

CITY COUNCIL BUSINESS MEETING AGENDA
1705 MAIN STREET, DAPHNE, AL
AUGUST 1, 2011
BUSINESS MEETING
6:30 P.M.

- 1. CALL TO ORDER**
- 2. ROLL CALL/INVOCATION / PLEDGE OF ALLEGIANCE**
- 3. APPROVE MINUTES:** Council meeting minutes / July 18, 2011

CHANGE: September 5, 2011 Council Meeting Date due to Labor Day

4. REPORT STANDING COMMITTEES:

- A. FINANCE COMMITTEE / Boulware**
- B. BUILDINGS & PROPERTY COMMITTEE- Lake**
- C. PUBLIC SAFETY COMMITTEE –**
- D. CODE ENFORCEMENT/ORDINANCE COMMITTEE -**
- E. PUBLIC WORKS COMMITTEE / SOLID WASTE AUTHORITY - Yelding**
Environmental Advisory Board Nominee:
Appoint: Stan Arbaczauskas
Appoint: Art Hosey

5. REPORTS OF SPECIAL BOARDS & COMMISSIONS:

- A. Board of Zoning Adjustments – Jones**
- B. Downtown Redevelopment Authority – Barnette**
Need one (1) member

- C. Industrial Development Board – Yelding**
Need two (2) members

D. Library Board – Lake

E. Planning Commission – Barnette

a.) Re-Set a Public Hearing Date for **September 6, 2011** ,and approve advertising to consider:

- 1.) Annexation: Audubon Holding, LLC
Property Located: Southeast of the intersection of County Road 64 and Pollard Road
Present Zoning: RMF-6, Multiple Family District in Baldwin County District 15
Requested Zoning: R-4, High Density Multi-Family Residential District
Recommendation: Unanimous Favorable
- 2.) Annexation: Right-of-Way of AL State Highway 181
Property Located: AL State Highway 181 from Lawson Road
South to the Southernmost Corporate
Limits of the City of Daphne
Recommendation: Unanimous Favorable

- F. Recreation Board – Reese**
Need one (1) member

G. Utility Board - Scott

6. REPORTS OF OFFICERS:

- A. Mayor’s Report**
- B. City Attorney’s Report**
Discuss New Horizon Retail Development MOU₁

C. Department Head Comments

David Cohen / City Clerk / Discuss NRDA Property

7. PUBLIC PARTICIPATION:

8. RESOLUTIONS & ORDINANCES:

RESOLUTIONS:

NO RESOLUTIONS

ORDINANCES:

2ND READ.

- a.) Appropriation of Funds: Floor Scrubber. /Ordinance 2011-55
- b.) Daphne High School Stadium / Final Payment. /Ordinance 2011-56
- c.) One-Time Lump Sum Pay Adjustment. /Ordinance 2011-57

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 REESE	PRESENT__	ABSENT__	__
COUNCILMAN SCOTT	PRESENT__	ABSENT__	__
COUNCILMAN BOULWARE	PRESENT__	ABSENT__	__
COUNCILMAN PALUMBO	PRESENT__	ABSENT__	__

MAYOR

MAYOR SMALL	PRESENT__	ABSENT__	__
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CITY CLERK:

DAVID L. COHEN	PRESENT___	ABSENT___	
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CITY ATTORNEY:

CITY ATTORNEY JAY ROSS	PRESENT__	ABSENT	
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MINUTE NOTES:

**CITY COUNCIL MEETING
MINUTES**

NOTES:

COMMITTEE RECOMMENDATIONS

**JULY 18, 2011
CITY COUNCIL MEETING
1705 MAIN STREET
DAPHNE, AL
6:30 P.M.**

1. CALL TO ORDER

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

2. ROLL CALL/INVOCATION/PLEDGE OF ALLEGIANCE

Invocation was given by Councilman Scott.

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

ABSENT: Bailey Yelding; Kelly Reese.

Also present: Mayor Small; David Cohen, City Clerk; Rebecca Hayes, Assistant City Clerk; Jay Ross, City Attorney; James White, Fire Chief; Adrienne Jones, Planning Director; Vickie Hinman, Human Resources Director; David Carpenter, Police Chief; Kim Briley, Finance Director; Tonja Young, Library Director; Richard Johnson, Publics Works Director; Richard Merchant, Building Official; John Williams, Civic Center; Officer Sidney Bumpers, Police Department; Scott Hutchinson, City Engineer; Al Guarisco, Village Point Foundation; Doug Dugat, Recreation Board; Joe Lemoine, Planning Commission; Willie Robison, BZA.

Absent: Margaret Thigpen, Civic Center Director; David McKelroy, Recreation Director.

3. APPROVE MINUTES

MOTION BY Councilman Boulware to adopt the July 5, 2011 Council meeting minutes. Seconded by Councilman Palumbo.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY councilman Boulware to adopt the July 11, 2011 Special Called Council meeting minutes. Seconded by Councilman Scott.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilman Boulware to adopt the July 11, 2011 Council Work Session minutes. Seconded by Councilman Scott.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

**JULY 18, 2011
CITY COUNCIL MEETING
1705 MAIN STREET
DAPHNE, AL
6:30 P.M.**

2

PRESENTATION: Certificate of Congratulations / District 7 AAA Champions Dixie Youth Baseball Team

Mayor Small read and presented the certificates to the Dixie Youth Baseball players. They are the District 7 Champions. They will represent Daphne at the State Championship in Athens, Alabama, and if they win that tournament then they go to the Regionals in North Carolina.

MOTION BY Councilman Scott to suspend the rules to consider a motion to donate \$1,000 from his and the Mayors travel fund to the Dixie Youth Baseball Team to defray expenses incurred to represent the City of Daphne at the State Championship in Athens, Alabama. *Seconded by Councilman Boulware.*

ROLL CALL VOTE

Lake	Aye	Palumbo	Aye
Scott	Aye	Barnette	Aye
Boulware	Aye		

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilman Scott to donate \$1,000 from his and the Mayors travel fund to the Dixie Youth AAA Baseball Team to defray expenses incurred to represent the City of Daphne at the State Championship in Athens, Alabama. *Seconded by Councilman Boulware.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

4. REPORT OF STANDING COMMITTEES:

A. FINANCE COMMITTEE – Boulware

The minutes for the July 11th meeting are in the packet.

Treasurers Report:

MOTION BY Councilman Scott to accept the Treasurers report as of June 30, 2011 in the amount of \$20,274,742.84. *Seconded by Councilman Lake.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

JULY 18, 2011
CITY COUNCIL MEETING
1705 MAIN STREET
DAPHNE, AL
6:30 P.M.

Sales and Use Taxes: May 31, 2011

Sales and Use Tax Collected for May 2011 - \$889,945
 Sales and Use Tax Budgeted for May 2011 - \$851,910
 Over Budget (for May) - \$ 38,035

YTD Budget Collections Variance – Over Budget - \$685,307

Lodging Tax Collections, May 2011

The Lodging Tax Collections report shows \$57,880.48 collected for May, 2011.

Zydeco Festival Report – FY 2011

This year's Zydeco Festival report showed expenses over revenues of (\$26,190.97). Annual comparisons from 2005 through 2011 were also presented showing that historically expenses have always exceeded revenues:

- FY2005 – (32,726.60)
- FY2006 – (8,558.24)
- FY2007 – (39,050.75)
- FY2008 – (49,359.48)
- FY2009 – (42,173.83)
- FY2010 – (5,664.68)
- FY2011 – (26,190.97)

Next meeting will be August 8th at 4:00 p.m. in the Executive Conference Room

B. BUILDINGS AND PROPERTY COMMITTEE – Lake

No report.

C. PUBLIC SAFETY COMMITTEE –

No report. The next meeting will be the 2nd Wednesday of August.

D. CODE ENFORCEMENT/ORDINANCE COMMITTEE –

No report. The next meeting will be the 2nd Wednesday in August after the Public Safety meeting.

E. PUBLIC WORKS COMMITTEE/SOLID WASTE AUTHORITY – Yelding

No report.

MOTION BY Councilman Palumbo to suspend the rules to consider a motion to appoint Mr. Chester McConnell to the Environmental Advisory Committee. *Seconded by Councilman Lake.*

ROLL CALL VOTE

Lake	Aye	Palumbo	Aye
Scott	Aye	Barnette	Aye
Boulware	Aye		

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilman Palumbo to appoint Mr. Chester McConnell to the Environmental Advisory Committee. *Seconded by Councilman Lake.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

5. REPORTS OF SPECIAL BOARDS & COMMISSIONS:

A. Board of Zoning Adjustments – Mrs. Jones

The board will meet the 1st Thursday in August to consider set back variances.

MOTION BY Councilman Palumbo to appoint Mr. Tony Felts as an alternate for the Board of Zoning Adjustments. *Seconded by Councilman Lake.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

B. Downtown Redevelopment Authority – Barnette

The next meeting is next Monday at 5:30 p.m.

C. Industrial Development Board – Yelding

The board needs two (2) members.

D. Library Board – Lake

The Library provides free and equal access to cutting-edge library services and materials for the citizens of Daphne and the surrounding areas. All Camellia Net downloads are free to anyone with a Daphne Library card. The library joins the other large Baldwin County Libraries in providing free service. Audio books and e-books include fiction, as well as topics such as parenting, gardening, cooking, health issues and starting a new business. Music downloads range from classical and country to Celtic and Latin to children lullabies. Downloads are formatted for temporary use only. From August 1st through September

1st the Library will offer Summer Reading for adults: “One World, Many Stories”. Topics include adventure, world literature and places in peril.

