

**CITY COUNCIL BUSINESS MEETING AGENDA
1705 MAIN STREET, DAPHNE, AL
DECEMBER 1, 2008
BUSINESS MEETING
6:30 P.M.**

1. CALL TO ORDER

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

- 3. APPROVE MINUTES:** Special Called Council meeting minutes meeting held November 10, 2008
Council Work Session minutes meeting held November 13, 2008
Council minutes meeting held November 17, 2008
Special Called Council meeting minutes meeting held November 17, 2008

4. REPORT STANDING COMMITTEES:

- A. FINANCE COMMITTEE / Boulware**
- B. BUILDINGS & PROPERTY - Lake**
- C. PUBLIC SAFETY - Burnam**
- D. CODE ENFORCEMENT/ORDINANCE COMMITTEE - Palumbo**
- E. PUBLIC WORKS COMMITTEE / SOLID WASTE AUTHORITY - Yelding**
Review minutes meeting held October 24th

5. REPORTS OF SPECIAL BOARDS & COMMISSIONS:

- A. Board of Zoning Adjustments - Eady**
- B. Downtown Redevelopment Authority - Barnette**
- C. Industrial Development Board – Yelding**
- D. Library Board - Lake**
- E. Planning Commission – Barnette**
Set Public Hearing date for January 5, 2009 to consider:
 - 1. Rezone: Springs @ Eastern Shore / SE of the intersection of US Hwy 98 & Johnson Road
Rezone from B-2, General Business District to R-4, High Density Multi-Family Residential District
 - 2. Rezone: Big Daddy’s Eastern Shore Car Lot / West side of US Hwy 98 / Rezone from B-1,
Local Business District to B-2, General Business District

F. Recreation Board - Palumbo

- 1. November 12, 2008 Recreation Board Minutes

G. Utility Board - Scott

6. REPORTS OF OFFICERS:

A. Mayors Report

- a.) Parade Permit / Shadow Barons / February 21, 2009 / Rain Date February 22, 2009
- b.) Parade Permit / Bounds Family YMCA / Fun Run / December 13, 2008

B. City Attorney’s Report

- a.) AT&T Agreement
- b.) BRAG Lease Agreement

C. Department Head Comments

7. PUBLIC PARTICIPATION:

8. RESOLUTIONS & ORDINANCES:

RESOLUTIONS:

NO RESOLUTIONS

ORDINANCES:

2ND READ

- a.) **Rezone Ashley Gates Apartments / B-2, General Business to R-4, High Density Multi-Family Residential District/Ordinance 2008-66**

1ST READ

- b.) **To Require Hotel Registration and Retention of Registration Records. /Ordinance 2008-67**

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 NAGER

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

NOVEMBER 17, 2008
CITY COUNCIL MEETING
1705 MAIN STREET
DAPHNE, AL
6:30 P.M.

1

1. CALL TO ORDER

Council President Lake called the meeting to order at 6:30 p.m.

2. ROLL CALL/INVOCATION/PLEDGE OF ALLEGIANCE

Invocation given Councilman Scott.

COUNCIL MEMBERS PRESENT: Bailey Yelding; Cathy Barnette; John Lake; Greg Burnam; Ron Scott; Derek Boulware; August Palumbo.

Also present: Mayor Fred Small; David Cohen, City Clerk; Rebecca Hayes, Assistant City Clerk; Erick Bussey, Attorney; Sandra Morse, Civic Center Director.; Sharon Cureton, Human Resource Director; Tonja Young, Library Director; David Carpenter, Police Chief; Richard Merchant, Building Official; James White, Fire Chief; Melvin McCarley, Interim Public Works Director; David McKelroy, Recreation Director; Adrienne Jones, City Planner; Jane Robbins, Mayor's Assistant; Capt. Scott Taylor, Police Dept.; Judge Thomas Doyle; Tracy Bishop, Police Dept.; Suzanne Henson, Senior Accountant; Scott Hutchinson, City Engineer; Al Guarisco, Village Point Foundation; Darrelynn Bender, Chamber of Commerce; Jay Hastings, Chamber of Commerce.

Absent: Kim Briley, Finance Director; Bill Eady, Planning Department Director; Jay Ross, City Attorney.

3. APPROVE MINUTES:

MOTION BY Councilwoman Barnette to adopt the Special Called Council meeting minutes meeting held October 27, 2008. *Seconded by Councilman Burnam.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilwoman Barnette to adopt the City Council Organizational meeting minutes meeting held November 3, 2008. *Seconded by Councilman Yelding.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilwoman Barnette to adopt the City Council Business meeting minutes meeting held November 3, 2008. *Seconded by Councilman Burnam.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

NOVEMBER 17, 2008
CITY COUNCIL MEETING
1705 MAIN STREET
DAPHNE, AL
6:30 P.M.

2

SWEARING IN: Sidney Bumpers / Police Department

Judge Thomas Doyle swore Officer Sidney Bumpers in as his finance held the Bible as Chief Carpenter looked on.

CERTIFICATE OF APPRECIATION: Dr. Albert Corte

Mayor Small read and presented the certificate to Dr. Corte for his almost 40 years of service to the citizens of Daphne, and for his help in establishing the Daphne Animal Shelter.

PUBLIC HEARING: Rezone: Ashley Gates Apartments, Phase I & II / Located on the SE Corner of Main Street and Van Avenue (13.21 Acres & 5.40 Acres) / Rezone from B-2, General Business District to R-4, High Density Multi-Family Residential District / Ordinance 2008-66

Ms. Meredith Turpin gave the presentation stating that they are not building anymore apartments. This is just a housekeeping measure. As it stands now if the apartments were destroyed they could not rebuild because they were grandfathered in as B-2. They want the ability to rebuild if anything happens.

Council President Lake opened the Public Hearing at 6:43 p.m.

No one spoke for or against the proposed rezoning.

Council President Lake closed the Public Hearing at 6:44 p.m.

4. REPORT OF STANDING COMMITTEES:

A. FINANCE COMMITTEE / *Boulware*

The minutes for the November 10th meeting are in the packet.

MOTION BY Councilwoman Barnette to reject the bids for the Park City and Joe Lewis Park Bathroom facilities, and re-evaluate the scope for re-bid. Seconded by Councilman Scott.

Councilman Yelding stated that he would like this done in a timely manner.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilman Scott to accept the Treasurers Report ending September 30, 2008 with a balance of \$20,157,496.61. Seconded by Councilman Yelding.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

Sales & Use Tax Collection / September 30, 2008

Sales tax collected for September was \$960,450.01, which was \$1,024,647 under budget.

Lodging Tax Collections / September 30, 2008

Lodging tax collected for the month of September was \$49,698.91.

B. BUILDINGS AND PROPERTY COMMITTEE – Lake

The minutes for the November 7th meeting are in the packet. Councilman Palumbo reported that the committee discussed and recommended roof repair for the Civic Center, the money has already appropriated from last years budget, and authorized the Mayor to go out for bids on the repair of the Civic Center roof. The committee also discussed property at 1618 Sixth Street that has been offered for sale to the city, and the committee authorized the Mayor to negotiate for the property, subject to Council approval.

C. PUBLIC SAFETY COMMITTEE – Burnam

There was not a quorum present for a meeting. The stats for the Fire and Police Department are in the packet.

D. CODE ENFORCEMENT/ORDINANCE COMMITTEE – Palumbo

No report. Councilman Palumbo stated that at the Work Session last week they discussed an ordinance for hotels regarding keeping records locally, and the ordinance will be on the next Council agenda.

E. PUBLIC WORKS COMMITTEE/SOLID WASTE AUTHORITY – Yelding

No report. The next meeting will be December 5th.

5. REPORTS OF SPECIAL BOARDS & COMMISSIONS:

A. Board of Zoning Adjustments – Eady

No meeting in November.

B. Downtown Redevelopment Authority – Barnette

No report.

C. Industrial Development Board – Yelding

No report.

D. Library Board – Lake

The board met on the 1st Thursday of November and elected new officers.

E. Planning Commission – Barnette

The minutes for the October 23rd meeting are in the packet. The Planning Commission meeting is this Thursday at 6:00 p.m.

F. Recreation Board – Palumbo

The minutes for the September 10th are in the packet. The board sent a letter to Council requesting a reduction in the membership terms from five (5) years to three (3) years.

Mr. Erick Bussey, representing the City Attorney. stated that State Code sets membership at five (5) years.

G. Utility Board – Scott

No report. The next meeting has been tentatively changed to December 3rd at 5:00 p.m. at City Hall.

6. REPORTS OF THE OFFICERS:

A. *Mayor's Report*

a.) *Parade Permit / Animal Rescue / December 20, 2008*

MOTION BY Councilwoman Barnette to approve the Parade Permit for Animal Rescue to be held December 20, 2008. *Seconded by Councilman Scott.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

b.) *Approve holding the Jubilee Festival on September 26, 27, 2009, and request per letter from Chamber of Commerce*

MOTION BY Councilman Yelding to approve the Jubilee Festival be held on September 26, 27, 2009, and request per letter from Chamber of Commerce. *Seconded by Councilwoman Barnette.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

The Eastern Shore Chamber of Commerce presented the 2008 Jubilee Festival Poster to the Mayor.

B. *City Attorney's Report*

Mr. Erick Bussey reported that the AT&T contract was ready to go.

Council asked if they were including the decorative landscape around equipment in Lake Forest.

Mr. Bussey said that he will call Ms. Albrecht and check on it.

C. *Department Head Comments*

David Carpenter – Police Chief - stated that the department is dealing with the tragedy of the missing young lady, and that if anyone knows anything regarding this to please contact the Police Department.

David Cohen – City Clerk – mentioned that Council needs to select an engineering firm for the boat ramp at May Day Park.

MOTION BY Councilwoman Barnette to select Moore Engineering to do the cost estimate for the May Day Park boat ramp. *Seconded by Councilman Scott.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

7. PUBLIC PARTICIPATION

Mr. Kevin Spriggs – Owner of Eastern Shore Motel - spoke regarding the budget.

Mr. Will Mastson – Trailblazers - spoke regarding sidewalks to schools.

8. RESOLUTIONS, ORDINANCES, ORDERS AND OTHER BUSINESS

RESOLUTIONS:

- a.) Retaining Officer & Employees...../Resolution 2008-61
- b.) Declaring Certain Property Surplus and Authorizing
the Mayor to Dispose of Such Property...../Resolution 2008-62
- c.) Prepaid Travel / David Cohen...../Resolution 2008-63
- d.) Safe Routes to School Project Grant / County Rd. 13...../Resolution 2008-64
- e.) Safe Routes to School Project Grant School Master Plan...../Resolution 2008-65

MOTION BY Councilwoman Barnette to waive the reading of Resolution 2008-61. *Seconded by Councilman Yelding.*

Councilman Ron Scott amended the motion to include Resolutions 2008-62, 2008-63, 2008-64 and 2008-65. *Seconded by Councilman Boulware.*

VOTE ON AMENDED MOTION

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilwoman Barnette to adopt Resolution 2008-61. *Seconded by Councilman Scott.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilwoman Barnette to adopt Resolution 2008-62. *Seconded by Councilman Yelding.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilwoman Barnette to adopt Resolution 2008-63, 2008-64 and 2008-65. *Seconded by Councilman Yelding.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

ORDINANCES

2ND READ

- a.) Adopting Fiscal Year 2009 Budget. /Ordinance 2008-57
- b.) Amending Renaissance Assessment Agreement. /Ordinance 2008-64

1ST READ

- c.) Rezone Ashley Gates Apartments / B-2, General Business to R-4, High Density Multi-Family Residential District /Ordinance 2008-66

MOTION BY Councilman Scott to waive the reading of Ordinances 2008-57. *Seconded by Councilwoman Barnette.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilman Scott to adopt Ordinance 2008-57. *Seconded by Councilman Barnette.*

Councilwoman Barnette stated that she is not for the amendments that were given to them at the work session. Council discussed the budget and decided to table the ordinance.

Councilman Scott withdrew his motion. Councilwoman Barnette withdrew her second.

MOTION BY Councilman Yelding to table Ordinance 2008-57. *Seconded by Councilman Scott.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilman Burnam to waive the reading of Ordinance 2008-64. *Seconded by Councilman Yelding.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilman Scott to adopt Ordinance 2008-64. *Seconded by Councilman Burnam.*

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

MOTION CARRIED

ORDINANCES 2008-66 WAS MADE 1ST READ.

8. COUNCIL COMMENTS

Councilman Yelding stated that Council President Lake was doing a great job.

Councilwoman Burnam stated that he is glad that they tabled the budget that it was the right thing to do.

Councilman Scott stated that the whole community needs to be vigilant to bring the tragic situation of the missing woman to a conclusion.

