

CITY COUNCIL BUSINESS MEETING AGENDA
1705 MAIN STREET, DAPHNE, AL
JUNE 3, 2013
6:30 P.M.

1. CALL TO ORDER

2. ROLL CALL / INVOCATION / Pastor Johnny Hunt / Celebration Church

3. APPROVE MINUTES: Council meeting minutes / May 20, 2013

PRESENTATION: Update from Baldwin County Commissioners:

District 1 Frank Burt, Jr.
District 2 Robert "Bob" James
District 3 Tucker Dorsey, Chairman
District 4 Charles "Skip" Gruber

PUBLIC HEARING: Public Indecency Ordinance

4. REPORT STANDING COMMITTEES:

- A. FINANCE COMMITTEE /** Conaway
- B. BUILDINGS & PROPERTY COMMITTEE-** Davis
Review minutes / May 6th
- C. PUBLIC SAFETY -** Rudicell
- D. CODE ENFORCEMENT/ORDINANCE COMMITTEE -** Fry
- E. PUBLIC WORKS COMMITTEE / SOLID WASTE AUTHORITY -** LeJeune

5. REPORTS OF SPECIAL BOARDS & COMMISSIONS:

- A. Board of Zoning Adjustments –** Adrienne Jones
Nomination: Lynn Mitchell / 2nd Alternate Supernumerary Position
Nomination: Thomas Warner, III / 2nd Alternate Supernumerary Position
- B. Downtown Redevelopment Authority -** Conaway
Review minutes / May 22nd
MOTION: To appoint Debbie Strahley
- C. Industrial Development Board –** Davis
- D. Library Board -** Lake
- E. Planning Commission –** Scott
Review Special Called meeting minutes / May 2nd
 - a.) Report of the Planning Commission meeting held May 23rd
 - b.) Special Called Planning Commission meeting June 11th
- F. Recreation Board -** LeJeune
- G. Utility Board -** Fry
Review minutes / March 27th
Re-appoint Bob Segalla / Term to end June 2019

6. REPORTS OF OFFICERS:

- A. Mayors Report*
- B. City Attorney's Report*
- C. Department Head Comments*
- City Clerk Report:*

7. PUBLIC PARTICIPATION:

8. RESOLUTIONS & ORDINANCES:

RESOLUTIONS:

NO RESOLUTIONS

ORDINANCES:

2ND READ

- a.) **Annexation: GCOF Retreat at Tiawasee, LLC...../Ordinance 2013-27**
- b.) **Appropriation of Funds: Mobile Bay National Estuary
Program Community Contribution...../Ordinance 2013-29**
- c.) **Regulating Solicitation...../Ordinance 2013-30**

1ST READ

- d.) **Public Indecency...../Ordinance 2013-31**
- e.) **Appropriation of Funds: Williams Property Acquisition...../Ordinance 2013-32**

9. COUNCIL COMMENTS

10. ADJOURN

**CITY OF DAPHNE
CITY COUNCIL**

ROLL CALL

CITY COUNCIL:

COUNCILWOMAN CONAWAY	PRESENT___	ABSENT___
COUNCILMAN RUDICELL	PRESENT___	ABSENT___
COUNCILMAN LAKE	PRESENT___	ABSENT___
COUNCILMAN FRY	PRESENT___	ABSENT___
COUNCILMAN SCOTT	PRESENT___	ABSENT___
COUNCILMAN LEJEUNE	PRESENT___	ABSENT___
COUNCILMAN DAVIS	PRESENT___	ABSENT___

MAYOR:

MAYOR HAYGOOD	PRESENT___	ABSENT___
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CITY CLERK:

REBECCA HAYES	PRESENT___	ABSENT___
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CITY ATTORNEY:

JAY ROSS	PRESENT___	ABSENT___
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**MAY 20, 2013
CITY COUNCIL MEETING
BUSINESS MEETING
1705 MAIN STREET
DAPHNE, AL
6:30 P.M.**

1. CALL TO ORDER:

Council President Scott called the meeting to order at 6:33 p.m.

2. ROLL CALL/INVOCATION/PLEDGE OF ALLEGAANCE:

Pastor Timothy Conaway of Restoration Place Church gave the invocation.

3. COUNCIL MEMBERS PRESENT:

Tommie Conaway; Pat Rudicell, Randy Fry; Ron Scott; Robin LeJeune; Joe Davis, III.

ABSENT: John Lake.

Also present: Rebecca Hayes, City Clerk; Kyle Navarro, Attorney; David Carpenter, Police Chief; James White, Fire Chief; Vickie Hinman, HR Director; Margaret Thigpen, Civic Center Director; David McKelroy, Recreation Director; Richard Johnson, Public Works Director; Adrienne Jones, Director of Community Development; Michael Hoyt, Municipal Judge; Suzanne Henson, Senior Accountant; Tonja Young, Library Director; Ashley Campbell, Environmental Programs Manager; Firemen; Bob Segalla, Utility Board; Tomasina Werner, Beautification Committee; Philip Durant, BZA; Willie Robison, BZA; Dorothy Morrison, Beautification Committee; Selena Vaughn, Beautification Committee; Joe Lemoine, Planning Commission.

Absent: Mayor Haygood; Kim Briley, Finance Director; Richard Merchant, Building Official; Jay Ross, City Attorney.

3. APPROVE MINUTES:

May 6, 2013 Council meeting minutes

No amendments the May 6, 2013 Council meeting minutes stand approved as written.

May 13, 2013 Council Work Session minutes

No amendments the May 13, 2013 Council Work Session minutes stand approved as written.

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PRESENTATION: Ryan Ramsey / Eagle Scout Project

Mr. Ramsey presented his plans to build flower boxes to go in front of some of the downtown businesses.

MOTION BY Councilman Fry to approve the Eagle Scout project to build flower boxes for some of the downtown businesses as presented by Ryan Ramsey. Seconded by Councilwoman Conaway.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

PROCLAMATION: Public Works Week / May 19-25, 2013

Councilman LeJeune read and presented the proclamation to Richard Johnson, Public Works Director.

Mr. Johnson invited everyone to Public Works Day on Wednesday at Lott Park.

PUBLIC HEARING:

Annexation: GCOF The Retreat at Tiawasee, LLC
Location: Southwest of the intersection of Tiawasee Boulevard and County Road 13
Present Zoning: RSF-2, Single Family District, Baldwin County
Requested Zoning: R-2, Medium Density Single Family Residential District, City of Daphne
Recommendation: Favorable

Mrs. Adrienne Jones, Director of Community Development gave the presentation.

Mr. Steve Pumphrey with Prebble-Risch gave a presentation stating that the reason they are petitioning for annexation is that in order to be serviced by Daphne Utilities they have to annex into the city.

Council President Scott opened the Public Hearing at 6:45 p.m.

Mr. Robert Stankoski, Attorney retained by Tiawasee Trace Property Owners Association, gave a presentation on why council should not approve the annexation. The POA wants the

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C. PUBLIC SAFETY COMMITTEE – Rudicell

The minutes for the May 8th meeting are in the packet. The next meeting will be June 12th.

MOTION BY Councilman Rudicell to authorize the Police Department to apply for an SRO Grant and authorize the Mayor to sign the grant application. *Seconded by Councilman Fry.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

D. CODE ENFORCEMENT/ORDINANCE COMMITTEE – Fry

The minutes from the May 8th meeting are in the packet.

MOTION: Set a Public Hearing Date for June 3, 2013 to consider the Public Indecency Ordinance, and authorize advertising of Public Hearing. *Seconded by Councilman LeJeune.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

Councilman Fry reported that a revision to the Solicitation ordinance is on the agenda tonight for a first read.

E. PUBLIC WORKS COMMITTEE – LeJeune

The minutes for the April 15th meeting, and the May 1st Beautification Committee minutes are in the packet. The committee met this afternoon, and Phase II of the Lake Forest Project is back on schedule, Phase III will start in August or September. Councilman LeJeune thanked Mr. Johnson and the Public Works staff, and is looking forward to Public Works week, and the festivities on Wednesday.

5. REPORTS OF SPECIAL BOARDS & COMMITTEES:

A. *Board of Zoning Adjustments* – Adrienne Jones

The minutes for the January 3rd meeting are in the packet. The next meeting will be June 6th at 6:00 p.m. with two (2) appeals for variances.

MOTION BY Councilman Fry to appoint Philip Durant to fill the term of Jim Moss on the Board of Zoning Adjustments term to end July 2015. *Seconded by Councilman Rudicell.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

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MOTION BY Councilwoman Conaway to re-appoint Larry Cook to the Board of Zoning Adjustments term to end May 2016. Seconded by Councilman Fry.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilman Rudicell to appoint William E. Scully to the 1st Alternate Supernumerary position on the Board of Zoning Adjustments term to end May 2016. Seconded by Councilman LeJeune.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

B. Downtown Redevelopment Authority – Conaway

The April 24th minutes are in the packet. The next meeting will be May 22nd at 5:30 p.m.

C. Industrial Development Board – Davis

There will not be a meeting in May. The next meeting will be the fourth Monday in June. They will be discussing the charter and by-laws to make sure they meet the latest information by State Code.

D. Library Board – Lake

Mrs. Young reported that the kickoff for the Summer Reading Program is June 3rd.

E. Planning Commission – Scott

The minutes for the March 28th meeting are in the packet.

MOTION BY Councilman Fry to set a Public Hearing for June 17, 2013, and to approve advertising to consider:

Rezoning:	Earth, Inc.
Location:	Southwest of the intersection of Park Drive and Tallent Lane, east of the Daphne Sports Complex
Present Zoning:	R-3, High Density Single Family Residential District
Requested Zoning:	R6 (G) , Garden or Patio Homes
Recommendation:	Motion Failed to set forth an unfavorable recommendation which is No recommendation

Seconded by Councilman Davis.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

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F. Recreation Board – LeJeune

The minutes for the April 10th meeting are in the packet. They recently hosted a big soccer tournament with 139 teams, and an estimated 460 hotel rooms were booked for the event.

G. Utility Board – Fry

The next meeting will be next Wednesday at 5:00 p.m. in the council chambers.

6. REPORTS OF OFFICERS:

A. Mayor’s Report

- a. Parade Permit / Christ the King / Annual Pilgrimage Walk / June 1, 2013
- b. Parade Permit / Arthritis Foundation / Annual 5K and 1 Mile Fun Run / December 7, 2013

MOTION BY Councilman Lake to approve the permits for Christ the King / Annual Pilgrimage Walk / June 1, 2013 and the Arthritis Foundation Annual 5K and 1 Mile Fun Run / December 7, 2013. Seconded by Councilwoman Conaway.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

B. City Attorney’s Report

Mr. Navarro reported that he had communicated via text messaging with Mr. Ross and the mediation is court ordered so council will need someone with settlement authority present for the mediation on May 30th. He said council must comply with the judge’s order. Council needs to set a Special Called council meeting for May 30th. Mr. Ross is pretty sure that the judge will be happy to cancel the mediation once he hears that council does not have an interest in settling. Mr. Ross wants to make sure that the city is complying with the judge’s orders.

Council President Scott wanted to get some clarification before calling a special meeting, because there is no interest in calling one. He said it would help if council could see the court order, and asked Mr. Navarro if he could produce it in 15 minutes.

Mr. Navarro said he would see what he could do.

Council President Scott said they will proceed with the meeting and check with him later in the meeting.

C. Department Head Comments

Margaret Thigpen – Civic Center Director – reported that their new website is up and running.

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David McKelroy – Recreation Director - reported that there are two (2) more Brown Bag by the Bay concerts. May 30th is the first of the Art in the Park events.

James White – Fire Chief – reported that the new fire engine was delivered last week, and it is parked outside city hall. He invited council to look at it after the meeting. He announced the open house for Fire Station #3 June 15th. He said he would appreciate council’s consideration of the ordinance for the fire engine repair.

Richard Johnson – Public Works Director – invited all to Public Works Day on Wednesday. Daphne Utilities will be supplying hot dogs.

Adrienne Jones – Community Development Director - reported that the Planning Commission will meet Thursday, and will be considering two (2) zonings, two (2) master plans and two (2) subdivisions.