E. Planning Commission – Jones

The next meeting will be Wednesday at 8:30 a.m. There are subdivisions requests, zoning request and site plan approvals that will be considered. They will also be discussing sign ordinance proposals for an amendment.

F. Recreation Board - Reese

There is a vacancy on the board that needs to be filled.

G. Utility Board – Scott

The minutes from the May 25th meeting are in the packet. He reported that the Utilities is having a special where they will put in an irrigation meter for \$150 which means, basically, that you can water your lawn, fill your pool, wash your car or whatever you need to do, because sewer bills are determined by water usage.

6. REPORTS OF THE OFFICERS:

A. Mayor’s Report

Mayor Small mentioned that Tyler Trembly, a member of the Dixie Youth Baseball Team, lost the battle with cancer, and if anyone would like to make a donation they are being accepted at the Recreation Department or somebody with the Daphne Dixie Youth organization. Coffee with the Mayor is next Thursday, July 28th, and the Department Heads will be giving updates on their departments, and will answer questions.

B. City Attorney Report

Mr. Ross stated that he has talked with Mr. Hickman, and is waiting on information from him in order to complete the MOU with New Horizon. He will send a draft to council so that it will make the August 1st council meeting. He said he told Mr. Hickman that it would not be voted on until the August 15th meeting.

C. Department Head Comments

Richard Johnson – Public Works Director – invited council and citizens when they leave the building to turn south to see the recent addition to the Public Works family. He thanks council and everyone that made that happen. He said that it has been nine months for the recycle truck to get here. The second truck will be on the road by the end of the week. He reminded everyone to recycle. He thanked Mr. Jim Ransom for loaning the city a truck when the one the city had died. The county is always willing to help out. He again thanked Baldwin County for their support.

Vickie Hinman – Human Resources Director – invited council to the 9th Annual Employee Wellness Fair being held August 3rd from 11-2 at the Civic Center.

Tonja Young – Library Director – announced that the Library Board has canceled the August meeting.

David Cohen – City Clerk – reported that he has talked with two people, and have had several requests for more information. Mr. Allen whose property is behind the old Angelo’s Steak House is receptive, and received a letter from him on Friday giving permission to proceed with an appraisal. He met with Mrs. Marino today, and she is receptive to getting an appraisal of her property. He has not gotten in touch with the bank owned property on Bay Front Park Drive, but he plans to do that tomorrow. He will also talk with the other people, and he will bring to council at the next meeting any other properties that come up.

7. PUBLIC PARTICIPATION

Mr. Doug Dugat – 9391 Montpelier Place – Recreation Board – spoke regarding building of the pavilion at the Dog Park saying it was a slap in the face of the Recreation Board. He also spoke regarding the bocce courts. He asked for direction and support from the council, and to consider the recommendations that come from the board.

8. RESOLUTIONS, ORDINANCES, ORDERS AND OTHER BUSINESS

RESOLUTIONS:

- a.) Bid Award: 2011-U-FD/Burn Building Training Center/Resolution 2011-52
- b.) Bid Award: 2011-V-Park Chemicals/Resolution 2011-53
- c.) Bid Award: 2011-W-Garbage Carts/Resolution 2011-54
- d.) Bid Award: 2011-X-Uniforms (PW)/Resolution 2011-55
- e.) Bid Award: 2011-Y-Police Vehicle Equipment/Resolution 2011-56
- f.) Ecumenical Ministries, Inc. Agreement/Resolution 2011-57

MOTION BY Council Boulware to waive the reading of Resolution 2011-52. *Seconded by Councilman Scott.*

Mr. Ross stated that the apparent low bidder for the Fire Department Burn Building was recommended to be disqualified, because they were not responsive as to what the definition of their submittals were. They received information Friday from Mrs. Henson, and he spoke with the Mayor regarding it, and he concurs with the recommendation from the Finance Directors office that the lowest bidder, the group out of Louisiana, was not the lowest responsive bidder based on his reading of the information. He concurs that they should be disqualified, and council if it so desires can take the next lowest bidder, which is the resolution presented tonight.

Mayor Small stated that, basically, the reason they were disqualified was that this is a design build, and they were supposed to show some type of rendering or some drawings of what they planned on doing there according to the specifications, and they did not send it or produce any drawings or renderings so the Fire Department could see what they were getting. The other companies and the next lowest bidder did send in renderings or drawings. The rejected company did not send any drawings or renderings.

Mr. Ross stated that the company was under the belief that if they got the bid they would supply the drawings then. Mr. Ross does not agree with that interpretation of the RFP as submitted. Mr. Ross stated that it is his opinion that the RFP required a submittal of the drawings or renderings with the bid.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilman Boulware to adopt Resolution 2011-52. *Seconded by Scott.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilman Boulware to waive the reading of Resolutions 2011-53, 2011-54, 2011-55 and 2011-56, 2011-57. *Seconded by Councilman Scott.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilman Boulware to adopt Resolution 2011-53. *Seconded by Councilman Scott.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilman Boulware to adopt Resolution 2011-54. *Seconded by Councilman Scott.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilman Boulware to adopt Resolution 2011-55. *Seconded by Councilman Scott.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilman Boulware to adopt Resolution 2011-56. Seconded by Councilman Scott.

AYE Scott, Boulware, Palumbo, Barnette

ABSTAIN Lake

MOTION CARRIED

MOTION BY Councilman Boulware to adopt Resolution 2011-57. Seconded by Councilman Scott.

AYE ALL IN FAVOR

NAY NONE OPPOSED

MOTION CARRIED

ORDINANCES:

2ND READ

a.) Land Use and Development Ordinance...../Ordinance 2011-54

1ST READ

b.) Appropriation of Funds: Floor Scrubber...../Ordinance 2011-55

c.) Daphne High School Stadium / Final Payment...../Ordinance 2011-56

d.) One-Time Lump Sum Pay Adjustment...../Ordinance 2011-57

MOTION BY Councilman Scott to wave the reading of Ordinance 2011-54. Seconded by Councilman Boulware.

AYE ALL IN FAVOR

NAY NONE OPPOSED

MOTION CARRIED

MOTION BY Councilman Scott to adopt Ordinance 2011-54. Seconded by Councilman Boulware.

AYE ALL IN FAVOR

NAY NONE OPPOSED

MOTION CARRIED

ORDINANCES 2011-55, 2011-56 and 2011-57 WERE MADE 1ST READ.

8. COUNCIL COMMENTS

Councilman Lake asked the City Attorney to research the legality of including in the business license renewals the option to contribute from \$1.00 to \$100 toward the capital improvement for recreation, and in return the city gives the business a decal to put on their door to show they support Daphne Recreation. He said that they need to start looking at some sort of fund raiser through Daphne businesses for capital improvement of the 100+ acres. He would like to see a program implemented, but he does not know the legalities.

Councilman Scott commented setting the record straight on an editorial by Mr. McConnell. He said in his editorial Sunday “to treat them equal to other businesses such as Dick’s that receive no tax breaks.” He clarified that saying that when you go into Dick’s and by \$100 worth of something they are going to charge you \$9.50 in tax, of which, \$2.50 of that goes to the City of Daphne, and unfortunately 1% of that goes to the developer of Dick’s Development so Dick’s is paying the exact same deal that the developer New Horizons has with a contract or letter of intent from Academy Sports. It is exactly identical. Dick’s is in a development where the City of Daphne did an improvement district some 10 years ago to the tune of some seven to eight million dollars or so. The Academy Sports location is where the city is receiving no income, and if it is put together and Academy does come they are looking at a revenue stream that they would not otherwise have, and as far as the improvements that the developer discussed turn lanes, sewer lift stations those would allow additional development up Highway 90, and that corridor along Highway 90 has been zoned B-2, except for the one small subdivision on the north side of Highway 90, Douglas Road, the rest of it is B-2, commercial, and the Planning Commission and Comprehensive Plan designated that area as commercial development for the city since before he came to town. One of the things they have planned to do is put in common detention which is a concept that they have been kicking around and wanting somebody to do for some time, and according the New Horizon engineers the water quality coming across that area will help and not be detrimental to it. When people write editorials if they don’t have all the facts he would encourage them to have them or call someone to get the facts before they go publishing themselves incorrectly.

Councilman Palumbo said since Mr. McConnell is not here to speak out and defend himself so he will say the very first amendment in the Bill of Rights is the right of citizens to assemble and express free speech. For a council member to refer to citizens that take time away from their jobs and family to attend Public Hearings and exercise that right to opinion to refer to them as “usual suspects” and to further name them publicly is not only irresponsible, but outright reprehensible. This is the type of thing that adds distaste that folks have for elected officials at every level. It exemplifies the notion of public officials being out of touch with the public, and sitting in ivory towers, and it is wrong. It puts a dampening effect on anyone who might want to participate in the democratic process. He thinks the folks referred to publicly as “usual suspects” are owed an apology.

Councilman Scott stated that he did not name anyone publicly; Councilman Palumbo can ask Mr. Henderson who wrote the article he provided those names.

**JULY 18, 2011
CITY COUNCIL MEETING
1705 MAIN STREET
DAPHNE, AL
6:30 P.M.**

Councilman Palumbo stated that perhaps Mr. Henderson should apologize or make a retraction if he concluded who the “usual suspects” were.