NOVEMBER 17, 2008
CITY COUNCIL MEETING
1705 MAIN STREET
DAPHNE, AL
6:30 P.M.

8

Councilman Palumbo congratulated Council President Lake on a successful but brief meeting. He reported that that building permits were down from 1,500 residential permits per month to last month one was issued. Daphne is not recession proof. He wished everyone a happy Thanksgiving.

Mayor Small thanked the Police Department for their work on the case of the missing woman, and asked the citizens to get behind the Police Department and show faith, trust and support for what they are going through. He also offered condolences to the Parrish family. The Mayor stated that Daphne has the best Police Department and he feels safe in Daphne.

Council President Lake stated that he received a lot of good information from the NLC conference that he will be sharing with Council. He wished everyone a good holiday.

10. ADJOURN

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

AYE ALL IN FAVOR

NAY NONE OPPOSED

MOTION CARRIED

THERE BEING NO FURTHER BUSINESS TO DISCUSS, THE MEETING ADJOURNED AT 7:48 P.M.

Respectfully submitted by,

David L. Cohen,
City Clerk, MMC

Certification by Presiding Officer:

John Lake
Council President

Date & Time Signed: _____

**NOVEMBER 17, 2008
SPECIAL CITY COUNCIL MEETING
1705 MAIN STREET
DAPHNE, AL
8:00 P.M.**

1. CALL TO ORDER

Council President Burnam called the meeting to order at 8:00 p.m.

2. ROLL CALL

COUNCIL MEMBERS PRESENT: Bailey Yelding; Cathy Barnette; John Lake; Greg Burnam; Ron Scott Derek Boulware; August Palumbo.

Also present: Mayor Small; David Cohen, City Clerk; Jay Ross, Attorney; Sharon Cureton, Human Resource Director; Sandra Morse, Civic Center Director; Georgia Landrum, Investigator.

Employee Hearing

MOTION BY Councilman Burnam to reconvene the Executive Session Quasi Judicial Hearing, and the meeting will last one (1) hour. *Seconded by Councilman Palumbo.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

Council entered into Executive Session at 8:00 p.m.

City Attorney, Jay Ross, came out to state that the session will last another 30 minutes.

Council returned from Executive Session at 9:55 p.m.

Council President Lake read the proposed recommendation of Council. (*Recommendation letter spread out upon these minutes*)

Council discussed the issues with Mayor Small and Jay Ross.

Mayor Small addressed Council stating that the probation will be removed from the employee file.

Only one issue of the 14 presented by the employee was acted upon, which was removing the probation.

MOTION BY Councilwoman Barnette to adopt the proposed agreement read by Council President Lake. *Seconded by Councilman Yelding.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

**NOVEMBER 17, 2007
SPECIAL CITY COUNCIL MEETING
1705 MAIN STREET
DAPHNE, AL
8:00 PM**

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 10:15 P.M.

Respectfully submitted by,

David L. Cohen, City Clerk, MMC

Certification of Presiding Officer:

John Lake,
Council President
Date & Time Signed: _____

**NOVEMBER 13, 2008
CITY COUNCIL WORK SESSION
1705 MAIN STREET
DAPHNE, AL
6:30 P.M.**

COUNCIL MEMBERS PRESENT: Cathy Barnette; Ron Scott; Derek Boulware; August Palumbo.

ABSENT: Bailey Yelding; John Lake; Greg Burnam.

Also present: David Cohen, City Clerk; Jay Ross, City Attorney; Kim Briley, Finance Director

Absent: Mayor Small.

Council President Pro tem Palumbo called the meeting to order at 6:30 p.m.

1. Trailblazers / Will Matson

Mr. Matson gave a presentation on safe routes to schools.

Council asked that this be on the agenda for Monday night.

2. May Day Boar Ramp Grant

David Cohen gave a presentation on why the city needs to designate an engineering firm for the project.

Council discussed the issue.

Consensus of Council was to put this on the agenda for Monday night for a vote.

3. Recreation Board Terms of Appointment

Council discussed the boards recommendation to shorten the length of the terms for the members to three (3) years.

Consensus of Council was to request the City Attorney to look at the ordinance and the state code to see what could be done to set up staggering three (3) year terms, and report the recommendations to Council.

4. City Council Rules of Procedure Ordinance

Council discussed the following changes:

1. Presentation:
 - a.) Limit time to 5 – 15 minutes
 - b.) Inform presenter of time frame
 - c.) Start Council meeting at 6:00 p.m. to do presentations
 - d.) Set a policy that presenter has to present a report of what will be presented before item is put on agenda
 - e.) Set up a protocol sheet for presentation

**NOVEMBER 13, 2008
CITY COUNCIL WORK SESSION
1705 MAIN STREET
DAPHNE, AL
6:30 P.M.**

2. Meeting time:
 - a.) Set meeting time for 6:00 p.m.
- 3.) Suspend Rules:
 - a.) Have a rule in the ordinance to allow for discussion of motion
- 4.) Section 16:
 - a.) Possibly delete – Seems to be in conflict with section 21
- 5.) Section 17:
 - a.) Remove Mayor from verbiage
- 6.) NEW SECTION (RULE): Council Procedure
 - a.) Any item to be put on agenda must be turned in by 5:00 p.m. on the Wednesday before the Council meeting.
 - b.) Council Packet will be ready by 12:00 noon on the Friday before the Council meeting.
 - c.) Only person to add items after the deadline is Council President
- 7.) Repealer Section in Rule of Procedure Ordinance:
 - a.) Omit ordinance numbers to be repealed and use generic repealer, “any ordinance that conflicts with this ordinance is hereby repealed.”
- 8.) Have this list of proposed changes to the Rules and Procedure ordinance on the December Work Session
- 9.) Council requested information regarding a Unanimous Consent Agenda similar to the agenda that the County Commission uses.
- 10.) Standing Committees:
 - a.) Put on December Work Session
- 11.) Send memo to Department Heads regarding the deadline regarding agenda items
- 12.) Move Work Session to Monday
- 5.) Budget
 1. Council requested the Archer Report on items for employees.
 - 2.) Council had questions about the Museum curator.
Consensus of Council was to wait until the Ad Valorem taxes are received before considering this request.
 - 3.) Council established a committee consisting of Council President Lake, Councilwoman Barnette and Councilman Scott to establish guidelines for the position of City Clerk.

**NOVEMBER 13, 2008
CITY COUNCIL WORK SESSION
1705 MAIN STREET
DAPHNE, AL
6:30 P.M.**

6. ADJOURN

There being no further business to discuss the meeting adjourned at 8:37 p.m.

Respectfully submitted by,

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

Certification of Presiding Officer:

**John Lake
Council President**

Date & Time Signed: _____

MEMO ROSS · JORDAN · GRAY · P.C.

1111 Dauphin St. Mobile, Al 36601 Tel:251-432-5400 Fax:251-432-5445 jay@rossandjordan.com

TO: David Cohen, CMC

FROM: Jay M. Ross

DATE: November 25, 2008

RE: RE: Sandra Morse Complaint

The City Council made the following motion in a vote of seven in favor none opposed.

1. That the Council finds that there has been no racial, ethnic, or religious discrimination
2. That the probationary period heretofore imposed by the Mayor upon Ms. Morse is hereby rescinded and all references related to said probation are to be deleted and removed from Ms. Morse human resource file.
3. That the three warning letters or reports issued by the Mayor upon Ms. Morse shall remain in Ms. Morse's HR file, but all references or check lists related to any probationary period herein are to be deleted.
4. That the Human Resources Director and the Mayor shall closely adhere to the grievance procedure, as set forth in the City's Human Resources Personnel Policy Procedure Manual of the City of Daphne.
5. That the Human Resources Director and the Mayor are to adopt and implement recommendations as set forth in Ms. Georgia Landrum's report as more specifically outlined therein, and at the next regularly scheduled Council meeting the Human Resources Director and the Mayor shall report to the Council as to the timeline for the implementation of the same.
6. That the Council President agrees to meet with the Human Resources Director and the Mayor and Ms. Morse to specifically discuss and explain the actions of the Council, if necessary.

**NOVEMBER 10, 2008
SPECIAL CITY COUNCIL MEETING
1705 MAIN STREET
DAPHNE, AL
5:30 P.M.**

1. CALL TO ORDER

Council President Lake called the meeting to order at 5:30 p.m.

2. ROLL CALL

COUNCIL MEMBERS PRESENT: Bailey Yelding; Cathy Barnette; John Lake; Greg Burnam; Ron Scott
Derek Boulware; August Palumbo arrived at 5:37 p.m.

Also present: Mayor Small; David Cohen, City Clerk; Jay Ross, Attorney; Sharon Cureton, Human Resource Director; Sandra Morse, Civic Center Director; District 6; Georgia Landrum, Investigator; Carol Cook, Court Reporter.

Employee Hearing

MOTION BY Councilman Scott to reconvene the Executive Session Quasi Judicial Hearing, and the meeting will last three (3) hours. *Seconded by Councilwoman Barnette.*

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

NAY NONE OPPOSED

MOTION CARRIED

NOTE: Councilman Palumbo arrived at 5:37 p.m.

Council entered into Executive Session at 5:37 p.m.

Mayor Small came out of Executive Session at 9:15 p.m. to state that the session will last another hour.

Council returned from Executive Session at 10:45 p.m.

MOTION BY Councilman Scott to recess the Special Called Council meeting at 10:45 p.m., and reconvene the meeting on Monday, November 17, 2008 after the Council meeting. *Seconded by Councilwoman Barnette.*

AYE ALL IN FAVOR

NAY NONE OPPOSED

MOTION CARRIED

Respectfully submitted by,

Certification of Presiding Officer:

David L. Cohen, City Clerk, MMC

John Lake, Council President
Date & Time Signed: _____

**CITY COUNCIL MEETING
STANDING COMMITTEE RECOMMENDATIONS:**

FINANCE COMMITTEE REPORT

BUILDINGS & PROPERTY COMMITTEE REPORT

PLANNING/ZONING/CODE ENFORCEMENT COMMITTEE REPORT

PUBLIC SAFETY/ORDINANCE COMMITTEE REPORT

PUBLIC WORKS/BEAUTIFICATION/MUSEUM COMMITTEE REPORT

CITY OF DAPHNE
PUBLIC WORKS COMMITTEE MEETING
Time: 8:00 AM on October 24, 2008
Location: City Hall Council Chambers

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

I. CALL TO ORDER

The May meeting of the Public Works Committee was called to order at 8:06 a.m.

Present: Councilman Bailey Yelding, Councilman John Lake, Melvin McCarley, Nancy Henderson-DBC, Frieda Romanchuk-DBC, Selena Vaughn-DBC, Dorothy Morrison-DBC, Sandi Cushway-PW Administrative Assistant

II. PUBLIC PARTICIPATION & CORRESPONDENCE

- A. Work Request Report – September 2008; FY2007 & FY 2008: Councilman John Lake questioned how much labor at the mechanical shop is routine maintenance versus repairs. Melvin responded that we should be able to get a breakdown from Duke. Will request for next meeting. Sandi to speak with Kerry to see if there is a report available to differentiate repairs versus maintenance.
- B. Correspondence – None

III. OLD BUSINESS

- A. Minutes – September 26, 2008 meeting. Will have to wait until next meeting to approve minutes from September meeting.
- B. Mosquito Reports – no comments
- C. Garbage Service Update – The Council did not approve feasibility study. They want it rephrased and the wording cleaned up and re-presented for council approval. Councilman Lake stated that we should just forego the survey and go to once a week service. Melvin McCarley stated that if we went to once a week service, it would free up two Solid Waste Workers that would be able to work exclusively at Gator Alley and they would also be cross trained to fill in and work in the Solid Waste department when needed. Frieda Romanchuk-DBC stated that she has never lived in a City that had more than once a week garbage service. Citizens would have the option of obtaining a second garbage cart if needed. Melvin stated that we would need more money for garbage carts if we provide everyone with carts. Councilman Yelding stated that this topic needs to be added to the next work session. Councilman Lake will get all the information from Buck and Melvin to take to the work session. Melvin commented that the national trend for garbage service is once weekly pickup. Councilman Lake suggested that the two extra employees be cross-trained and given a salary incentive to work as back up for Solid Waste.
- D. Resurfacing – Mayor Small not here for discussion. Councilman Lake stated that we need a list of roads that need to be resurfaced. Several streets named were Ridgewood, Bay View, several side streets in Lake Forest, Santa Rosa, Main Street from Judge Roy Beans old location all the way to the hotels and College Avenue. Councilman Lake also stated that we would need to establish priorities and a timeline for the project. Councilman Yelding said that we needed to come up with a budget first, then form a committee. Each district needs to submit streets that need repairs the most.

