

**CITY COUNCIL BUSINESS MEETING AGENDA
BUSINESS MEETING
1705 MAIN STREET, DAPHNE, AL
JULY 2, 2012
6:30 P.M.**

- 1. CALL TO ORDER**
- 2. ROLL CALL/INVOCATION / PLEDGE OF ALLEGIANCE**
- 3. APPROVE MINUTES:** Council meeting minutes / June 18, 2012
Council Work Session minutes / June 11, 2012

PROCLAMATION: Daphne Firefighter Appreciation Month / Muscular Dystrophy Association / Nickole Martel

- 4. REPORT STANDING COMMITTEES:**
 - A. FINANCE COMMITTEE / Boulware**
 - B. BUILDINGS & PROPERTY COMMITTEE - Lake**
 - C. PUBLIC SAFETY COMMITTEE – Boulware**
 - D. CODE ENFORCEMENT/ORDINANCE COMMITTEE - Reese**
 - E. PUBLIC WORKS COMMITTEE / SOLID WASTE AUTHORITY - Conaway**

5. REPORTS OF SPECIAL BOARDS & COMMISSIONS:

- A. Board of Zoning Adjustments – Jones**
Review minutes / December 1, 2011
- B. Downtown Redevelopment Authority – Barnette**
- C. Industrial Development Board – Conaway**
- D. Library Board – Lake**
- E. Planning Commission – Barnette**
- F. Recreation Board – Reese**
- G. Utility Board - Scott**

6. REPORTS OF OFFICERS:

- A. Mayor’s Report**

MOTION: Motion to exercise the authority of the City Council granted by Section 33-5 (e) (1) of the Land Use Ordinance: the City Council recognizes the economic recession and has determined that this is an on-going economic down-turn that is affecting businesses in the City of Daphne. The City Council has determined that the recession is an occasion in which it can exercise its authority to allow temporary signage and banners in order to stimulate and support local businesses. Therefore, temporary signs and banners as described in promotional weekends are authorized in the City of Daphne each Friday at 12:00 a.m. through Sunday at 11:59 p.m. beginning July 6, 2012 and ending October 1, 2012. Such temporary signs and banners must meet all other requirements and provisions of the Land Use Ordinance. Motion does not suspend or replace any provisions of the sign ordinance, and reiterates that all other requirements of the sign ordinance remain under stringent and uniform enforcement.

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

7. PUBLIC PARTICIPATION:

8. RESOLUTIONS & ORDINANCES:

RESOLUTIONS:

- a.) **Appointing Members to the Metropolitan Planning Organization (MPO)..... /Resolution 2012-45**
- b.) **Bid Award: Main Street Resurfacing: McAdams Avenue to Bayfront / Hosea O. Weaver & Sons, Inc. /Resolution 2012-46**
- c.) **Appointing the City Clerk to Perform All the Duties Otherwise Required to Be Performed by the Mayor In the 2012 Municipal Election and Run-Off Election. /Resolution 2012-47**

ORDINANCES:

2nd READ

- a.) **Amend Ordinance 2003-32 / Noise Ordinance. /Ordinance 2012-35**
- b.) **Appropriation of Funds: Sports Complex Entrance Road. /Ordinance 2012-44**
- c.) **Appropriation of Funds: City Hall Chiller Maintenance Agreement. /Ordinance 2012-45**

1ST READ

- d.) **Appropriation of Funds: Resurfacing: Ryan Avenue to Bayfront Drive /Ordinance 2012-46**

9. COUNCIL COMMENTS

10. ADJOURN

**CITY OF DAPHNE
CITY COUNCIL MEETING**

ROLL CALL

CITY COUNCIL:

CALL VOTES

COUNCILWOMAN CONAWAY	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 YELDING	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

**JUNE 18, 2012
REGULAR 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:

The invocation was given by Councilman Lake.

COUNCIL MEMBERS PRESENT: Tommie Conaway; Cathy Barnette; John Lake; Kelly Reese; Ron Scott; Derek Boulware.

ABSENT: August Palumbo.

ALSO PRESENT: Mayor Yelding; David Cohen, City Clerk; Rebecca Hayes, Assistant City Clerk; James White, Fire Chief; David Carpenter, Police Chief; Margaret Thigpen, Civic Center Director; Christine Ciancetta, Deputy Finance Director; David McKelroy, Recreation Director; Richard Johnson, Public Works Director; Vickie Hinman, Human Resources Director; Richard Merchant, Building Official; Adrienne Jones, Planning Director; Ashley Campbell, Environmental Programs Manager; Anne Morris, Reference Librarian; Scott Hutchinson, City Engineer; Willie Robison, BZA; Bob Segalla, Utility Board; Rob McKelroy, Daphne Utilities, Danny Lyndall, Daphne Utilities.

ABSENT: Jay Ross, City Attorney; Tonja Young, Library Director; Kim Briley, Finance Director.

Council President Barnette announced that Ordinance 2012-44 is a 1st Read not a 2nd Read.

3. APPROVE MINUTES:

MOTION BY Councilman Boulware to adopt the June 4, 2012 council meeting minutes. Seconded by Councilman Scott.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

**JUNE 18, 2012
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MOTION BY Councilman Boulware to amend the June 11, 2012 council work session minutes to include verbatim the sign portion of the meeting. *Seconded by Councilman Reese.*

Council discussed the motion.

Council President Barnette stated that since this was a significant amendment that it would be better to table the minutes.

Councilman Boulware withdrew his motion. Councilman Reese withdrew his second.

MOTION BY Councilman Boulware to table the June 11, 2012 council work session minutes. *Seconded by Councilman Reese.*

AYE Conaway, Reese, Boulware, Barnette

NAY Lake, Scott

MOTION CARRIED

Council President Barnette asked Councilman Boulware to get with the City Clerk to define the sections that he would like included in the work session minutes.

PRESENTATION: Daphne Utilities Bio-Solid Facility / Melinda Immell Volkert & Associates / Jim Caudle / Daphne Utilities

Mrs. Immell and Mr. Caudle gave a power point presentation of the Waste Water Facilities, and explained the new process for treating waste water that takes care of the odor.

4. REPORT OF STANDING COMMITTEES:

A. FINANCE – Boulware

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

MOTION BY Councilman Boulware to accept the Treasurers Report as of May 31, 2012 in the amount of \$19,452,034.17. *Seconded by Councilwoman Conaway.*

AYE ALL IN FAVOR

NAY NONE OPPOSED

MOTION CARRIED

**JUNE 18, 2012
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Sales and Use Taxes: April 30, 2012

Sales and Use Tax Collected for April 2012 - \$911,388
Sales and Use Tax Budgeted for April 2012 - \$935,721
Under Budget (for April) - \$ (24,333)

YTD Budget Collections Variance – Over Budget - \$39,161

Lodging Tax Collections, April 30, 2012

The Lodging Tax Collections report shows \$51,939.06 collected for April 2012.

The next meeting will be July 9th at 4:00 p.m. in the Executive Conference room.

B. BUILDINGS AND PROPERTY COMMITTEE – Lake

The minutes for the May 11th and June 4th meetings are in the packet. The committee sent items to the Finance Committee for review.

C. PUBLIC SAFETY COMMITTEE – Boulware

The minutes for the June 13th meeting are in the packet. No report.

D. CODE ENFORCEMENT / ORDINANCE COMMITTEE – Boulware

The minutes for the June 13th meeting are in the packet. No report.

E. PUBLIC WORKS COMMITTEE/ SOLID WASTE AUTHORITY – Conaway

The committee will meet tomorrow at 5:00 p.m. in the Executive Conference room.

5. REPORTS OF SPECIAL BOARDS & COMMISSIONS:

A. Board of Zoning Adjustments – Adrienne Jones

No report. The board still needs a temporary position from District 4 or the south part of the city filled.

B. Downtown Redevelopment Authority – Barnette

The Authority will have an ad in the next issue of the Alabama Coastal Living magazine which will feature some of the Olde Towne businesses. The next meeting will be next Monday at 5:30.

C. Industrial Development Board – Conaway

No report.

D. Library Board – Lake

No report.

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E. Planning Commission – Barnette

The Site Review meeting will be Wednesday at 10:00 a.m., and the Planning Commission will meet next Thursday at 5:00 p.m.

F. Recreation Board – Reese

No report.

G. Utility Board – Scott

The next meeting will be June 27th at 5:00 p.m.

6. REPORTS OF THE OFFICERS:

A. *Mayor's Report*

a.) Parade Permit / Citrin Safety Foundation / 5K Run / October 20, 2012

MOTION BY Councilman Boulware to approve the Parade Permit for Citrin Safety Foundation / 5K Run / October 20, 2012. *Seconded by Councilman Scott.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

B. *City Attorney Report*

An Executive Session is needed to discuss pending and threatened litigation which should not take more than 10 minutes.

C. *Department Head Comments*

David McKelroy – Recreation Director – announced Wet and Wild will be June 20th, and 27th. June 22-24 is the Youth FSA tournament with 68 teams registered. He said that there will be fireworks for July 4th, and they will have hot dogs and snow cones.