City Clerk Report – Rebecca Hayes –
 No report.

7. PUBLIC PARTICIPATION:

Mr. Willie Robison – 560 Stuart Street – spoke regarding a mistake on the agenda, one of the ordinances had a wrong title. He wanted council to know that citizens do read the packet. He also said that there were 5,000 people there to welcome the last Honor Flight’s return.

Mr. August Palumbo – 30578 Laurel Court – thanked council for their move to stand against violation of the sign ordinance. He also spoke regarding the annexation of The Retreat at Tiawasee.

8. RESOLUTIONS & ORDINANCES:

RESOLUTIONS:

- a.) Declaring Certain Property Surplus. /Resolution 2013-31
- b.) Acceptance of Streets & Drainage / Dunmore Subdivision. /Resolution 2013-32
- c.) Bid Award: City Hall Roof Restoration / Kiker Corporation. /Resolution 2013-33

MOTION BY Councilwoman Conaway to waive the reading of Resolution 2013-31, 2013-32 AND 2013-33. *Seconded by Councilman Fry.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

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MOTION BY Councilwoman Conaway to adopt Resolution 2013-31, 2013-32 and 2013-33. *Seconded by Councilman Fry.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

ORDINANCES:

2nd READ

a.) Appropriation of Funds: Fiscal 2013 Capital & Personnel. /Ordinance 2013-25

b.) Amendments to Pay Scale Plan, Hiring Practices and Pay Raises. /Ordinance 2013-26

1ST READ

c.) Annexation: GCOF Retreat at Tiawasee, LLC. /Ordinance 2013-27

d.) Appropriation of Funds: Fire Engine #4 #822 Repair /Ordinance 2013-28

e.) Appropriation of Funds: Mobile Bay National Estuary Program Community Contribution /Ordinance 2013-29

f.) Regulating Solicitation /Ordinance 2013-30

MOTION BY Councilman LeJeune to waive the reading of Ordinance 2013-25 and 2013-26. *Seconded by Councilman Fry.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilman LeJeune to adopt Ordinance 2013-25 and 2013-26. *Seconded by Councilman Davis.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

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MOTION BY Councilman Fry to suspend the rules to consider Ordinance 2013-28.
Seconded by Councilwoman Conaway.

ROLL CALL VOTE

Conaway	Aye	LeJeune	Aye
Rudicell	Aye	Davis	Aye
Fry	Aye	Scott	Aye

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilwoman Conaway to waive the reading of Ordinance 2013-28.
Seconded by Councilman LeJeune.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilwoman Conaway to adopt Ordinance 2013-28. *Seconded by Councilman Davis.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

ORDINANCES 2013-27, 2013-29 AND 2013-30 ARE 1ST READ.

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SPECIAL CALLED MEETING FOR MEDIATION FOR THE LAMAR SIGN MEDIATION

MOTION BY Councilman LeJeune to call a Special Called Council meeting for May 30, 2013, subject to the requirement of the Federal Court, at 9:00 a.m. to be held at the Federal District Court House 113 St. Joseph Street, Mobile, Alabama for the purpose of mediation in the Lamar Sign lawsuit. Seconded by Councilman Rudicell.

MOTION BY Councilman Fry to amend the motion to ask the judge to consider council is not interested in mediation, and chooses not to participate, but will comply to the judge's order. Seconded by Councilman Davis.

VOTE ON AMENDMENT

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

VOTE ON ORIGINAL MOTION AS AMENDED

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

9. COUNCIL COMMENTS:

Councilwoman Conaway participated in the tree planting in memory of Mayor Bailey Yelding, Jr. at the Elizabeth Yelding Park. The tree was purchased by Daphne East Elementary School students. She is looking forward to helping at Public Works Day Wednesday.

Councilman Rudicell – urged everyone to go and look at the new fire engine, and they expect another one in October.

Councilman Fry was in attendance at the tree planting, and gave kudos to Mrs. Conaway, the school children and Daphne Utilities. He said it was an excellent program. He said the Sunset Series with the Mobile Big Band performing was a good event. There was a good crowd for the series. He thanked the Recreation Department for the job they did for the event. He said it was a great experience, and encouraged anyone who had not experienced it to go to the next series.

Councilman Davis asked everyone to keep in mind those affected by the tornado in Moore, Oklahoma.

Council President Scott enjoyed all the e-mails he received on the sign issue. He has always said that there is nothing worse in a community than apathy, and Daphne is certainly not apathetic.

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10. ADJOURN:

MOTION BY Councilwoman Conaway to adjourn. *Seconded by Councilman Davis.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

THERE BEING NO FURTHER BUSINESS TO DISCUSS, THE MEETING ADJOURNED AT 8:14 P.M.

Respectfully submitted by,

Rebecca A. Hayes, City Clerk

Certification of Presiding Officer,

Ron Scott, Council President

**PUBLIC HEARING
FOR COUNCIL MEETING
JUNE 3, 2013**

TO CONSIDER:

FROM ORDINANCE COMMITTEE:

PUBLIC INDECENCY ORDINANCE

RECOMMENDATION: FAVORABLE

**CITY OF DAPHNE
ORDINANCE NO. 2013-31**

**AN ORDINANCE TO REPEAL ORDINANCE NO. 2003-09
CONCERNING PUBLIC INDECENCY**

WHEREAS, based on the evidence contained in Jules B. Gerard & Scott D. Bergthold, *Local Regulation of Adult Businesses* (2013 ed.) along with the studies and court cases cited therein, the City Council of the City of Daphne has determined that Adult Entertainment Establishments (hereinafter defined) have negative secondary effects and are often associated with crime, the downgrading of property values and sexual exploitation;

WHEREAS the City Council of the City of Daphne desires to minimize the negative secondary effects of Adult Entertainment Establishments in order to protect the public health, safety and welfare of the citizens, preserve the quality of life, property values and character of the City of Daphne and deter the spread of urban blight;

WHEREAS it is the intent of the City Council of the City of Daphne to enact a content-neutral ordinance regulating Adult Entertainment Establishments to further a compelling governmental interest of minimizing the negative secondary effects of Adult Entertainment Establishments in the City of Daphne; and

WHEREAS it is not the intent of the City Council of the City of Daphne to suppress any speech activities protected by the United States Constitution or the Alabama Constitution.

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

PUBLIC INDECENCY

(a)

Definitions. As used in this section, the following words and terms shall have the following meanings:

Adult Bookstore. An establishment which, as one of its Principal Business Purposes, offers for sale or rental books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videocassettes, slides, tapes, records, compact disks or other form of visual or audio representations which are distinguished or characterized by their emphasis on matters depicting, describing or relating to Nudity.

Adult Cabaret. A nightclub, bar, theater, concert hall, auditorium, restaurant or similar establishment which, having as a preponderance of its entertainment or staff, live performances or appearances by Topless females.

Adult Entertainment Establishment. Adult Bookstores, Adult Cabarets, Adult Novelty Stores, Adult Theaters or Tattoo Facilities.

Adult Novelty Store. An establishment which, as one of its Principal Business Purposes, offers for sale or rental books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videocassettes, slides, tapes, records, compact disks or other form of visual or audio representations or instruments, devices or

paraphernalia which are distinguished or characterized by their emphasis on matter depicting, describing or relating to Nudity.

Adult Theater. A commercial establishment where, for any form of consideration, films, motion pictures, or other photographic reproductions are regularly shown which are distinguished or characterized by their emphasis on matters depicting, describing or relating to Nudity.

Distinguished or characterized by. To be “distinguished or characterized by” means the essential character or quality of an item. As applied in this ordinance, no business shall be classified as an Adult Entertainment Establishment by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

Nude (Nudity). The showing, display or appearance of:

(1)

All or any part of the human male or female genitals, pubic area or anus with less than a fully opaque covering;

(2)

More than two-thirds (2/3) of the buttocks of the human male or female with less than a fully opaque covering;

(3)

Any portion of the human female areola or nipple with less than a fully opaque covering; or

(4)

The covered male genitals in a discernibly turgid state.

Principal Business Purpose. A business purpose shall be a Principal Business Purpose if said purpose accounts for thirty five percent (35%) of the business’:

(1)

Displayed merchandise;

(2)

Wholesale or retail value of displayed merchandise;

(3)

Revenues; or

(4)

Interior business space.

Public Place. Means any location which is frequently by the public, or where the public is present or likely to be present, or where a person may reasonably be expected to be observed by members of the public or is otherwise visible to members of the public. Public Places include, but are not limited to, streets, sidewalks, parks, beaches, business and commercial establishments (whether for profit or not-for-profit and whether open to the public at large or whether entrance is limited by age restrictions, cover charges, or membership requirements), bottle clubs, hotels, motels, restaurants, night clubs, country

clubs, cabarets and meeting facilities utilized by any religious, social, fraternal, charitable or other organizations. Premises used solely as a private residence, whether permanent or temporary in nature, shall not be deemed a Public Place. Public Place shall not include enclosed single sex public restrooms, enclosed single sex functional showers, locker and/or dressing room facilities, enclosed motel rooms and hotel rooms designed and intended for sleeping accommodations, doctor's offices, portions of hospitals and similar places in which Nudity or exposure is necessarily and customarily expected outside of the home and the sphere of privacy constitutionally protected herein.

Tattoo Facility. The geographic location at which an individual does one or more of the following for compensation:

- (1) Places an indelible mark upon the body of another individual by the insertion of a pigment in or under the skin.
- (2) Places an indelible design upon the body of another individual by production of scars.
- (3) The perforation of human tissue other than ear for a nonmedical purpose.

Topless. The exposing of any portion of the human female breast below a horizontal line across the top or the areola at its highest point or simulation thereof excluding any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit or outerwear apparel.

(b)

Public indecency. It shall be unlawful for any person in a Public Place in the corporate limits or police jurisdiction of the City of Daphne to knowingly, intentionally or recklessly:

- (1) Engage in actual or simulated sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, excretory functions;
- (2) Appear or suffer or permit another person to appear Nude or in a state of Nudity;
- (3) Fondle, touch or otherwise come in direct or indirect contact with the genitals of himself, herself, or another person; or
- (4) Fondle, touch or otherwise come in direct or indirect contact with the female breasts of another person or to permit another person fondling, touching or otherwise coming in direct or indirect contact with a female's breasts.

(c)

Public indecency in establishment dealing in alcoholic beverages.

(1)

No person shall expose, show or display to public view his or her genitals, pubic area, vulva, anus, anal clef or cleavage or any simulation of such act in an establishment dealing in alcoholic beverages.

(2)

No female person shall appear topless in an establishment dealing in alcoholic beverages.

(3)

No person maintaining, owning or operating an establishment dealing in alcoholic beverages shall suffer or permit any person to expose, show or display to the public view his or her genitals, pubic area, vulva, anus, anal clef or cleavage or simulation of such act within the establishments dealing in alcoholic beverages.

(4)

No person maintaining, owning or operating an establishment dealing in alcoholic beverages shall suffer or permit any female person to appear Topless within the establishment dealing in alcoholic beverages.

(5)

No person shall engage in and no person maintaining, owning or operating an establishment dealing in alcoholic beverages shall suffer or permit any sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, any sexual act which is prohibited by law, touching, caressing or fondling of the breasts, buttocks, anus or genitals or the simulation of such acts within an establishment dealing in alcoholic beverages.

(6)

No person shall cause and no person maintaining, owning or operating an establishment dealing in alcoholic beverages shall suffer or permit the exposition of any graphic representation, including, but not limited to, pictures or the projection of film or image, which depicts human genitals, pubic area, vulva, anus, anal cleft or cleavage, Topless female(s), sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, any sexual act prohibited by law, touching, caressing or fondling of the breasts, buttocks, anus or genitals or any simulation of such acts within any establishment dealing in alcoholic beverages.

(d)

Adult Entertainment Establishments location requirements.

(1)

Adult Entertainment Establishments are prohibited:

a.

Within one thousand (1,000) feet of any residential zone or any single family or multiple-family residential use.

b.

Within one thousand (1,000) feet of any public or private elementary or secondary school.

c.