9. ADJOURN

MOTION BY Councilman Lake 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 7:40 p.m.

Respectfully submitted by,

David L. Cohen,
City Clerk, MMC

Certification by Presiding Officer:

Cathy S. Barnette,
Council President

**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

Stan Arbaczauskas

PO Box 2458, Daphne, Alabama 36526
251-654-1427

Work Experience

Ecologist - 11 Years

Consulting:

Performing Wetland Determinations & Delineations
Managing & Restoring Wetland Mitigation Banking Sites
Federal, State, & Local Permitting
Surveying and Relocation for Endangered Species
Preparing Baseline Surveys for Conservation Easements
Providing Hydrological Studies
Prescribed Burning
Natural Resource Management for Tracts > 70,000 acres
Timber Management
Performing Phase I Environmental Site Assessments
Natural Resource Planner Baldwin County Commission:
Managed NPDES Construction & MS4 Permits
Served as Staff Person for Environmental Advisory Board
Procured and Managed Grants
Technical Advisor for Development of Watershed Plans
Managed County-Owned Underground Storage Tanks
Served as Interagency Liaison

Certification & Professional Course Work

University of South Alabama - 2000

Bachelor of Science: Biology major, chemistry minor

Commercial Pesticide Applicator Certification

Forestry/Ground Application

Erosion Control Course

International Erosion Control Association

U.S. Army Corps of Engineers Wetland Delineation

Jim Teaford

Plant Identification Course

Robert Haynes

Field Indicators for Hydric Soils

Wade Hurt

ADEM-approved Qualified Credential Inspector

Home Builder's Association

Conservation Easement Writing

Numerous Guest Speakers

Wetland Rapid Assessment Procedure (WRAP)

Raymond E. Miller & Boyd E. Gunsalus

References

Art Hosey, Retired Regulatory Chief, USACE Mobile District

Phone: 251-626-5308

Leslie Turney, Project Manager, ADEM Coastal Zone

Phone: 251-694-3873

JJ McCool, President, Wildlife Solutions, Inc.

Phone: 251-591-2682

**CITY OF DAPHNE, ALABAMA
ORDINANCE 2011-_____**

**AN ORDINANCE TO ANNEX THE RIGHT OF WAY OF ALABAMA STATE
HIGHWAY 181 FROM LAWSON ROAD SOUTH TO THE SOUTHERNMOST
CORPORATE LIMITS OF THE CITY OF DAPHNE**

WHEREAS, on the 25th day of May, 2011, the State of Alabama, being the owner of the real property herein described, did file with the City a letter containing the signature of Vincent E. Calametti, P.E., an authorized agent of the State of Alabama Department of Transportation, and a map of said property showing its proximity to the corporate limits of the City of Daphne, Alabama, whereby the State of Alabama provided its consent to the annexation of said real property into the corporate limits of the City of Daphne, Alabama; and,

WHEREAS, the City of Daphne, Alabama, desires to utilize said real property for the health, safety, and welfare purposes of providing fire and police protection; and,

WHEREAS, the Planning Commission of the City of Daphne, Alabama, at its regularly scheduled meeting of June 23, 2011, forwarded a unanimous favorable recommendation to the City Council of the City of Daphne, Alabama for annexation of the areas shown in Exhibit "A"; and,

WHEREAS, after proper publication, a public hearing was held on August 1, 2011, by the City Council of the City of Daphne concerning said letter for annexation; and,

WHEREAS, the City Council of the City of Daphne determined it is in the public interest that said real property be annexed into the City of Daphne, Alabama and that all legal requirements for annexing said real property have been met pursuant to Sections 11-42-20 through 11-42-24, Code of Alabama (1975).

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

SECTION I: ANNEXATION

The boundary lines of the City of Daphne, Alabama, be, and the same are hereby altered or rearranged as to include all of the territory heretofore encompassed by the corporate limits of the City of Daphne, Alabama and in addition thereto the following described territory, to-wit:

Name: Right-of-Way of Alabama State Highway 181 from Lawson Road southward unto the southernmost City limits

Legal Description: BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF LAWSON ROAD AND THE WEST RIGHT-OF-WAY LINE OF STATE HIGHWAY 181 (FORMERLY COUNTY ROAD 27), SECTION 34, TOWNSHIP 4 SOUTH, RANGE 2 EAST, FOR THE POINT OF BEGINNING; THENCE RUN SOUTHERLY ALONG THE WEST RIGHT-OF-WAY BOUNDARY LINE OF STATE HIGHWAY 181 TO THE POINT OF INTERSECTION OF THE SOUTH PROPERTY LINE OF OLDFIELD SUBDIVISION, PHASE ONE AS RECORDED WITH THE JUDGE OF PROBATE BALDWIN COUNTY, ALABAMA ON SLIDE 2328-C&D, SECTION 34, TOWNSHIP 5 SOUTH, RANGE 2 EAST; THENCE EASTERLY TO THE POINT OF INTERSECTION OF THE SOUTH PROPERTY LINE OF DUNMORE SUBDIVISION, PHASE ONE AS RECORDED WITH THE JUDGE OF PROBATE BALDWIN COUNTY, ALABAMA ON SLIDE 2414-A&B, SECTION 35, TOWNSHIP 5 SOUTH, RANGE 2 EAST; THENCE NORTHERLY ALONG THE EAST RIGHT-OF-WAY BOUNDARY LINE OF STATE HIGHWAY 181 TO THE POINT OF THE PROJECTED INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF STATE HIGHWAY 181 AND THE SOUTH RIGHT-OF-WAY LINE OF LAWSON ROAD; THENCE WEST TO THE POINT OF BEGINNING.

Being contiguous to the Corporate Limits of the City of Daphne, Alabama.

SECTION II: PUBLICATION

This ordinance shall be published as provided by law, and a certified copy of the same shall be filed with the Probate Court of Baldwin County, Alabama.

SECTION III: 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 IV: EFFECTIVE DATE

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

APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA ON THIS THE ____ DAY OF _____, 2011.

**CATHY S. BARNETTE
COUNCIL PRESIDENT**

**FRED SMALL,
MAYOR**

ATTEST:

**DAVID COHEN,
CITY CLERK, MMC**

**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:

SET A PUBLIC HEARING DATE

SEPTEMBER 6, 2011

TO CONSIDER:

- 1.) Annexation: Audubon Holding, LLC
- Property Located: Southeast of the intersection of County Road 64 and Pollard Road
- Present Zoning: RMF-6, Multiple Family District in Baldwin County District 15
- Requested Zoning: R-4, High Density Multi-Family Residential District
- Recommendation: Unanimous Favorable
-

- 2.) Annexation: Right-of-Way of AL State Highway 181
- Property Located: AL State Highway 181 from Lawson Road South to the Southernmost Corporate Limits of the City of Daphne
- Recommendation: Unanimous Favorable

To: Office of the City Clerk
From: Adrienne D. Jones,
Director of Community Development
Subject: Audubon Holding, L.L.C.
Annexation Review
Date: June 27, 2011

MEMORANDUM

PRESENT ZONING: RMF-6, Multiple Family District, in Baldwin County District 15

PROPOSED ZONING: R-4, High Density Multi-Family Residential, City of Daphne

LOCATION: Southeast of the intersection of County Road 64 and Pollard Road

RECOMMENDATION: At the June 23, 2011, regular meeting of the City of Daphne Planning Commission, seven members were present. The motion carried unanimously for a ***favorable recommendation*** of the above-mentioned petition for annexation.

Attached please find said documentation and a copy of an ordinance from the office of the City Attorney for placement on the Tuesday, July 5, 2011 City Council agenda for action by the City Council.

Thank you,
ADJ/jd

cc: file

attachment(s)

1. Planning Report
2. Petition
3. Legal Description
4. Map of Property (Plat)
5. Ordinance

COMMUNITY DEVELOPMENT

AUDUBON PARK APARTMENTS ANNEXATION REVIEW

Owner: Audubon Holdings, LLC.

Contiguous to Daphne Corporate Limits: Yes, corporate lines adjoin the property to the east and west.

Existing Conditions: 262 unit apartment complex on 19.08 acres

Existing Zoning: RMF-6, Multiple Family District—Baldwin County District 15

See attached excerpt from Baldwin County Zoning Ordinance for RMF-6 district details.

Proposed Zoning: R-4, Multi-Family Residential district

See attached excerpt from Daphne Land Use & Development Ordinance for R-4 details.