James White – Fire Chief – reported that they concluded the ISO rating meeting, and the results will be forthcoming in the next few months.

Anne Morris – Reference Librarian – reported that they have had robust participation in the children's summer reading program, and the over 18 reading program will be in August.

7. PUBLIC PARTICIPATION:

Mr. Robin LeJune – Owner of Market by the Bay – spoke regarding the recent enforcement of the sign ordinance and the removal of all banners which will negatively affect the businesses.

Mr. Keith Rector – Owner of Uncorked Wine – spoke of his concern with the removal of the banners and how it will affect the businesses, and the lack of notice of the enforcement of the sign ordinance.

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Mr. Willie Robison – 560 Stuart Street – spoke regarding the sound equipment, non-conforming signs, and that council was picking on small businesses.

Mr. Eric Hanson – Owner of American Gold Parties – 2101 Highway 98 – spoke regarding supporting changes to the sign ordinance.

8. RESOLUTIONS, ORDINANCES, ORDERS AND OTHER BUSINESS:

RESOLUTIONS:

- a.) Bid Award: Sports Complex Entrance Road / S.J. & L. Civil Contractors. /Resolution 2012-44

MOTION BY Councilman Boulware to waive the reading of Resolution 2012-44. *Seconded by Councilman Scott.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilman Boulware to adopt Resolution 2012-44. *Seconded by Councilman Scott.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

ORDINANCES:

2nd READ

- a.) Adopting the 2012 International Building Code. /Ordinance 2012-40
- b.) Adopting the 2012 International Fire Code. /Ordinance 2012-41
- c.) Amendment to the Land Use & Development Ordinance / Landscape Provisions / 19-8(b) / Communications Tower Provisions / Add Section 32-3(d)(3)(i). /Ordinance 2012-42
- d.) Fixing Speed & Establishing Speed Limits in the City of Daphne. /Ordinance 2012-43

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IST READ

- e.) Amend Ordinance 2003-32 / Noise Ordinance. /Ordinance 2012-35
- f.) Appropriation of Funds: Sports Complex Entrance Road. /Ordinance 2012-44
- g.) Appropriation of Funds: City Hall Chiller Maintenance Agreement. /Ordinance 2012-45

MOTION BY Councilman Scott to waive the reading of Ordinances 2012-40, 2012-41, 2012-42 and 2012-43. *Seconded by Councilman Reese.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilman Scott to adopt Ordinance 2012-40. *Seconded by Councilwoman Conaway.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilman Scott to adopt Ordinance 2012-41. *Seconded by Councilwoman Conaway.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilman Scott to adopt Ordinance 2012-42. *Seconded by Councilman Boulware.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

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MOTION BY Councilman Scott to adopt Ordinance 2012-43. *Seconded by Councilwoman Conaway.*

MOTION BY Councilman Scott to amend Ordinance 2012-43 to include the AL Code number Section 32-5A-171 through Section 32-5A-173 in the third whereas of the ordinance.

VOTE ON AMENDMENT

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

VOTE ON ORIGINAL MOTION AS AMENDED

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

Ordinances 2012-35, 2012-44 and 2012-45 were 1st Read.

9. COUNCIL COMMENTS:

Councilman Boulware said that he is proud to represent the citizens of Daphne, and encouraged everyone's participation.

10. ADJOURN:

MOTION BY Councilman Scott to adjourn into Executive Session to discuss pending and threatened litigation. The Session will last 10 minutes. *Seconded by Councilwoman Lake.*

The City Attorney certified that the foregoing reason to adjourn into Executive Session was appropriate according to the Open Meetings Act.

ROLL CALL VOTE

Conaway	Aye	Scott	Aye
Lake	Aye	Boulware	Aye
Reese	Aye	Barnette	Aye

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

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There being no further business to discuss the meeting adjourned at 7:30 p.m.

Respectfully submitted by,

David L. Cohen, City Clerk, MMC

Certification of Presiding Officer,

Cathy S. Barnette, Council President

JUNE 11, 2012
CITY COUNCIL WORK SESSION
1705 MAIN STREET
DAPHNE, AL
6:30 P.M.

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

ABSENT: Kelly Reese.

Also present: David Cohen, City Clerk; Rebecca Hayes, Assistant City Clerk; Jay Ross, City Attorney; Melvin McCarley, Public Works Supervisor; Officer Menefee, Police Department, Lonnie Jones, Code Enforcement Officer, David McKelroy, Recreation Director, Adrienne Jones, Planning Director; Scott Hutchinson, City Engineer.

Absent: Mayor Yelding.

Council President Barnette called the meeting to order at 6:35 p.m.

1. ENFORCEMENT OF SIGN ORDINANCE

There is a problem with a number of vehicles parking in the green space or right-of-way with signage printed on the vehicles. Council needs to change the sign ordinance or enforce it.

Council President Barnette stated that the Mayor has said that whatever council decides they could give Mr. Jones his marching orders.

Mr. Jones said that he needs guidance from council. He asked should he be less strict with enforcement of the ordinance.

Council discussed the issue along with the Political Sign ordinance.

Verbatim as requested by Councilman Boulware:

Councilman Lake - I can remember when you went down 98 it used to be called "Hamburger Alley" where they had the flashing arrow signs every other place, it was a mess. That is all you can say about it. The comments you hear now from people is "oh that is a beautiful place to visit, that is a beautiful place to shop", and the whole idea of the sign ordinance was to help make this a more conducive neighborhood, a community for businesses, and also for people who live in it. I think some of the car signs and things like that a business person is going to have their car wrapped in their logo and that because it is a way to advertising their business when they are going to get the mail or anything like that or even when they are to buy groceries. It is a way of attracting attention to their business. I think, though, that we do need to have a response that if it is in the right-of-way, on the grass towards the right-of-way that there be a response to it telling them like in Lake Forest that you are not allowed to park your cars on grass. If the person is parking their cars on the grass because they do not have enough parking that is another issue, and I think that is where your wisdom comes in if you see that this place has no parking or doesn't have enough parking for their customers,

and they park their vehicle up on the grass for that reason I think we need to be courteous of that, understanding of that and let's hope they have that problem. They do bring business in for Daphne, but the main thing we need to understand is that the sign ordinance was originally implemented to give small business along with big business the same playing field. Nobody can afford a \$50,000 high pro sign or anything like that, so the idea was to put them on the same playing field so that the small business and the large business could compete against each other in fairness, and sometimes it does get out of hand. I have seen some of these road signs, and actually have the billboards driving down the road, but how do you address those. What do we do? I think the main thing is we need to say that our sign ordinance says this until it is contested, and if it is contested in court and thrown out then that is something we need to look at. I am kind of worried about making it too hard for some of the businesses to succeed and attract them. I think that is where your wisdom comes in when you see that a business does not have enough parking or something like that you need to document that and say this is why this happened.

Councilman Boulware - Just one thing, and this is what Councilman Lake touched on about the fairness in our sign ordinance that is why it was developed, as Mr. Lake says, so that businesses had a fair opportunity to advertise in the city. I can't help but think that this is, you know, we've got a gentleman sitting out there in the audience right now who would like to run for city council. By our own ordinance he won't be able to begin campaigning with signs within the city limits until five weeks before the election if he files on the deadline of qualifying. We've got council people that have been in office for years, and their name has certainly been in the public conscience. I think if we want to talk about fairness, let's think about people that want to engage in our political process. I think five weeks is not fair, if you consider they're running against people that some have had 20 years on the city council. I think we ought to abide by the law, I think our Mayor should enforce the law even handedly, and here I could not agree with you more, but then let's be careful when we talk about fairness that we are being fair to the people that want to get involved in this process. So if we are going to do any kind of adjusting, I know that the City of Spanish Fort recently did. They went from 30 days to 90 days for their political signs. I don't know if that is the answer or not, but they certainly saw a problem with their fairness issue, and they addressed it that way. So, let's just be careful when we talk about fairness, and let's make sure we address that on all levels.

Consensus of council was for Mr. Jones to enforce the ordinance with no waivers.

Council President Barnette said that if there is a problem to relate it to the council.

Council President Barnette - Mr. Palumbo has brought up the issue of the non-conforming signs that are still in existence within the City of Daphne. I think Mr. Jones gave us a list of seven or so that are still remaining.

Mr. Jones – Mrs. Barnette before we switch there can I say one more thing. Mrs. Barnette had called me a while back and she asked me if these political signs were the right size, and I've got what we need as far as Jay Ross and what ya'll have decided as far as our vehicles on the right-of-way and everything else, but what do we want to do about our political signs. Are we going to enforce our

ordinance on this, the size of the sign. Mrs. Barnette asked me are the signs the right size. I reported in the last election, nothing to do with this election, actually I called one of the candidates up and made him move his sign, and I told him he would have to make the sign smaller. I got slapped on the hand for it. I have been told here recently that candidates have spent a lot of money on signs and you know, we are more or less going to just look over that. I would like to have some direction on that as well. Are you going to let them come in with bigger signs or we going to make them go by our sign ordinance, our political sign.