IV. NEW BUSINESS

- A. Councilman Lake stated that the crosswalks on trails need to be re-stripped.
- B. Replacing signs in Lake Forest – Councilman Lake asked if we could put up “Share the Road” signs near stop signs. He is going to bring this up at the next Safety meeting about bikes using sidewalks where available. Need to get some public awareness out there about this.
- C. Councilman Lake commented that the State Tourism Board is allowing us to put in a pamphlet for the Jubilee Festival. Will get historic placards. Wants to put the story of Daphne “Black Slave”. They get 8 million advertisers. Would be national media for our Zydeco Festival also.

V. DIRECTOR’S REPORT

- A. Mosquito Report – No comments
- B. Recycling Bins came in and are set up. A bobcat is used to move the dumpsters to empty them. This cuts down tremendously on time. John Lake asked if we had brochures that we could provide Condo/Apartment owners about recycling program. Information could be included with the monthly utility bill. Melvin to get with Tracey Miller, Solid Waste Coordinator and see about getting 50-60 to each one. Councilman Lake also suggested that when someone opens a new business that they be given a recycling brochure so that they are aware of our program.

VI. SOLID WASTE AUTHORITY

- A. Nothing to report

VII. MUSEUM COMMITTEE

- A. No minutes submitted for September

VIII. BEAUTIFICATION COMMITTEE

- A. No minutes submitted for September
- B. Met with Jan Lloyd. She had to move her Christmas decorations. Looked at decorations in a book she had put together. Anything that the City borrowed would have to be returned by December the 8th due to previous commitments.
- C. Dorothy asked whether the City would be holding an Open House. Councilman Lake stated that the Chamber hosts one every year.
- D. Santa will be on the day of the Christmas Parade, then at City Hall. He will be located under the clock tower.
- E. Inside the Civic Center lobby, there will be 4 snowmen, a sleigh and a throne.
- F. Dorothy passed out Gator Alley cards to hotels and also passed them out at the council meeting.
- G. Thanks to David McElroy for cleaning up the debris and thanks to Melvin McCarley for getting curbing repaired.
- H. Rotary Club Clock – This issue should go to the Buildings and Properties Committee. Stark Irvine wants the clock to be placed in the courtyard in Old Town Daphne. He would like for the front gates top be removed, but the DBC is opposed to that option. Melvin McCarley to get with Frank Barnett to determine the best location for the clock. The light pole would have to be moved, which would cost the city approximately \$25,000. There is plenty of electricity in the courtyard. The clock is on a 15-20’ pole and is about 4 sq ft. Melvin said that it would be nice to put it with one of the Welcome to Daphne signs.
- I. Sidewalk in Spanish Fort is continuing from Gator Alley to Spanish Fort with a hatched crosswalk across 2nd traffic light and down to the shopping center. It will also connect

down to the Rite Aid shopping center and end at Spanish Fort elementary school. This is a state project.

- J. Selena Vaughn commented that we are under a tight timeline for planting the wildflowers at Hwy 98 and Main Street. Have already purchased the native plants for Gator Alley. Dorothy has an Eagle Scout who needs a project.
- K. Melvin McCarley stated that Christmas Decorations will start going up the Wednesday before Thanksgiving ((November 26th). Nancy stated that they will be keeping the decorations simple this year. Can put lights on evergreen trees at City Hall. She is meeting with Marjorie next week to discuss.

IX. ENGINEER REPORT

- A. NRCS Update – No update

V. FUTURE BUSINESS

- A. Next Meeting – December 5, 2008, 8:00 a.m.

XI. ADJOURNMENT

Councilman John Lake motioned to adjourn. Motion seconded by Councilman Bailey Yelding. The meeting adjourned at 9:00 AM.

SET A PUBLIC HEARING DATE FOR

JANUARY 5, 2009

TO CONSIDER:

- 1. REZONE: Big Sandy / SE Corner of US Hwy 98 and Johnson Road / B-2, General Business District to R-4, High Density Multi-Family Residential District**
- 2. REZONE: Johnny Littleton / West side of US Hwy 98 / B-1, Local Business District to B-2, General Business District**

To: Office of the City Clerk
From: Adrienne Jones, Director of
Community Development
Subject: Big Sandy, LLC,
Zoning Amendment
Date: November 21, 2008

MEMORANDUM

PRESENT ZONING: B-2, General Business

PROPOSED ZONING: R-4, High Density Single Family
Multi-Family Residential

LOCATION: Southwest of the intersection of
U. S. Highway 98 and Johnson Road

RECOMMENDATION: At the November 20, 2008, regular
meeting of the City of Daphne
Planning Commission, eight members
were present and the vote carried
(seven to one) for the favorable
recommendation of the above-
mentioned zoning amendment.

REFERENCE: Owner: Big Sandy, LLC
Project: Springs @ Eastern Shore

Upon receipt of said documentation, please place on the
appropriate agenda for action by the City Council.

Thank you,

AJ/jd

cc: file

attachment(s)

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:

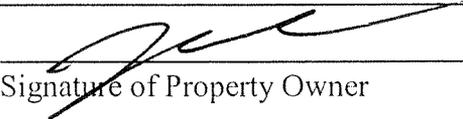
- a) Address S29 T5S R2E property is located on the east side of US Hwy 98
approximately 600 ft south of Johnson Road in Daphne, Alabama
- b) Name of Subdivision Springs @ Eastern Shore
- c) Lot numbers involved in change 1
- d) Total acreage of change ~~20.57~~ 19.85 ^{WAL}
- e) Recorded in Map Book _____ 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 B2 - General Business
- b) Reclassification desired R4 - HD ^{DM} Single & Multi Family Residential
- c) Character of neighborhood vacant land w/residential to the north and
east and commercial to the south

3) Certifications:

- a) Owner's Name Richard Inge ~ Big Sandy, LLC
- b) Address 169 Dauphin Street, Suite 101, Mobile, AL 36602
- c) Telephone Number 251-432-2520
- d) Date October 20, 2008



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.

October 20, 2008
Date


Signature of Property Owner

BIG SANDY LLC

ZONING AMENDMENT

EXHIBIT "A"

LEGAL DESCRIPTION:

COMMENCING AT THE NORTHWEST CORNER OF SECTION 29, TOWNSHIP 5 SOUTH, RANGE 2 WEST; THENCE RUN SOUTH 627.00 FEET TO A POINT; THENCE RUN N-89°31'00"-E, 1510.40, TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY 98; THENCE RUN S-89°48'32"-E, 140.06 FEET TO THE POINT OF BEGINNING; THENCE RUN N-89°44'02"-E, 223.53 FEET TO A POINT; THENCE RUN N-00°04'54"-E, 210.59 FEET TO A POINT; THENCE RUN S-89°58'28"-E 220.89 FEET TO A POINT; THENCE RUN S-00°36'14"-E, 210.23 FEET TO A POINT; THENCE RUN N-89°59'05"-E 354.02 FEET TO A POINT; THENCE RUN S-00°41'37"-E, 106.74 FEET TO A POINT; THENCE RUN S-88°46'44"-E 256.55 FEET TO A POINT ON THE WEST LINE OF DAPHMONT SUBDIVISION, UNIT ONE, AS RECORDED ON MAP BOOK 5, PAGE 7, IN THE OFFICE OF THE JUDGE OF PROBATE, BALDWIN COUNTY, ALABAMA; THENCE RUN S-00°46'19"-E, ALONG THE WEST LINE OF SAID DAPHMONT SUBDIVISION, UNIT ONE, 418.00 FEET TO A POINT; THENCE LEAVING THE WEST LINE OF SAID DAPHMONT SUBDIVISION, UNIT ONE, RUN S-54°35'56"-W, 477.50 FEET TO A POINT; THENCE RUN S-88°42'46"-W, 680.40 FEET TO A POINT; THENCE RUN N-00°21'19"-E, 404.21 FEET TO A POINT; THENCE RUN S-89°31'09"-W, 210.75 FEET TO A POINT ON THE EAST RIGHT-OF-WAY OF U.S. HIGHWAY 98; THENCE RUN N-05°41'54"-E, 12.66 FEET ALONG THE EAST RIGHT-OF-WAY OF SAID U.S. HIGHWAY 98 TO A POINT; THENCE RUN S-88°41'48"-E ALONG THE EAST RIGHT-OF-WAY OF SAID U.S. HIGHWAY 98, 29.78 FEET TO A POINT; THENCE RUN N-05°56'30"-E ALONG THE EAST RIGHT-OF-WAY LINE OF SAID U.S. HIGHWAY 98, 199.71 FEET TO A POINT; THENCE LEAVING SAID EAST RIGHT-OF-WAY LINE RUN S-89°36'05"-E, 160.37 FEET TO A POINT; THENCE RUN N-01°19'34"-E, 208.78 FEET TO THE POINT OF BEGINNING. CONTAINING 19.85 ACRES, MORE OR LESS.

REFERENCE: SPRINGS @ EASTERN SHORE

REVISION DATE: NOVEMBER 6, 2008

ADJACENT PROPERTY OWNERS
SPRINGS @ EASTERN SHORE

BIG SANDY LLC ZONING AMENDMENT

Suzanne D Parsons
85 Fairway Drive
Birmingham, AL 35213
05-43-09-29-2-000-036.003

Mary Ellen Wood
713 Daphmont Drive
Daphne, AL 36526
05-43-09-29-1-000-087.000

Rita L Hand
602 Highway 98
Daphne, AL 36526
05-43-09-29-2-000-036.006

Robert and Tina Alexander
Post Office Box 1526
Daphne, AL 36526
05-43-09-29-2-000-003.002
05-43-09-29-2-000-003.004

Norma L Altamirano
10082 Bay Haven Circle
Fairhope, AL 36532
05-43-09-29-2-000-035.000

Otis & Frederick Pickett
Post Office Box 69
Daphne, AL 36526
05-43-09-29-2-000-007.000

Michael Mitchell
2458 Friar Lane
Mobile, AL 36605
05-43-09-29-2-000-034.000

JDC Acquisition Corporation
3201 Dauphin Street
Mobile, AL 36606
05-43-09-29-2-000-008.000

Willie Mae Williams
Post Office Box 1065
Daphne, AL 36526
05-43-09-29-2-000-030.000

Ida Jean Reed
110 Valrie Lane
Daphne, AL 36526
05-43-09-29-2-000-029.001

Linda F & Larry Howard
Post Office Box 817
Daphne, AL 36526
05-43-09-29-2-000-028.000

Jordan Investments, LLC
Post Office Box 2747
Mobile, AL 36652-2747
05-43-09-29-1-000-093.000

Robert L & Monya R Johnson
1960 Story Road
San Jose, CA 95122
05-43-09-29-1-000-090.000

Universal Brokers Realty Inc. of San Jose
1960 Story Road
San Jose, CA 95122
05-43-09-29-1-000-088.000



HUTCHINSON, MOORE & RAUCH, LLC

Post Office Box 1127
Daphne, Alabama 36526

Telephone: (251) 626-2626
Fax: (251) 626-6934

October 20, 2008

Mr. William H. Eady, Sr., Director
Community Development
City of Daphne
Post Office Box 400
Daphne, Alabama 36526

RE: Springs at Eastern Shore

Dear Mr. Eady:

Attached please find the applications for Subdivision Final Plat (one-lot subdivision) and rezoning from B-2 to R-4. The site plan application will be submitted in November or December.

On behalf of our client, we would like it noted that we want section 22-2 Reversionary Clause of the Zoning Amendment to apply to this parcel. If the property is rezoned from B-2 to R-4 and our client fails to start R-4 construction within one year, then we want section 22-2 to apply and the property zoning reverted back to B-2.

Should you have any questions, please call me at 251-626-2626.

Sincerely,

HUTCHINSON, MOORE & RAUCH, LLC

Scott A. Hutchinson, P.E.
Vice-President

/mlp
C1100/3361/08 388

cc: Ashley Zur, Continental Properties

Attachments

ORDINANCE NO. 2009 - _____
Ordinance to Rezone Property Located on the Southeast Corner of
U.S. Highway 98 and Johnson Road (19.85 Acres)
Big Sandy L.L.C.