Surrounding Zonings/Uses: District 15 Baldwin County

Northwest-(B-2) Local Business

Northeast-(RMF-6) Multi-family Baldwin County

South-(R-2B) Single family residential Baldwin County

East- (R-4) Multi-family townhomes-Jubilee Ridge

West-(R-4) Multi-family apartment district-Phase 2 Audubon Park

Existing Utility Service Providers:

Sewer and Gas Daphne Utilities

Electric—Riviera Utilities

Affected City Service Providers:

Fire Protection—Station 2 (North Main Street)

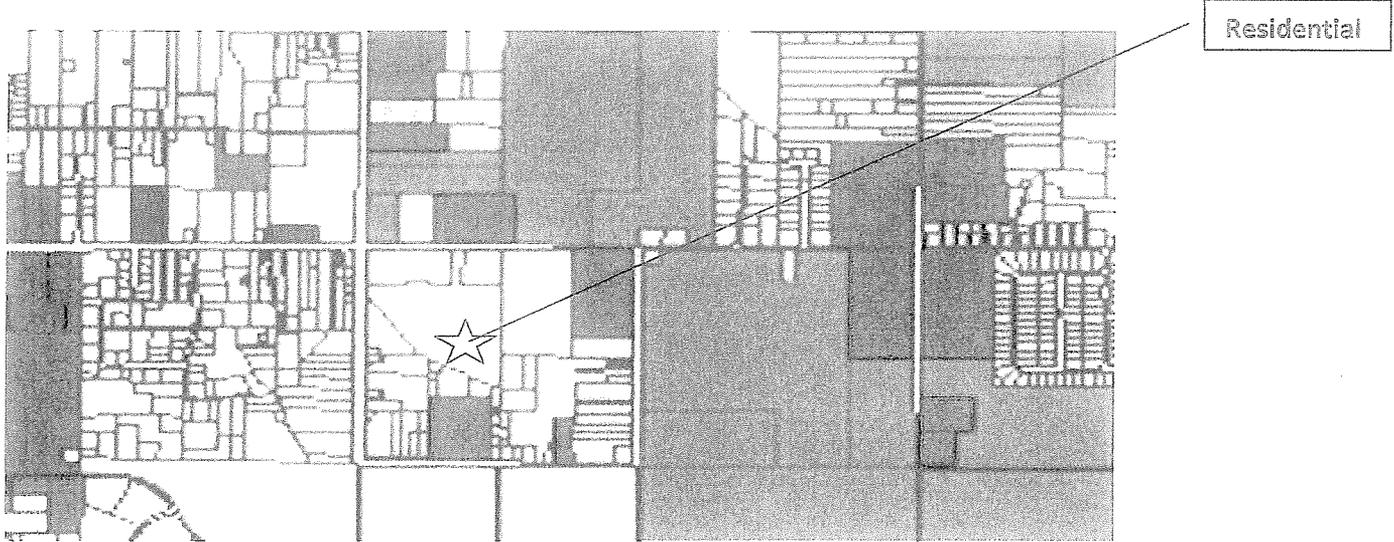
Police Protection—Police Beat 1

Public Works

Baldwin County Schools—School district zones are not set by municipal boundaries, therefore school districting will not be affected by annexation.

Comprehensive Plan

The Comprehensive Plan designates this area as a residential use. Therefore, the requested R-4 zoning is consistent with the Future Land Use Designation.



Future Land Use Map



Community Development

The well-established Audubon Park Apartment complex is located along County Road 64 between Pollard Road (west) and Friendship Road (east). The property is currently in Baldwin County, zoned RMF-6, Multiple Family District—Baldwin County District 15. The petitioner proposes to annex into the City of Daphne as R-4 which is the only district where such use is allowed. R-4 zoning would be appropriate here as the surrounding properties are also zoned R-4. Recommend approval.

Density Comparison

Audubon Park, Phase1	Approximate Density
Density at time of development (was 26.3 acre site)—no county zoning or density requirements were in place when originally constructed	9.96 units/acre
Current Density (now 19.08 acres-result of subdivision of property)	13.7 units/acre
Current Max Density RMF-6	6 units/acre
Current Max Density R-4	14 units/acre

STATE OF ALABAMA
COUNTY OF BALDWIN

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

(Audubon Park Apartments, Phase)
One

The undersigned, Audubon Holdings, L.L.C., files this petition with the Clerk of the City of Daphne requesting the property hereafter described commonly referred to as 19.08 acres adjacent to County Rd. 64 to be annexed into the City of Daphne, a municipal corporation incorporated under the laws of the State of Alabama, and submits the following in support of its petition:

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

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

3. Owner: The Petitioner, Audubon Holdings, L.L.C., is the owner of the Property hereby sought to be annexed into the corporate limits of the City of Daphne.

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

ZONE: R-4, High Density Multi-Family Residential

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

DATED this 19th day of May,
2011.

Respectfully submitted,

Audubon Holdings, L.L.C.
Name of Corporation

Joe D. Blanchard
By: John D. Blanchard

Its: Authorized Signatory

STATE OF ALABAMA
COUNTY OF BALDWIN

I, the undersigned Notary Public in and for said State and County, hereby certify that John D. Blanchard whose name as Authorized Signatory of Audubon Holdings, L.L.C., an Alabama corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he as such officer and with full authority, executed the same voluntarily on the day same bears date.

GIVEN under my hand and official seal on this the 19th day of May, 2011.

Michelle Powell (NOTARY SEAL)
NOTARY PUBLIC
My commission expires: 8/29/2012

AUDUBON PARK APARTMENTS,
PHASE ONE

SOUTHEAST OF THE INTERSECTION OF POLLARD ROAD AND COUNTY
ROAD 64

ANNEXATION REVIEW

EXHIBIT "A"

LEGAL DESCRIPTION:

LOT 2, FINAL PLAT (REVISED), AUDUBON PARK SUBDIVISION,
RESUBDIVISION OF LOT 2, AS PER PLAT RECORDED ON SLIDE NO.
2364-F OF THE PROBATE COURT RECORDS OF BALDWIN COUNTY,
ALABAMA.

**CITY OF DAPHNE, ALABAMA
ORDINANCE 2011-_____**

**AN ORDINANCE TO ANNEX AUDUBON PARK APARTMENTS, PHASE ONE, INTO
THE CORPORATE LIMITS OF THE CITY OF DAPHNE**

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

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

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

WHEREAS, the Planning Commission of the City of Daphne, Alabama, at its regularly scheduled meeting of June 23, 2011, forwarded a unanimous favorable recommendation to the City Council of the City of Daphne, Alabama for annexation of the areas shown in Exhibit "A" with said property being zoned as a R-4, High Density Multi-Family Residential, District; and,

WHEREAS, after proper publication, a public hearing was held by the City Council on August 1, 2011, concerning the petition for annexation; and,

WHEREAS, the City Council of the City of Daphne determined it is in the public interest that said real property be annexed into the City of Daphne, Alabama and that all legal requirements for annexing said real property have been met pursuant to Sections 11-42-20 through 11-42-24, Code of Alabama (1975).

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

SECTION I: ANNEXATION

The boundary lines of the City of Daphne, Alabama, be, and the same are hereby altered or rearranged as to include all of the territory heretofore encompassed by the corporate limits of the City of Daphne, Alabama and in addition thereto the following described territory, to-wit:

Name: Audubon Park Apartments, Phase One

Legal Description: LOT 2, FINAL PLAT (REVISED), AUDUBON PARK SUBDIVISION, RESUBDIVISION OF LOT 2, AS PER PLAT RECORDED ON SLIDE NO. 2364-F OF THE PROBATE COURT RECORDS OF BALDWIN COUNTY, ALABAMA.

SECTION II: PUBLICATION

This ordinance shall be published as provided by law, and a certified copy of the same shall be filed with the Probate Court of Baldwin County, Alabama.

SECTION III: 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 IV: EFFECTIVE DATE

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

APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA ON THIS THE ____ DAY OF _____, 2011.

**CATHY S. BARNETTE,
COUNCIL PRESIDENT**

**FRED SMALL,
MAYOR**

ATTEST:

**DAVID COHEN
CITY CLERK, MMC**

MEMORANDUM

To: Office of the City Clerk
From: Adrienne D. Jones,
Director of Community Development
Subject: The Right-of-Way of Alabama State
Highway 181 from Lawson Road South to
the Southernmost Corporate Limits of
the City of Daphne

Date: Annexation Review
June 27, 2011

LOCATION: The right-of way of Alabama State Highway 181 from Lawson Road South to the Southernmost corporate limits of the City of Daphne

RECOMMENDATION: At the June 23, 2011, regular meeting of the City of Daphne Planning Commission, seven members were present. The motion carried unanimously for a ***favorable recommendation*** of the above-mentioned annexation.

Attached please find said documentation and a copy of an ordinance from the office of the City Attorney for placement on the Tuesday, July 5, 2011 City Council agenda for action by the City Council.

Thank you,
ADJ/jd

cc: file

attachment(s)

1. Planning Report
2. Internal Memorandum - Mayor Small
3. Correspondence to ALDOT
4. Correspondence from ALDOT
5. Map of Right-of-Way
6. Legal Description
7. Ordinance

COMMUNITY DEVELOPMENT

STATE ROAD 181 A.K.A HIGHWAY 181 ANNEXATION REVIEW

Owner: State of Alabama

Contiguous to Daphne Corporate Limits: Yes, corporate lines adjoin the property to the north and south

Existing Conditions: approximately 5.56 miles of existing right-of-way

Existing Zoning: N/A **Proposed Zoning:** N/A **Baldwin County Schools—**N/A

Surrounding Zonings/Uses: District 15 Baldwin County N/A

Affected Utility Service Providers: N/A

Affected City Service Providers:

Fire Protection—Stations 3 & 4

Police Protection—Police Beat – 1 & 3

Comprehensive Plan

The Proposed Roadway Functional Classifications Map of the Comprehensive Plan (*see attached*) designates this roadway as a minor arterial, similar to Highway 90, County Road 13, County Road 64, Johnson Road, and Main Street. Once the Planning Commission reviews and updates the Comprehensive Plan, State Road 181 should be designated as a future “Major Arterial.”