Within one thousand (1,000) feet of any family day care, day care center for children, nursery, or preschool.

d.

Within one thousand (1,000) feet of any church or other facility or institution used primarily for religious purposes.

e.

Within one thousand (1,000) feet of any public park.

f.

Within one thousand (1,000) feet of another Adult Entertainment Establishment.

g.

Within a local business district, professional business district, overlay district or mixed use district.

(2)

The distances provided in this section shall be measured by following a straight line, without regard to intervening buildings, from the nearest point of the property parcel upon which the proposed use is to be located, to the nearest point of the parcel of property or the land use district boundary line from which the proposed land use is to be separated.

(3)

The table of permitted uses shall be updated to reflect the location restrictions contained herein.

(e)

Hours of Operation. No Adult Entertainment Establishment shall be open to do business before eight o'clock a.m. (8:00a.m.), and no Adult Entertainment Establishment shall be open to do business after twelve o'clock (12:00) midnight. No Adult Entertainment Establishment shall be open to do business on Sunday.

(f)

Permitting.

(1)

It shall be unlawful to operate an Adult Entertainment Establishment in the City of Daphne without a valid Adult Entertainment Establishment Permit.

(2)

An applicant for an Adult Entertainment Establishment Permit shall file in person with the Department of Community Development a completed application made on a form provided by the Department of Community Development accompanied by an application fee of \$50.00.

(3)

An application for an Adult Entertainment Establishment Permit shall contain:

(a)

Applicant's full name and any other names used by the applicant in the past five (5) years.

(b)

Written proof of the age of the applicant in the form of a driver's license or other picture identification document issued by a governmental agency.

(c)

Current business or mailing address of the applicant.

(d)

The proposed name of the proposed Adult Entertainment Establishment.

(e)

The proposed location of the proposed Adult Entertainment Establishment.

(f)

An application of an Adult Entertainment Establishment Permit shall be accompanied by a legal description of the property where the Adult Entertainment Establishment is proposed to be located.

(4)

An application containing all items required by this section shall be considered complete. Within thirty (30) days of the submission of a completed application, the Department of Community Development shall issue a permit unless:

- (a) The applicant is less than eighteen (18) years of age.
 - (b) The location of the proposed Adult Entertainment Establishment is not in compliance with the locational requirement of this ordinance.
 - (c) The application fee required by the Department of Community Development has not been paid.
- (5) Adult Entertainment Establishment Permit shall not, and does not, relieve the applicant of other relevant licensing or permitting requirements.
- (g) *City or state regulation.* Nothing in this section is intended to authorize, legalize or permit the establishment, operation or maintenance of any business, building or use which violates any city regulation or statute of the State of Alabama.
 - (h) *Penalty.* 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.

SEVERABILITY

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

REPEALER

Ordinance No. 2003-09 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. This Ordinance shall lift the moratorium placed on the “establishment of adult entertainment stores and tattoo parlors in the City of Daphne” enacted on February 4, 2013.

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.

ADOPTED AND APPROVED BY AND CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA THIS ___ DAY OF _____ 2013.

CITY OF DAPHNE

DANE HAYGOOD, MAYOR

ATTEST:

REBECCA A. HAYES, CITY CLERK

**REPORT
OF
STANDING COMMITTEES**

Buildings & Property Committee Meeting
Monday, May 6, 2013 5:30 PM
Daphne City Hall

Committee

Councilman Joe Davis, Chair
Councilman Randy Fry
Councilman Pat Rudicell
Mayor Dane Haygood
Richard Merchant, Building Official
Frank Barnett, Maintenance Supervisor
Margaret Thigpen, Civic Center Director
Rick Whitehead, IT Coordinator

Committee Minutes (Summary)

Present: Mayor Dane Haygood, Frank Barnett, Councilman Randy Fry, Jane Ellis, Councilman Pat Rudicell, Richard Johnson, Margaret Thigpen, David McKelroy, Councilman Joe Davis, Richard Merchant, Rebecca Hayes, Suzanne Henson, Annie Root & Fran Neumann (BRAG)

A.) Minutes from April Meeting: March Minutes not available for approval. Suspended until next meeting.

B.) BRAG: Annie Root with Bay Rivers Art Guild (BRAG) report on the activities and projects the art group has been working on and future plans. They have many new programs and trying to attract and involve young people. The city used to give BRAG \$12,000 per year for operations but that stopped 4 years ago. It is a struggle financially to provide the quality classes for the citizens. They are requesting that the BRAG building which sits behind City Hall be upgraded and painted to match City Hall. Fran Neumann provided a rendering with these improvements and changes. This rendering includes landscaping.

Richard Johnson stated that the City has \$1000 is budgeted for the BRAG building. He will get Dwayne to look at the landscaping to see if the grounds budget could cover this. Discussion over the city providing the labor and BRAG covering the materials. Joe Davis said we would work up a cost on what they are asking for and get back in touch. The Mayor asked if the committee would allow him to approve it. **Joe Davis made a motion to pursue some plans and priorities for the project and approve the design using existing resources and move forward.**

C.) City Clerk's Office: Rebecca Hayes, City Clerk, requested that her office be repainted using a different color (she provided a sample) and ad chair rail as well. Richard Johnson stated that he felt by allowing an employee to paint or alter their office that is different from the existing look will open up a Pandora's Box with requests asking for the same

thing. Also from a maintenance standpoint it is better to keep it all the same. She also requested that a door and window be placed in her office to match the one in the city clerk's office. Richard and Frank said they would look at costs, materials, etc. to accommodate this request.

D.) Surplus Resolution – Suzanne brought before the committee to move forward to surplus the named garbage truck. Mayor wants to make sure we have it priced right. Suzanne said Duke works up the figures. Mayor said we should reach out to other municipalities for any interest on their party. **Pat Rudicell made a motion to declare the truck surplus and Randy Fry made a second motion.**

E.) Civic Center – Margaret presented her monthly revenue reports. Civic Center and Bayfront were both up in revenue. 600 people are expected for the upcoming Auburn Alumni Association's event. There will be an Open House at Civic Center to feature the facility as a daily rental for business meetings, etc. as well. Margaret reported that the websites were ready to go live. Several big events coming up this summer one being the TASTE (Taste of the Eastern Shore) to benefit Daphne High School.

F.) Building Inspection – Reporting 116 permits for the month for a total of \$2M with approximately \$25,000 in fees for the city.

G.) Building Maintenance – A set of doors at City Hall need to be replaced. Frank said we could buy one or the set. Buying one we do take the risk of it not looking the same – stain be off some. \$1100 for one \$2100 for both. Randy Fry asked if a warranty came with the doors and Frank said no. **Randy made a motion we buy 2 doors and Pat made a second motion.**

**REPORT
OF
SPECIAL BOARDS**

BZA

Lynn Mitchell, CCIM

26244 Via Del San Francesco

Daphne, Alabama 36526

251-656-4770

lyn@bellsouth.net

May 14, 2013

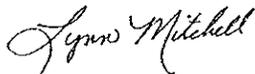
Dear City Council Members,

Five years ago, I sold my commercial real estate practice in Georgia and returned to Daphne after a long absence. I made a decision to devote my time to volunteer activities until I found a place where I 'fit'. Since then, SCORE, SARPC, Job Seekers, CCIM, and a variety of other organizations have allowed me to be involved in all aspects of volunteerism and the business community here in Mobile. While finding a 'job' is important to many of the people I have worked with in my volunteer experience, for me it is much more important to find a position that I can add value to, and be valued in.

I have become aware of new vacancies on both the BZA and the Economic Development Board in the City of Daphne. My experience in development, commercial real estate and work with a variety of organizations in the business and volunteer community provides a foundation of experience which I hope will be valuable to the city in either, or both of these positions. Having one individual serve in both positions would provide continuity and coordination that could streamline the development process. As Daphne grows, it is important that we find ways to make ourselves more appealing and accessible to those who wish to locate businesses here. I hope that you will consider me as a candidate who can assist in that effort.

I have attached my resume, and would welcome the opportunity to meet with you in person to discuss how I can add value to either, or both of these positions.

Sincerely,



Lynn Mitchell

BZA

Lynn Mitchell, CCIM

26244 Via Del San Francesco

Daphne, Alabama 36526

251-656-4770

Lyn@bellsouth.net

SKILLS

- Insurance Adjustor, Alabama License 16802347
- Xactimate Level 1 & 2 Certifications
- Commercial and residential construction, planning, and development.
- Management of personnel, clients, and business assets.
- Training, curriculum development and education of clients, employees and community.
- Public speaking to diverse groups in both large and small group settings.
- Community outreach using a variety of forums including social networking, face to face, and printed media.
- Fundraising
- Volunteer workforce development.
- Space management and construction in office, retail, and industrial settings, including medical facilities.
- Knowledge of laboratory procedures, safety, and equipment.
- Core computer skills including familiarity with GIS, Microsoft Office, Databases, and marketing via the Internet and computer anchored presentations.

SIGNIFICANT ACCOMPLISHMENTS

- Built Commercial/Investment Real Estate firm closing an average of \$15,000,000 in transactions annually from the ground up, ultimately selling to a national franchise.
- Reviewed client investments, goals, and lifestyle needs
- Counseled with clients to develop portfolio based investment strategies
- Developed long and short-term investment programs for clients
- Acted as client representative to interface with local officials and construction contractors on commercial projects including shopping centers, medical office, dialysis centers, industrial, office, multi-family, and development properties.
- Marketed on national real estate platforms presenting properties to over 100 professionals at each meeting in instructional style settings using creative real estate transaction formats to expand both acquisition and disposition opportunities
- Counseled novice realtors to assist in pursuit of CCIM designation.
- Spearheaded the development of the Southern Gulf Coast District of the Alabama Chapter of CCIM working with both the state chapter and National CCIM
- Volunteer with the Service Corps of Retired Executives, Job Seekers, Area Agency on Aging, and other local agencies.

PROFESSIONAL HISTORY

2008-current

La Scala Real Estate Investments, LLC- Owner, Broker

2000- 2008	Mitchell Realty Group, Inc.- Broker, Owner, President
1998-2000	Century 21 Long Mountain Realty-Sales Associate
1996-1998	Prudential Georgia Realty-Sales Associate
1989-1995	Mobile County Public Schools- Science Instructor From 1991-1995, I was a member of the Instructional Team serving the magnet school system, specifically in the Science Department. Working in the team environment, I developed curriculum and teaching models that were extended to schools throughout Mobile, the State, and school districts both nationally and internationally. Teacher of the Year 1991

EDUCATION:

AdjusterPro	Insurance Adjuster/Xactimate Training
NFIP	Flood Insurance Certification Course
CCIM Institute	CCIM Designee Commercial Real Estate
University of South Alabama, Alabama	BS-Science Education
Burlington College, New Jersey	AAS-MTASCP

Continuing Coursework at a number of colleges throughout the Southeast focusing on Science and Real Estate.

PROFESSIONAL DESIGNATIONS:

Alabama insurance Adjuster License #16802347
 NIFP Claims Adjuster Presentation, Feb, 2013
 Certified Commercial Investment Member (CCIM) designation awarded by CCIM Institute.
 Alabama and Georgia Teacher Certification in Grades K-12 (Not Current)
 American Society of Clinical Pathologists (inactive)

AWARDS AND AFFILIATIONS:

Mobile County Public Schools- Teacher of the Year
 Kid's Cottage- Board Member of Charitable Foundation serving Children of Gilmer County, Pickens County, and Fannin County, Georgia.
 Gilmer County Georgia Builder's and Developers Association
 Gilmer County Georgia Chamber of Commerce
 North Georgia Domestic Violence Task Force – Board Member
 Alabama Senior Citizen's Hall of Fame -2010 Inductee

BZA

Thomas Warner III
1315 Warren Dr
Daphne, AL 36526
(251) 455-7142
Yardsarge@gmail.com

Summary

- True Professional whose skills and abilities are shown in the current position as Lead Sales and Service Clerk at the Daphne Post Office.
- Currently serves as Trustee for the Macedonia Missionary Baptist Church
- Elected Local Union Shop Steward American Postal Workers Union
- Vice President LSK Lupus Awareness Foundation
- Retired SMSGT U.S. Air Force Reserves 2005

Education

Micro Computer Accounting Philips College 1990

Career History and Accomplishments

Lead Sales Service Associate United States Postal Service 09/27 1994 to Present
Daphne AL

- Communicates and provides administrative and technical guidance to retail and post office operations employees assigned to the unit by informing them of changes or clarifications in policies, procedures, operations, schedules, and regulations. Ensures that work is performed efficiently.