WHEREAS, the owners of certain real property within the City of Daphne, Alabama, have requested that said property be rezoned from B-2, General Business District to R-4, High Density Multi-Family Residential District to said property is located on the Southeast Corner of U.S. Highway 98 and Johnson Road, being more particularly described as follows:

LEGAL DESCRIPTION:

COMMENCING AT THE NORTHWEST CORNER OF SECTION 29, TOWNSHIP 5 SOUTH, RANGE 2 WEST; THENCE RUN SOUTH 627.00 FEET TO A POINT; THENCE RUN N-89°31'00"-E, 1510.40, TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY 98; THENCE RUN S-89°48'32"-E, 140.06 FEET TO THE POINT OF BEGINNING; THENCE RUN N-89°44'02"-E, 223.53 FEET TO A POINT; THENCE RUN N-00°04'54"-E, 210.59 FEET TO A POINT; THENCE RUN S-89°58'28"-E 220.89 FEET TO A POINT; THENCE RUN S-00°36'14"-E, 210.23 FEET TO A POINT; THENCE RUN N-89°59'05"-E 354.02 FEET TO A POINT; THENCE RUN S-00°41'37"-E, 106.74 FEET TO A POINT; THENCE RUN S-88°46'44"-E 256.55 FEET TO A POINT ON THE WEST LINE OF DAPHMONT SUBDIVISION, UNIT ONE, AS RECORDED ON MAP BOOK 5, PAGE 7, IN THE OFFICE OF THE JUDGE OF PROBATE, BALDWIN COUNTY, ALABAMA; THENCE RUN S-00°46'19"-E, ALONG THE WEST LINE OF SAID DAPHMONT SUBDIVISION, UNIT ONE, 418.00 FEET TO A POINT; THENCE LEAVING THE WEST LINE OF SAID DAPHMONT SUBDIVISION, UNIT ONE, RUN S-54°35'56"-W, 477.50 FEET TO A POINT; THENCE RUN S-88°42'46"-W, 680.40 FEET TO A POINT; THENCE RUN N-00°21'19"-E, 404.21 FEET TO A POINT; THENCE RUN S-89°31'09"-W, 210.75 FEET TO A POINT ON THE EAST RIGHT-OF-WAY OF U.S. HIGHWAY 98; THENCE RUN N-05°41'54"-E, 12.66 FEET ALONG THE EAST RIGHT-OF-WAY OF SAID U.S. HIGHWAY 98 TO A POINT; THENCE RUN S-88°41'48"-E ALONG THE EAST RIGHT-OF-WAY OF SAID U.S. HIGHWAY 98, 29.78 FEET TO A POINT; THENCE RUN N-05°56'30"-E ALONG THE EAST RIGHT-OF-WAY LINE OF SAID U.S. HIGHWAY 98, 199.71 FEET TO A POINT; THENCE LEAVING SAID EAST RIGHT-OF-WAY LINE RUN S-89°36'05"-E, 160.37 FEET TO A POINT; THENCE RUN N-01°19'34"-E, 208.78 FEET TO THE POINT OF BEGINNING. CONTAINING 19.85 ACRES, MORE OR LESS.

WHEREAS, the Planning Commission of the City of Daphne on November 20, 2008 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, January 5, 2009 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 B-2, General Business District to R-4, High Density Multi-Family Residential 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 _____, 2009.

John Lake, Council President
Date & Time Signed: _____

Fred Small, Mayor
Date & Time Signed: _____

ATTEST:

David L. Cohen
City Clerk, MMC

To: Office of the City Clerk
From: Adrienne Jones, Director of
Community Development
Subject: Johnny Littleton,
Zoning Amendment
Date: November 21, 2008

MEMORANDUM

PRESENT ZONING: B-1, Local Business

PROPOSED ZONING: B-2, General Business

LOCATION: West side of U.S. Highway 98

RECOMMENDATION: At the November 20, 2008, regular meeting of the City of Daphne Planning Commission, eight members were present and the vote carried unanimously for the favorable recommendation of the above-mentioned zoning amendment.

REFERENCE: Project: Big Daddys Eastern Shore Car Lot

Upon receipt of said documentation, please place on the appropriate agenda for action by the City Council.

Thank you,

AJ/jd

cc: file

attachment(s)

THE CITY OF DAPHNE
PLANNING DEPARTMENT
APPLICATION FOR ZONING AMENDMENT

Application Number: 208-09 Date Plat Submitted: 10/31/2008

Date Presented: 11/20/2008

Name of Owner: Johnnie Littleton

Address: P.O. Box 3199 Daphne, AL 36526 Telephone # 545-6978
(Street or P.O. Box) (City) (State) (Zip Code)

Name of Authorized Agent, if other than owner: _____

Address: _____ Telephone # _____
(Street or P.O. Box) (City) (State) (Zip Code)

Subdivision: _____

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: 10/31/08).

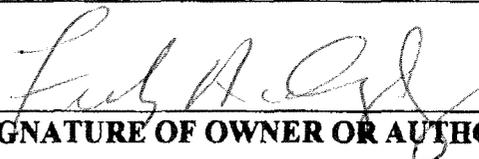
Meeting Dates:

Planning Commission: 11/20/2008

City Council: _____

Reason(s) for requesting the Zoning Amendment:

To allow use of property for a automotive sales business.



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:

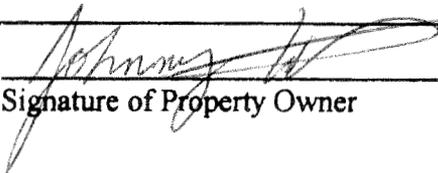
- a) Address U.S. Highway 98
Daphne
- b) Name of Subdivision _____
- c) Lot numbers involved in change 1
- d) Total acreage of change 1.69
- e) Recorded in Map Book _____ Page _____
- f) Owned in whole by the undersigned? yes
- g) If owned in part, name(s) of co-owner(s) :

2) Zoning change requested:

- a) Present classification of property B-1
- b) Reclassification desired B-2
- c) Character of neighborhood Business

3) Certifications:

- a) Owner's Name Johnnie Littleton
- b) Address P.O. Box 3199 Daphne, AL 36526
- c) Telephone Number 545-6978
- d) Date 10/31/08



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.

10-30-08
Date

Johnny [Signature]
Signature of Property Owner

JOHNNY LITTLETON
ZONING AMENDMENT

EXHIBIT "A"

LEGAL DESCRIPTION

COMMENCING AT A POINT WHERE THE NORTH RIGHT-OF-WAY LINE OF GRANT STREET, AS RECORDED IN MISCELLANEOUS BOOK 1, PAGES 230 AND 287 OF THE BALDWIN COUNTY, ALABAMA, PROBATE RECORDS, INTERSECTS THE WEST RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 98 (4 LANE); THENCE NORTH 00 DEG. 35' 10" EAST ALONG SAID WEST RIGHT-OF-WAY 426.34 FEET; THENCE NORTH 89 DEG. 23' 00" WEST 30.22 FEET; THENCE NORTH 00 DEG. 43' 49" EAST 354.01 FEET; THENCE IN A NORTHEASTERLY DIRECTION ALONG A CURVE HAVING A RADIUS OF 11,579.24 FEET AND AN ARC LENGTH OF 100.94 FEET AND A CHORD BEARING AND DISTANCE OF NORTH 00 DEG. 54' 39" EAST 100.94 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID CURVE AND ALONG SAID WEST RIGHT-OF-WAY HAVING A RADIUS OF 11,579.24 FEET AND AN ARC LENGTH OF 219.87 FEET AND A CHORD BEARING AND DISTANCE OF NORTH 01 DEG. 40' 39" EAST 219.87 FEET; THENCE NORTH 89 DEG. 54' 59" WEST 335.44 FEET; THENCE SOUTH 01 DEG. 40' 40" WEST 219.82 FEET; THENCE SOUTH 89 DEG. 54' 28" EAST 335.44 FEET TO SAID WEST RIGHT-OF-WAY AND THE POINT OF BEGINNING AND CONTAINING 1.69 ACRES MORE OR LESS AND LYING IN GRANT SECTION 37, TOWNSHIP 4 SOUTH, RANGE 2 EAST BALDWIN COUNTY, ALABAMA.

REFERENCE: BIG DADDY EASTERN SHORE CAR LOT

Johnny Littleton Zoning Amendment Application
Adjacent Property Owners List

JN, LLC
P.O. Box 3199
Daphne, AL 36526

Linda Chin
3723 Swansea Drive
Mobile, AL 36608

Victor Lejeune et al
126 Hope Drive
Daphne, AL 36526

Tri-Bond, LLC
P.O. Box 8277
Montgomery, AL 36110

McDonald's Corporation
c/o TR Sells
861 E. I-65 Service Road Suite 500
Mobile, AL 36606

Waffle House #365
P.O. Box 6450
Norcross, GA 3

BIG DADDY'S EASTERN SHORE CAR LOT

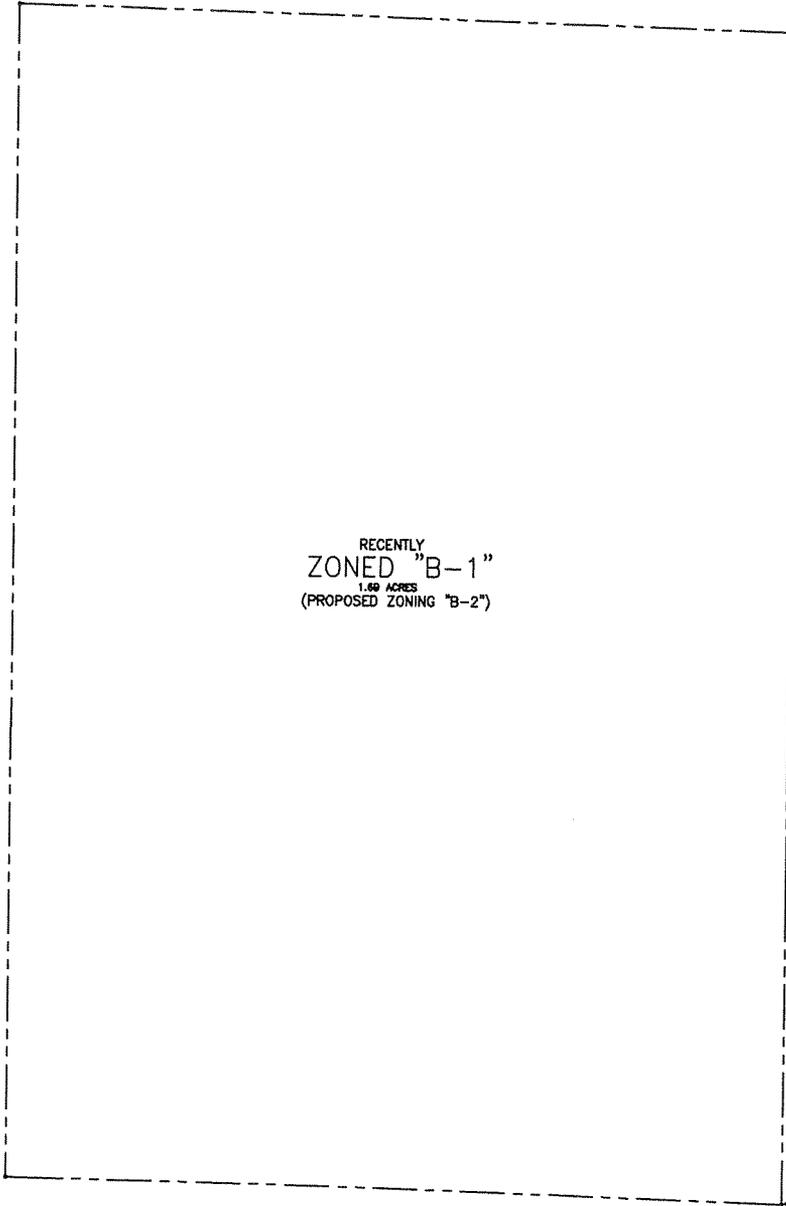
ZONING AMENDMENT

EXHIBIT "B"

B-2 ZONING



TRI BOND LLC
3609 LOWER WETUMPKA ROAD
P.O. BOX 8277
MONTGOMERY, AL 36110



B-1 ZONING

LINDA CHIN
3723 SWANSEA DRIVE
MOBILE, AL 36608

RECENTLY
ZONED "B-1"
1.99 ACRES
(PROPOSED ZONING "B-2")

B-1 ZONING

VICTOR LEJEUNE
HOLLIE LEJEUNE
126 HOPE DR
DAPHNE, AL 36526

HWY 98 SERVICE ROAD

WAFFLE HOUSE #365
P.O. BOX 6450
NORCROSS, GA 30091

B-1 ZONING

McDONALDS CORPORATION
C/O TR SELLS
851 EAST I-65 SERVICE RD, SUITE 500
MOBILE, AL 36606

ORDINANCE NO. 2009 - _____
Ordinance to Rezone Property Located on the West Side of U.S. Highway 98
(1.69 Acres)
Johnny Littleton

WHEREAS, the owners of certain real property within the City of Daphne, Alabama, have requested that said property be rezoned from B-1, Local Business to a B-2, General Business District to said property is located on the West side of U.S. Highway 98, being more particularly described as follows:

LEGAL DESCRIPTION

COMMENCING AT A POINT WHERE THE NORTH RIGHT-OF-WAY LINE OF GRANT STREET, AS RECORDED IN MISCELLANEOUS BOOK 1, PAGES 230 AND 287 OF THE BALDWIN COUNTY, ALABAMA, PROBATE RECORDS, INTERSECTS THE WEST RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 98 (4 LANE); THENCE NORTH 00 DEG. 35' 10" EAST ALONG SAID WEST RIGHT-OF-WAY 426.34 FEET; THENCE NORTH 89 DEG. 23' 00" WEST 30.22 FEET; THENCE NORTH 00 DEG. 43' 49" EAST 354.01 FEET; THENCE IN A NORTHEASTERLY DIRECTION ALONG A CURVE HAVING A RADIUS OF 11,579.24 FEET AND AN ARC LENGTH OF 100.94 FEET AND A CHORD BEARING AND DISTANCE OF NORTH 00 DEG. 54' 39" EAST 100.94 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID CURVE AND ALONG SAID WEST RIGHT-OF-WAY HAVING A RADIUS OF 11,579.24 FEET AND AN ARC LENGTH OF 219.87 FEET AND A CHORD BEARING AND DISTANCE OF NORTH 01 DEG. 40' 39" EAST 219.87 FEET; THENCE NORTH 89 DEG. 54' 59" WEST 335.44 FEET; THENCE SOUTH 01 DEG. 40' 40" WEST 219.82 FEET; THENCE SOUTH 89 DEG. 54' 28" EAST 335.44 FEET TO SAID WEST RIGHT-OF-WAY AND THE POINT OF BEGINNING AND CONTAINING 1.69 ACRES MORE OR LESS AND LYING IN GRANT SECTION 37, TOWNSHIP 4 SOUTH, RANGE 2 EAST BALDWIN COUNTY, ALABAMA.

WHEREAS, the Planning Commission of the City of Daphne on November 20, 2008 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, January 5, 2009 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 B-1, Local Business to B-2, General Business 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 _____, 2009.

John Lake, Council President
Date & Time Signed: _____

Fred Small, Mayor
Date & Time Signed: _____

ATTEST:

David L. Cohen
City Clerk, MMC

City of Daphne Recreation Board Minutes
2605 Hwy 98
Daphne, Al. 36526
November 12, 2008
6:30 pm

Members Present: Chairman Ed Nelson, Kit Smith, Eric Smith, Rick Cleveland and Lynne Thompson –Yates (arrived at 7:00pm)

Members Absent: John Peterson and Matt Cunningham

Advisory Staff Present: David McKelroy, Parks and Recreation Director, Councilman Gus Palumbo and Coach Glenn Vickery

Call to Order

The Meeting was called to order by Chairman Ed Nelson at 6:31pm.

Review and approval of Minutes

Motion was made by Eric Smith and seconded by Kit Smith to approve the October 8, 2008 meeting minutes. Motion passed.

Program Reports

Athletics Charlie McDavid reported that Youth Soccer league play has concluded and soccer was preparing for the first Baldwin County Youth Soccer All-Star Tournament. Youth football regular season has concluded and the playoffs start the 15th. Winter adult softball, co-ed softball and 7v7 soccer were starting league play.

Community Activities Megan Matrone White reported that the Celtic Celebration was successful. Up coming events include the Veteran Day program and the Christmas Parade and Tree Lighting.

Senior Adults Mary Jensen provided participation information and a monthly calendar for senior adult activities. Senior Center will once again sponsor an Alzheimer's respite care program.

Old / New Business

1. Trione Park Project Update Scott Hutchinson from HMR reported that the bids for the project had been opened. Eleven bids were received, with James Brothers Excavating turning in the low bid at \$837,218.50. Bids did not include lighting, irrigation, restroom-concession and bleachers. Director will get estimates for these services and report to the board.

2. Council Response to Board Membership Request This matter has been forwarded to the City Attorney to determine if the suggested changes conflict with Alabama Codes or law.

3. Bids for Restrooms at park sites All bids exceed the amount budgeted for the project and were rejected by the Finance Committee. Scope of work will be reviewed and the project will be re-bid.

4. Status of Student Survey Survey has not been completed at this time.

5. Dauphine Acres Park situation Budget for the park equipment has not yet been approved. There is concern that one or more neighbors are opposed to a playground at this location. Director and Mayor will discuss this project.

6. Director's Budget Request The director and finance director discussed procedures for budgeting new programs and contributions to programs. No problems should be encountered in either circumstance.

7. Report regarding Lacrosse request The lacrosse group meet November 8, with about 30 participants. Additional meeting are scheduled for December 6 and January 10 at Daphne Middle school with an exhibition game at Daphne High School Stadium, January 31.

8. Comments / Recommendation from Chairperson Chairman Ed Nelson presented comments and recommendation to the board for their consideration.

Comments from Board Members

Kit Smith made comments about May Day Park boat launch.

Comments from Advisors

Councilman Gus Palumbo advised the board that this was his last meeting, as he will be assuming the duties of Council President Pro-Tem.

Adjourn

The meeting was adjourned at 7:35pm.

**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:

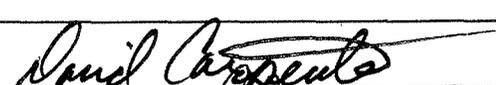
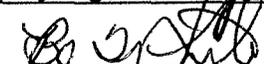
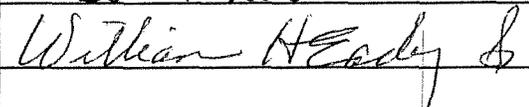
RECREATION BOARD REPORT:

UTILITY BOARD REPORT:

**CITY COUNCIL MEETING
MAYOR'S REPORT**

NOTES:

CITY OF DAPHNE PARADE PERMIT

ORGANIZATION:	<i>Shadow Barron</i>
CONTACT PERSON:	<i>Damon Henderson</i> 
ADDRESS:	<i>P.O. Box 2770 Daphne, AL 36526</i>
PHONE NUMBER (HOME): PHONE NUMBER (BUSINESS):	<i>251-533-4263 Cell</i>
TYPE OF PARADE:	<i>Mardi Gras Parade</i>
DATE OF PARADE:	<i>February 21, 2009 February 22, 2009 Rain Date</i>
ROUTE TO BE TRAVELED:	<i>See attached map</i>
APPROXIMATE # OF PEOPLE & CARS:	<i>18 Units – 550 people includes band members</i>
START TIME:	<i>6:45 P.M.</i>
STOP TIME:	<i>8:30 P.M.</i>
ASSEMBLY AREA/STREET:	<i>Civic Center</i>
ASSEMBLY TIME:	<i>5:00 P.M.</i>
SPECIAL REQUEST:	<i>Block Streets</i>
APPROVAL	
POLICE: Chief David Carpenter:	
FIRE: Chief Bo White	
PUBLIC WORKS: Bill Eady	
CITY COUNCIL: <i>12/01/08</i>	
SPECIAL INSTRUCTIONS:	
DATE ROUTED:	<i>November 12, 2009</i>
NOTIFICATION OF APPROVAL:	

CITY OF DAPHNE PARADE PERMIT

ORGANIZATION:	<i>Bounds Family YMCA</i>
CONTACT PERSON:	<i>Judson Crawley</i>
ADDRESS:	<i>8051 Whispering Pines Road Daphne, AL 36526</i>
PHONE NUMBER (HOME): PHONE NUMBER (BUSINESS):	<i>680-6826 626-0888</i>
TYPE OF PARADE:	<i>Fun Run</i>
DATE OF PARADE:	<i>December 13, 2008</i>
ROUTE TO BE TRAVELED:	<i>Whispering Pines Road from Bounds YMCA to Daphne Middle School and Back</i>
APPROXIMATE # OF PEOPLE & CARS:	<i>200</i>
START TIME:	<i>10:00 a.m.</i>
STOP TIME:	<i>11:00 a.m.</i>
ASSEMBLY AREA/STREET:	<i>In front of Bounds YMCA</i>
ASSEMBLY TIME:	<i>9:30 a.m.</i>
SPECIAL REQUEST:	<i>Street Blocked Off</i>
APPROVAL	
POLICE: Chief David Carpenter:	<i>David Carpenter</i>
FIRE: Chief James White	<i>James White</i>
PUBLIC WORKS: Bill Eady	<i>William H Eady Sr</i>
CITY COUNCIL: 12/01/08	
SPECIAL INSTRUCTIONS:	
DATE ROUTED:	<i>November 13, 2008</i>
NOTIFICATION OF APPROVAL:	

CITY ATTORNEY'S REPORT

NOTES:

DEPARTMENT HEAD'S COMMENTS

STATE OF ALABAMA)
COUNTY OF BALDWIN)

AGREEMENT

THIS AGREEMENT (“Agreement”) dated _____, 2008 (“Effective Date”) is made by and between BellSouth Telecommunications, Inc., d/b/a AT&T Alabama (“AT&T Alabama” or the “Company”), a Georgia corporation, and the City of Daphne, Alabama, an Alabama municipal corporation (“City”). AT&T Alabama and City shall sometimes be referred to separately as a “Party,” and collectively as the “Parties.”

RECITALS

WHEREAS, as a telephone corporation, AT&T Alabama asserts that it has a statewide franchise granted to it pursuant to Alabama Code Section 23-1-85 (1975) and its predecessors, by operation of law, and under other applicable law to construct, operate and maintain its communications facilities in the public rights of way (“ROW”) throughout the state of Alabama without having to obtain a local franchise or pay franchise fees. This assertion by AT&T Alabama is supported by the opinion of the Alabama Attorney General Opinion 2008-021 issued to Representative Greg Canfield; and

WHEREAS, AT&T Alabama is in the process of modifying its existing telecommunications network to provide an integrated Internet Protocol (“IP”) enabled broadband platform of voice, data and video services (“IP Network”), the video component of which AT&T Alabama asserts is a switched, two-way, point-to-point and interactive service (“IP Video Service”). The IP Network upgrade will involve the use of the public right-of-way in the City (“ROW”).

NOW, THEREFORE, in consideration of and reliance upon the respective representations, promises, concessions, terms and conditions contained herein, the City and AT&T Alabama agree as follows.

1. Term. The term of this Agreement shall be from the Effective Date of this Agreement through December 31, 2013. The term may be extended only upon mutual agreement of the Parties.

A. The Parties agree to consult in the event that, after the Effective Date, any court, agency, commission, legislative body, or other authority of controlling jurisdiction issues a finding that limits the validity or enforceability of this Agreement, in whole or in part. Should the finding be final, non-appealable and binding upon either the City or AT&T Alabama, this Agreement shall be deemed modified or limited to the extent necessary to address the subject of the

finding unless either Party, within thirty (30) days of receipt of the finding, provides written notice to the other party of its election to terminate, in which case this Agreement shall terminate within six (6) months or such earlier period as the Parties mutually may agree. Where the effect of a finding is a modification, the Parties shall enter into good faith negotiations to modify this Agreement in the manner which best effectuates its overall purposes and the intentions of the Parties. Failure to reach a mutually satisfactory modification within ninety (90) days of the commencement of such efforts shall entitle either Party to terminate the Agreement upon the provision of thirty (30) days' written notice.

B. In addition to the termination rights set forth in Section 1(A) above, AT&T Alabama shall have the right to terminate this Agreement and all obligations hereunder upon ninety (90) days written notice to the City, if (a) AT&T Alabama concludes in its reasonable business judgment that IP Video Service in the City is no longer technically, economically or financially consistent with AT&T Alabama's business objectives; (b) Title VI of the Communications Act of 1934, as amended, obligations or any similar obligations are imposed on AT&T Alabama; (c) it becomes clear that AT&T Alabama must offer or provide IP Video Service pursuant to a franchise (cable or otherwise) and/or franchise-like requirements or other local authorization; or (d) the City materially breaches this Agreement and fails to cure such breach within the cure period provided for in Section 9 herein.

C. In addition to the termination rights set forth in Section 1(A) above, the City shall have the right to terminate this Agreement and all obligations hereunder upon ninety (90) days written notice to AT&T Alabama, if AT&T Alabama materially breaches this Agreement and fails to cure such material breach within the cure period provided for in Section 9 herein.

2. Compensation to the City. During the term of this Agreement, AT&T Alabama shall pay to the City a fee equal to 5% of the Gross Revenues from subscription fees collected from each subscriber to AT&T Alabama's IP Video Services product delivered over the IP Network in the City's ROW, including any Gross Revenues from video services included in a bundle of services. The fee ("IP Video Services Provider Fee") shall be identified and passed through on any subscriber bill by AT&T Alabama, and all such fees collected will be forwarded to City quarterly and shall be due 45 days after the end of each quarter. Any fees paid to the City pursuant to this Agreement shall be in lieu of any franchise, business, privilege, or similar fees or taxes.