Community Development

With Ordinance 2010-01, the City Council approved the annexation of the northern end of Highway 181 and parts of Highway 90. At that time, the City of Daphne proposed to expand its police and fire protection coverage by annexing the right-of-way(s) of U.S. Highway 90 (from County Road 13 eastward to the Daphne Corporate limits) and Alabama Highway 181 (just north of the interchange of I-10 southward to Lawson Road). At that time, Baldwin County Sheriff’s Department serviced the area; however, the Police Chief indicated that it would be in the interest of public safety to provide for police and fire protection in this area, thereby closing the gap of protection in this section of the City.

The current issue came from the Public Works Committee as a result of a discussion regarding a Highway 181 Maintenance Agreement between the City and the State. *Please see attached Public Works Committee Meeting minutes (March 21, 2011 and May 25, 2011). Included herein, please see ROW annexation request letter from Mayor to Division Engineer and response letter indicating “no objection.”*

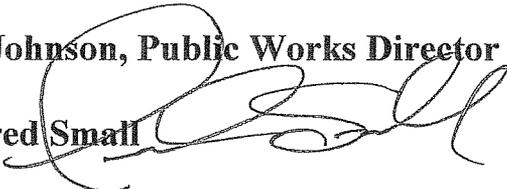
Recommend Approval.



INTERNAL MEMORANDUM

TO: Adrienne Jones, Community Development Director

CC: Richard Johnson, Public Works Director

FROM: Mayor Fred Small 

DATE: June 2, 2011

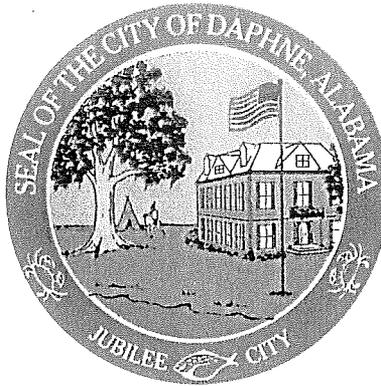
SUBJECT: Right-of-Way Annexation – State Route 181

Please find attached a letter from ALDOT stating they have no objections to the City of Daphne annexing the rights-of-way of State Route 181 from US Highway 90 south to the southern city limits as shown on the map.

By way of this memo I am asking that you move forward with this annexation process.

Thank you.

RECEIVED
RIGOLD



FRED SMALL
MAYOR

DAVID L. COHEN, MMC
CITY CLERK

KIMBERLY M. BRILEY
FINANCE DIRECTOR/TREASURER

DAVID CARPENTER II
CHIEF OF POLICE

JAMES "BO" WHITE
FIRE CHIEF

COUNCIL MEMBERS
BAILEY YELDING, JR.
DISTRICT 1
CATHY BARNETTE
DISTRICT 2
JOHN L. LAKE
DISTRICT 3
KELLY D. REESE
DISTRICT 4
RON SCOTT
DISTRICT 5
DEREK BOULWARE
DISTRICT 6

April 7, 2011

SECTION	AUGUST 11, 2010	INFO ACTION	FILE
DIV ENGINEER			
ADMINISTRATION			
CONSTRUCTION			
COUNTY TRANS			
DISTRICT ENGRS			
EQUIPMENT			
MAINTENANCE			
MATERIALS			
PLANNING			
SPECIAL PROJ			

Mr. Vince Calametti, P.E., Division Engineer
ALDOT - Ninth Division
1701 North Beltline Hwy.
Mobile, AL 36618

Re: City of Daphne – ROW Annexation Request - State Route 181

Dear Mr. Calametti:

I am respectfully writing to ask for the consent of the Alabama Department of Transportation (ALDOT) for the annexation of the Rights-of-Way of State Highway 181 from U.S. Highway 90 south to the City of Daphne's southern city limits. The extents of this annexation request are described in the attached Legal Description and map.

This request is precipitated by the current action of the City to enter into a Cooperative Maintenance Agreement for the same described State Right-of-Way. To expedite this process please forward this request to your Chief Legal Counsel for simultaneous review and possible approval.

Upon consent, City Staff will present the annexation to all applicable Commissions and the full City Council for approval. If you have any questions or need additional information you can contact Richard Johnson, Public Works Director at (251) 621-3182.

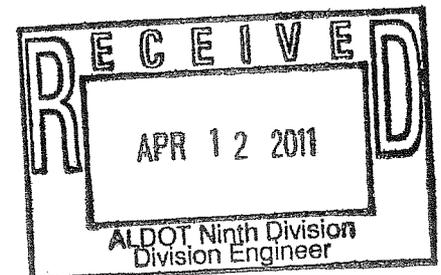
ALDOT and the Ninth Division has been a stalwart supporter of the City in such past endeavors and I thank you in advance for your continuing support of the City of Daphne.

Sincerely,

Fred Small
Mayor

Attachments: Legal Description
Annexation Map

Cc: Richard D. Johnson, PE; Public Works Director
Adrienne Jones; Director, Community Development
File





ALABAMA DEPARTMENT OF TRANSPORTATION

NINTH DIVISION
OFFICE OF DIVISION ENGINEER
1701 I-65 WEST SERVICE ROAD N
MOBILE, ALABAMA 36618-1109
TELEPHONE: (251) 470-8200
FAX: (251) 473-3624



Robert Bentley
Governor

John R. Cooper
Transportation Director

May 25, 2011

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

Dear Mayor Small:

Re: Right-of-Way Annexation Request
State Route 181
City of Daphne

The Ninth Division has no objections to the City of Daphne annexing the rights-of-way of State Route 181 from US Highway 90 south to the southern city limits as shown on the attached map.

If any additional information is needed, please advise.

Sincerely,

Vincent E. Calametti, P.E.
Division Engineer

VEC/LR/bja
c: File

"EXHIBIT A"

SR 181 ROW -LAWSON ROAD SOUTH TO SOUTHERN CITY LIMIT

LEGAL DESCRIPTION:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF LAWSON ROAD AND THE WEST RIGHT-OF-WAY LINE OF STATE HIGHWAY 181 (FORMERLY COUNTY ROAD 27), SECTION 34, TOWNSHIP 4 SOUTH, RANGE 2 EAST, FOR THE POINT OF BEGINNING; THENCE RUN SOUTHERLY ALONG THE WEST RIGHT-OF-WAY BOUNDARY LINE OF STATE HIGHWAY 181 TO THE POINT OF INTERSECTION OF THE SOUTH PROPERTY LINE OF OLDFIELD SUBDIVISION, PHASE ONE AS RECORDED WITH THE JUDGE OF PROBATE BALDWIN COUNTY, ALABAMA ON SLIDE 2328-C&D, SECTION 34, TOWNSHIP 5 SOUTH, RANGE 2 EAST; THENCE EASTERLY TO THE POINT OF INTERSECTION OF THE SOUTH PROPERTY LINE OF DUNMORE SUBDIVISION, PHASE ONE AS RECORDED WITH THE JUDGE OF PROBATE BALDWIN COUNTY, ALABAMA ON SLIDE 2414-A&B, SECTION 35, TOWNSHIP 5 SOUTH, RANGE 2 EAST; THENCE NORTHERLY ALONG THE EAST RIGHT-OF-WAY BOUNDARY LINE OF STATE HIGHWAY 181 TO THE POINT OF THE PROJECTED INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF STATE HIGHWAY 181 AND THE SOUTH RIGHT-OF-WAY LINE OF LAWSON ROAD; THENCE WEST TO THE POINT OF BEGINNING.

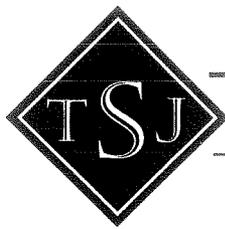
**CITY COUNCIL MEETING
MAYOR'S REPORT**

NOTES:

CITY ATTORNEY'S REPORT

NOTES:

DEPARTMENT HEAD'S COMMENTS



T. JEFF STEIN
ATTORNEY AT LAW

July 14, 2011

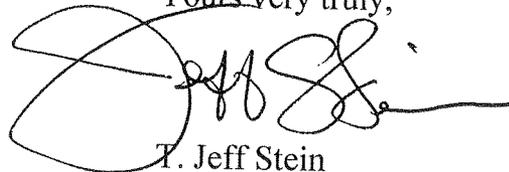
The Hon. David Cohen
City Clerk
City of Daphne
Post Office Box 400
Daphne, Alabama 36526

Re: Appraisal for Nerda Application
My File No. 11-145

Dear David:

Enclosed you will find an authorization signed by Leon Allen to allow the City of Daphne to perform an appraisal on the property bordering D'Olive Bay which is further described on the attached exhibit. Should you need any further information please do not hesitate to give me a call.

Yours very truly,



T. Jeff Stein

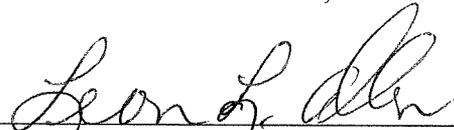
Enclosures
TJS/mcb

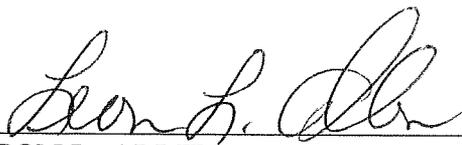
AUTHORIZATION FOR REAL ESTATE APPRAISAL

The undersigned hereby authorizes the City of Daphne to order and obtain a real estate appraisal on the property described on the attached exhibit. A. L. & Associates, Inc., an Alabama corporation, and Leon L. Allen both claim an equitable ownership in and to the property described herein as shown by the attached recorded Notice of Ownership Claim filed and recorded in December, 2008. Should you need any further information concerning this matter, please do not hesitate to contact my office.

