animal is being kept in the city, and the reason he or she believes the animal to be vicious.

The sworn statement will be delivered to the Animal Control Officer who will complete a vicious animal investigation.

Animal Control Officers are authorized to initiate a vicious animal investigation in cases where a bite or serious injury to any person has been reported or when the officer has other reason to believe a dog may be vicious.

Police officers and/or animal control officers shall be permitted to enter the exterior property where a vicious animal or animal presumed to be vicious is located for

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the purpose of investigating the allegation of viciousness. If the police officer and/or animal control officer has reason to believe an animal poses an immediate threat to the health, safety or welfare of the general public, the officer may seize the animal and impound the animal at the animal shelter pending completion of the investigation and hearing.

If an animal control officer or a law enforcement officer has investigated and determined that there exists probable cause to believe that an animal is potentially dangerous or vicious, the animal control officer, the chief officer of the public pound or animal control department or his or her immediate supervisor or the head of the local law enforcement agency, or his or her designee, shall petition the Municipal Court of the City of Daphne for a hearing for the purpose of determining whether or not the animal in question should be declared potentially dangerous or vicious. Whenever possible, any complaint received from a member of the public which serves as the evidentiary basis for the animal control officer or law enforcement officer to find probable cause shall be sworn to and verified by the complainant and shall be attached to the petition.

In the event the vicious animal investigation leads the Animal Control Officer to believe the allegation is unfounded, the Animal Control Officer shall advise the complainant of his findings and submit the results of the investigation to the Municipal Court and his animal control supervisor.

#### E. Notice, Court Hearing, and Appeal

- (a) The owner or keeper of the animal shall be served with notice of the hearing and a copy of the petition, either personally or by first-class mail with return receipt requested. [The hearing shall be held no less than ten (10) days nor more than twenty (20) days after such notice is mailed to the owner or keeper of the animal] and shall be open to the public.
- (b) At such hearing all interested persons shall have the opportunity to present evidence on the issue of the animal's dangerousness. The court may admit all relevant evidence, including incident reports and the affidavits of witnesses, photographs and video tapes, limit the scope of discovery, and may shorten the time to produce records or witnesses.

In the event that the animal in question has caused injury to any person, the municipal judge may impound the animal, at the owner's expense, pending the hearing and determination of the complaint. If the court finds that the animal is potentially dangerous or vicious, it may make any orders authorized by this chapter or other laws, including but not limited to assessment of fines and costs as provided in this Code.

- (c) If a determination is made that the animal is potentially dangerous or vicious and no appeal is filed, the owner or keeper shall comply with the municipal court's order no later than fourteen (14) days following the rendering of the decision. If the owner or keeper of the animal contests the

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determination, he or she may, within fourteen (14) days of the municipal court's decision appeal the decision to the circuit court of the county. All filing fees and costs shall be paid by the owner or keeper of the animal. The owner or keeper of the animal shall serve notice upon the city that the appeal has been filed.

- (d) The Circuit Court shall conduct a hearing de novo, and make its own determination as to potential danger and viciousness and make other orders authorized by this chapter, based upon the evidence presented. The court may admit all relevant evidence, including incident reports and the affidavits of witnesses, limit the scope of discovery, and may shorten the time to produce records or witnesses. If the court rules the animal to be potentially dangerous or vicious, compliance with the order shall begin within seven (7) days of the date of the court's determination.
- (e) The determination of the circuit court shall be final and conclusive upon all parties. However, the animal control authority shall have the right, following due process, to later declare an animal to be vicious or to determine that the animal constitutes a threat to the public health and safety, for any subsequent actions of the animal.

F. Regulation of Potentially Dangerous or Vicious Animals

If it is determined at the hearing that the animal is dangerous or vicious, the Court may order the following:

- (a) Confinement:
  - (1) Owners shall provide an exterior perimeter fence suitable to contain an average animal of the same type. The perimeter fence shall be constructed of chain link or wooden privacy type and shall be at least four (4) feet in height.
  - (2) Owners shall provide an additional fence or pen of adequate size inside the perimeter fence to humanely confine the vicious animal.
    - (a) This additional fence or pen may not share common fencing with the perimeter fence.
    - (b) This additional fence or pen must have secure sides and a secure top attached at all sides.
    - (c) All four sides of this additional fence or pen must be sunk at least two feet into the ground or the fence or pen must be built over a concrete pad to prevent the animal from digging out.
    - (d) The additional fence or pen must have an inward-opening gate and shall be kept locked at all times by pad lock or key lock except when tending to the care of the animal.