Payment shall be accompanied by a report, in such form and containing sufficient detail reasonably satisfactory to the City, to determine AT&T's compliance with this provision, not later than forty-five (45) days after the last day of each March, June, September, and December of each year, throughout the term of this Agreement setting forth the Gross Revenue for the quarter ending on said last day. The City shall have the right to audit any such payment for a period of three (3) years after said quarterly due date, and no acceptance of any payment by City shall be deemed final until the period for audit shall have expired. The right to audit shall include the right to review the books and

records of AT&T Alabama during normal business hours or at such other time or times as the Parties may agree.

A. For purposes of this Agreement, Gross Revenues are limited to amounts billed to and collected from AT&T Alabama IP Video Services product subscribers for the following:

- (a) recurring charges for IP Video Services;
- (b) event-based charges for IP Video Services, including but not limited to pay-per-view and video-on-demand charges;
- (c) rental of set top boxes and other IP Video Services equipment;
- (d) service charges related to the provision of IP Video Services, including, but not limited to, activation, installation, and repair; and
- (e) administrative charges related to the provision of IP Video Services, including, but not limited to, service order and service termination charges.

B. For purposes of this Agreement, Gross Revenues shall not include:

- (a) uncollectible fees, provided that all or part of uncollectible fees which is written off as bad debt but subsequently collected fees, less expenses of collection, shall be included in Gross Revenues in the period collected;
- (b) discounts, refunds, and other price adjustments that reduce the amount of compensation received by AT&T Alabama;
- (c) late payment fees;
- (d) maintenance charges;
- (e) amounts billed to IP Video Services subscribers to recover taxes, fees or surcharges imposed upon IP Video Services subscribers in connection with the provision of IP Video Services, including the IP Video Services Provider Fee authorized by this section;
- (f) revenue from the sale of capital assets or surplus equipment or
- (g) charges, other than those described in subsection (a), that are aggregated or bundled with amounts billed to IP Video Services subscribers including but not limited to any revenues received by AT&T Alabama or its affiliates for telecommunications services, information

services, or the provision of directory or Internet advertising, including yellow pages, white pages, banner advertisement, and electronic publishing.

C. (1) "Gross Revenues" which are subject to the IP Video Service Provider Fee paid by AT&T Alabama additionally include a pro rata portion of all revenue collected by AT&T Alabama pursuant to compensation arrangements for advertising (less any commissions AT&T Alabama receives from any third party for advertising) and home-shopping sales derived from the operation of AT&T Alabama's IP Video service within the City.

(2) Advertising commissions paid to third parties (excluding any refunds, rebates, or discounts the Company may make to advertisers) shall not be deducted from advertising revenue included in gross revenue. The allocation of advertising and home-shopping revenue referred to above shall be based on the number of subscribers in the City divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement.

3. Public, Educational and Governmental ("PEG") Programming. In recognition of the technical architecture of IP Video Services AT&T Alabama will make Public, Educational and Governmental ("PEG") capability available to the City with AT&T Alabama's IP Video Service network, at such time as AT&T Alabama achieves 10% market share of the pay TV subscriber market within City or within 180 days of AT&T Alabama's launch of IP Video Services and subject to reasonable economic and technical feasibility considerations. AT&T Alabama will provide two (2) programming streams or the number of programming streams provided by the incumbent cable company with the most subscribers in the City on the effective date of this Agreement, whichever is greater.

Any operation of any PEG access channel by City shall be the responsibility of City, and AT&T Alabama's only obligation is the responsibility for the transmission of such channel. The City will be responsible to ensure that all transmissions, retransmissions, content, or programming that may be requested to be transmitted over a channel or facility by AT&T Alabama in the future, if any, are provided or submitted to AT&T Alabama, at the AT&T Alabama's designated connection point, in a manner or form that is capable of being accepted and transmitted by AT&T Alabama, without requirement for additional alteration or change in the format or content by AT&T Alabama, over the network of the AT&T Alabama, and which is compatible with the technology or protocol utilized by AT&T Alabama to deliver IP Video Services.

If technically and economically feasible, AT&T Alabama will, at its discretion, use reasonable efforts to interconnect with the incumbent cable provider to provide PEG programming.

4. Emergency Message. AT&T Alabama shall carry all Federal, State and Local alerts provided over the “Federal Emergency Alert System” through AT&T Alabama’s IP Video Services in the event of a public safety emergency, which at a minimum will include the concurrent rebroadcast of local broadcast channels.

5. Customer Service Standards. AT&T Alabama shall comply with the customer service requirements consistent with that set forth in 47 C.F.R. Section 76.309(c), as may be amended from time to time.

6. Obligations of City. During the term of this Agreement, the City will not subject, nor attempt to subject, the provision of IP Video Service over the IP Network to regulation under any cable franchise or similar ordinance. The City further agrees:

(a) To subject the construction and installation of the IP Network to the same process and review as it subjects the installation and construction of AT&T Alabama’s existing telecommunications infrastructure.

(b) Not to unreasonably block, restrict, or limit the construction and installation of the IP Network.

(c) To process any and all applicable permits for the installation, construction, maintenance, repair, removal, and other activities associated with the IP Network in a normal and reasonable manner.

7. Rights of Way. The City shall maintain reasonable police powers over installation of facilities in the public rights of way. AT&T Alabama shall maintain its facilities in a condition which shall not pose unreasonable danger to the safety of the traveling public. AT&T Alabama will comply with the same terms and conditions as are applicable under its existing authorizations for AT&T Alabama’s facilities and equipment in the public ROW with respect to all work involved in the construction, maintenance, repair and upgrade of the IP Network. AT&T Alabama shall make reasonable efforts to notify, consult, and collaborate with the City as to locations where it will construct, implement, or otherwise erect equipment necessitated for the proper working order and/or functioning of its IP Network in the City’s ROW. Nothing in this Agreement shall in any way reduce or expand the City’s authority over the public ROW.

8. Insurance. AT&T Alabama agrees to either obtain a policy of public liability insurance in an amount not less than \$1,000,000 with the City named as an additional insured under such policy or provide the City with proof of self insurance in an amount not less than \$1,000,000.

9. Breach of Agreement. Should either party claim that a breach of any part of this Agreement has occurred, that party will provide prompt written notice to the other, specifying the nature of the breach; and upon receipt the other party shall cure such breach within 60 days.

10. Dispute Resolution. Except as otherwise provided in this Agreement, the Parties shall make diligent good faith efforts to resolve all issues and disputes that arise in the administration of this Agreement through discussions between designated representatives of the Parties and use of a mediator when such discussions have failed.

11. Indemnification.

A. The City shall maintain no responsibility or liability for claims or damages resulting from tangible property damage or bodily injury (including accidental death) arising out of AT&T Alabama's negligent construction, operation, or maintenance of its IP Network or operations authorized hereby. AT&T Alabama shall maintain no responsibility or liability for claims or damages resulting from tangible property damage or bodily injury (including accidental death) arising out of the negligence or willful misconduct of the City.

B. AT&T Alabama shall indemnify and hold the City harmless from and against any claims, judgments, damages and liabilities of every kind and nature (including, but not limited to, reasonable attorneys' fees) arising from or relating to any incumbent video service provider, including, but not limited to, any cable franchise holder, challenging the lawfulness of this Agreement and/or seeking to modify its existing obligations under any franchise agreement with the City.

AT&T Alabama shall assume, at its expense, the sole defense of the claim through counsel selected by AT&T Alabama and shall keep the City fully informed as to the progress of such defense. Upon reasonable request by AT&T Alabama and at AT&T Alabama's expense, the City shall cooperate with AT&T Alabama in the defense of the claim. At its option and expense, the City may retain or use separate counsel to represent it. AT&T Alabama shall maintain control of the defense and resolution or settlement of the claim, including decisions with respect to appeals, except that if the settlement of a claim would adversely affect the City, AT&T Alabama may settle the claim as to the City only with its consent, which consent shall not be unreasonably withheld or delayed.

12. Non-discrimination. AT&T Alabama shall not deny access to its IP Video Services to any group of potential residential customers because of the income of the residents of the local area in which the group resides.

13. Notices. Any notice to be given under this Agreement shall be in writing and may be delivered to either personally, by facsimile or by certified or registered mail with postage prepaid and return receipt requested, addressed as follows:

If to City:

Honorable Fred Small, Mayor
City of Daphne
1705 Main Street, P.O. Box 400
Daphne, Alabama 36526

If to AT&T Alabama:

AT&T Alabama
General Counsel – Alabama
Suite 28A2
600 19th Street N
Birmingham, Alabama 35203

14. Modification. This Agreement may be amended or modified only by a written instrument executed by both Parties.

15. Assignment. AT&T Alabama may not assign or transfer this Agreement or any interest therein, except to any affiliate of AT&T Alabama, without the prior notice to the City. An affiliate shall include an entity that is under the control of AT&T or under the common control of a parent entity that also controls AT&T Alabama.

16. Relationship of the Parties. The Parties understand, acknowledge and agree that by making and entering into this Agreement, the City is not in any way or for any purpose a partner of or joint venturer with AT&T Alabama in the conduct of AT&T Alabama's business or activities as a public utility, nor does this Agreement constitute the City's endorsement of AT&T Alabama's activities as such.

17. Entire Agreement. This Agreement constitutes the entire agreement between the City and AT&T Alabama with respect to the subject matter contained herein and supersedes all prior or contemporaneous discussions, agreements, and/or representations of or between the City and AT&T Alabama regarding the subject matter hereof.

18. Waiver. Failure on the part of either Party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.

19. Miscellaneous.

A. AT&T Alabama and the City each hereby warrants that it has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof.

B. The headings used in this Agreement are inserted for convenience or reference only and are not intended to define, limit or affect the interpretation

of any term or provision hereof. The singular shall include the plural; the masculine gender shall include the feminine and neutral gender.

C. AT&T Alabama and the City shall cooperate fully with one another in the execution of any and all other documents and in the completion of any additional actions including, without limitation, the processing of permits that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

D. Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties hereto toward any person or entity not a party to this Agreement, unless otherwise expressly set forth herein.

20. Binding Effect. This Agreement shall be binding upon and for the benefit of each of the Parties and their respective successors and permitted assigns and any parents, subsidiaries or affiliated corporations or entities, as applicable.

21. Counterpart Execution. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Signature pages may be transmitted by facsimile and any signature transmitted by facsimile will be given the same force and effect as an original signature.

22. Force Majeure. In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by an event of force majeure, the Party affected, upon giving prompt notice to the other Party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction or interference. If such event of force majeure continues for a consecutive period of 365 days, then the Party not so affected by the event of force majeure may terminate this Agreement by giving written notice to the other Party.

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives, have executed this Agreement and made the same effective as of this ____ day of _____, 2008.

(Signature page follows)

STATE OF ALABAMA)
COUNTY OF BALDWIN)

LEASE AGREEMENT

THIS LEASE AGREEMENT, (hereinafter referred to as "AGREEMENT"), is made and entered into as of the _____ day of November of 2008, by and between the CITY OF DAPHNE, an Alabama Municipal Corporation (hereinafter referred to as the "CITY " or "LESSOR"), and BAY RIVERS ART GUILD, INC. (hereinafter referred to as the "LESSEE").

WITNESSETH:

WHEREAS, the CITY or LESSOR is the owner of those certain premises in Baldwin County, Alabama, located at 1410 Captain O'Neal Drive, Daphne, Alabama 36526, Daphne, Alabama more commonly known as the Nicholson Center and more particularly marked as Exhibit "A" attached hereto, signed for identification by the CITY and the LESSEE and made a part hereof by reference; and

WHEREAS, CITY represents in good faith that it has the legal right and statutory authority to lease unto the Lessee the herein referenced subject real property; and

WHEREAS, the parties desire to enter into a LEASE AGREEMENT for the leasing of the referenced improved real property upon the terms and conditions more particularly hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and mutual covenants, agreements and understandings hereinafter set forth, the CITY and LESSEE do hereby agree as follows:

1. DESCRIPTION, USE TERM, AND RENTAL:

A. **Leased Property:** The CITY does hereby devise, let, lease and rent unto the LESSEE that parcel of real property commonly known as the Nicholson Center as more specifically outlined on Exhibit "A" attached hereto, which consists of a portion of real property and a structure and building (the "Leased Property").