A. L. & ASSOCIATES, INC.

By:


LEON L. ALLEN, President


LEON L. ALLEN

7/14/2011
Dated

IN THE PROBATE COURT OF BALDWIN COUNTY, ALABAMA

BALDWIN COUNTY, ALABAMA
JUDGE ADRIAN T. JOHNS
Filed/cert. 12/23/2008 1:55 PM
TOTAL \$ 49.00
13 Pages

1154682

A.L. & ASSOCIATES, INC.
and LEON L. ALLEN

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Plaintiffs,

vs

CASE NO. CV-04-462

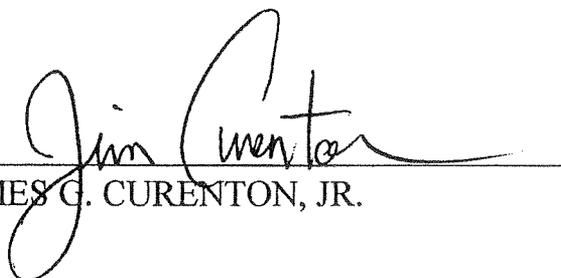
TRI-BOND DEVELOPMENT, INC.;
et al,

Defendants.

NOTICE OF OWNERSHIP CLAIM

Notice is hereby given that A.L. & Associates, Inc. and Leon L. Allen claim one hundred percent (100%) of all net proceeds from any sale of the real property described in the Lis Pendens filed on April 8, 2004, and recorded as Instrument Number 801300, pursuant to the Settlement Agreement executed on November 20, 2007, in the above civil action and attached hereto as Exhibit A. A. L. & Associates, Inc. and Leon L. Allen further claim an ownership interest in said property, pursuant to said Settlement Agreement, and breach thereof by the Defendants in said civil action.

DONE this 23rd day of December 2008.



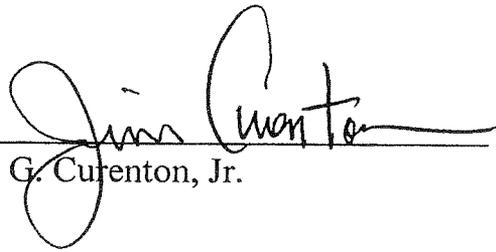
JAMES G. CURENTON, JR.

Attorney for A.L. & Associates, Inc. and
Leon L. Allen
P. O. Box 1435
Fairhope, Alabama 36533
(251) 928-3993
jim_jcl@bellsouth.net

CERTIFICATE OF SERVICE

I hereby certify that I have on this 23rd day of December 2008, served a true and correct copy of the foregoing pleading on all parties or their counsel by AlaFile, by facsimile transmittal, by hand, or by mailing United States postal service, postage prepaid, and addressed as follows:

C. Robert Gottlieb, Jr., Esq.
P.O. Box 9820
Mobile, AL 36691



James G. Curenton, Jr.

STATE OF ALABAMA
BALDWIN COUNTY
2008 DEC 23 P 1:11
REC. _____ BK. _____ PG. _____
Adrian J. Jones
JUDGE OF PROBATE

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

A.L. & ASSOCIATES, INC.
and LEON L. ALLEN,

Plaintiffs,

vs.

TRI-BOND DEVELOPMENT, INC.;
et al,

Defendants.

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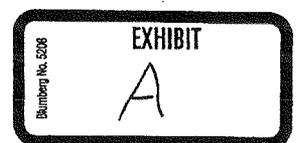
CASE NO.: CV-2004-462

SETTLEMENT AGREEMENT AND
MUTUAL RELEASE PRO TANTO

This agreement of release (*pro tanto*) made this 30th day of November, 2007, by and between the Plaintiffs, A.L. & Associates, Inc. and Leon L. Allen, and the Defendants, Tri-Bond Development, Inc., Joe B. Crosby and John S. Whaley, states as follows:

WHEREAS, litigation is currently pending between the Plaintiffs, A.L. & Associates, Inc. and Leon Allen, and the Defendants, Tri-Bond Development, Inc., Joe B. Crosby and John S. Whaley concerning title and facts related to the acquisition of title to specified property in Baldwin County, Alabama. Tri-Bond, LLC is not a party to said action, but is a party to this agreement to compromise all disputes between the above named parties to the litigation.

WHEREAS, there is a disagreement as to whether the Defendants are liable to



the Plaintiffs as alleged in said civil action; and

WHEREAS, all of the released parties named herein understand and agree that the claims asserted by Plaintiffs are in dispute and have settled such dispute by compromise to avoid further litigation.

NOW, THEREFORE, in consideration of the mutual promises herein contained and for other good and valuable consideration, the receipt of which is hereby acknowledged, each of the parties identified below **RELEASE AND FOREVER DISCHARGE** the other and their officers, directors, members, co-managers, agents and employees and those persons or entities in privity with them, expressly excluding Manuel Ramos, Jr. & Associates, Manuel Ramos, Jr., and Eusebio Limas, of and from any and all claims, demands, damages, actions, causes of actions, or suits in equity, of whatever kind or nature, and whether accruing now or in the future, or whether now known or unknown to the parties, for or because of any matter or thing done, omitted, or suffered by any of said released parties prior to and including the date hereof, and in any way directly or indirectly arising out of the aforementioned claims by A.L. & Associates, Inc. and Leon L. Allen as described above, and of and from any and all expenses, debts and liabilities of every kind, character, and description, present and future, either direct or consequential, either at law or in equity, arising under Federal or State statute, or otherwise which the released parties have ever had

or now have against any of the above-named released parties arising from any act or occurrence at any time, and more particularly arising out of the matters alleged in A.L. & Associates, Inc., et al v. Tri-Bond Development, Inc., et al, Case No: CV-2004-462, pending in the Circuit Court of Baldwin County, Alabama. In this connection, none of the released parties or those in privity with them, will file or institute any type of action as the same relates to the above-described pending lawsuit and/or the business transactions, mortgages, deeds, foreclosures, redemption and/or related matters other than the enforcement of this Settlement Agreement. In this regard, the released parties have executed this Settlement Agreement and Mutual Release (*pro tanto*) under the terms of which all parties agree to be bound forever. As part of this settlement and compromise, the released parties and Tri-Bond, LLC have agreed to settle this civil action on the following terms:

1. The property will be placed on the market for sale with a realtor to be selected by Leon Allen and/or A.L. & Associates, and the real estate commission will be mutually determined by Tri-Bond and Leon Allen/A.L. & Associates.
2. The listing price and the final sale price (from offers received) will be mutually agreed upon by Tri-Bond and Leon Allen/A.L. & Associates.
3. The closing of the sale will be handled by a licensed title company or

real estate attorney agreed upon by Leon Allen and Tri-Bond.

- (a) The closing agent will provide a complete accounting to Leon Allen and Tri-Bond at the time of closing and an estimate of costs prior to closing.
4. The net profits will be determined by the sale price minus the following:
 - (a) Realtor's fees /commission
 - (b) Customary closing costs paid by the Seller and Seller related costs of sale.
 - (c) Costs related to the sale of the property such as proration of ad valorem taxes, costs resulting from any additional expenses (see below), etc.
 - (d) Payoff of existing First Tuskegee Bank Mortgage of approximately \$320,000 (the exact balance to be provided at the time of closing).
 - (e) Reimbursement of \$250,000 to Tri-Bond as an agreed-upon reimbursement for the payments and costs incurred over the years by Tri-Bond.
5. Any additional expenses, such as a request by the Buyer for new surveys, appraisals prior to listing the property, etc., shall be agreed

upon, in writing, by Leon Allen and Tri-Bond.

6. The net proceeds, after all costs itemized above are subtracted from the sale price, will be divided fifty percent (50%) to Leon Allen/A.L. & Associates and fifty percent (50%) to Tri-Bond.
7. All continuing mortgage payments and related costs of ownership, such as property taxes, until the date of closing of the sale of property will be paid by Tri-Bond, however, Leon Allen/A.L. & Associates agree to reimburse Tri-Bond a sum equal one-half ($\frac{1}{2}$) of the monthly mortgage payments and other costs related to ownership, including one-half ($\frac{1}{2}$) of the ad valorem taxes due for the year ending September 30, 2007 and any tax years thereafter so long as the property is unsold.
 - (a) In the event Leon Allen and/or A.L. & Associates should not pay their contributions for any given month, the amount of the unpaid contributions will be deducted from the fifty percent (50%) of the net proceeds of the sale which will be due to Leon Allen and A.L. & Associates, at closing.
8. The parties agree to a consent order being entered by the Circuit Court and agree that any party may enforce this Settlement Agreement by

filing a motion to enforce settlement.

It is understood and agreed that the named parties hereby released have not admitted liability on any account of any consideration delivered and any sums paid in connection with this release are made to terminate any controversy respecting any and all claims, demands, damages, actions, causes of actions, suits, costs, damages, expenses, debts and liabilities as a result of those claims against the parties herein released.

It is understood and agreed that this is a full and final settlement of all claims of every nature and kind whatsoever resulting from the above described business mortgages, deeds, foreclosure, redemption transactions and/or related matters and that no representations of any kind have been made to the undersigned by the parties hereby released to induce this release. Furthermore, this release has been explained to all parties by their attorneys.