Council President Barnette - We said that for everything the ordinance as written is the rule, and unless we change the rule you enforce the ordinance as presented. So your charge is to enforce the ordinance. Now how you chose to enforce it as far as citations and warnings that is your discretion, and that is your job, you understand the people that you are dealing with, but your job is to enforce the ordinance as written. There are no exceptions, there aren't special waivers, the rule is the rule. It is the council's job to then determine whether or not there needs to be a variation or modification to the existing ordinance, because technically that is the only legal way that you can vary from this ordinance, so if there is an ambiguity for enforcement or that of interpretation which is what we are asking Mr. Ross to let us know if there are problems whether it is a prosecution or working with our prosecutor if there are problems with the ordinance fundamentally. Now, the issues of political signage and what is fair, and all that is not necessarily the discussion this evening, but enforcement of our ordinance as written. So your charge is to enforce the ordinance, and the council's charge is to modify that if we chose. I think we said we are going to dispense with the sign ordinance except for the legal non-conforming signs so with that if you could give us a report of where we stand there, and how our plans to move forward.

End Verbatim

Council discussed non-conforming signage.

Mr. Jones said that there were seven (7) or eight (8) business that are not in compliance with the sign ordinance.

Letters were sent out some time ago to businesses that were not in compliance with the sign ordinance giving them ample time to come into compliance, and some came into compliance, some went out of business and others just did not comply.

Verbatim as requested by Councilman Boulware:

Council President Barnette - Mr. Boulware you had a question.

Councilman Boulware - I do.

Council President Barnette - We are not going to digress back to political signage.

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Councilman Boulware - It is about enforcement.

Council President Barnette - OK.

Councilman Boulware - I need Mr. Jones to clarify something I just heard him say. In the last election, and the last election in this county was the judicial elections, I think the election date was March 15th, you were instructed after you gave a notice to comply with the sign ordinance to a candidate you were instructed by who not to enforce that law?

Mr. Jones - The Mayor told me, there it is, the Mayor told me that the candidates, including you, on this election, had spent a lot of good money, and that we were not going to enforce the size of the sign.

End Verbatim

Consensus of council was for Mr. Ross to get with Mr. Jones to send demand letters again to the businesses that are non-conforming giving a specific time for them to come into compliance.

2. SPORTS COMPLEX ENTRANCE ROAD

Council discussed putting a road through the Sports Complex property so that they will be eligible to apply for grants.

Councilman Scott stated that the Finance Committee discussed the funding for the project and sent forth a recommendation to loan the Recreation Board the money like they did for the lights at Trione.

Council President Barnette stated that she spoke with Ms. Ciancetta and found out that the Recreation Board had three (3) more years to pay on the Trione loan.

Councilman Scott said that they were aware of that, but the committee felt that this project needed to get done to provide recreation for the citizens, and instead of paying for three (3) years they would pay seven (7) or (8) years. The bid for the road is around \$726,000, and they would take the money from the reserves since they have built back up to \$8.7 million.

Consensus of council was to move forward with the project.

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3. DISCUSS WHATEVER ELSE IS DEEMED NECESSARY

1.) MUNICIPAL PLANNING ORGANIZATION

Councilman Lake was disturbed by an article in the paper regarding the Municipal Planning Organization. He did not want the county to squeeze Daphne out of funds like they have done with the storm water funds. He wanted to make sure the city had representation on the board.

Ms. Nichols, reporter for the Press-Register, assured Mr. Lake that Mr. Johnson was at the meeting.

Council President Barnette said that they would follow up with the Mayor and Mr. Johnson to make sure the city is represented on the board.

4. COUNCIL COMMENTS

Councilman Boulware said that council had only four (4) more months to serve together on council and encouraged council to work together for the good of the city for these last few months together as a council.

5. ADJOURN

There being no further business to discuss the meeting adjourned at 7:49 p.m.

Respectfully submitted by,

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

Certification of Presiding Officer:

**Cathy S. Barnette,
Council President**

Office of the Mayor
Daphne, Alabama

PROCLAMATION

“Daphne Firefighter Appreciation Month”

WHEREAS, fighting fires is one of the most hazardous professions, requiring physical strength, stamina, extensive training, courage, and selfless concern for the welfare of our citizens; and

WHEREAS, in addition to their daily service to communities fire fighters throughout the state and across the nation have joined the Muscular Dystrophy Association for the past forty-eight years in the fight against neuromuscular diseases; and

WHEREAS, Daphne firefighters collected \$6,200 in the City of Daphne for the 2011 “Fill the Boot” campaign for MDA; and

WHEREAS, the Muscular Dystrophy Association is extremely grateful to the City of Daphne firefighters for their support and dedication; and

WHEREAS, the funds collected by the City of Daphne firefighters assist MDA in providing medical services at local clinics, summer camp, research grants, support groups, and public education seminars at no cost to local children and families; and

WHEREAS, in honor of the efforts of the Daphne firefighters, the Muscular Dystrophy Association is sponsoring Daphne Firefighter Appreciation Month; and

WHEREAS, it is appropriate for all Daphne citizens to join the Muscular Dystrophy Association in this tribute to our firefighters.

NOW, THEREFORE, THE MAYOR AND CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA commend the City of Daphne firefighters for their efforts on behalf of the Muscular Dystrophy Association, and do hereby proclaim:

JULY, 2012 AS DAPHNE FIREFIGHTER APPRECIATION MONTH

Bailey Yelding, Jr., Mayor

ATTEST:

David L. Cohen, City Clerk, MMC

**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 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 OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF DECEMBER 1, 2011 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL

Vice Chairman: the number of members present constitutes a quorum and the regular meeting of the Board of Zoning Adjustment called to order at 6:00 p.m. Let us have roll call.

Call of Roll:

Members Present:

Jeri Hargiss, Secretary
Glen Swaney, Vice Chairman
Tony Felts
Frank Lamb
Billy Mayhand

Members Absent:

Willie Robison, Chairman
Jim Moss

Staff Present:

Adrienne D. Jones, Director of Community Development
Tony Hoffman, BZA Attorney
Pat Houston, Recording Secretary

Vice Chairman: there will be five members of the BZA voting tonight and it takes a super majority to approve any of the appeals. The first order of business tonight will be the approval of the November 3rd, 2011 meeting minutes. The Chair will entertain a motion to approve the minutes as written.

Approval of Minutes:

The minutes of the November 3rd, 2011 meeting were considered for approval.

A Motion was made by Mr. Lamb and Seconded by Mr. Mayhand to approve the minutes as written.

The Motion carried unanimously.

New Business:

Appeal #2011-08 Key Point Communications

Vice Chairman: next item for business on the agenda is Appeal #2011-08 Key Point Communications, a special exception to allow the construction of a 180-foot monopole telecommunication tower on a vacant lot.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF DECEMBER 1, 2011 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Vice Chairman: the property is a grassed 100' x 100' lot located west of 28825 U.S. Highway 98 behind Subway, and it is in a B-2, General Business Zone. Ms. Jones, if you would take us through this please.

Ms. Jones: we have received a request to withdraw this appeal until February 2012.

Mr. Lamb: I am sorry. I did not hear that. Withdrawn until when?

Ms. Jones: until our regular meeting in February 2012.

Vice Chairman: okay. We will move on to the next appeal. Next on the agenda is Appeal #2011-09 Christ The King Church, a special exception to allow the construction of a new chapel at 715 College Avenue, which is zoned R-2, Medium Density, Single Family Residential. Ms. Jones, would you lead us through this?

Ms. Jones: [displayed a Power Point Presentation of 715 College Avenue, Christ The King Church.] Yes, sir. We have a request for a special exception for Christ The King Church. The property is located at 715 College Avenue and it is zoned R-2, Medium Density, Single Family Residential, and this slide shows the zoning of the property and the surrounding area. Christ the King is located south of Dryer Avenue and west of Main Street. The subject property is at the southwest intersection of those two streets. As is the property is zoned R-2, and in order to allow any expansion to the facility, which is grandfathered by the way, we would first have to grant a special exception for any further expansion of Christ The King Church or any new facilities. This slide shows the landscape plan for the purposed facility. It shows the located of the sanctuary, as well as, the gym. The sanctuary is located south of the purposed chapel, which is seven hundred and seventy five square feet. The chapel will be located east of the gymnasium.

Mr. Felts: Ms. Jones, if you can go back to that plan for me real quick, I just have a question. Is that the large Oak tree that exists on the site that is shown?

Ms. Jones: yes, sir.

Mr. Felts: are they purposing to take it down? It is purposed to remain.

Ms. Jones: it is purposed to remain. The area, I do not have my pointer, but if you can see the word Dryer Avenue, it is the drip line for the existing Oak tree.

Mr. Felts: excellent. Thank you, madam.

Ms. Jones: you are welcome.