- B. **Use:** The **LESSEE** shall have the right and obligation privilege to use the Leased Property for continuous use and occupancy for the purposes of cultural development as more specifically set forth in Bay Rivers Art Guild's Mission Statement which is attached hereto and marked as Exhibit "B" and incorporated herein by reference. **LESSEE** agrees not to utilize the Leased Property for any other purpose without the prior written consent of the **LESSOR** for which the **LESSOR** shall have the unilateral right and privilege to deny any of the use thereof. The **LESSEE** shall have the right and privilege to do all things reasonably requisite and necessary for the enjoyment of the foregoing, including the right to make improvements thereon.
- C. The **LESSOR** agrees that the **LESSEE** shall have the exclusive use of the real property as reflected on Exhibit "A" and agrees that it will not take any action which would give or grant any other entity the right to entry of the property except for agreements to lease a portion of the real property and building from time to time.
- D. **Interference with other LESSEES:** The **LESSEE** agrees to conduct its Operations so as not to interfere with the operations of the **CITY** or to otherwise interfere with the quiet use and enjoyment of the adjoining residential properties within proximity to the Leased Property.
- E. **Term:** The term of this **LEASE AGREEMENT** shall be for a period of forty nine (49) years commencing on ___ day of November, 2008 and ending on ___ day of November, 2057. The **CITY** does hereby expressly and solely reserve unto its self, the unilateral right to terminate this Lease Agreement for any reason by providing **LESSEE** with not less than three (3) years written notice of the **CITY's** intent to terminate said **LEASE**. Should the **CITY** elect to terminate said **LEASE AGREEMENT**, then **LESSEE** Shall be entitled to receive 40% of its capital expenditures less depreciation if **LESSEE** terminates within the first ten (10) years, 30% of its capital expenditures less depreciation, if **LESSEE** terminates in the first fifteen (15) years, 20% of its capital expenditures less depreciation, if **LESSEE** terminates in the first twenty (20) years and if **LESSEE** terminates in the first in the first Twenty-five (25) years, 10%. Thereafter, if the **CITY** elects to terminate by the provisions

contained herein, the CITY would not be obligated to reimburse any capital expenditures, less depreciation to LESSEE.

F. **Rent:** During the term of this **LEASE AGREEMENT**, the **LESSEE** shall pay to the **LESSOR** rent of TEN (\$10.00) DOLLARS per year, to be due and payable in advance on or before the first (1st) day of each calendar month commencing on _____ day of November, 2008 for the term described heretofore.

2. **UTILITIES:**

The **LESSOR** shall pay and be responsible for all utilities for the leased premises and including water, sewer, natural gas and power for a period of thirty six (36) calendar months following the date of the execution of this agreement. Thereafter **LESSEE** shall pay during the lease term for public utility services consumed by it upon the Leased Premises and it shall then be the **LESSEEs** responsibility to arrange and secure such utility services. **LESSEE** shall further provide its own janitorial services the **CITY** agrees for trash and refuse pickup consistent with the **CITY** ordinances as they may be amended from time to time.

3. **MAINTENANCE:** **LESSEE** is familiar with the Leased Premises and does except the otherwise Leased Premises in the condition and state of repair which the same is in the effective date hereof. **LESSEE** shall have the right and privilege of its own expense to make non structural repairs to the interior and exterior of the premises. Premises of any major or structural repairs or any partitions not be made or installed by **LESSEE** without express prior written consent of **LESSOR**. Notwithstanding the above, **LESSOR** shall be responsible at its own expense to maintain the slab, exterior walls, roof, foundation, HVAC, and wiring of any of the Leased Premises and any major plumbing repairs not necessitated by the negligence of **LESSEE** or **LESSEE's** guest. **LESSEE** agrees to keep the Leased Premises clean and in good condition, and not to use the premises in any way that might be construed a nuance and to otherwise comply with all laws and ordinances and valid rules and regulations of any Federal, State, County and Municipal and any other public authority having jurisdiction about the Leased Premises. **LESSEE** shall be responsible for any other repairs, maintenance, modifications and/or improvements to the Leased Premises.

4. **EARLY TERMINATION:** That should the CITY elect pursuant to provisions of paragraph [REDACTED] to provide early termination of said **LEASE**, The CITY agrees to pay and be responsible for the fair market value of the improvements made by **LESSEE** less depreciation with valuation to be determined at the date immediately prior to vacation of the Leased Premises.
5. **FURTHER CONDITIONS UPON THE USE OF THE LEASED PREMISES:** **LESSEE** agrees that it shall not utilize the Leased Premises or any portion thereof for any strictly political reasons nor shall authorize any religious activity or **solely** commercial activity to be utilized upon the leased premises except that **LESSEE** may, without limitation, **authorize and approve art shows, festivals, product sales, and the like, as the** **LESSEE** shall use the premises for those matters and events and events consistent with the Mission Statement of BRAG which is heretofore attached. Any other request for use of the premises other than for the incidental subleasing of portions of the premises which subleases shall be connected with the *Arts* or for purposes consistent with the Mission Statement heretofore referenced. Other request for utilization of the Leased Premises outside the purposed contained herein shall be considered by the **LESSOR**.
6. **ASSIGNMENT OF LEASE:** **LESSEE** shall not assign this **LEASE** or any of its rights hereunder and shall not sublet the Leased Premises except for the provisions as set forth in paragraph [REDACTED] hereinabove without the prior written consent of the **LESSOR** which **LESSOR** reserves the right to unilaterally withhold consent which consent may be unreasonably withheld.
7. **OPERATION COST RISK AND EXPENSE:** THE **LESSEE** shall pay and be responsible for all cost and assume all risk in performing the work or carrying upon its operation of Leased Premises in accordance with this agreement.
8. **INSURANCE:**
 - A. The **LESSEE** shall, at all times during the term of this **LEASE** maintain its own expense, public liability insurance for the joint benefit of the **LESSOR** and **LESSEE** to insure against claims for personal injury, death, personal or real property damage occurring upon in or about the Leased Premises

for an amount not less than ONE MILLION (\$1,000,000.00) DOLLARS combined single limit coverage. Said policy of insurance may be in the form of a general coverage or blanket policy covering the Leased Premises provided that in all events the **LESSOR** is therein named as an additional insured.

- B. The **LESSEE** shall also, at all times during the term of this Lease Agreement maintain at its own expense Worker's Compensation and Employer's Liability Insurance with limits as prescribed by law.
- C. The **LESSEE** may provide the insurance coverage's required under this section through one or several policies provide such policy or policies do in fact satisfy the requirements of this lease.
- D. All insurance required under this **AGREEMENT** shall be place with an insurance company qualified to do business the State of Alabama and shall be satisfactory to **LESSOR**. Each such policy of insurance, or a certificate thereof, shall be deposited with the **LESSOR** in the time of execution of this **AGREEMENT** or within reasonable time of the date hereof and shall provide for sixty (60) days advanced written notice to **LESSOR** in the event of cancellation, modification, or change. The **LESSEE** shall promptly deposit with **LESSOR** any new policy or certificates upon such change. If the **LESSEE** fails to furnish the **LESSOR** with such certificate prior to the date hereof or at any time thereafter, the **LESSOR** may cause such insurance to be issued and assess the cost thereof against the **LESSEE** as additional rent hereunder; provided, however, that nothing herein shall be interpreted as requiring the **LESSOR** to secure insurance. **The LESSOR** shall not be responsible for the payment of any of the insurances to be provided by the **LESSEE** pursuant to this **AGREEMENT** and if **LESSEE** fails to furnish the insurance, same shall constitute material breach of the terms of this **AGREEMENT**.

9. **DEFAULT:** Upon the happening of any one or more of the events as expressed below in which said events shall separately and severally constitute a default hereunder at the

LESSOR's option, the **LESSOR** shall have the right to annul and terminate this **AGREEMENT**, and thereupon re-enter and take possession of the Leased Premises and the improvements thereon will revert to the **LESSOR**.

a. In the event the **LESSEE** violates any of the terms condition, or covenants on the part of the **LESSEE** herein contained and fails to correct or desist from such violation within ten (10) days after receipt of written notice thereof by the **LESSOR** that such violation exists.

10. ENTRY BY OWNER: With **LESSEE's** permission, which shall not be withheld unreasonably, **LESSOR** or **LESSOR's** agent shall be permitted to enter the premises to make repairs or to inspect the Leased Premises to determine compliance herewith.

11 NOTICE: Until the **LESSEE** is otherwise advised in writing by **LESSOR** all payments of rental herein and other charges accruing as a result of this **AGREEMENT**, shall be made by the **LESSEE** to the **LESSOR**, payable to the order of the City of Daphne, P.O. Box 400, Daphne, Alabama, 36526. Any Notice to be given under the terms of the **AGREEMENT** to the **LESSOR** shall be in writing and addressed as stated hereinabove, unless otherwise directed in writing, and notices to the **LESSEE** shall be address to the **LESSEE** at 1410 Captain O'Neal Drive, Daphne, Alabama, 36526 until the **LESSOR** is otherwise advised by the **LESSEE** in writing.

12. WAIVER: Any waiver at any time of a breach or default of any of the conditions of the **AGREEMENT** shall extend only to the particular breach or default so waived, and shall, in no way, impair or affect the continued existence of such conditions or deprive either party of its remedies arising out of any subsequent breach or default hereunder.

13. CONDITION AT END OF TERM: Upon the expiration, cancellation or termination of this **AGREEMENT**, the **LESSEE**, without further notice, shall deliver up to the **LESSOR** possession of the Leased Premises and, all improvements thereon shall revert to the **LESSOR**.

14. LEGAL CONSTUCTION: This is an Alabama contract and shall be governed, interpreted, and enforced in accordance with the laws of the State of Alabama.

15. **ATTORNEY FEES:** In the event of employment of any attorney by the **LESSOR** for the collection of any amount due hereunder, or for the institution of any suit for possession of the Leased Premises or any of the **LESSEE's** property located thereon, or on account of bankruptcy proceedings by or against the **LESSEE**, or legal process being issued against the property of the **LESSEE** located at the Leased Premises, or the leasehold interest of the **LESSEE** herein, or for any other reason, the **LESSEE** agrees to pay and shall be taxed with an attorney fee which shall be a part of the debt evidenced and secured by this **AGREEMENT**.
16. **TAXES:** Notwithstanding the fact that the Leased Premises is owned by the **LESSOR**, no exemption from taxation on property of the **LESSEE** is contemplated or agreed to in the **LEASE AGREEMENT**. The **LESSEE** agrees to pay, **if any**, and all ad valorem taxes and special assessments assessed against the Leased Premises or any of the **LESSEE's** property located thereon, or against any building or improvement the **LESSEE** constructs, or causes to be constructed, on the Leased Premises. The **LESSOR** may pay such taxes or assessments if it so chooses, and, upon receipt of notice of such payment from the **LESSOR**, the **LESSEE** shall include the amount paid in its next monthly rental payment to the **LESSOR**, and such amounts shall be deemed additional rent.
17. **INDEMNITY:** **LESSEE** agrees to indemnify and hold **LESSOR** harmless from any and all claims, demands, actions, causes of action, suits at law or in equity and the expense of defending the same, brought, asserted or filed by any person or persons as a result of any injuries or loss to person or property upon the Leased Premises during the term hereof or while **LESSEE** is in possession of the leased premises unless the same are caused by the fault or negligence of **LESSOR**, and from any and all losses, damages, claims, costs, fees, penalties, assessments, fines, and the like asserted against **LESSOR** as a result of any breach by **LESSEE** of any covenants or representations contained in this lease.
18. **EXECUTION:** This **AGREEMENT** may be executed in original counterparts, each of which counterparts shall be deemed to be an original, and all collectively but one instrument, and shall for all purposes be sufficiently proved by any such counterpart.
19. **BINDING EFFECT:** This **AGREEMENT** shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the date first above written.

CITY OF DAPHNE, ALABAMA A
Municipal Corporation, Lessor

By: _____
Fred Small as its Mayor

BAY RIVERS ART GUILD, INC.
A Non-Profit Organization, Lessee

By: _____
_____ As its President

ATTEST:

David Cohen, MMC

STATE OF ALABAMA
COUNTY OF BALDWIN

I, the undersigned, a Notary Public in and for said County in said State, do hereby certify that Fred Small, whose name as Mayor of the City of Daphne, Alabama, a Municipal Corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this date that, being informed of the content of this instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said Corporation, on the date the same bears date.

Given under my hand and seal this the ____ day of November, 2008.

NOTARY PUBLIC
Commission Expires:

STATE OF ALABAMA
COUNTY OF BALDWIN

I, the undersigned, a Notary Public in and for said County in said State, do hereby certify that, whose name as President of Bay Rivers Art Guild, Inc., is signed to the foregoing instrument, and who is known to me, acknowledged before me on this date that, being informed of the content of this instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said Corporation, on the date the same bears date.