Fuels superintendent Grade E-8 403rd LRS/LGSF Keesler AFB MS 1/1/1988 to 6/1/2005

- Established personnel controls, training program, and supply administrative procedures. Monitors Unit Manning documents and allocates personnel to authorized positions
- Oversees unit personnel readiness. Participates in mobility planning, submission of resources and training data, and evaluates and approves unit type code changes.
- Maintains quality control of petroleum fuel, and cryogenic products. Documents analysis results in FAS area laboratory to ensure the integrity of the base-level analysis procedures.
- Supervisor of 10 fuels journeymen and craftsmen

Executive Vice President South Alabama Area Local 10/ 2006 - 09/2010

Treasurer South Alabama Area Local 02/ 1999 to 10/ 2006

**DOWNTOWN REDEVELOPMENT AUTHORITY
1705 MAIN STREET
DAPHNE, AL
MAY 22, 2013
5:30 P.M.**

1. CALL TO ORDER/ROLL CALL

Casey Zito called the meeting to order at 5:40 p.m..

Members Present: Casey Zito; Ken Balme; Dorothy Morrison; Patricia Vanderpool; Dayna Oldham; Ronald Nero.

Absent: Doug Bailey; Mary Beth Mantiply.

Also Present: Rebecca Hayes, Recording Secretary; Councilwoman Conaway; Debbie Strahley;

2. APPROVE MINUTES / APRIL 24, 2013

MOTION BY Dorothy Morrison to approve the April 24, 2013 meeting minutes. Seconded by Ronald Nero.

ALL IN FAVOR

NONE OPPOSED

MOTION CARRIED

3. TREASURERS REPORT

Casey gave the Treasurers Report ending March 31, 2013 with a balance of \$94,184.60.

4. BEAUTIFICATION REPORT

Dorothy reported they are through planting until the fall. They are making plans to finish the rest of the area at the triangle in front of KFC.

5. OLD BUSINESS

a.) Downtown Planters / Dorothy Morrison

Council approved Ryan Ramsay's project for the flower boxes.

Discussion was held on refurbishing the historical markers on the sidewalks.

b.) Plaque / Dorothy Morrison

Mr. Johnson is waiting on approval from the Mayor for mounting the plaque on the stand.

Discussion was held that the former Council had approved the plans and placement of the plaque.

**DOWNTOWN REDEVELOPMENT AUTHORITY
1705 MAIN STREET
DAPHNE, AL
MAY 22, 2013
5:30 P.M.**

c.) Website

Casey reported they have a new contact for the website, John Beck.

d.) Mini-Grant Update

Mini-Grants awarded are:

Certa Pro Painters	\$1,025	Landscaping
Daphne Land Company	\$2,500	Paving parking lot
Sandbank, LLC (DeCuba)	\$ 828.49	Paving parking lot
Eddie Youngblood Builders	\$2,000	Paving parking lot
Southern Nappa	\$1,000	Lighting for oak tree in front of building
Olde Towne Daphne Assoc.	\$3,000	Olde Towne Daphne Map & Business insert

d.) Reprint of Business Insert

Ken is working on updating the insert with new businesses.

Discussion was held on getting permission to use a portion of the map for the rack at the Welcome Centers.

6. NEW BUSINESS

a.) Nominate Debbie Strahley for appointment to the Downtown Redevelopment Authority

MOTION BY Dorothy Morrison to nominate Debbie Strahely for appointment to the Downtown Redevelopment Authority. Seconded by Patty Vanderpool.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

7. NEXT MEETING

The next meeting will be June 26, 2013 at 6:14 p.m.

There being no further business to discuss the meeting adjourned at 7:00 p.m.

Respectfully Submitted,
Downtown Redevelopment Authority

Downtown Redevelopment Authority

Debbie C. Strahley

P. O. Box 503
912 Van Ave, Apt 314, Daphne, AL
Montrose, AL 36559

251-599-8577

strahley@alt.net

Experience:

APR INC. Fairhope, AL

January 2002-Present

Sales & Marketing Manager, over all daily operations, buyer and training staff.

Daniel Corp./Colony At The Grand, Point Clear, AL

April 2008 -January 2010

Greet guest, promote condo living, assist Real Estate agents with daily sales.

WaterColor, Seaside, FL

January 2000 - March -2002

Promotional Coordinator for WaterColor Resort. Assisted Marketing Manager with design and production of logos for golf course, The WaterColor Inn and resort.

Arnold Palmer & Nancy Lopez Golf Co., Chattanooga, TN

October 1998-August 2000

Company Sales Rep and integral part of the launch of The Nancy Lopez Golf line. Introduced approximately 40 new products into Alabama, Florida Panhandle, Louisiana and Mississippi, serving 500 customers. Cold calls to prospect for new clients and service existing accounts. Answered questions, solved problems and followed-up on product lines to ensure overall satisfaction with all products and services.

Education

University of Tennessee at Chattanooga

Bachelor of Science Degree/Business



— T H E —
C O L O N Y
— AT THE GRAND —

To Whom It May Concern:

I take genuine pleasure in recommending Debbie C. Strahley for a position with in your organization.

I am proud to say that I have known her both professionally and personally. I have had the privilege of not just working with her but also having her become an integral part of our sales team. She has shown a consistent high level work ethic as well. She is a woman of education, high ideals, and sound integrity. Her originality of ideas and her capacity for hard work have been outstanding characteristics since the first day I met her. So far as I am concerned, you may tell her what I have said – I've often told her myself.

I believe that your firm would be fortunate in obtaining her services.

Sincerely,

Jason P. Janssen

Director of Sales and Marketing
The Colony at the Grand
6401 Old Battles Rd.
Fairhope, AL 36532
jjanssen@danielrealty.com

— * —
6401 OLD BATTLES ROAD
FAIRHOPE, AL 36532

P: 251.929.3383
F: 251.929.2405

— * —

~~CONFIDENTIAL~~

water·color
1701 EAST HIGHWAY 30A SEAGROVE BEACH, FLORIDA

May 25, 2001

Ladies/Gentlemen:

I'm delighted to recommend Debbie Strahley as a conscientious, multi-talented, and pleasant person who became an invaluable resource for Arvida and me. There was nothing that Debbie wasn't willing or able to do for any aspect of our dynamic business. She has a natural ability to produce and recognize quality work with exceptional speed—a rare combination I came to depend and rely on.

I hope you'll take the opportunity to put her considerable talents to work for you.

Please contact me if I can provide any additional information.

Cordially,

Karen Terrell

Karen Terrell

Marketing Manager

Arvida/WaterColor

1701 East Highway 30A

Seagrove Beach, Florida 32459

850/231-6555



THERE'S MORE IN IT™



NANCY LOPEZ GOLF

Defining the Women's Game™

September 25, 2000

Ladies/Gentleman:

I am writing to you in reference to my experience of having worked with Debbie Strahley at The Arnold Palmer Golf Company. I have known Debbie since I joined the Company in October 1997.

Debbie is an extremely hard-working individual, with unyielding loyalty to her Company and her coworkers. She has been very popular with many of her accounts. My own experience with Debbie has shown her to have a tremendous appetite to be an integral part of the team and to be an energetic contributor to the overall corporate vision.

I would be happy to discuss Debbie with you if you want to call me at the number shown below.

Sincerely,

Elaine Scott
Vice President Marketing and Communications

THE ARNOLD PALMER GOLF COMPANY

THE CITY OF DAPHNE
PLANNING COMMISSION MINUTES
SPECIAL MEETING OF MAY 2, 2013
COUNCIL CHAMBERS, CITY HALL - 5:00 P.M.

CALL TO ORDER

The number of members present constitutes a quorum. The special meeting of the City of Daphne Planning Commission was called to order at 5:00 p.m.

CALL OF ROLL:

Members Present:

Joe Lemoine
Dan Gibson
Don Terry, Secretary
Ed Kirby, Chairman
Larry Chason, Vice Chairman
Ron Scott, Councilman
Chief James "Bo" White

Members Absent:

Charles Smith

Staff Present:

Adrienne Jones, Director of Community Development
Jan Vallecillo (Dickson), Planning Coordinator
Jay Ross, Attorney

Staff Absent:

Misty Gray, Attorney
Kyle Navarro, Associate Attorney
Richard Johnson, Public Works Director
Ashley Campbell, Environmental Programs Manager

Others Absent:

Rob McElroy, General Manager/Utilities Board of the City of Daphne
Danny Lyndall, Operations Manager/Utilities Board of the City of Daphne
Rex Rentz, Code Enforcement Officer/Utilities Board of the City of Daphne

The first order of business is the call to order.

Chairman: Please let the record reflect that Mr. Smith is not present.

The next order of business is the approval of the minutes.

APPROVAL OF MINUTES:

The minutes of the March 28, 2013 regular meeting were considered for approval.

THE CITY OF DAPHNE
PLANNING COMMISSION MINUTES
SPECIAL MEETING OF MAY 2, 2013
COUNCIL CHAMBERS, CITY HALL - 5:00 P.M.

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

A **Motion** was made by Mr. Chason and **Seconded** by Mr. Lemoine **to approve the minutes of the March 28, 2013 regular meeting. The Motion carried unanimously.**

NEW BUSINESS:

The first order of business is final plat review for Summer Oaks Townhomes, Phase XIV.

FINAL PLAT REVIEW:

File SDF13-03:

Subdivision: Summer Oaks Townhomes, Phase XIV

Present Zoning: R-4

Location: East of U. S. Highway 98, north of Wal-Mart
Area: 3.43 Acres ±, (13) lots
Owner: Tonsmeire Development Corporation - Elizabeth Tonsmeire
Engineer: Rowe Surveying and Engineering - Don Rowe

Ms. Jones: I set it up like BZA. Let me go ahead and do a little background. Let me give some background first. The subject property is zoned R-4, Multi-family. It is located on the east side of U.S. Highway 98, north of Wal-Mart. This is the final plat that has been presented. This is Phase Fourteen, and there are thirteen lots.

Mr. Don Rowe, representing Rowe Surveying and Engineering. I am present to answer questions you may have.

Chairman: Do any of the Commissioners have any questions or comments? With that being said, if there is no objection, the Chair will entertain a motion.

A **Motion** was made by Mr. Terry and **Seconded** by Mr. Gibson **to approve the final plat for Summer Oaks Townhomes, Phase XIV. The Motion carried unanimously.**

Chairman: I meant to announce at the beginning of the meeting we are limited to fifty minutes today because we have the BZA coming behind us. I have been informed that I will be thrown off of this pedestal if I do not get out of the way.

THE CITY OF DAPHNE
PLANNING COMMISSION MINUTES
SPECIAL MEETING OF MAY 2, 2013
COUNCIL CHAMBERS, CITY HALL - 5:00 P.M.

The next order of business is preliminary/final plat review for Resubdivision of Lot 2, Webb FLP Subdivision.