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Ms. Jones: in order to properly facilitate a special exception review we must have a recommendation from myself, from the Building Official, as well as, the Public Works Director and each one of them has rendered a favorable recommendation including myself. With that I will pass this on to Doug Bailey, who is the authorized representative for Christ The King Church.

Mr. Bailey: as Adrienne said we are seeking a special exception for the addition of this chapel to the main sanctuary. I did want to point out and I tried to illustrate it in the letter that should have been enclosed in your packet, that this chapel works hand and hand with the main sanctuary in that we have been honored by the Archbishop and given permission to have Eucharistic Adoration twenty-four hours a day, three hundred and sixty-five days a year, which means that we display the hosts in the Monstrance, it is inside a large display case, if you will, inside the chapel twenty-four seven and there is always someone present. It is a requirement from the church that we have at least one or more persons present at all times. So that means that we have someone going, and my wife is on that Committee, I am a member of this church, as well as, being a local resident, but we have someone there coming and going every hour, two or three o'clock in the morning, rain or shine. The proximity of the chapel to the church is also equally important in that the host is brought or the Eucharistic is brought from the church into the main sanctuary for mass, and for other special masses. So being able to take that back and forth easily is another part of the function of it. Can we go back to the overall layout? Is it appropriate to get into the reasoning of the location of it at this point?

Vice Chairman: I think that would be ideal.

Mr. Bailey: do you have an overall layout that shows the entire site, the entire block?

Ms. Jones: no.

Mr. Bailey: can we go back to the color for the zoning? If I can point this out, you can see that the star is the location of the sanctuary and of the chapel. Of course, to the west of it is the gym and the P.E. field. I am sure you all have ridden by the site and ridden by it many times. To the south is the school, and farther south of that is the old sanctuary, which is on the corner right there across from Ms. Ceeanne's frame shop, and to the west of that is the Rectory, and our church offices, and then a large group of Oak trees and the playground equipment. So there were some purposeful choices not only the proximity to the church, as far as, bringing the Eucharistic in and out, but basically having a place to put it that fits in with the architecture of the church, it does not interfere with the other activities of the school, it provides a location that is well lit, and it is easily seen from Main Street.

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Mr. Bailey: as far as, people coming and going at night. If you ride by there tonight you will notice that it is the best lit area around that block. It also takes advantage of existing parking. We have handicap parking at the rear of the gym there, and we also have the additional parking at the Immaculate Center, plus it locates the building away from residences that on the south side of the campus, and it locates it away from the playground and the school where again, we will have people in there in the middle of the day. We will have kids outside playing, but we will not have to have solid walls to keep baseballs and soccer balls and everything else from bursting windows out. It is far enough away from the church that we still can get some natural light and separation between the buildings for fire issues and for natural light through the stain glass windows on the north side. We do not constantly have that in the shadows, and it is for enough west, as Mr. Felts pointed out, that it preserves that Oak tree. So we kind of got backed into that location there. We did look around the other parts of the campus and we did talk about other locations, but this seems to be the most logical. Even though, you know, we feel like we have a hard issue there to ask for a variance, well special exception and then a variance.

Vice Chairman: could you go to the detailed plot plan and show us the actual location of that chapel in relation to the church?

Mr. Bailey: yes, sir. The chapel is nineteen point three-feet or so, let us say nineteen-feet from the right-of-way and the right-of-way is actually another four and a half-feet to the edge of the curb. So when you are out there it is not nineteen-feet from the edge of the road, it is around twenty-three, twenty four-feet from the edge of the pavement, and we do purpose to have a walk along the north side that will be partially in the right-of-way and tie back into a walk leading directly into the sanctuary.

Vice Chairman: how does that sat in relations to the existing gym?

Mr. Bailey: the north wall of the chapel will align with the north wall of the gym.

Vice Chairman: okay, and that is the building that is grandfathered in. Correct?

Ms. Jones: yes.

Vice Chairman: okay.

Mr. Felts: does the church own that entire block or just the two parcels that the buildings are on?

Mr. Bailey: they own the entire block.

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Mr. Felts: in looking at the eastern side of Dryer Avenue and the street along the east over there is that mostly residential once you get back there? Is it fully developed as residences and that is kind of why you are trying to keep the chapel away from those open areas?

Mr. Bailey: are you talking about back to the west?

Mr. Felts: I am sorry, that is correct. I meant west. Get my directions in order here, back to the west.

Mr. Bailey: yes, there are residences on the north corners of the intersection of Sixth and Dryer.

Mr. Felts: and this will be a twenty-four hour facility.

Mr. Bailey: yes, sir.

Mr. Felts: have you had any objections from any of the residents in that area?

Mr. Bailey: to our knowledge, no, sir.

Ms. Jones: we have not received any objections by phone or mail.

Mr. Bailey: I believe we have a couple of residents here tonight that live in the area.

Vice Chairman: we will open up the meeting a little later for objections.

Mr. Felts: I just have one more question. You mention in your letter about the moving the host from the chapel into the main sanctuary of the church. Is that a somewhat cumbersome process or is that a large heavy object?

Mr. Baily: well, it is kind of a dual issue here in that right now what we do is use the cry room, that is inside the building, for the chapel, and every time we have mass, of course, we are fortunate enough to have seventeen hundred families in our church, and as you can imagine it gets crowded real quick, and we have to make use of that cry room. So it is disassembled, set up, and put back several times over the weekends and through the week. Then, of course, with that added capacity and not having to do that if we had the chapel nearby we are able to reduce that and make it a short trip in and out, but yes, sir, it is large and tall, a large piece to carry.

Vice Chairman: any additional questions of Mr. Bailey?

Mr. Lamb: let me ask this. What are you going to do with the Oak tree?

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Mr. Bailey: the Oak tree is to remain, and we understand we will probably have to trim some limbs on the very west side of it. There is a tree protection plan that has been put together by Kent Broom. We have gone ahead and developed some of that plan as far as the site plan submittal. So we knew some of these issues when we came out. For instance, on the south side of the chapel, there is existing plumbing that goes into the gym and into the building of the sanctuary. So we are trying to keep the building a little north to avoid that. We went as far west as we could to still have a corridor between the back of the building and the gym. Because a lot of the kids, and I forgot to mention this, thank you, that sidewalk of the west side of the chapel has a striped crossing there and signage to the east and west of that, and that is where the children cross in the mornings, and it is also where a lot of people cross during mass and everything because it is signed. So people are aware of it as they turn that corner, hey there is a traffic crossing here.

Vice Chairman: I see. There is a fairly wide area between the chapel and the adjacent building sidewalks, you mentioned plumbing in there and so forth. Can you move it any closer to the existing building?

Mr. Bailey: we could, well, you see where there is a circle. It is one of the planting to the southwest corner of the chapel that is where the grease trap, the plumbing and such come into building. They go west into the gym and that is where the cafeteria or the kitchen is right there inside the gym.

Vice Chairman: what is the distant between the chapel and the existing building now?

Mr. Bailey: the distant between the chapel and the northern part of the sanctuary where it comes out, which is the doorway right there, I believe is fifteen and a half feet.

Vice Chairman: but you said that you would rather not because of engineering problems, plumbing and etc.

Mr. Bailey: there are some storm drains that go through there. The storm drain for the main sanctuary runs east and west and comes back to the back side of the gym underneath that sidewalk and goes out all the way across campus over to Sixth Avenue and runs out over there close to where the gate is.

Vice Chairman: I see.

Mr. Lamb: getting back to the tree. I was looking at it today and it seems to me that you are going to have to cut a lot off the west side of the Oak tree. The tree is going to look out of balance, if you will. Those are some pretty big limbs and you have got to go up pretty high.

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Mr. Lamb: it is an old, old tree and from an ecstatic viewpoint it is not going to look right because you are going to have to cut a lot of limbs off of it.

Mr. Bailey: I understand, that was one of the main concerns that a lot of people mentioned when we started looking at this thing was to try not to cut down any of the trees around there. Of course, the farther east you go with it the worse that gets.

Vice Chairman: any more questions or comments? Thank you.

Mr. Bailey: thank you, sir.

Vice Chairman: how many tonight would like to speak in favor of this appeal? I just want a show of hands at this time. Who would like to speak in opposition of this appeal? Okay. With that in mind the floor is open for public participation. Who would like to be the first to speak and if you would please limit your comments to four minutes.

Mr. Robinson: I am Bill Robinson, my wife and my family live at 1500 Main Street, very nearby. We had Mr. Frances take a look at that tree issue, maybe it was Mr. Lamb that raised it, but this is going to be as minimal a trimming of the tree as we can do. He is very aware of the parishes driving concern to maintain that tree and to keep its natural beauty as intact as possible. The only other thing that I would like to say is that it is so important to a Catholic Christian community to have adoration of the Eucharist. The real presence of our Lord Jesus Christ is recognized by Catholic Christians throughout the world. We will be the first parish in our dioceses to have perpetual adoration. We have had for many years forty hour adoration at Christ The King, but it has been so crowded so that is one of the primary liturgical reasons that the parish is so enthusiastic in support of this. We have got about five hundred families with five hundred children in our school and another group of families with five hundred in our Catholic education program. We are going to rotate these classes of children in this as part of their Catholic Christian education, and that is part of the reason for the size of the chapel. So thank you very much for your consideration.