Given under my hand and seal this the _____ day of November, 2008.

NOTARY PUBLIC
Commission Expires: _____

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

NOTES:

RECOMMENDATIONS

COUNCIL COMMENTS:

ORDINANCE NO. 2008 - 66

**Ordinance to Rezone Property Located on the Southeast Corner of
Main Street and Van Avenue (13.21 and 5.40 Acres)
Ashley Gates Apartments, Phases I & II**

WHEREAS, the owners of certain real property within the City of Daphne, Alabama, have requested that said property be rezoned from B-2, General Business District to R-4, High Density Multi-Family Residential District said property is located on the Southeast Corner of Main Street and Van Avenue, being more particularly described as follows:

Legal Description:

COMMENCING AT THE NORTHWEST CORNER OF SECTION 20, T5S-R2E, BALDWIN COUNTY, ALABAMA, RUN THENCE SOUTH 2226.67 FEET TO A POINT ON A WESTWARD PROJECTION OF THE SOUTH RIGHT OF WAY LINE OF VAN AVENUE; THENCE ALONG SAID WESTWARD PROJECTION AND ALONG THE SOUTH RIGHT OF WAY LINE OF VAN AVENUE RUN N 89° 51' 14" E 858.28 FEET TO THE POINT OF BEGINNING OF THE PROPERTY HEREIN DESCRIBED; THENCE CONTINUING N 89° 51' 14" E AND ALONG SAID SOUTH LINE OF VAN AVENUE RUN 266.00 FEET TO A POINT; THENCE RUN S 00° 15' 57" E 578.45 FEET TO THE NORTHWEST CORNER OF DAPHNE SQUARE, ACCORDING TO PLAT RECORDED IN MAP BOOK 10, PAGE 125 OF THE PROBATE COURT RECORDS OF BALDWIN COUNTY, ALABAMA; THENCE ALONG THE WEST BOUNDARY OF SAID DAPHNE SQUARE RUN S 00° 18' 31" E 704.83 FEET TO THE SOUTHWEST CORNER OF SAID DAPHNE SQUARE; THENCE RUN N 89° 39' 07" W 712.61 FEET TO A POINT; THENCE RUN N 00° 23' 48" E 509.33 FEET TO A POINT; THENCE RUN N 00° 29' 32" E 557.91 FEET TO A POINT; THENCE RUN N 89° 51' 14" E 434.28 FEET TO A POINT; THENCE RUN N 00° 40' 29" W 210.0 FEET TO THE POINT OF BEGINNING. CONTAINING 18.620 ACRES. THIS DESCRIPTION INCLUDES LOT 1 OF VAN AVENUE SUBDIVISION AS PER PLAT RECORDED ON SLIDE NO. 1815-A OF THE PROBATE COURT RECORDS OF BALDWIN COUNTY, ALABAMA.

THE FOLLOWING AREA IS TO RETAIN B-2 ZONING AS BUFFER FOR ADJACENT PROPERTY ZONED B-2:

LESS AND EXCEPT A 10 FOOT BUFFER STRIP BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SECTION 20, T5S-R2E, BALDWIN COUNTY, ALABAMA, RUN THENCE SOUTH 2226.67 FEET TO A POINT ON A WESTWARD PROJECTION OF THE SOUTH RIGHT OF WAY LINE OF VAN AVENUE; THENCE ALONG SAID WESTWARD PROJECTION AND ALONG THE SOUTH RIGHT OF WAY LINE OF VAN AVENUE RUN N 89° 51' 14" E 1114.28 FEET TO THE POINT OF BEGINNING OF THE PROPERTY HEREIN DESCRIBED; THENCE CONTINUING N 89° 51' 14" E AND ALONG SAID SOUTH LINE OF VAN AVENUE RUN 10.00 FEET TO A POINT; THENCE RUN S 00° 15' 57" E 578.45 FEET TO THE NORTHWEST CORNER OF DAPHNE SQUARE, ACCORDING TO PLAT RECORDED IN MAP BOOK 10, PAGE 125 OF THE PROBATE COURT RECORDS OF BALDWIN COUNTY, ALABAMA; THENCE ALONG THE WEST BOUNDARY OF SAID DAPHNE SQUARE RUN S 00° 18' 31" E 704.83 FEET TO THE SOUTHWEST CORNER OF SAID DAPHNE SQUARE; THENCE RUN N 89° 39' 07" W 492.96 FEET TO A POINT; THENCE RUN N 00° 20' 53" E 10.00 FEET TO A POINT; THENCE RUN S 89° 39' 07" E 482.85 FEET TO A POINT; THENCE RUN N 00° 18' 31" W 694.73 FEET TO A POINT; THENCE RUN N 00° 15' 57" W 578.47 FEET TO THE POINT OF BEGINNING. CONTAINING 17,657 SQUARE FEET OR 0.4054 ACRE.

WHEREAS, the Planning Commission of the City of Daphne on August 28, 2008 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, November 17, 2008 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 B-2, General Business District to R-4, High Density Multi-Family Residential 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 _____, 2008.

Greg Burnam, Council President
Date & Time Signed:_____

Fred Small, Mayor
Date & Time Signed:_____

ATTEST:

David L. Cohen
City Clerk, MMC

ASHLEY GATES –BROOKFIELD, L.L.C.
ZONING AMENDMENT
from B2, General Business
to R4, High Density Multi-family Residential
(PROPERTY 18.2146 ACRES)

EXHIBIT "A"

LEGAL DESCRIPTION:

COMMENCING AT THE NORTHWEST CORNER OF SECTION 20, T5S-R2E, BALDWIN COUNTY, ALABAMA, RUN THENCE SOUTH 2226.67 FEET TO A POINT ON A WESTWARD PROJECTION OF THE SOUTH RIGHT OF WAY LINE OF VAN AVENUE; THENCE ALONG SAID WESTWARD PROJECTION AND ALONG THE SOUTH RIGHT OF WAY LINE OF VAN AVENUE RUN N 89° 51' 14" E 858.28 FEET TO THE POINT OF BEGINNING OF THE PROPERTY HEREIN DESCRIBED; THENCE CONTINUING N 89° 51' 14" E AND ALONG SAID SOUTH LINE OF VAN AVENUE RUN 266.00 FEET TO A POINT; THENCE RUN S 00° 15' 57" E 578.45 FEET TO THE NORTHWEST CORNER OF DAPHNE SQUARE, ACCORDING TO PLAT RECORDED IN MAP BOOK 10, PAGE 125 OF THE PROBATE COURT RECORDS OF BALDWIN COUNTY, ALABAMA; THENCE ALONG THE WEST BOUNDARY OF SAID DAPHNE SQUARE RUN S 00° 18' 31" E 704.83 FEET TO THE SOUTHWEST CORNER OF SAID DAPHNE SQUARE; THENCE RUN N 89° 39' 07" W 712.61 FEET TO A POINT; THENCE RUN N 00° 23' 48" E 509.33 FEET TO A POINT; THENCE RUN N 00° 29' 32" E 557.91 FEET TO A POINT; THENCE RUN N 89° 51' 14" E 434.28 FEET TO A POINT; THENCE RUN N 00° 40' 29" W 210.0 FEET TO THE POINT OF BEGINNING. CONTAINING 18.620 ACRES. THIS DESCRIPTION INCLUDES LOT 1 OF VAN AVENUE SUBDIVISION AS PER PLAT RECORDED ON SLIDE NO. 1815-A OF THE PROBATE COURT RECORDS OF BALDWIN COUNTY, ALABAMA.

THE FOLLOWING AREA IS TO RETAIN B-2 ZONING AS BUFFER FOR ADJACENT PROPERTY ZONED B-2:

LESS AND EXCEPT A 10 FOOT BUFFER STRIP BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SECTION 20, T5S-R2E, BALDWIN COUNTY, ALABAMA, RUN THENCE SOUTH 2226.67 FEET TO A POINT ON A WESTWARD PROJECTION OF THE SOUTH RIGHT OF WAY LINE OF VAN AVENUE; THENCE ALONG SAID WESTWARD PROJECTION AND ALONG THE SOUTH RIGHT OF WAY LINE OF VAN AVENUE RUN N 89° 51' 14" E 1114.28 FEET TO THE POINT OF BEGINNING OF THE PROPERTY HEREIN DESCRIBED; THENCE CONTINUING N 89° 51' 14" E AND ALONG SAID SOUTH LINE OF VAN AVENUE RUN 10.00 FEET TO A POINT; THENCE RUN S 00° 15' 57" E 578.45 FEET TO THE NORTHWEST CORNER OF DAPHNE SQUARE, ACCORDING TO PLAT RECORDED IN MAP BOOK 10, PAGE 125 OF THE PROBATE COURT RECORDS OF BALDWIN COUNTY, ALABAMA; THENCE ALONG THE WEST BOUNDARY OF SAID DAPHNE SQUARE RUN S 00° 18' 31" E 704.83 FEET TO THE SOUTHWEST CORNER OF SAID DAPHNE SQUARE; THENCE RUN N 89° 39' 07" W 492.96 FEET TO A POINT; THENCE RUN N 00° 20' 53" E 10.00 FEET TO A POINT; THENCE RUN S 89° 39' 07" E 482.85 FEET TO A POINT; THENCE RUN N 00° 18' 31" W 694.73 FEET TO A POINT; THENCE RUN N 00° 15' 57" W 578.47 FEET TO THE POINT OF BEGINNING. CONTAINING 17,657 SQUARE FEET OR 0.4054 ACRE.

**CITY OF DAPHNE, ALABAMA
ORDINANCE NO. 2008-67**

**AN ORDINANCE TO REQUIRE HOTEL REGISTRATION AND
RETENTION OF REGISTRATION RECORDS**

WHEREAS, the investigation and prevention of criminal and immoral acts is within the City's responsibility for the health, safety, and welfare of its citizens and visitors; and,

WHEREAS, the requiring of all lodging establishments within the City to have its guests present proper and valid identification upon registering will aide and support police activity for the health, safety, and welfare of the City's citizens and visitors; and,

WHEREAS, an individual maintains no reasonable expectation of privacy under the 4th Amendment of the United States Constitution in regards to guest registration records; and,

WHEREAS, the City Council of the City of Daphne, after due consideration and upon deliberation, has determined to be in the best interest of the City to require hotel registration and retention of registration records for lodging establishments in the City;

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

SECTION I: REGISTRATION REQUIREMENTS

A. Any person who controls or operates a hotel, motel, boardinghouse, roominghouse, guesthouse, apartment hotel, lodging house, motor hotel, extended stay lodging facility, or similar establishment offering rental accommodations shall keep and maintain a register of guests which shall include the true name and address of each guest, the room number occupied by such guest and the beginning and ending dates of occupancy for each guest. The registering guest shall verify his or her true name at the time of registration by presenting valid identification which shall be in the form of a driver's license, non-driver's state issued identification card, federal government identification, military identification, or passport.

B. Any person who controls or operates an establishment describes in Section I(A) of this Ordinance shall record the issuer of the identification and identifying numbers on the identification presented. No guest shall be allowed to register without presenting valid identification. If the guest is traveling in a motor vehicle, the license number and owner of such motor vehicle shall also be recorded in the register.

SECTION II: RETENTION REQUIREMENTS

Any person who controls or operates an establishment listed in Section I (A) of this Ordinance shall also retain the register of guests, including all information required under Section I(A) of this Ordinance, for three years and open it for inspection at any time the establishment is open for business upon the request and presentation of valid identification by any City of Daphne police officer or any other member of law enforcement having proper authority to enforce the laws of the State of Alabama and the United States of America.

Said information required under Section I(A) of this Ordinance shall be stored in a manner in which to be readily available to members of law enforcement when requested, regardless of company policy.

SECTION III: PENALTY

A. It shall be a violation of this Ordinance for any person subject to the provisions herein to refuse to keep or maintain a register as required by this Ordinance, to fail or refuse to make such register available for inspection as required by this Ordinance, to otherwise violate or fail to comply with any other provision of this Ordinance, or for any registering guest to register using a false name.

B. Any person convicted of violating any of the provisions of this Ordinance shall be punished by a fine of not less than Fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), or by imprisonment for a period not exceeding six months, or both, in the discretion of the Municipal Judge.

SECTION IV: SEVERABILITY

The provisions of this Ordinance are severable. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION V: EFFECTIVE DATE

This Ordinance shall become effective immediately and be in full force after final passage and publication as required by law.

**ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF
DAPHNE, ALABAMA ON THE _____ DAY OF _____, 2008**

John Lake,
Council President
Date & Time Signed: _____

Fred Small,
Mayor
Date & Time Signed: _____

ATTEST:

David Cohen, City Clerk MMC