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- (e) The sides of this additional fence or pen shall be from ground to top at least twice the height of the animal, the height of the animal being measured from its shoulders.

- (f) The additional fence or pen must not be positioned so that neighbors or passers by have access to the animal. It must be no less than twenty (20) feet from any neighboring property line.
  - (g) Signs shall be posted on each side of this additional fence or pen stating that a vicious animal is enclosed and shall specify the type of animal enclosed, i.e. "Vicious Dog". Signs must be printed and legible from 20 feet.
  - (h) The pen or structure must also provide the animal with protection from the elements and must at all times be kept in sanitary condition.
- (3) Whenever the animal is outside either the additional fence or pen provided for this section:
- (a) It must be attended by the owner; and
  - (b) It must be restrained by a secure collar and leash or rope to no longer than eight (8) feet and of sufficient strength to prevent escape; and
  - (c) It must be securely muzzled so as to effectively prevent such animal from biting another animal or person
- (4) No vicious animal shall be allowed outside the owner's property except in emergencies or for normal or necessary medical or health related treatment.

(b) Destruction of a Vicious Dog

In the event it is determined at the hearing that the release of the animal would create a significant threat to the public health, safety and welfare, the animal may be humanely destroyed by the Department of Animal Control.

(c) When it is Determined that the Animal is not Dangerous or Vicious

In the event it is determined at the hearing that the animal is not vicious, the court shall inform the complainant of said findings.

G. Minor Owner or Keeper

In the event that the owner or keeper of a potentially dangerous or vicious animal is a minor, the parent or guardian of such minor shall be liable for all injuries and

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property damage sustained by any person or domestic animal caused by a unprovoked attack by such potentially dangerous or vicious animal.

H. Procedure Upon Loss, Sale or Transfer of Animal

The owner or keeper of a potentially dangerous or vicious animal shall notify the department of animal control or the police department immediately if such potentially dangerous or vicious animal is loose or missing or if the potentially dangerous or vicious animal has attacked or wounded a human being or another animal. If the animal in question dies, or is sold, transferred, or permanently removed from the city or county where the owner or keeper resides, the owner of a potentially dangerous or vicious animal shall notify the animal control department of the changed condition and new location of the animal in writing within two (2) working days. If the owner or keeper of a potentially dangerous or vicious animal moves the animal to a different address within the city limits of the city, such owner or keeper shall notify the department of animal control of such fact and the new address within twenty-four (24) hours.

I. Keeping Potentially Dangerous or Vicious Animals

It shall be unlawful for any owner, keeper or other person to be in violation of any provision of this chapter or any order of any court as provided in this chapter. Any owner or keeper found to be in violation of this section shall be guilty of a misdemeanor and shall be punishable as provided in Subsection J of this Section.

J. Penalty for Violation

The penalty for violation of any provision of this Section shall be as follows:

1 <sup>st</sup> Offense	Not less than \$100.00 or more than \$350.00 and/or not to exceed 6 months in jail;
2 <sup>nd</sup> and Subsequent Offenses	Not less than \$350.00 or more than \$500.00 and/or not to exceed six (6) months in jail.

In addition, the Court shall assess the violator with any and all costs incurred for the impoundment and/or destruction of the dog.

K. Confinement Generally

No owner, keeper or harbinger of an animal shall permit a vicious or dangerous dog to be kept on a chain, rope or other type of leash outside of its fence and/or pen unless it is under physical control of a leash. Such dogs may not be leashed or chained to inanimate objects such as trees, posts, buildings, etc. outside of the perimeter fence and/or pen. No vicious or dangerous dog may be kept on a porch, patio or in any other

portion of the house or structure that would allow the dog to exit such building or structure on its own volition. In addition, no such animal may be kept in a house or structure where screen doors are the only obstacle preventing the dog from exiting the structure.