PRELIMINARY/FINAL PLAT REVIEW:

File SDPF13-04:

Subdivision: Resubdivision of Lot 2, Webb FLP

Present Zoning: B-2, General Business

Location: On the west side of U. S. Highway 98, north of Van Avenue
Area: 8.02 Acres \pm , (2) lots
Owner: Webb Family Limited Partnership - Scottie Webb
Engineer: Preble-Rish - Steve Pumphrey

Ms. Jones: I think that I left off your drawing, but I will say you have a favorable recommendation from staff and the utility companies. It is located on U.S. Highway 98 across from our jail. Last month or the month before, they did a one-lot split followed by site plan approval. Now they are back for another split off of Lot 2. We have someone who is interested in purchasing the existing buildings there. They are located in the leg portion adjacent to Halls Lane and U.S. Highway 98. As you can see, there is very little connection to the property to the north. That is what we are desiring to do tonight. We would like to cut off the existing portion at the bottom. They have a party interested in purchasing that piece, and that piece alone. In the last meeting, we got into talking about a master plan for the balance of the property. We are not really looking at that piece. As I told you in the last meeting, the owner is not looking at doing anything with that parcel. He may do a couple of more sites on the front and have the big piece in the back. Some of you were not happy about this type of plan. One thing that I noticed is that Target has a big box store in the back with three out parcels out front. No big box store is going to go back there. The site is not big enough. I went back to the owner, and this plan is the best that I can do. That is my business. There are many, many different plans we could lay out in the back, but this gentleman does not have a clue what that will be. As I told you before, he would like nothing better to sell the balance of the property just like it is now. He has not interest in building any road ways. I have always pushed to maintain access to the rear of the property for access. I could have given you a dozen ways to lay this out, but what I have given you is the best that he has got. His goal here tonight is to cut off the existing retail portion on the bottom.

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

Mr. Chason: I do agree when we talked about the Popeyes site that the focus was on the raw land of which they come out of the southeast corner of that tract.

THE CITY OF DAPHNE
PLANNING COMMISSION MINUTES
SPECIAL MEETING OF MAY 2, 2013
COUNCIL CHAMBERS, CITY HALL - 5:00 P.M.

Mr. Chason: This is, I assume, the existing buildings to the south which are being bought as is and will be continued to be used that way. I still contend that before we further subdivided any additional property other than this lot that we need a master plan. I still think that is the way to go. However, since the piece is removed, I do not see a problem with one more subdivision without a master plan. As far as I am concerned, I think we should disregard the drawing we were given showing two more lots. I would not want to give any indication that is acceptable. I would say as far as what they are asking for on 2A that is a reasonable request. That is my opinion.

Chairman: Do any of the Commissioners have any questions or comments? He opened the floor to public participation. Is there someone else who would like to address the Commission?

Mr. Calhoun: My name is Danny Calhoun. I am an attorney in Fairhope, Alabama. I represent the Webb Family Partnership. I am in support of this plan. I just wanted to briefly say this subdivision complies with the current subdivision and zoning regulations. As Mr. Chason stated because this parcel contains all of the existing buildings that are on the main parcel, it makes sense to divide it off and to make it a separate parcel. I would encourage you to approve the subdivision as requested. I will be happy to answer any questions should the Commission have any.

Chairman: Thank you. Is there anyone else that would like to address the Commission? With that being said, I will close public participation. Do any of the Commissioners have any further questions or comments? With that being said, if there is no objection, the Chair will entertain a motion.

A Motion was made by Mr. Chason and Seconded by Mr. Terry to approve the preliminary/final plat for the Resubdivision of Lot 2, Webb FLP Subdivision, contingent upon no further subdividing of 2B is allowed without the presentation of a master plan. The Motion carried unanimously.

Ms. Jones: Just one quick comment. This is kind of based on the BZA meeting that is coming up tonight. One of the buildings on the site is going to be rendered nonconforming. I think you are aware of that, and you may have some parking issues, as well. I wanted to make a note of that and to have it on the record. The subdivision does render non-conformities for at least one of the buildings on the site. The one located in the south corner. It is fine to approve the subdivision. I just wanted to say that is a factor they will have to consider in the future if they want to expand that building.

Chairman: Ok.

The next order of business is subdivision replat review for Ervin Subdivision.

SUBDIVISION REPLAT REVIEW:

THE CITY OF DAPHNE
PLANNING COMMISSION MINUTES
SPECIAL MEETING OF MAY 2, 2013
COUNCIL CHAMBERS, CITY HALL - 5:00 P.M.

File SRP13-01:

Subdivision: Ervin

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

Location: Northeast of Japonica Lane and Park Drive

Area: 4 Acres ±

Owner: Jimmy Ervin

Surveyor: GeoSurveying - Matt Kountz

An introductory presentation was given by Mr. Ervin, the owner. I have three lots. I would like to expand one lot to make it larger than it was originally by adding twenty-five feet to it.

Chairman: Do any of the Commissioners have any questions or comments? So we are just shifting an interior lot line to make one lot bigger?

Mr. Scott: With moving this lot line, all of the lots still in conformity. Is that correct?

Ms. Jones: That is correct.

Mr. Scott: Ok.

Mr. Chason: Are you anticipating any further subdividing of either one of these lots?

Mr. Ervin: No. I do not really have a plan of what I am going to build. I bought it to build a home. There are issues on these lots regarding drainage, and the City and I are working to address that. I still do not know where I am going to build a house or which way it will face. It may be located on Park Drive or Japonica Lane.

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

A Motion was made by Mr. Scott and Seconded by Mr. Terry to approve the subdivision replat review to move the interior lot line for Ervin Subdivision. The Motion carried unanimously.

The next order under petitions is a zoning amendment review for Earth, Inc.

PETITIONS:

ZONING AMENDMENT:

THE CITY OF DAPHNE
PLANNING COMMISSION MINUTES
SPECIAL MEETING OF MAY 2, 2013
COUNCIL CHAMBERS, CITY HALL - 5:00 P.M.

File Z13-03: Earth, Inc.

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

Proposed Zoning: R-6 (G), Garden or Patio Home District

Location: Southwest of the intersection of Park Drive and Tallent Lane, east of the Daphne Sports Complex
Area: 5.95 Acres ±
Owner(s): Earth, Inc. - A. Scott Curtis
Engineer: Rowe Surveying & Engineering - Don Rowe

Ms. Jones: The subject property is located south of Tallent Lane between Fallen Oak and Caroline Woods Subdivision. The Daphne Tallent Lane facility is located to the east, and our future Sports Complex is on the west. The property is zoned R-3 at this time. They are proposing to rezone to R-6(G) for garden homes or patio homes. That is equivalent to our old R-4, High Density Single Family, zoning district, in all capacities. Here on this chart you will see that R-3 zoning allows lots that are eighty feet wide with three and a half units per acre. The proposed zoning is for five thousand square foot lots, fifty feet wide, with eight units per acre. Caroline Woods which is the closest subdivision to the south with similar zoning is also allowed to have lots with five thousand square feet, fifty foot wide lots, and eight units per acre. The setbacks for R-4 and R-6(G) are twenty-five from the front. For the existing R-3, it is thirty feet. You can see the other comparisons. They are very similar to what it is already zoned. Our future land use map shows this as residential. The rezoning would be in conformity with our zoning and future land use designation. Here is a copy of the boundary survey that has been submitted, and the conceptual drawing of the future development. I want to say that the conceptual drawing is just that. It has not been reviewed to determine whether or not it is in conformance with our subdivision regulations. If a property is rezoned, whatever layout they decide upon will still have to come to you for approval of the subdivision.

Chairman: So we are here dealing strictly with the zoning amendment. Do any of the Commissioners have any questions or comments?

Mr. Chason: Ms. Jones, now that we have changed the zoning designations around what is the zoning designation that accommodates eight units per acre? I am sorry. I meant to say three point five units per acre.

Ms. Jones: R-3. It is the only one.

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

Mr. Lemoine: There was a discussion at the site preview meeting about the street tying into the street that is planned for Caroline Woods Subdivision, Phase Three. My question is, was there any effort to find out whether or not those streets are still lined up with one another?

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Mr. Rowe: Yes sir. I did check the Caroline Woods Subdivision plat, and it lines up exactly with Tallent Lane. There was another question about how wide the pavement is. It is twenty-eight feet back to back with curb and gutter and sidewalks. It is a beautiful street. I think one of the members thought it was a trail, but it is not. It is a fine road. The only other thing I would like to add is, this is strictly out of my mind, is this drawing is strictly conceptual. The only thing I know is that the detention pond will be where it is shown because it is the low corner. For whomever does the subdivision, it could be anything.

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

Mr. Chason: At the work session Mr. Avent was here, he is the gentleman that designed the Caroline Woods Subdivision, and it is a fact they do have an R-4 zone. He also said, and we have confirmed that the subdivision yields no more than three lots per acre. I believe that is correct. He may have been entitled to eight an acre, but the adjoining neighborhood has less than three and one half units per acre. There were some other concerns about density, and one was the amount of traffic on Tallent Lane. There also was a question about who would be required to improve the street to this property should it be developed. There is no requirement in our Ordinance that I know of would require him to improve Tallent Lane all the way to his south property line. It would be necessary for us to discuss this if we were considering an R-6(G) zone. From my prospective, I think R-3 is the highest density we ought to allow here. That is what I am going with.

Mr. Gibson: Does Chief White have any problem with fire protection or getting there?

Chief White: After we left here, I went back and checked the fire flow on Tallent Lane. There is almost none back there where that subdivision is. You have to go to Tallent Lane and Park Drive in order to get a fire flow. I guess the pipe is too small. The size will have to be increased, but I do not think this is the time to do that now. Right?

Ms. Jones: Not necessarily. That will be done once we get to the subdivision plat.

Chief White: There is no adequate water pressure there at all.

Ms. Jones: That is something they will have to try to improve to the point of compliance with the presentation of the subdivision plat.

Chairman: That will come with the subdivision approval. Here we are dealing strictly with the zoning.

Ms. Jones: Yes sir.

Chairman: Although it has not been built, we do have an existing R-4 next to it. The subdivision adjacent to this property is Caroline Woods Subdivision. There are no dimensions here so I can see what size dimensions of the lots are.

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Mr. Rowe: I think they are sixty feet. I am pretty sure they were sixty feet.

Chairman: I am looking at the dimensions of the subdivision lots adjacent to the property, not how they may have built it, and I cannot tell.

Mr. Chason: A lot of them are eighty or eighty-two feet.

Mr. Lemoine: I think he is right about the sixty foot lots. There are a couple of the corner lots that are a little bigger.

Chairman: Well, here we are just dealing with zoning.

Chief White: Are you planning to bring the water from Caroline Woods Subdivision or use the existing line that comes down Tallent Lane?

Mr. Rowe: We are not at the development stage yet.

Chief White: Have you given it any thought though?

Mr. Rowe: At the time of the submittal of the subdivision plat we would have to seek it out. Caroline Woods Subdivision, Phase Three is not constructed yet so it is a long way south before you get to water so it would have to come from the north.

Mr. Scott: Isn't Caroline Woods Subdivision served by Daphne Utilities?

Ms. Jones: They are.

Mr. Scott: There is a legal territory in which Daphne Utilities is not allowed to encroach upon so I do not think that would be a solution. One question I have of the Chief is regarding side setbacks and fire jumping from building to building. At the County, they would allow a three-foot setback on one side, but it had to be matched by ten feet on the other side so there would be thirteen feet between structures. With a six-foot setback, that is pretty close. With these close structures, is this a fire concern.

Chief White: I do not have an answer to that right now as far as figures. As you said, this is just a conceptual drawing right now. It could come back and change.

Mr. Scott: Ok. Thank you.

Chairman: Do any of the Commissioners have any further questions or comments? He opened the floor to public participation. Is there someone else who would like to address the Commission?

Mr. Ouellette: My name is Don Ouellette. I live on Elizabeth Drive in Daphne. I only have one question. The houses that are going to be built there are going to be high density across from a big dirt pit that is owned by the City. I imagine there is going to be a lot of children there. This is going to be an attractive nuisance as far as I am concerned. Those pits are usually pretty deep. I am wondering about the safety of the children that are going to be in this area. Thank you.

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Chairman: Thank you. Is there anyone else that would like to address the Commission? With that being said, I will close public participation. Do any of the Commissioners have any further questions or comments? With that being said, if there is no objection, the Chair will entertain a motion.

A Motion was made by Mr. Chason and **Seconded** by Mr. Scott **for an unfavorable recommendation by the Planning Commission to the City Council of Daphne of the zoning of a five-point nine five-acre parcel located southwest of the intersection of Park Drive and Tallent Lane, east of the Daphne Sports Complex from an R-3, High Density Single Family Residential, to an R-6(G), Garden or Patio Home, zoning district.**

Ms. Jones: So your motion is for denial.

Mr. Chason: It is currently zoned R-3. Is that correct?

Ms. Jones: Right.

Mr. Chason: Well, that is my motion.