Vice Chairman: thank you, Mr. Robinson. The next person please.

Mr. Crimmins: I am Walt Crimmins a Deacon at the church, Christ The King, Daphne resident and former member of this Board. Some of you still recognize me. I asked to be relieved of the duties about 2007. I would like to tell you that right now there are hundreds of people involved in this perpetual adoration, probably somewhere between four and five hundred that are dedicated to this and in need of this facility to continue on, and I ask you to consider that. People come not only from, they are all connected with Christ The King, but some of them come from Fairhope or Spanish Fort and anywhere in between.

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Mr. Crimmins: they come and promote this. So this benefits The Christ The King family and all of the Eastern Shore. Thank you.

Vice Chairman: thank you. Next person if there is any.

Mr. Mayhand: I would like to ask the attorney a question concerning conflict of interest. When I was a youngster I attended Christ The King many years ago and some of these ladies and gentlemen may have known my mother, Gertrude Longmire Mayhand, that worked there for many years. So I would vote yes because I care about the school and the church. So I do not know if that is called a conflict or nor.

Mr. Hoffman: do you think that you can be impartial in your decision making and make the best decision for the Board of Zoning Adjustment, taking into account whether you know the individuals of the church.

Mr. Mayhand: yes, I think so.

Mr. Hoffman: then I do not think that would be a conflict.

Mr. Mayhand: okay, I just wanted to put that out there.

Vice Chairman: thank you, Mr. Mayhand. For point of reference, the tree that Mr. Lamb discussed has a radius now. What do you anticipate the trimmed radius to be or diameter? How drastic is that trimming going to be?

Mr. Bailey: sorry I had to consult with them. They met with Chris Francis, of Chris Francis Landscaping, he is a license Arborist here in town, and he had told the church that he thought it would be a minimal trimming just to try and get up high enough away from the face of the building. You know the building is not high until you get to the peak. I do not know, but have you all seen the elevation views of the building?

Mr. Felts: it is in our packet.

Mr. Bailey: okay. I believe, I cannot remember the peak height of the building, but it is at the edges of those limbs. He did not seem to think there was an issue with them is what I have been told.

Mr. Mayhand: it is probably going to be an ongoing process of trimming that tree every five years or so.

Mr. Bailey: yes, sir, and that is one reason why we are not including gutters on the building, of course, because of leaves and such as that, so that was something else we looked at, maintenance issues later on. As you can tell from the elevation views of the building, I do not know if you have seen the color renderings or not, but same brick, same slate roof, pitch and that kind of thing.

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Vice Chairman: your plot plan would indicate that you do not plan any additional parking in front of the chapel.

Mr. Bailey: correct.

Vice Chairman: you do not.

Mr. Bailey: no, sir. We plan to make use of the parking behind the gym and the parking at the Immaculate Center.

Vice Chairman: okay, thank you. Any additional discussion or questions?

Mr. Felts: perhaps just a question for staff or the attorney. If the Board was so inclined to approve the location of the chapel as shown by the applicants, could we place a condition on it that impact on the tree be as limited as possible in order to preserve it?

Mr. Hoffman: you can do that, but it is sort of a grey area. What would as limited as possible be? Who would interpret it and things of that nature? So I do not know how effective that limitation would be.

Mr. Felts: or perhaps a limitation of preservation of the tree.

Mr. Hoffman: again, you can make any restrictions you want to. Twenty years down the line if something happens to the tree that does not affect it you will already have the special exception in place. You can try and put as much as you can into it or express your desires, but essentially it is here for a special exception and then ultimately a variance, which will go into play immediately.

Mr. Lamb: this is almost a unique situation, but not entirely. It requires almost a division between the emotional religiosity, liturgical agreement of what you would like to do, want to do, need to do verses the responsibility of the BZA to protect not only this facility, but the entire City of Daphne in their Ordinance. Now if we consistently grant every setback that comes before us indiscriminately because they are good people, it is nice, they want to do something, so then we might as well take the Ordinance and throw it out. Now of the many years that I have been on this Board we have almost consistently, regardless of who it was, denied any setback that was more than three or four-feet, maybe seven. I am not even sure about seven. Last month we denied one for twelve-feet. Would you mind backing up to that overhead view of the church. Yes that one. Now that is Dryer Street and you go down and take a right and the last lot of the right on that street we denied a ten-foot setback. The property was owned by the mother of the lady and she passed away, the individual lived in Monroeville and had no desire, need or want to move to Daphne and wanted to sell her property. It was all created prior to the Land Use & Development Ordinance.

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Mr. Lamb: however, the lady had built a carport before the Land Use & Development Ordinance was even established, which infringed upon the setback ten-feet. Now here she is stuck with this property. This Board denied her that, denied the setback. She still owns the property and I think she has it rented out now. Down the street is a church that asked for a special exception and they would have probably had a festivity, if you want to say that, maybe twice a year. Unfortunately, area residents objected to it and so we as a Board listened to their concerns, looked at it and we denied that church the special exception. As a member of the Board we have to look at the setbacks as far as the future implication, and at this point I would like to ask the attorney. This is an Olde Towne Daphne Overlay District. If we were to grant this setback, would future landowners in the City of Daphne, have recourse to say you granted the church one and they may even say because it is a church, but they may say you granted that church, we want to encroach the setbacks and refer the reasoning that we granted it to the church. Even though we may say, may say this is a one-time thing and it does not set a precedent. Would the Court on further appeal say you set the precedent, you cannot say you are not setting a precedent, and therefore in effect change the Land Use & Development Ordinance to whatever setback up to sixteen-feet that anybody else might want to have?

Mr. Hoffman: obviously I cannot tell you what a Judge or an Appeals Court would decide. I cannot tell you for a fact how they would decide. With every case you would look at it, and we are looking at two different things. The first is the special exception and the second one is the variance, and with the variance it is the Board's determination as to what constitutes a hardship. Can somebody then say well it appears to be the same thing and make that argument in Court? They could try to make that argument. Whether the Court would say well one is a church, one is a commercial building or one is a church verses a residential building I cannot tell you that it would be something that they will utilize, but it could be an argument way down in the future. I do not know if that answers your questions, but it can be an argument. Each case is taken on its own facts, as to what the Board decides is a hardship, under the law and how someone would then try to interpret that hardship and make it similar to theirs depends on what the Judge would decide.

Vice Chairman: I have an additional question of Mr. Bailey. What would cost be to the church to move that building some seven to ten-feet closer to the gym or the adjacent building?

Mr. Bailey: I do not know, but we are probably thinking along the same lines. I did want to point out that if we were a residence, of course, in R-2, we would not have an issue with the setback if we were at twenty-feet, you all are aware of that. If we were zoned B-2 and we moved the building to twenty five-feet off the right-of-way it is my understanding we would not have an issue with the side setback.

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Mr. Bailey: it is my understanding from reading the Olde Towne Daphne District regulations that the Planning Commission can no longer consider zoning or rezoning amendments for B-2 General Business or R-4 zoning districts, so we do not have an option to rezone to B-2 to get inside that window and that is why the church has owned this property since 1905, long before zoning existed in the mid-eighties or so. We do have an issue in that we would like to comply. Our property on the north side, the Immaculate Center is B-2, but of course, it was the First National Bank building forty years ago. I guess what I would propose would be, perhaps a compromise, is if we could move the building to a point where it is twenty five-feet from right-of-way line by reworking that in there then perhaps moving the handicap ramp to the other side would allow the building to shift five and a half so feet. If we got to twenty five-feet we would meet B-2, unfortunately our hands are tied we cannot go to B-2.

Vice Chairman: let me ask an additional question of the attorney. Could we tonight modify the appeal to be the setback we just discussed here? In other words, could we change those setbacks they are requesting?

Mr. Hoffman: I would think that you need to table it at this point because a site plan has to be approved and considered by the Planning Commission.

Vice Chairman: I was not thinking so much of tabling as I was of just establishing a minimum setback line as per Mr. Bailey's discussion.

Mr. Bailey: so we would be asking for less of a variance than what we originally applied for?

Vice Chairman: yes.

Mr. Hoffman: but in order to apply for a special exception you need to have a site plan in place, and there is no site plan in place to modify so you would be acting without a site plan, and the requirements require the site plan first.

Vice Chairman: well in essence we have a site plan we are just changing one dimension.

Mr. Hoffman: I understand that, but you still would not have the site plan and the recommendations based upon the new site plan.

Vice Chairman: so in other words we cannot modify the setback as requested.

Ms. Jones: we have actually jumped into the variance request. You need to make a determination on the special exception first. I think once we open the hearing for the variance we can vent it out some more.