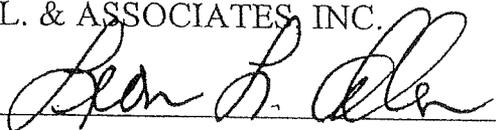
It is further understood that A.L. & Associates, Inc. and Leon L. Allen release Joe B. Crosby, John S. Whaley, Tri-Bond Development, Inc., its officers, directors, agents and employees, Tri-Bond, LLC, its members, co-managers, agents and employees, and those persons or entities in privity with them, their successors and assigns only, and do **not** intend to release, and do not release Manuel Ramos, Jr. & Associates, Manuel Ramos and Eusebio Limas, or any of those persons or entities in

privity with them, their respective successors and assigns, or any agent or employee of said Defendants. A.L. & Associates, Inc. and Leon L. Allen expressly reserve all claims against Manuel Ramos, Jr. & Associates, Manuel Ramos and Eusebio Limas, and/or any of those persons or entities in privity with them, their successors, assigns, heirs, and executors, or any agents, partners, principals, associates, servants, employees, and/or affiliated persons or entities, including any insurance company that may be liable for indemnification, reimbursement, reparations, or payments, whether by contractual obligation or in tort or otherwise, to any non-released person or entity.

Each party hereto acknowledges that the foregoing has been read and understood and that this release is executed freely for the purposes and consideration set forth.

IN WITNESS WHEREOF, the parties hereto to signify acceptance of the terms and provisions hereof, have hereunto set their hands and seals on the dates of the notarial acknowledgment set forth below. The effective date of this agreement being date of the latter such acknowledgment.

A.L. & ASSOCIATES, INC.



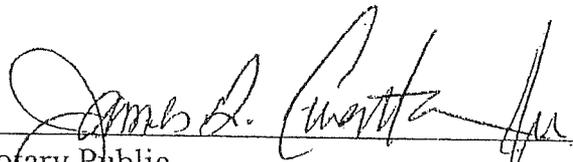
By: LEON L. ALLEN

Its: PRESIDENT

STATE OF ALABAMA
COUNTY OF BALDWIN

I, the undersigned Notary Public, in and for said county in said State, hereby certify that Leon L. Allen whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on behalf of A.L. & ASSOCIATES, INC., on the day the same bears date.

Given under my hand and official seal on this 4th day of December,
2007.



Notary Public
My commission expires on: 4/4/08

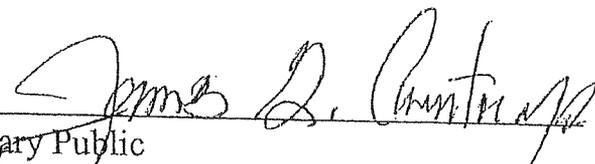


LEON L. ALLEN

STATE OF ALABAMA
COUNTY OF BALDWIN

I, the undersigned Notary Public, in and for said county in said State, hereby certify that LEON L. ALLEN whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal on this 4th day of December,
2007.



Notary Public

Joint and Mutual Release - Pro Tanto

My commission expires on: 7/27/08

TRI-BOND DEVELOPMENT, INC.

Joe B Crosby

By: JOE B CROSBY

Its: President

STATE OF ALABAMA
COUNTY OF MONTGOMERY

I, the undersigned Notary Public, in and for said county in said State, hereby certify that Joe B. Crosby whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on behalf of TRI-BOND DEVELOPMENT, INC. on the day the same bears date.

Given under my hand and official seal on this 30th day of November,

2007.

Roxie Chesnut-Beth

Notary Public

My commission expires on: 7/27/08

Joe B Crosby
JOE B. CROSBY

STATE OF ALABAMA
COUNTY OF MONTGOMERY

I, the undersigned Notary Public, in and for said county in said State, hereby

certify that JOE B. CROSBY whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal on this 30th day of November,

2007.

Roxi Chesnut Butler

Notary Public

My commission expires on: 7/27/08

John S. Whaley

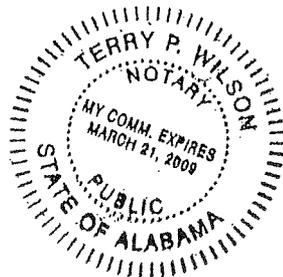
JOHN S. WHALEY

STATE OF ALABAMA
COUNTY OF MONTGOMERY

I, the undersigned Notary Public, in and for said county in said State, hereby certify that JOHN S. WHALEY whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal on this 30th day of November,

2007.



Terry P. Wilson

Notary Public

My commission expires on: 3/21/09

TRI-BOND L.L.C.

John S. Whaley

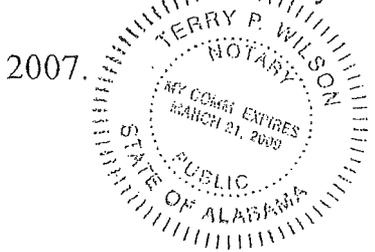
By: John S. Whaley

Its: CO-MANAGER

STATE OF ALABAMA
COUNTY OF MONTGOMERY

I, the undersigned Notary Public, in and for said county in said State, hereby certify that John S. Whaley as Co-manager whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on behalf of TRI-BOND, L.L.C. on the day the same bears date.

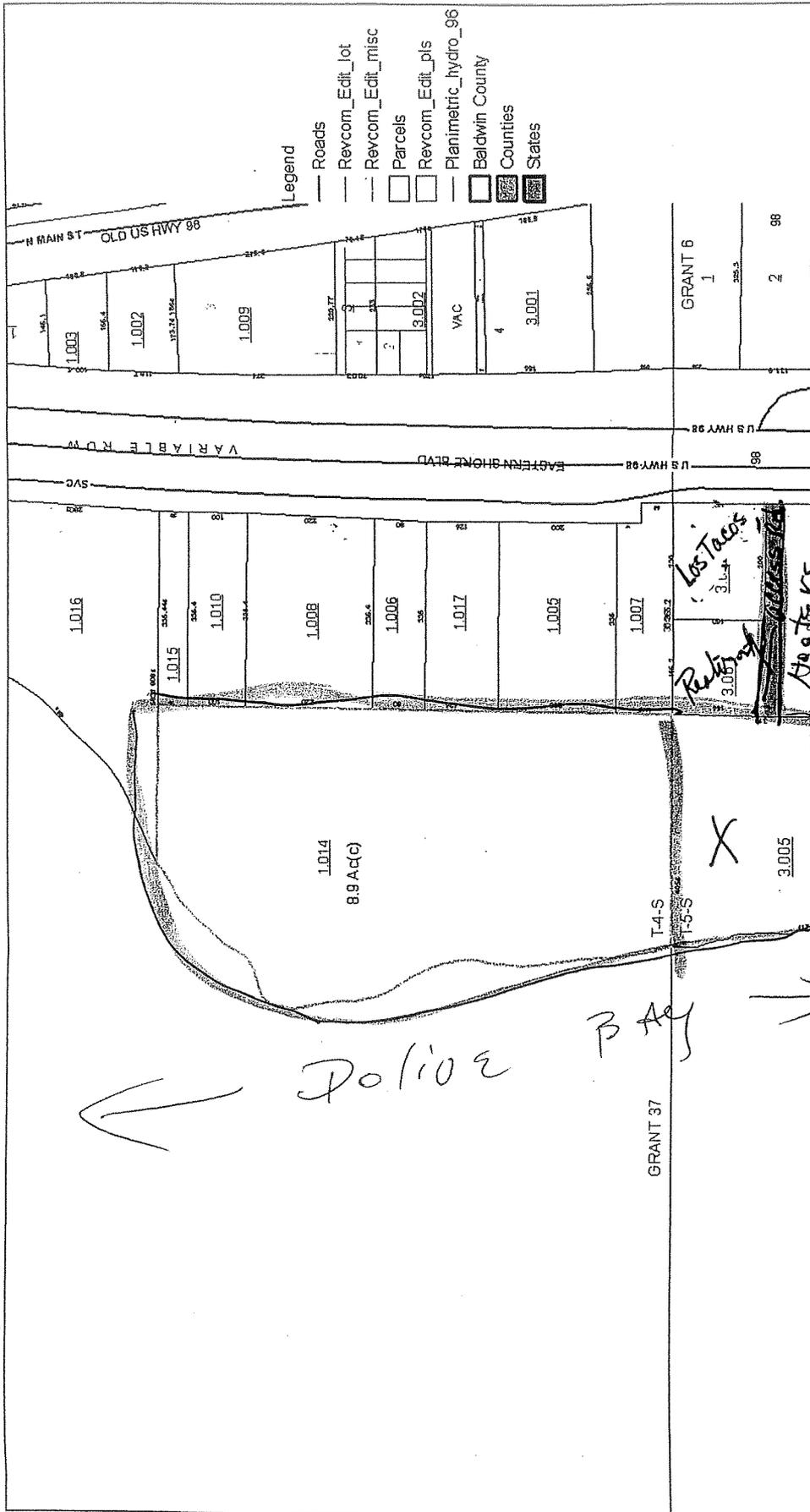
Given under my hand and official seal on this 30th day of November,