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

Ms. Jones: Yes. I have a couple of things to say. You have a piece of property that is immediately contiguous to this that has the same zoning as the request you have now with a different type of development. Unless you have justifiable evidence that having this property develop would create a nuisance, a situation where it would not be harmonious, or it would not be compatible with the existing area, I would caution you about recommending approval. That is all that I will say.

Chairman: Let me get a clarification on that. Are you cautioning us about recommending approval or about approval of that motion?

Ms. Jones: I am cautioning you about approval of that motion. Yes. Thank you.

Mr. Chason: I am just going to say at this time we have not been given a plan. We do not have a design. We have not discussed the density, the traffic, or the drainage because that is not on the table. None of that is presented. When we get to the point where we want to talk about what kind of subdivision this is going to be, we know the density, what the drainage is going to be, and where the access is going to be the time to talk about it. We approve preliminary plats all day long, but this is a situation where we are being asked to rezone the property, and then we are going to find out what the plan is. If it meets the requirements of R-6(G) which are very much liberal than R-3, then we are going to be compelled to have to approve it at that point. This is just not the time to take this density and go from twelve thousand to a five thousand square foot lots. It is more than two times the density per lot. We are just not ready for that. That is my opinion. That is the reason that I made the motion.

Chairman: Well, I am going to chime in here a minute.

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Chairman: I believe with rezoning we have always had a conceptual drawing and not a definite site plan or subdivision plat presented. I do not ever remember having a subdivision plat presented prior to the application for rezoning.

Mr. Gibson: I would like to ask Chief White something. Shouldn't we be concerned when houses are twelve feet apart?

Chief White: I would be.

Mr. Gibson: That is what we have here. Larry and I are further than twelve feet. We are probably fifteen feet apart. If I have a fire before Chief White can get there, it is probably going to jump to the next house. It could very easily happen. That is why I am concerned about this.

Chairman: We have these same subdivisions in the City.

Mr. Chason: We do not know about the water pressure.

Chairman: That will all come during the review of the subdivision plat.

Mr. Chason: Once it is zoned R-6(G), they will have a right to five thousand square foot lots. I will point out that is the minimum. In R-6(G), you have a minimum of five thousand square feet. That is what the conceptual drawing shows, and minimum means minimum.

Mr. Lemoine: Mr. Chairman, I would just like to make a point. On Avery Lane, they are a number of homes that are all twelve feet apart. It is six feet to the boundary line.

Chairman: We have some R-4 lots with a six-foot setback to the boundary line all over the City.

Ms. Jones: Yes. You do. You have Sehay, French Settlement, Dunmore, and Oldfield Subdivisions. You have many that you have already approved that have six foot setbacks. You have not, not to my knowledge, requested this type of information with rezoning in the past. I would caution you to not approve this motion.

Chairman: We have a motion and a second of which will vote on.

Ms. Jones: Let's do a roll call vote.

Upon roll call vote, **the Motion carried failed.**

Mr. Kirby	Nay
Chief White	Nay
Ron Scott	Aye
Mr. Chason	Aye
Mr. Gibson	Aye
Mr. Terry	Nay
Mr. Lemoine	Nay

Chairman: Mr. Ross.

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Mr. Ross: Just record what it is.

Chairman: So it goes onto the City Council.

Mr. Ross: It will go to the City Council. They will know the vote. The City Council will be transmitted the vote for their consideration.

The next order of business is administrative presentation for Dunmore Subdivision, Phase Two, Part C, Phase Two.

ADMINISTRATIVE PRESENTATION:

PETITION FOR STREET ACCEPTANCE:

File AP13-04:

Ms. Jones: This is for Dunmore Subdivision, Phase Two, Part C, Phase Two. They have provided their maintenance bond for their drainage system and rights-of-way. They have asked that the City to accept the roads and right-of-ways of Kilkenny Lane, Flynt Drive, Doireann Street, and Dunmore Drive into the City. I need a recommendation for City Council.

A Motion was made by Mr. Scott and **Seconded** by Mr. Terry *for the favorable recommendation by the Planning Commission to the City Council of Daphne the acceptance of the right-of-ways and maintenance of Kilkenny Lane, Flynt Drive, Doireann Street, and Dunmore Drive. The Motion carried unanimously.*

The next order of business is administrative presentation for Ordinance 2011-54, the Land Use and Development Ordinance, Article 11-4, Open Space Provisions.

PLANNING COMMISSION DISCUSSION:

Discussion regarding Ordinance 2011-54, Land Use and Development Ordinance, Article 11-4, Open Space Provisions.

Chairman: We have a few minutes left so we can deal with this. It deals with changing the amount of open space required in a subdivision. Are we going to discuss this?

Ms. Jones: What I presented in your packet is the existing Ordinance that is in place. What Jan is passing out is a list of considerations for you to look at, think about, debate about, and to see if meets approval to accept as an amendment. These are items Mr. Chason and I have discussed. I think he will be in favor of them. You do not have to do anything tonight, except to review them for discussion at the next meeting.

Chairman: Are you going to talk about this or are we going to study it for later?

Ms. Jones: Study it for later.

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Chairman: It does seem that what we have is sort of excessive so maybe we can work on this.

Ms. Jones: So I ask that you keep this and the document that Jan just handed you for our next meeting.

The next order of business is public participation.

PUBLIC PARTICIPATION:

Chairman: Is there anyone here that would like to address the Commission?

No public participation.

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

ATTORNEY'S REPORT:

Mr. Ross: No report at this time.

The next order of business is commissioner comments.

COMMISSIONER'S COMMENTS:

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

Mr. Scott: I have one. At some point in the past, the City has looked at expanding the City limits. One of the things we ran into is that we do not have anything that is comparable to Baldwin County's Rural/Agricultural zone. A RA designation which says you can have cattle and horses in anticipation that some time in the future we will have some answers. I am not predicting when it may happen. It certainly will not happen tomorrow, but I would like staff to start working on it. We did not have any answers the last time that we looked at the expansion.

Mr. Chason: With regard to the Webb tract, there are several remaining large tracts along U.S. Highway 98 that have been there. I will tell you when the decision to zone Daphne and U.S. Highway 98 came about, it was a new concept. A lot of the land owners were uncomfortable with it. It was the first time they were going to be told what they were going to do with their property. I think simply put B-2 was the least restrictive zone available so people with large tracts of land asked for it. Mr. Pumphrey compared this site to the Target site. That site is a total different situation. There are out parcels on the corners. It is also located at an intersection, and there is nothing to obstruct the front of the subdivision. I can tell you right now if he wanted to compare it to Target that it should be zoned B-1 for local retail. If you have a land owner that admits he does not want to develop it, then in effect what he is saying what he would like carve out whatever he needs each time a buyer comes to him. If a guy comes by and wants to buy two acres, then he will ask to carve out two acres and leave the remaining B-2 parcel. I have spoken to the realtor and suggested they look at a master plan not so much about the lines on the paper.

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Mr. Chason: It is not only used so the tract to is developed to the owner's and to the City's best advantage as well, but because at some point we will have to deal with traffic and lining up the curb cuts on U.S. Highway 98. The owner needs to realize the Planning Commission is here to help to do what is best for the landowner, for the City, and for the people that travel up and down the highway. It is just a personal opinion, but I think the Planning Commission should plan. I do not think we should react to each request we are given. We are supposed to encourage developers to look at different zones and different types of uses. I think that is our role. I do not make any apologizes to Mr. Pumphrey for wanting a master plan. I think that is what we need to do in this and any other case in which we are dealing with a B-2 or large tract of land on U.S. Highway 98.

Mr. Terry: With regard to Earth, Inc., have we given the City Council what they need to make a decision on the zoning amendment? All we said by the vote is to leave it as is. We voted four to three. Mr. Scott, how do you feel about that and presenting it to your fellow council members?

Mr. Scott: It will be presented to the Council that it was not an affirmative vote. If someone had made the recommendation to rezone it to R-6(G), and the vote was four to three, it would have still gone to the City Council without a favorable recommendation. The same thing is going to happen. It is going the same way. Is that correct? It is going without a favorable recommendation. I have been beat up a lot lately. Everything that has been approved by this Commission has not been approved by the City Council so I do not know where they are. I think Ms. Jones has made recommendations in the past, and we have not been real successful. We will see how it goes.

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

The next order of business is director's comments.

DIRECTOR'S COMMENTS:

Ms. Jones: When I get to the City Council, I am always trying to make sure that this body is seen in a favorable light. I am always trying to give them some kind of assurance that what you do is in accordance with the Comprehensive Plan, the standards and procedures for zoning, and Land Use. The recommendation that was made tonight on the R-6(G) proposal could get us in trouble because what you noted that we needed are things that were not noted in any other request for rezoning from this body. That could create trouble for us. My recommendation was for approval because of the site immediately south regardless of what the preliminary plat was approved for. It is still R-4 which is the same thing. The subdivision to the south does have preliminary plat approval. I am not sure whether or not they have had their preconstruction meeting, but they are still within their time frame to come back and ask for more units per acres for their subdivision plat. You had given them a two-year extension. They would have the right to do that. You would still weigh the merits of that application at the time that it is submitted.

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Ms. Jones: With the recommendation to deny it, I do not think you gave them a fair opportunity to see if they would or would not meet our subdivision regulations. I think you shot it down too soon. I think you put us in a situation in which litigation will be coming if the City Council does not approve it. I am going to caution you. I am going to continue to caution you because if I don't I have not done my job. I am supposed to tell you the way it should be, and you vote whichever way you wish to vote. I know in good conscience I have told you what should be done or considered.

Mr. Chason: We put an R-6(G) designation in our Ordinance, and it is the highest density we permit. It is five thousand square feet. Is that correct? Do we permit anything higher than that?

Chairman and Mr. Terry: No. That is it for single family.

Mr. Chason: I realize that this is not New York City or Mobile, Alabama, but this is still a rural area. I do not know how many of you went by and looked at the site, but I did. This type of density is reserved for areas where land values are higher which have tighter spacing. This zoning is not appropriate and is not consistent with the neighborhood that is adjacent to whether or not zoned R-4. What are you going to look at? What are you going to put the most importance on what it is or what it is being proposed to be? If they want to come change it, they can change it, or they can ask to change it. This area out here is getting more and more dense. There will be the streets, the drainage, the utilities, and there is the point that was brought up about the dirt pit and safety. There will be all of these small lots crammed out there. There is no reason for it. You say what we do this in practice. I promise you that in practice we look at a zoning and a subdivision in the same meeting all of the time where we have the information available to us. This is a proposal that was given to us hypothetical. With a proper proposal, I might be willing to recommend R-6(G) if I had that information in front of me. They made a point to say that none of these counts for anything. We just want the highest density offered by this City in this particular location. I feel that it is my job. It is not appropriate. That is the way that I feel. I voted against it, and I am not worried about the consequences. I think it was an appropriate action so we just disagree.

Ms. Jones: We disagree.

Mr. Terry: Ms. Jones, although I voted nay, what if it comes up, and we approved this and the infrastructure cannot support this density.

Ms. Jones: We don't approve it. You would not approve the subdivision, and you could not.

Mr. Terry: What is he going to do because it is already zoned? Would he have to rezone it again?

Ms. Jones: No. His job is to make sure the infrastructure is there. That is a part of his preliminary plat process. His job is to get water, sewer, gas, and every utility. It is incumbent upon him to make sure those services are available, as well as, the road way.

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Ms. Jones: It is his responsibility to make sure that those services are available to each lot owner if the subdivision is approved. It is not our job. We do not pay in on it. It is not the City's job. It is not anyone's job to grant him a discount or what have you. When he came in or he decided that in the future that he wanted to divide it, he accepted the responsibility for placement of the utilities and infrastructure. If he cannot do that and he needs to reduce the number of lots, then his subdivision plat will reflect that. Regardless of the number of lots, the services still have to be there.

ADJOURNMENT:

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

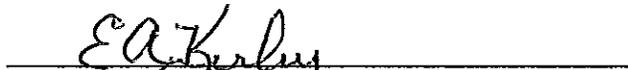
There being no further business, the meeting was adjourned at 5:47 p.m.