L. Registration of Vicious Dogs

All dangerous or vicious dogs as defined herein or as found to be vicious after a Municipal Court hearing shall be registered on the City's website. Such registry shall include the address where the dog is located and identifying information on the dog, including two (2) identifying color photographs of the dog. The registry shall not contain the name or names of the owners or tenants at said location.

**SECTION V: ADDITION OF SECTION XXVI**

Ordinance 2003-11 is hereby amended to include the following additional section concerning donations to the City.

**SECTION XXVI: DONATIONS TO ANIMAL SHELTER**

This section shall establish an additional procedure for donations to the City of Daphne Animal Shelter via online payment at the City of Daphne Animal Shelter website through generally accepted credit cards.

**SECTION VI: CONFLICT WITH OTHER ORDINANCES**

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

**SECTION VII: SEVERABILITY**

The provisions of this Ordinance are severable. If any provision, section, paragraph, sentence, or part thereof shall be held unconstitutional or invalid, such

decision shall not affect or impair the remainder of the Ordinance, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence, and part thereof separately and independently of each other.

**SECTION VIII: EFFECTIVE DATE**

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

**ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY  
OF DAPHNE, ALABAMA ON THIS THE \_\_\_\_\_ day of \_\_\_\_\_, 2010.**

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

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**AUGUST PALUMBO,  
COUNCIL PRESIDENT**

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**FRED SMALL,  
MAYOR**

**ATTEST:**

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**DAVID L. COHEN,  
CITY CLERK, MMC**

**CITY OF DAPHNE, ALABAMA  
ORDINANCE NO. 2010-58**

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

**WHEREAS**, the Planning Commission of the City of Daphne, Alabama at their regular meeting held on July 22, 2010 , favorably recommended to the City Council of the City of Daphne certain amendments to the Zoning District Map approved and adopted by the Daphne Land Use and Development Ordinance No. 2002-22, referenced in Appendix H “Exhibit A” thereof and amended by Ordinance No. 2003-06, Ordinance No. 2005-11, Ordinance No. 2005-42, Ordinance No. 2006-24, Ordinance No. 2006-73, Ordinance No. 2007-15, Ordinance 2007-48 and Ordinance 2008-56, Ordinance 2009-19, Ordinance 2009-60; and

**WHEREAS**, said amendments are necessary due to various rezoning and annexation requests which have been approved since the adoption of Ordinance No. 2002-22, Ordinance 2003-06, Ordinance No. 2005-11, Ordinance No. 2005-42, Ordinance No. 2006-24, Ordinance No. 2006-73, Ordinance No. 2007-15, Ordinance 2007-48, Ordinance 2008-56, Ordinance 2009-19 and Ordinance No. 2009-60; and

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

**WHEREAS**, a public hearing regarding the proposed Zoning District Map amendments was held by the City Council on September 7, 2010; and

**WHEREAS**, the City Council of the City of Daphne after due consideration and upon recommendation of the Planning Commission believe it in the best interest of the health, safety and welfare of the citizens of the City of Daphne to amend said Zoning District Map as recommended; and

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

**SECTION I: ZONING DISTRICT MAP**

The Zoning District Map referenced hereto as Exhibit "A" shall be the official zoning map of the City of Daphne, Alabama and shall be further designated in Appendix H of Exhibit "A" of the City of Daphne Land Use and Development Ordinance, as set forth in Ordinance No. 2002-22 and its amendments.

**SECTION II: REPEALER**

Ordinances No. 2002-22, Appendix H "Exhibit A", 2003-06, 2005-11, 2005-42, 2006-24, 2006-73, 2007-15, 2007-48, 2008-56, 2009-19 and 2009-60 are specifically repealed and any Ordinance(s), parts of Ordinance(s) or Resolution(s) conflicting with the provisions of this Ordinance are hereby repealed insofar as they conflict.

**SECTION III: EFFECTIVE DATE**

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

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