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Mr. Felts: but the special exception is dependent, from what I understand Mr. Hoffman saying, the special exception is dependent upon this site plan. So if we approve the special exception it is dependent upon site plan. Is that correct?

Mr. Hoffman: well the site plan and the variance are actually two different things. I mean the special exception and the variance are two different things.

Mr. Felts: so if we approve the variance with what is different than what is presented then they would still have to come back for another special exception?

Mr. Hoffman: no, I think you can approve the special exception and then work on the terms of the variance. Right now we are talking globally both of them at the same point and time. If you approve the special exception then you can accept terms on the variance so long as then it is approved through the proper channels. Does that make sense? You might want some restrictions on the variance side, but not on the special exception side.

Vice Chairman: would you then state how this next motion should be made.

Ms. Jones: or do you want to not vote on the special exception and review the variance request and then take them both at the same time for the determination? That way if there are conditions that would apply to variance those would be in place at the same time that you would consider the special exception.

Mr. Hoffman: I think the problem is that because it is Olde Town Daphne District then you need both in this situation. You are going to have to have both. You cannot do the variance without the special exception, and you need the site plan for the special exception. I just think that is the problem, which is why I say if we are going to modify the site plan then you would need to not modify the site plan and move forward. They have a year if it is denied or you get approved, and I do not know which or you table it, and work on the site plan and variance from there, but the special exception has to come first I would think.

Vice Chairman: if we tabled it this evening if they withdrew, in essence their appeal, would they have to pay any additional fees and so forth or could they just modify the site plan and come back?

Ms. Jones: if it is tabled, no they would not have to pay any additional fees.

Mr. Lamb: I do not have a problem with the appeal to build a new chapel. I do not think we have a problem with allowing that.

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Mr. Lamb: the big problem is in the setback. My big problem is does that set precedent, particularly when we have had a history of not allowing that.

Vice Chairman: of course, our attorney has responded saying in essence that each case is treated different.

Mr. Hoffman: and that is why when you look at each hardship case that we have had in the past you have to look at the factual circumstances as to what is creating the hardship, is it a hardship and then you rule on it. So without going into the minds of the Board it is difficult to determine if there is precedent there. Because what one Board member might see as a hardship in one case they might not see it as necessarily one in another case, for example, saving trees is a hardship in one case to preserve the atmosphere, but maybe not in another situation. So it is a little hard for me to say that it is a precedent, but I cannot tell you it would not in the mind of some judge or appeals court later on.

Mr. Felts: Ms. Jones, the applicant made a statement about perhaps there is a setback discrepancy. If this was a residence as opposed to a church, commercial building, would it have a reduced setback than what is required?

Ms. Jones: this chart I prepared for the variance and it provides all the corner yard setbacks for properties. The first talks about Article 14, which is Olde Towne Daphne, and every zoning district whether it is residential or commercial is allowed to have a twenty five-foot side corner yard setback. Article 13.6 talks about our general district requirements, everything except R-1 and our business districts are allowed to have twenty-feet on the corner yard setback. For those that are R-1 and for those the "B" zones it is allowed to have twenty five-feet on the corner yard as a setback. Now for semi-public buildings, a church, hospital, city hall, fire department or what have you they are classified as semi-public buildings and would be required to have a thirty-five foot corner yard setback. Right now what is being requested, for the variance, is essentially a nineteen-foot corner yard setback, which is similar to what an "R" district would be, R-2, R-3, R-4 for general.

Mr. Felts: if they were not located in Olde Towne?

Ms. Jones: yes.

Mr. Felts: so essentially if this was not in Olde Towne Daphne and it was not a public building, if it was a residence we would really only be talking about one-foot. Right?

Ms. Jones: correct.

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Mr. Felts: correct me if I am mistaken, but this building does not go out any further than the existing gym does already.

Mr. Lamb: that is correct.

Ms. Jones: this building would align with the existing gym, yes.

Mr. Felts: you know ordinarily I have a problem with setback variances as a professional planner we know the purpose of setbacks is to preserve air and light and to provide overall quality of life. However, in this case with it being in line with an existing building and the fact that really if it was in a district that was not in the Olde Town District we would only be talking about point seven feet. It does not seem like that much of a stretch to allow it in its present location.

Vice Chairman: point well taken I think. Any additional questions or comments? If not, the Chair will entertain a motion in the affirmative. All members will be voting tonight and you need a super majority of four to approve this appeal.

A Motion was made by **Mr. Lamb** and **Seconded** by **Mr. Felts** to approve Appeal #2011-09, Christ The King Church, for a special exception to allow the construction of a new chapel. The property is located at 715 College Avenue, and it is in an R-2, Medium Density, Single Family Residential Zone.

Upon roll call vote, the motion carried unanimously.

Mr. Swaney	Aye
Mr. Mayhand	Aye
Mr. Lamb	Aye
Ms. Hargiss	Aye
Mr. Felts	Aye

Chairman: the appeal has been granted. Ms. Houston they can pick up the paperwork tomorrow, correct?

Ms. Houston: yes, sir.

Chairman: next item on the agenda is Appeal #2011-10, Christ The King Church, a variance allowing the construction of a new chapel to encroach into the required thirty five-foot north side yard setback by sixteen-feet. The property is located at 715 College Avenue, which is zoned R-2, Medium Density, Single Family Residential.

Mr. Lamb: I make a motion to approve Appeal #2011-10.

Ms. Jones: you have to open the floor for public participation first.

CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF DECEMBER 1, 2011 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL

Mr. Lamb: excuse me.

Vice Chairman: are there any public comments concerning Appeal #2011-10?

Mr. Bailey: the only thing I would like to add is that, of course Mr. Lamb under the site plan submittal we do have a tree protection plan that has been given to Community Development for review by the Planning Commission.

Mr. Lamb: thank you.

Vice Chairman: is there a second to the motion?

A Motion was made by Mr. Lamb and Seconded by Mr. Felts to approve Appeal #2011-10, Christ The King Church, for a variance to allow the construction of a new chapel to encroach into the north yard setback sixteen feet in lieu in the required thirty five-foot setback. The property is located at 715 College Avenue, and it is in an R-2, Medium Density, Single Family Residential Zone.

Upon roll call vote, the motion carried unanimously.

Mr. Swaney	Aye
Mr. Mayhand	Aye
Mr. Lamb	Aye
Ms. Hargiss	Aye
Mr. Felts	Aye

Vice Chairman: the appeal has been granted. Again you can pick up your paperwork on tomorrow morning in the Community Development office. Thank you very much. If there is no other business, the Chair will entertain a motion to adjourn.

Adjournment:

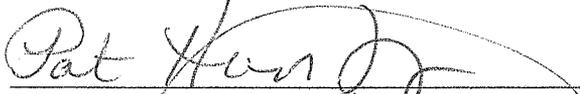
A Motion was made by Mr. Lamb and Seconded by Ms. Hargiss to adjourn.

The Motion carried unanimously.

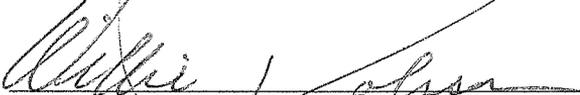
There being no further business the meeting was adjourned at 6:45 p.m.

CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF DECEMBER 1, 2011 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL

Respectfully submitted by:


Pat Houston, Recording Secretary

APPROVED: May 3, 2012


Willie Robison, Chairman

/ph

**CITY COUNCIL MEETING
MAYOR'S REPORT**

NOTES:

MAYOR'S REPORT

MOTION REGARDING TEMPORARY SIGNS

Motion to exercise the authority of the City Council granted by Section 33-5 (e) (1) of the Land Use Ordinance: the City Council recognizes the economic recession and has determined that this is an on-going economic down-turn that is affecting businesses in the City of Daphne. The City Council has determined that the recession is an occasion in which it can exercise its authority to allow temporary signage and banners in order to stimulate and support local businesses. Therefore, temporary signs and banners as described in promotional weekends are authorized in the City of Daphne each Friday at 12:00am through Sunday at 11:59pm beginning July 6, 2012 and ending October 1, 2012. Such temporary signs and banners must meet all other requirements and provisions of the Land Use Ordinance. Motion does not suspend or replace any provisions of the sign ordinance, and reiterates that all other requirements of the sign ordinance remain under stringent and uniform enforcement.

**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 ATTORNEY'S REPORT

NOTES:

DEPARTMENT HEAD'S COMMENTS

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

NOTES:

RECOMMENDATIONS

COUNCIL COMMENTS:

CITY OF DAPHNE

RESOLUTION NO. 2012-45

**Appointing Representatives for the Eastern Shore
Metropolitan Planning Organization**

WHEREAS, the 2010 U. S. Census has determined that Urbanized Areas of at least 50,000 combined population and requisite density exist in the Eastern Shore Area, and therefore meet the U. S. Code requirements for the formation of a Metropolitan Planning Organization (“MPO”); and

WHEREAS, Title 23 USC 134, 135, and 23 CFR 450, provide the governing authority and organizational requirements for an Eastern Shore MPO consisting primarily of the cities of Daphne, Fairhope, Spanish Fort, and Loxley. Formation of a new MPO by local governments is required within twelve (12) months of designation; and

WHEREAS, the City of Daphne desires to be a part of the Eastern Shore MPO, and is the principal city within the Eastern Shore MPO, and the City of Daphne shall have two (2) voting members on the MPO Policy Board.

THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF DAPHNE, ALABAMA, that the City of Daphne does hereby accept and approve the formation of the Eastern Shore Metropolitan Planning Organization, and appoints the Mayor and one sitting City Council member, to be selected by the Mayor, to represent the City of Daphne in all matters pertaining to the Eastern Shore MPO, and to authorize the Mayor to sign all necessary agreements on the city’s behalf.

ADOPTED AND APPROVED THIS _____ DAY OF _____, 2012

Cathy S. Barnette, Council President

Bailey Yelding, Jr., Mayor

ATTEST:

David L. Cohen, MMC
City Clerk

RESOLUTION 2012-46
2012-H-MAIN STREET RESURFACING: RYAN AVENUE TO BAYFRONT DRIVE

WHEREAS, the City of Daphne is required under section 39-1-1(E) of the Code of Alabama to secure competitive bids for public works contracts in excess of \$ 50,000; and

WHEREAS, the City of Daphne acknowledges that MAIN STREET: RYAN AVENUE TO BAYFRONT DRIVE will exceed \$50,000; and

WHEREAS, the City of Daphne did receive and review bids for the MAIN STREET: RYAN AVENUE TO BAYFRONT DRIVE and has determined that the bid as presented is reasonable; and

WHEREAS, staff recommends the bid for MAIN STREET: RYAN AVENUE TO BAYFRONT DRIVE be awarded to Hosea O. Weaver & Sons, Inc..

NOW, THEREFORE BE IT RESOLVED, AND IT IS HEREBY RESOLVED, THAT THE MAYOR AND CITY COUNCIL OF THE CITY OF DAPHNE, hereby accept the bid from Hosea O. Weaver & Sons, Inc. in the amount of \$815,642.10 as specified in BID SPECIFICATION NO. 2012-H-MAIN STREET: RYAN AVENUE TO BAYFRONT DRIVE.

APPROVED AND ADOPTED by the Mayor and City Council of the City of Daphne, Alabama, this ____ day of _____, 2012.

Cathy S. Barnette, Council President

Bailey Yelding, Jr., Mayor

ATTEST:

David L. Cohen, City Clerk MMC

CITY OF DAPHNE

RESOLUTION NO. 2012-47

**Appointing the City Clerk to Perform All the Duties
Otherwise Required to Be Performed by the Mayor
In the 2012 Municipal Election and Run-Off Election**

WHEREAS, a General Municipal Election will be held in the City of Daphne on the 28th of August 2012, and if necessary a Run-off Election will be held in the City of Daphne on October 9, 2012; and,

WHEREAS, the Mayor of the City of Daphne is a candidate in said election and is thereby disqualified to perform certain duties per Code of Alabama, 1975.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF DAPHNE, ALABAMA, that David L. Cohen, City Clerk, is hereby appointed to perform all the duties otherwise required to be performed by the Mayor per Code of Alabama, 1975 with respect to the Municipal Election to be held in the City of Daphne on the 28th August 2012 and any Run-off Election ordered held with respect thereto.

ADOPTED this the _____ day of _____, 2012

Cathy S. Barnette, Council President

Bailey Yelding, Jr., Mayor

Attest:

David L. Cohen, City Clerk, MMC

**CITY OF DAPHNE
ORDINANCE 2012 – 35**

**ORDINANCE TO REPEAL ORDINANCE 2003-32 AND TO REGULATE NOISE
WITHIN THE CITY OF DAPHNE, ALABAMA**

WHEREAS, Ordinance 2003-32 was approved and adopted December 15, 2003, to establish standards to eliminate and reduce unnecessary and excessive noises detrimental to individuals and the community in the enjoyment of life, property, and the conduct of business; and

WHEREAS, the City Council for the City of Daphne, Alabama, has determined that various sections of Ordinance 2003-32 should be repealed to eliminate any vagueness and ambiguity contained therein; and

WHEREAS, the City Council for the City of Daphne, Alabama, has deemed it to be within the health, safety, and welfare of the citizens of Daphne, Alabama, to repeal Ordinance 2003-32 and replace the same with new standards to further promote the enforcement thereof;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Daphne, Alabama, as follows:

**SECTION I: ILLEGAL NOISES-LOUD, DISTURBING OR UNNECESSARY,
PROHIBITED**

A. No person shall make, continue or cause to be made or continued any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others in the City. It shall also be unlawful and a nuisance for any person to permit any such noise to be made in any house or upon any premises owned or possessed by him or under his management or control.

B. The following acts, and the causing thereof, are declared to be in violation of this section, but such enumeration shall not be deemed to be exclusive:

- 1.) Horns, signaling, devices, etc.
 - a.) The sounding of any horn or signal device on any automobile, motorcycle, bus or other vehicle, except as a danger warning when and as required by ordinances of the City of Daphne or by the Code of Alabama; or

- b.) The sounding of such signaling device for any period of time exceeding that in which the warned person or persons are alerted thereto; or
- c) The use of any such signaling device when traffic is held up for any reason; or
- d) The use of any horn, whistle or other device operated by engine exhaust.

2.) Animals, birds, etc.

The keeping of any animal or bird which causes repeated noise which is plainly audible to any person inside a commercial, residential, multifamily dwelling or public place between the hours of 10:00 p.m. and 7:00 a.m.

3.) Stationary non-emergency, signaling devices.

- a) The sounding or permitting the sounding of any signal from any stationary bell, chime, siren, whistle or similar device intended primarily for non-emergency purposes, from any place, for more than one minute in any hourly period.
- b) Any such bell, chime and similar device used in conjunction with places of religious worship shall be exempt from the operation of this provision.

4.) Exhausts

The discharge, into the open air, of the exhaust of any steam engine or internal combustion engine of any motor boat or motor vehicle except through a muffler or other in good working order and in constant operation. The sound therefrom such shall not be plainly audible outside a radius of fifty (50) feet.

5.) Fireworks

The explosion of firecrackers, skyrockets, roman candles, pinwheels or any other form of fireworks, except the display of fireworks in public parks or other open places within the City under a permit issued by the fire marshal pursuant to the fire prevention code of the City or as provided in Ordinance No. 1994-09.

6.) Loudspeakers, amplifiers, etc. for commercial advertising purpose.

The use, operation or permitting the use or operation of any drum, bell, horn, musical, instrument, stereo, loud speaker, amplifier, public address system or other instrument or device or the production or reproduction of sound which casts sound upon the public streets for the purpose of commercial advertising or intending to attract attention to any building, structure, performance, show, sale or display of merchandise, or for any other commercial advertising purposes.

7.) Radios, stereos, television sets, musical instruments, etc.

a) The operating, playing or permitting the operation or playing of any device, radio, television, stereo, drum, musical instrument, sound amplifier or similar device which produces, reproduces or amplifies sound in such a manner as to create any sound or noise which exceed 60 dB [during the hours of 10:00 p.m. until 7:00 a.m.] at any property line within a residential district or upon any public street of right-of-way within, or bordering upon any residential district within the corporate limits of the City of Daphne; or

b) The operating, playing or permitting the operation or playing of any device, radio, television, stereo, drum, musical instrument, sound amplifier or similar device which produces, reproduces or amplifies sound in such a manner as to be plainly audible outside a radius of twenty-five (25) feet to any person inside a commercial, residential, multifamily dwelling or public place [during the hours of 10:00 p.m. until 7:00 a.m.]. This includes, but is not limited to, any low level rhythmic base component of music sufficient to constitute a violation thereof; or

c) The operation of any device, radio, television, personal stereo, cassette player, compact disc player, digitally stored audio or video player, musical instrument, sound amplifier or similar device which produces, reproduces or amplifies sound by a passenger on a common carrier or by a pedestrian on the street without the use of an external ear plug speaker in such a manner as to be plainly audible to any person other than the player or operator of the devise at a distance of twenty-five (25) feet.

8.) Unreasonable sound amplification from a vehicle.

a) The operation or permitting of the operation of, any sound amplification system which is plainly audible outside a radius of twenty-five (25) feet when the vehicle is on a public highway or on premises open to the public, unless that system is being operated to request assistance or warn of a hazardous situation.

b) This section does not apply to:

- i. Emergency vehicles
- ii. Vehicles operated by utilities
- iii. Sound systems of vehicles used for advertising in parades, political or other, special events or when properly permitted by the City Council.

9.) Defect in vehicle or load.

The use or operation of any automobile, motorcycle or other vehicle which by its physical state of repair, physical state of disrepair or by the manner in which it is loaded creates any grating, grinding, rattling or other noise which is plainly audible outside a radius of fifty (50) feet when the vehicle is on a public highway or on premises open to the public.