Respectfully submitted by:



Jan Vallecillo (Dickson), Planning Coordinator

APPROVED: May 23, 2013



Ed Kirby, Chairman

CITY OF DAPHNE
PLANNING COMMISSION AGENDA
REGULAR MEETING OF MAY 23, 2013 **REPORT**
COUNCIL CHAMBERS, CITY HALL - 5:00 P.M.

D. BELLATON SUBDIVISION, PHASE THREE AND FOUR:

MASTER PLAN:

1. MPA13-02: (APPROVED)

Presentation to be given by Mr. Steve Pumphrey, representing Preble-Rish, requesting a master plan modification review for the Bellaton Subdivision, Phase Three and Four.

2. PRELIMINARY PLAT REVIEW:

a. File SDP13-02: (DUE TO THE LACK OF A SUPER MAJORITY OF MEMBERS PRESENT, ITEM TABLED UNTIL JUNE 27, 2013 MEETING)

Subdivision: Bellaton, Phase Three

Zoning(s): *R-4, High Density Single Family Residential*

Location: Southwest of Alabama Highway 181 and Corte Road

Area: 12.45 Acres ±, (39) lots

Owner: D.R. Horton, Inc. - Birmingham - Joel Coleman

Engineer: Preble-Rish - Steve Pumphrey or Jason Estes

b. File SDP13-03: (DUE TO THE LACK OF A SUPER MAJORITY OF MEMBERS PRESENT, ITEM TABLED UNTIL JUNE 27, 2013 MEETING)

Subdivision: Bellaton, Phase Four

Zoning(s): *R-4, High Density Single Family Residential*

Location: Southwest of Alabama Highway 181 and Corte Road

Area: 21.36 Acres ±, (54) lots

Owner: D.R. Horton, Inc. - Birmingham - Joel Coleman

Engineer: Preble-Rish - Steve Pumphrey or Jason Estes

E. A PORTION OF THE REMAINDER OF TIMBERCREEK SUBDIVISION:

1. MASTER PLAN:

MPA13-01: (TABLED UNTIL JUNE 27, 2013 MEETING TO PREPARE LANGUAGE REGARDING PROPOSED CONNECTION TO WILSON DRIVE)

Presentation to be given by Mr. Daryl Russell, representing Coleman Engineering Group of McCrory & Williams, requesting a master plan revision of a portion of the remainder of TimberCreek Subdivision.

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COUNCIL CHAMBERS, CITY HALL - 5:00 P.M.

2. **PETITIONS:**

ZONING AMENDMENT:

File Z13-04: **Interstate-Baldwin Investment, L.L.C. (DUE TO THE LACK OF A SUPER MAJORITY OF MEMBERS PRESENT, ITEM TABLED UNTIL JUNE 27, 2013 MEETING)**

Present Zoning: B-2, General Business

Proposed Zoning: R-6 (G), Garden or Patio Home District

Location: Northwest of the intersection of TimberCreek Subdivision and Interstate 10
Area: 97.49 Acres ±
Owner(s): Interstate Baldwin Investment, L.L.C. - Allen Cox, Manager
Engineer: Coleman Engineering Group of McCrory & Williams - Daryl Russell

F. **PETITIONS:**

ZONING AMENDMENT

1. File Z13-05: **John & Deborah Kim : (DUE TO THE LACK OF A SUPER MAJORITY OF MEMBERS PRESENT, ITEM TABLED UNTIL JUNE 27, 2013 MEETING)**

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

Proposed Zoning: B-3, Professional Business

Location: Southwest of the intersection of Pollard Road and County Road 64, 1709 Pollard Road
Area: 0.46 Acres ±
Owner(s): John & Deborah Kim

G. **PLANNING COMMISSION DISCUSSION:**

a. Discussion regarding “No Clear Zone” for Rolling Hills Subdivision located on Rolling Hill Drive between Hope Drive and Calverdale Circle (**MOTION TO SET “NO CLEAR ZONE” FOR ROLLING HILLS SUBDIVISION AS NO CLEARING OF UNDERGROWTH OR TREES WITHIN TWENTY-FIVE FEET FROM THE REAR PROPERTY LINE. FURTHER DISCUSSION OF “NO CLEAR ZONE” TABLED UNTIL JUNE 27, 2013 MEETING FOR THE PREPARATION OF A DEFINITION TO BE ADDED TO THE LAND USE ORDINANCE**)

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5. **PUBLIC PARTICIPATION**
6. **ATTORNEY'S REPORT**
7. **COMMISSIONER'S COMMENTS**
8. **DIRECTOR'S COMMENTS**
9. **ADJOURNMENT: 5:48 P.M.**

PUBLIC NOTICE



CITY OF DAPHNE PLANNING COMMISSION

A Special Meeting will be held on Tuesday, June 11,
2013 at 5:00 p.m. in the Council Chambers at City
Hall.



*Note: An agenda will be posted at the Daphne
City Hall, 1705 Main Street for reference.
Additional information available at the
City of Daphne Community Development Department
621-3184*

CITY OF DAPHNE
PLANNING COMMISSION AGENDA
SPECIAL MEETING OF JUNE 11, 2013
COUNCIL CHAMBERS, CITY HALL - 5:00 P.M.

1. **CALL TO ORDER**

2. **CALL OF ROLL**

3. **NEW BUSINESS:**

A. **BELLATON SUBDIVISION, PHASE THREE AND FOUR:**

1. **PRELIMINARY PLAT REVIEW:**

a. **File SDP13-02:**

Subdivision: Bellaton, Phase Three

Zoning(s): *R-4, High Density Single Family Residential*

Location: Southwest of Alabama Highway 181 and Corte Road
Area: 12.45 Acres \pm , (39) lots
Owner: D.R. Horton, Inc. - Birmingham - Joel Coleman
Engineer: Preble-Rish - Steve Pumphrey or Jason Estes

b. **File SDP13-03:**

Subdivision: Bellaton, Phase Four

Zoning(s): *R-4, High Density Single Family Residential*

Location: Southwest of Alabama Highway 181 and Corte Road
Area: 21.36 Acres \pm , (54) lots
Owner: D.R. Horton, Inc. - Birmingham - Joel Coleman
Engineer: Preble-Rish - Steve Pumphrey or Jason Estes

B. **PETITIONS:**

ZONING AMENDMENT:

File Z13-04: Interstate-Baldwin Investment, L.L.C.

Present Zoning: *B-2, General Business*

Proposed Zoning: *R-6 (G), Garden or Patio Home District*

Location: Northwest of the intersection of TimberCreek Subdivision and Interstate 10
Area: 97.49 Acres \pm
Owner(s): Interstate Baldwin Investment, L.L.C. - Allen Cox, Manager
Engineer: Coleman Engineering Group of McCrory & Williams - Daryl Russell

CITY OF DAPHNE
PLANNING COMMISSION AGENDA
SPECIAL MEETING OF JUNE 11, 2013
COUNCIL CHAMBERS, CITY HALL - 5:00 P.M.

C. PETITIONS:

ZONING AMENDMENT:

1. File Z13-05: John & Deborah Kim

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

Proposed Zoning: B-3, Professional Business

Location: Southwest of the intersection of Pollard Road and County Road 64, 1709 Pollard Road

Area: 0.46 Acres ±

Owner(s): John & Deborah Kim

- 4. PUBLIC PARTICIPATION**
- 5. ATTORNEY'S REPORT**
- 6. COMMISSIONER'S COMMENTS**
- 7. DIRECTOR'S COMMENTS**
- 8. ADJOURNMENT**



Accepted by:

Chairman, Daphne Utilities

Daphne Utilities

APPROVED MINUTES

Utilities Board Meeting

City of Daphne Council Chambers ♦ March 27, 2013 ♦ 5:00 p.m.

I. Call to Order

The regular March 2013, Board meeting for the Utilities Board of the City of Daphne was held on March 27, 2013 and called to order by Chairman Robert Segalla, at 5:02 p.m.

II. Roll Call

Members Present:

Robert Segalla, Chairman
Lon Johnston
Randy Fry – Secretary / Treasurer

Mayor Dane Haygood - arrived at 5:08 pm
Fenton E. Jenkins, Vice Chairman – arrived at 5:21 pm

Others Absent:

Others Present:

Jerry Speegle – Board Attorney
Rob McElroy – General Manager
Danny Lyndall – Operations Manager
Drew Klumpp – Administrative Services Manager
Deloris Brown – HR Manager
Lori May-Wilson – Executive Assistant
Tim Patton – Volkert & Associates
Melinda Immel – Volkert & Associates
Ray Moore – HMR
Rebecca Williamson – Accounting Assistant

Others Absent:

Teresa Logiotatos – Finance Manager

III. Pledge of Allegiance

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

IV. Approval of Minutes

A. Utilities Board Minutes from February 27, 2013:

The Chairman inquired if there were any corrections for the submitted Minutes from the February 27, 2013, Utilities Board meeting. Lon Johnston asked to have the word “interjected” changed to “interrupted”.

MOTION BY Lon Johnston to approve the Minutes for February 27, 2013, with the noted correction; Seconded by Randy Fry.

AYE: FRY, JOHNSTON, SEGALLA

ABSENT: JENKINS, HAYGOOD

ABSTAIN:

MOTION CARRIED

V. Old Business

No old business was addressed.

VI. New Business

A. Election of Daphne Utilities Board members to Finance Committee

Mr. McElroy explained for Mr. Fry that Daphne Utilities By-laws does not state that a committee is required and clarified that work sessions of the full Board have been previously held in reviewing various financial issues intending to pull in many opinions rather than small subsets of the full Board but that however the Board decides on this issue is achievable. Chairman Segalla recommended establishing the committee for some items but to have full Board input and involvement for significant items such as the budget but the responsibility will be on the Finance Committee. The Chairman stated that Mr. Fry has accepted the Finance Committee Chairmanship and Mr. Johnston also agreed to continue his participation as well as the Chairman himself; he then called for a Motion to approve those Board members for the Finance Committee.

MOTION BY Lon Johnston to approve the members of the Finance Committee as Randy Fry as Chairman of the Finance Committee, Lon Johnston, and Robert Segalla; Seconded by Randy Fry.

AYE: FRY, JOHNSTON, SEGALLA

ABSENT: JENKINS, HAYGOOD

ABSTAIN:

MOTION CARRIED

The Chairman confirmed that a Resolution will be presented at the next Board meeting validating the appointments. Mr. Johnston reminded that a mid-year budget review should be organized for the coming months to which Mr. McElroy agreed. Mr. McElroy elaborated that during the mid-year budget review the engineer’s report will be updated and revised along with Blair Troutman’s financial module.

(Mayor Haygood arrived at 5:08pm)

VII. BOARD ATTORNEY’S REPORT

Mr. Speegel had nothing further to add to his report and had no questions to answer from the Board.

VIII. FINANCIAL REPORT

Rebecca Williamson highlighted the financials for the Board. Chairman Segalla had questions about the sizeable difference in the projections of Workers’ Compensation. It was explained that the monthly expenditure is estimated on the previous year’s figures and that an annual payment is made during the year. Mr. Johnston asked if the billing issue affected the revenue data. Mr. McElroy stated that it did not.

IX. GENERAL MANAGER’S REPORT

A. GM Report

Rob McElroy nothing further to add to his report and deferred to Danny Lyndall who then gave a short presentation of the Daphne Utilities’ SCADA system. Afterward, he answered questions from the Board relating to the Daphne Utilities system. Mr. McElroy informed the Board of upcoming presentations and programs, such as a “clean-out cover giveaway program”, as well as giving presentations at City Council meetings.

(Fenton Jenkins arrived at 5:21pm)

Danny Lyndall had nothing further to add to his report.

Melinda Immel had nothing to include to her report.

Ray Moore had nothing to add to his report.

X. PUBLIC PARTICIPATION – None

XI. BOARD ACTION – None

XII. BOARD COMMENTS –

Mayor Haygood gave kudos to the pro-active programs of the Utilities. Chairman Segalla gave credit to the Mayor for his kind words and projected positive changes for the City with the new Council members and Mayor Haygood at the helm.