Terry P. Wilson

Notary Public
My commission expires on: 3/21/09

Baldwin County Revenue GIS



1.014

Created on 7/27/2009 3:55:01 PM

from Allen Property

STATE OF ALABAMA
COUNTY OF BALDWIN

STATUTORY WARRANTY DEED

State of Alabama, Baldwin County
I certify this instrument was
and taxes collected on:
2002 July -23 9:27AM
Instrument Number 671874 Page
Recording 6.00 Mortgage
Deed .50 Min Fee
Index DP
Archive 3.00
Adrian T. Johns, Judge of Probate

671874

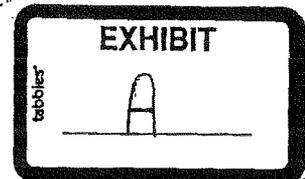
KNOW ALL MEN BY THESE PRESENTS, that LEON L. ALLEN, married, the Grantor, in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS, and other good and valuable consideration hereby acknowledged to have been paid to said Grantor by DELTA WILDERNESS RESORT PROPERTIES, L.L.C., the Grantee, does, subject to the exceptions, reservations and provisions hereinafter set forth, hereby GRANT, BARGAIN, SELL and CONVEY unto the said Grantee, the following described real property situate in the County of Baldwin, State of Alabama, to-wit:

Parcel 1:

Beginning at the Northeast corner of Lot 13, Block 90, Park City Subdivision, as recorded in Miscellaneous Book 1, pages 230-231 and 287 in the office of the Judge of Probate, Baldwin County, Alabama, thence run South 89 degrees, 56 minutes, 12 seconds East 39.62 feet; thence run North 00 degrees, 02 minutes, 10 seconds East, 56.40 feet; thence run North 89 degrees, 56 minutes, 12 seconds West along said North right of way line 8.92 feet; thence run North 00 degrees, 35 minutes, 10 seconds East 310.01 feet to an iron pin; thence run North 00 degrees, 34 minutes, 37 seconds East 100.13 feet to an iron pin; thence run North 00 degrees, 45 minutes, 55 seconds East 200.20 feet to a stainless steel pipe; thence run North 00 degrees, 34 minutes, 58 seconds East 124.89 feet to a stainless steel pipe; thence run North 00 degrees, 32 minutes, 45 seconds East 89.84 feet to an iron pin; thence run North 01 degrees, 42 minutes, 33 seconds East 219.96 feet to a stainless steel pipe; thence run North 02 degrees, 26 minutes, 26 seconds East 100.02 feet to an iron pipe; thence run North 02 degrees, 30 minutes, 05 seconds East 49.54 feet to an iron pipe; thence run South 89 degrees, 49 minutes, 56 seconds West, 211.87 feet to an iron pin; thence continue South 89 degrees, 49 minutes, 56 seconds West 10.0 feet, more or less, to the East margin of D'Olive Bay; thence run Southwestwardly and Southwardly along the East margin of D'Olive Bay 1525 feet, more or less, to a point on the North line of the aforementioned Lot 13 (The Chord Bears South 06 degrees, 17 minutes, 30 seconds West and measures 1257.24 feet; thence run North 89 degrees, 56 minutes, 12 seconds East, along the North line of the aforementioned Lot 13, 307 feet, more or less, to the point of beginning.

Parcel 2:

Commencing at the Northeast corner of Lot 13, Block 90, Park City Subdivision, as recorded in Miscellaneous Book 1, pages 230-231 and 287 in the office of the Judge of Probate, Baldwin County, Alabama, thence run South 89 degrees, 56 minutes, 12 seconds East 39.62 feet to the point of beginning of the easement herein described; thence run South 00 degrees, 02 minutes, 10 seconds East, 45.45 feet; thence run North 89 degrees, 59 minutes, 03 seconds East, 25.00 feet to an iron pipe; thence run North 00 degrees, 02 minutes, 10 seconds East 76.82 feet; thence run South 89 degrees, 56 minutes, 12 seconds East 330.90 feet to the West right of way line of U.S. Highway No. 98; thence run North 00 degrees, 35 minutes, 10 seconds East along said West right of way line 25.00 feet to an iron pin; thence departing said West right of way line, run North 89 degrees, 56 minutes, 12 seconds West 365.06



feet; thence run South 00 degrees, 02 minutes, 10 seconds East 56.40 feet to the point of beginning.

None of the property hereinabove described comprises any part of the homestead of Grantor, or of Grantor's spouse.

LESS AND EXCEPTING THEREFROM such oil, gas and other minerals in, on and under the above described real property, together with all rights in connection therewith, as have previously been reserved by or conveyed to others.

THIS CONVEYANCE IS ALSO MADE SUBJECT TO THE FOLLOWING:

- 1. The lien for taxes hereafter falling due; and
- 2. All building setback lines and restrictive covenants and easements of record.

TOGETHER WITH ALL AND SINGULAR the rights, members, privileges, tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining.

TO HAVE AND TO HOLD unto the said Grantee, Grantee's heirs and assigns, in fee simple, forever.

All recording references are to records in the Office of the Judge of Probate of Baldwin County, Alabama.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal on this the 11th

day of July, 2002.



Leon L. Allen (SEAL)
LEON L. ALLEN

STATE OF ALABAMA
COUNTY OF MOBILE

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that LEON L. ALLEN, whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this, the 11th day of July, 2002.

Ima G. Sims
Notary Public
My Commission Expires 6/20/05

State of Alabama, Baldwin County
I certify this instrument was filed
and taxes collected on:

This instrument prepared by:
Goodman G. Ledyard
PIERCE, LEDYARD, LATTA,
WASDEN & BOWRON, P.C.
Post Office Box 16046
Mobile, Alabama 36616
(6/DELTA.HUD/844/13667); SLT-116958

Grantee's address:
Post Office Box 5
Daphne, AL 36526

2004 April - 8 2:43PM
Instrument Number 881308 Pages 5
Recording 15.00 Mortgage
Deed Min Tax
Index DP 5.00
Archive 5.00
Adrian T. Johns, Judge of Probate

I Vilai Marino authorize the City of Daphne to order and obtain a real estate appraisal on the property that I own located on the bay behind the Thomas Hospital complex.



Vilai Marino, Owner

20 July 2011

Date

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

NOTES:

RECOMMENDATIONS

COUNCIL COMMENTS:

ORDINANCE 2011-55

Floor Scrubber for Floor Maintenance

WHEREAS, Ordinance 2010-71 approved and adopted the Fiscal Year 2011 Budget on December 20, 2010; and

WHEREAS, subsequent to the adoption of the Fiscal Year 2011 budget, the City Council has determined that certain appropriations are required and should be approved and made a part of the Fiscal Year 2011 budget; and

WHEREAS, the adopted budget does not include an appropriation for a floor scrubber to assist with floor cleaning and maintenance of City buildings; and

WHEREAS, due to the increase in foot traffic in City buildings a more efficient method of floor maintenance is needed, and

WHEREAS, an automatic floor scrubber would provide faster and more efficient cleaning of the floors in city buildings.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Daphne, Alabama, that: the Fiscal Year 2011 Budget is hereby amended to include a General Fund appropriation in the amount of \$3,400 for a floor scrubber.

APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, THIS _____ day of _____, 2011.

Cathy S. Barnette, Council President

Fred Small, Mayor

ATTEST:

David L. Cohen, City Clerk MMC

ORDINANCE 2011-56

Daphne High School Stadium - Final Payment

WHEREAS, Ordinance 2010-71 approved and adopted the Fiscal Year 2011 Budget on December 20, 2010; and

WHEREAS, subsequent to the adoption of the Fiscal Year 2011 budget, the City Council has determined that certain appropriations are required and should be approved and made a part of the Fiscal Year 2011 budget; and

WHEREAS, the Final Payment is due in October for the Daphne High School Stadium; and

WHEREAS, the FY011 adopted budget does not include an appropriation for early payment of this debt; and

WHEREAS, early payment from the FY2011 Budget is requested to alleviate this debt from the FY2012 Budget process and thereby make these funds available for other purposes.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Daphne, Alabama, that: the Fiscal Year 2011 Budget is hereby amended to include a General Fund appropriation in the amount of \$168,000 for the final payment on the Daphne High School Stadium.

APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, THIS _____ day of _____, 2011.

Cathy S. Barnette, Council President

Fred Small, Mayor

ATTEST:

David L. Cohen, City Clerk MMC

ORDINANCE 2011-57

One-Time Lump Sum Pay Adjustment

WHEREAS, Ordinance 2010-71 approved and adopted the Fiscal Year 2011 Budget on December 20, 2010; and

WHEREAS, subsequent to the adoption of the Fiscal Year 2011 budget, the City Council has determined that certain appropriations are required and should be approved and made a part of the Fiscal Year 2011 budget; and

WHEREAS, the adopted budget does not include an appropriation for a One-Time Lump Sum Pay Adjustment for Full and Part-Time employees; and

WHEREAS, the City Council of the City of Daphne, Alabama, has determined that for work to be performed by Daphne employees during the period of July 2nd to July 15th, 2011, each regular full-time employee shall be paid the additional sum of \$500 (Net) and each regular part-time employee shall be paid the additional sum of \$150 (Net) to be paid following completion of work on July 22, 2011 .

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Daphne, Alabama, that: the Fiscal Year 2011 Budget is hereby amended to include an appropriation in the amount of \$153,655 for Full-Time employees to receive an additional sum of \$500 (Net) and Part-Time employees to receive an additional sum of \$150 (Net).

APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, THIS _____ day of _____, 2011.

Cathy S. Barnette, Council President

Fred Small, Mayor

ATTEST:

David L. Cohen, City Clerk MMC