10.) Emergency signaling devices.

Sounding or permitting the sounding of any exterior burglar alarm or any motor vehicle burglar alarm unless such alarm is automatically terminated within fifteen minutes of activation unless there has been an attempted or actual entry of the premises or vehicle.

11.) Domestic power equipment.

a) The operating or permitting the operation out of doors in a residential area or area adjacent to a residential area, of any mechanically powered saw, sander, drill, grinder, lawn and garden equipment, or similar device, between the hour of 10:00 p.m. and 7:00 a.m. so as to cause a noise disturbance across a residential property boundary.

b) For the purposes of this subsection (B)(11), lawn and garden equipment shall be defined as any gas or electric powered mower, edger, blower, trimmer, tiller, or other, whether commercial or homeowner grade.

12.) Construction

a) Any and all activity incidental to the erection, demolition, assembling, altering, repairing, installing, or equipping of buildings, structures, roads, or appurtenances thereto, including land clearing, grading, excavating and filling between the hours of 10:00 p.m. and 7:00 a.m. in a residential area, or area adjacent to a residential area, so as to cause a noise disturbance across a residential property boundary.

b) Emergency repair or maintenance of public roads and highways parks, sewers, water, electric, gas or telephone systems at any time or any such private construction necessary to restore property to a safe condition following a public calamity or work required to protect persons or property from eminent exposure to danger shall be exempt from the operation of this provision.

13.) Noises near schools, courts, churches or hospitals.

The creation of any noise on any street adjacent to any school, institution of learning, church or court which the same is in use, or adjacent to any hospital, nursing home or similar facility which is plainly audible within said school, institution of learning, church or court which the same is in use, or any hospital, nursing home or similar facility, provided that construction signs are displayed in such street indication that the same is a school, hospital church or court street and specifying the hours and days of which such regulation is to be effective.

C. The provisions of Section 1 heretofore shall not apply to:

- 1.) Any bell or chime from any clock, school or church.
- 2.) Any siren, whistle, horn or bell used by emergency vehicles or any other alarm systems used in case of fire, collision, civil defense, burglary, police activity, except as otherwise provided herein.
- 3.) Any construction equipment utilized in the activities described in Section I (B)(12)(a) of this Ordinance and operated upon residential, commercial, industrial or public premises during the time period between 7:00 a.m. and 10:00 p.m.; provided however, that operation of construction equipment between the hours of 10:00 p.m. and 7:00 a.m. shall not exceed a sound level of 80 dB when measured at a minimum of Fifty (50) feet from the noise source, and further provide that such equipment shall be equipped with a properly installed muffler in good working order.
- 4.) Any domestic power equipment operated upon any residential, commercial, industrial or public premises during the time period between 7:00 a.m. and 10:00 p.m., provided that such equipment does not exceed a sound level of 80 dB when measured at a minimum of Fifty (50) feet from the noise source.
- 5.) Any recreational and educational activity including, but not limited to, school bands and neighborhood ball games, provided that between the hours of 10:00 p.m. and 7:00 a.m. such activity does not exceed a sound

level of 80 dB when measured at a minimum of Fifty (50) feet from the noise source.

6.) Licensed refuse collection vehicles operating during the time period between 6:00 a.m. and 9:00 p.m.; provided, however, sound omitted from license refuse collection vehicles operated upon or within 150 feet of any residential premises between the hours of 9:00 p.m. and 6:00 a.m. shall not be plainly audible outside a radius of fifty (50) feet when the vehicle is on a public highway or on premises open to the public.

7.) The emission of sound for the purpose of alarming persons to the existence of an emergency; or

8.) The emission of sound in the performance of emergency work.

D. Except as provided, the Mayor shall have the right to waive any or all of the requirements of Section 1 in cases of emergency where the welfare of persons or property may be jeopardized by their strict enforcement or on such special occasions as the governing body may determine. Exemptions from the requirements of Section I (b)(7)(a) relating to the time periods during which radios, phonographs, television sets, musical instruments, etc. may be operated and may only be granted:

- 1) During weekends, legal holidays (or eve thereof), or school vacations
- 2) After due consideration of the factors set forth in Section I (B)(5); and
- 3) Upon approval of the Council representative for the district where the event is to be held.

SECTION II: PENALTY.

A. Any person found guilty of violating any provision 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 (6) months, or both, in the discretion of the Municipal Judge.

B. This Ordinance shall also be subject to enforcement by the issuance of a summons and complaint pursuant to the provisions of Ordinance No. 1993-02, as the same may be from time to time amended.

SECTION III: REPEALER

Ordinance No. 2003-32 is hereby repealed in its entirety. All other City Ordinances or parts thereof in conflict with the provision of this Ordinance, in so far as they conflict, are hereby repealed.

SECTION IV: SEVERABILITY

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 hereof.

SECTION V: EFFECTIVE DATE

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

APPROVED AND ADOPTED by the City Council of the City of Daphne, Alabama, this _____ day of _____, 2012.

Cathy Barnette, Council President

Bailey Yelding, Jr., Mayor

ATTEST:

David L. Cohen, City Clerk, MMC

ORDINANCE 2012 - 44

DAPHNE SPORTS COMPLEX ENTRANCE ROAD APPROPRIATION

WHEREAS, Ordinance 2011-81 approved and adopted the Fiscal Year 2012 Budget on November 21, 2011; and

WHEREAS, subsequent to the adoption of the Fiscal Year 2012 budget, the City Council has determined that certain appropriations are required and should be approved and made a part of the Fiscal Year 2012 budget; and

WHEREAS, Ordinance 2009-55 sets forth an allocation of Lodging Tax proceeds that may be used for certain recreational grounds capital items; and

WHEREAS, the Daphne Sports Complex Entrance Road project meets such recreational grounds capital criteria; and

WHEREAS, such project has been bid and staff has reviewed bids as submitted.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, AL, that the Fiscal Year 2012 Budget is hereby amended to include an appropriation for the Daphne Sports Complex Entrance Road – Phase I in the amount of \$831,207 (*construction -\$726,307 & Engineering & Testing - \$104,900*). The General Fund will advance the project cost and be reimbursed by Lodging Tax Recreation allocations pursuant to Ordinance 2009-55 after such time as the advance for projects approved by Ordinance 2010-09 is paid back to the General Fund in full.

APPROVED AND ADOPTED by the City Council of the City of Daphne, Alabama, this _____ day of _____, 2012.

Cathy S. Barnette, Council President

Bailey Yelding, Jr., Mayor

ATTEST:

David L. Cohen, City Clerk, MMC

ORDINANCE 2012 - 45

City Hall Chiller Maintenance Appropriation

WHEREAS, Ordinance 2011-81 approved and adopted the Fiscal Year 2012 Budget on November 21, 2011; and

WHEREAS, subsequent to the adoption of the Fiscal Year 2012 budget, the City Council has determined that certain appropriations are required and should be approved and made a part of the Fiscal Year 2012 budget; and

WHEREAS, due to the need to keep the HVAC system functional for City Hall operations; and

WHEREAS, the chiller must remain functional for the HVAC system to operate.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Daphne, Alabama, that funds in the amount of \$8,012 from the General Fund are hereby appropriated and made a part of the Fiscal Year 2012 budget for the maintenance agreement needed for the City Hall HVAC System.

APPROVED AND ADOPTED by the Mayor and City Council of the City of Daphne, Alabama, this _____ day of _____, 2012.

Cathy S. Barnette, Council President

Bailey Yelding, Jr. , Mayor

ATTEST:

David L. Cohen, City Clerk, MMC

ORDINANCE 2012 - 46

**Main Street Resurfacing: Ryan Avenue to Bayfront Drive
- Mill & Overlay Road Project**

WHEREAS, Ordinance 2011-81 approved and adopted the Fiscal Year 2012 Budget on November 21, 2011; and

WHEREAS, subsequent to the adoption of the Fiscal Year 2012 budget, the City Council has determined that certain appropriations are required and should be approved and made a part of the Fiscal Year 2012 budget; and

WHEREAS, the City Council has determined it to be in the best interest of the City to obtain bids for this project and design engineering services in the amount of \$25,815 were previously approved.

WHEREAS, the Main Street – Ryan Avenue to Bayfront Drive: Mill & Overlay Road project (2.54 miles) went out for bid; and

WHEREAS, an appropriation is needed for the cost of construction - \$815,642.10 and additional engineering fees - \$61,288 (*survey/testing/inspection...*). (*Total Project Cost - \$902,745.10*).

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

1. A change of use for funds in the amount of \$876,930.10 from the 2012 Construction Fund is approved by Council; and
2. Funds made a part of the Fiscal Year 2012 budget for the Main Street – Ryan Avenue to Bayfront Drive: Mill & Overlay Road project.

APPROVED AND ADOPTED by the Mayor and City Council of the City of Daphne, Alabama, this _____ day of _____, 2012.

Cathy S. Barnette, Council President

Bailey Yelding, Jr., Mayor

ATTEST:

David L. Cohen, City Clerk, MMC