XIII. ADJOURNMENT –

MOTION BY Lon Johnston to adjourn the meeting; Seconded by Randy Fry.

AYE: *Fry, Haygood, Jenkins, Johnston, Segalla,*

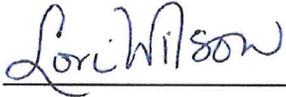
ABSENT:

ABSTAIN:

MOTION CARRIED

The meeting adjourned at 5:28 pm.

Preceding minutes submitted to the Daphne Utilities Board by:



Lori Wilson, Executive Assistant, Daphne Utilities

**REPORT
OF
OFFICERS**

RESOLUTIONS

&

ORDINANCES

ORDINANCE NO. 2013-27

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

**GCOF Retreat at Tiawasee, LLC
(Located Southwest of the intersection of Tiawasee Trace Boulevard and County Road 13)
(31.53 acres)**

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

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

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

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

WHEREAS, said petition has been presented to the Planning Commission of the City of Daphne on March 28, 2013, and a favorable recommendation was **approved** for the City Council to consider said request for annexation and said property **shall be zoned R-2, Medium Density Single Family Residential District**; and

WHEREAS, after proper publication, a public hearing was held by the City Council on May 20, 2013 concerning the petition for annexation; and,

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

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

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

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

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

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

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

LEGAL:

“Exhibit A”

COMMENCING AT THE NORTHWEST CORNER OF SECTION 9, TOWNSHIP 5 SOUTH, RANGE 2 EAST, BALDWIN COUNTY, ALABAMA AS RECORDED IN THE OFFICE OF THE JUDGE OF PROBATE, BALDWIN COUNTY, ALABAMA, REAL PROPERTY BOOK 256, PAGE 274; THENCE RUN SOUTH 00°00'19" EAST, 840.93 FEET TO THE NORTH RIGHT OF WAY OF PARKER ROAD (80' R/W); THENCE RUN ALONG THE SAID NORTH RIGHT OF WAY NORTH 89°32'20" EAST, 42.92 FEET TO THE EAST RIGHT OF WAY OF POLLARD ROAD; THENCE RUN ALONG THE EAST RIGHT OF WAY SOUTH 00°00'19" EAST, 403.14 FEET TO THE POINT OF BEGINNING; THENCE RUN SOUTH 89°50'14" EAST, 3490.21 FEET; THENCE RUN SOUTH 89°48'53" EAST, 786.31 FEET; THENCE RUN SOUTH 11°19'19" EAST, 51.02 FEET; THENCE RUN NORTH 89°49'05" WEST, 796.66 FEET; THENCE RUN SOUTH 00°05'47" EAST, 1327.82 FEET; THENCE RUN NORTH 89°48'41" WEST, 878.46 FEET; THENCE RUN NORTH 00°10'07" EAST, 1328.02 FEET; THENCE RUN NORTH 89°49'02" WEST, 2617.56 FEET TO THE EAST RIGHT OF WAY OF POLLARD ROAD (80' R/W); THENCE RUN ALONG SAID EAST RIGHT OF WAY NORTH 00°00'19" WEST, 48.51 FEET TO THE POINT OF BEGINNING. PARCEL CONTAINING 31.53 ACRES, MORE OR LESS, LYING IN SECTION 9, TOWNSHIP 5 SOUTH, RANGE 2 EAST, BALDWIN COUNTY, ALABAMA.

ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA on this _____ day of _____, 2013.

Dane Haygood,
Mayor

ATTEST:

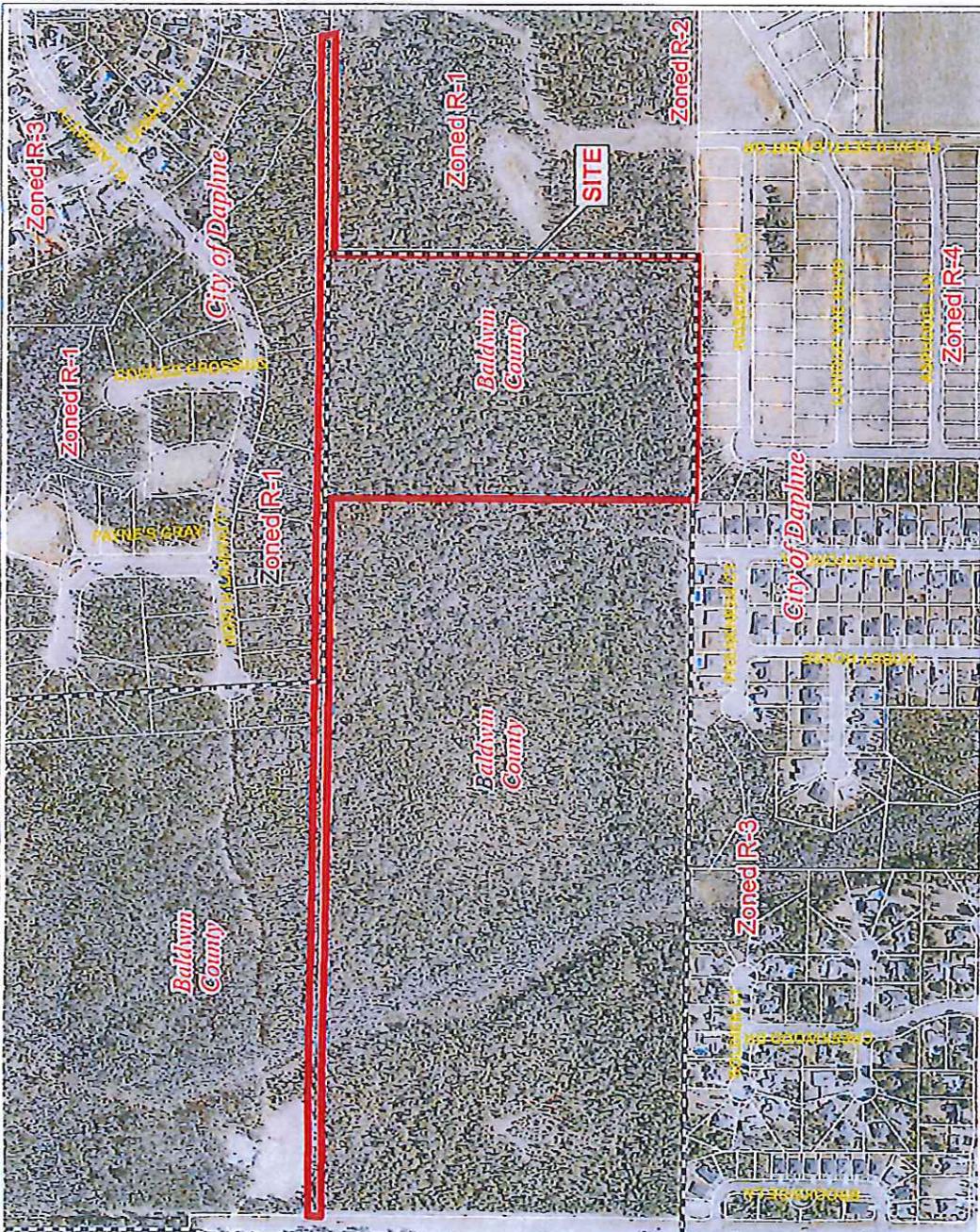
Rebecca A. Hayes,
City Clerk



City of Daphne Community Development
 Master Plan, Zoning Amendment, Annexation Review

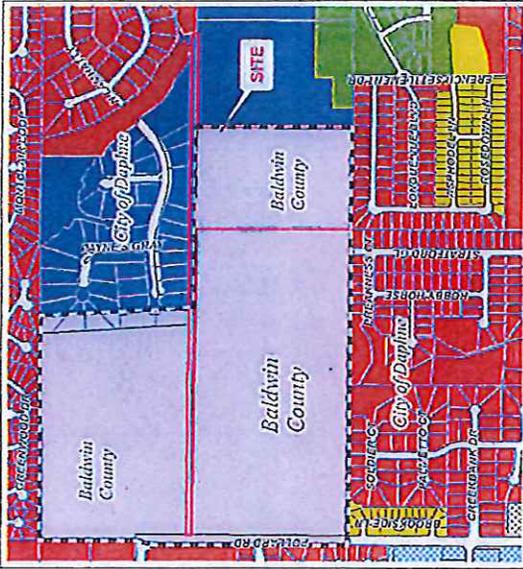
October 25, 2012

1 inch = 400 feet



GCOF / The Retreat at Tiawasee
 SW of intersection of
 Tiawasee Blvd & Co Rd 13
 MPA12-04 and Z12-03

Zoning Detail



Legend

1 inch = 1,000 feet

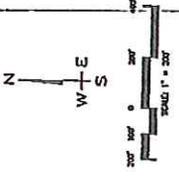
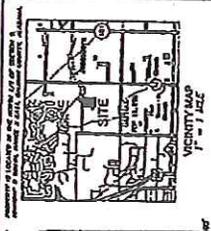
- CITY LIMITS
- R-1 LOW DENSITY SINGLE FAMILY RESIDENTIAL
- R-2 MEDIUM DENSITY SINGLE FAMILY RESIDENTIAL
- R-3 HIGH DENSITY SINGLE FAMILY RESIDENTIAL
- R-4 HIGH DENSITY SINGLE & MULTI-FAMILY RESIDENTIAL
- B-1 LOCAL BUSINESS
- B-2 GENERAL BUSINESS
- B-3 PROFESSIONAL BUSINESS
- CI COMMERCIAL/INDUSTRIAL
- IMU MULTI-USE
- GOLF COURSE
- ET JURISDICTION

This information is based on the data captured by the City of Daphne is derived from a variety of public and private sources (including but not limited to the County, State, Federal, or other public agencies) and is provided as is for informational purposes only. The City of Daphne is not responsible for any errors or omissions in the data contained herein. The City of Daphne is not responsible for any errors or omissions in the data contained herein. The City of Daphne is not responsible for any errors or omissions in the data contained herein. The City of Daphne is not responsible for any errors or omissions in the data contained herein. Any questions regarding zoning or any data should be directed to the City of Daphne Planning Department. Tel: # 251-421-3134

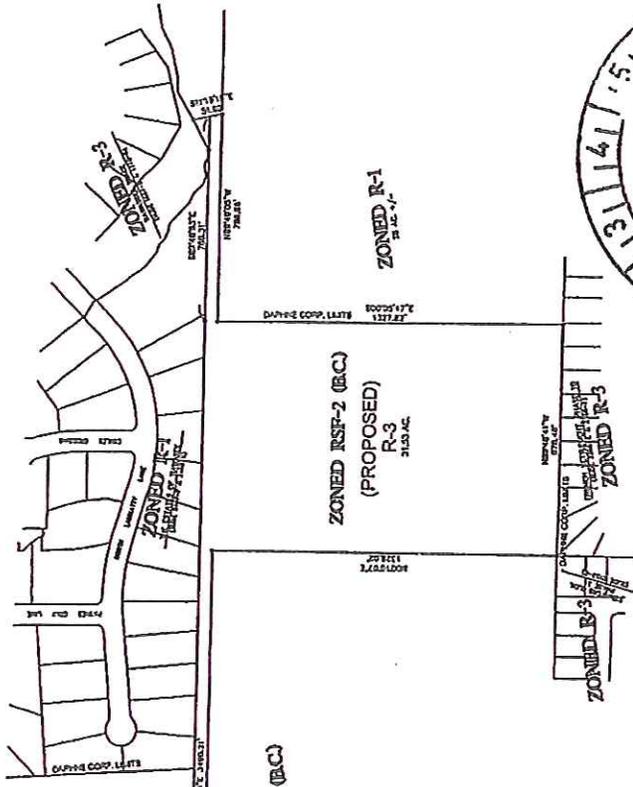
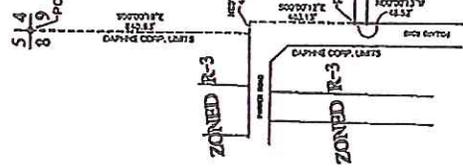
Presented to PC 3.28.13

From Ann Strickland in Opposition to Requests

GCOF RETREAT AT TIAWASEE, LLC EXHIBIT "B"



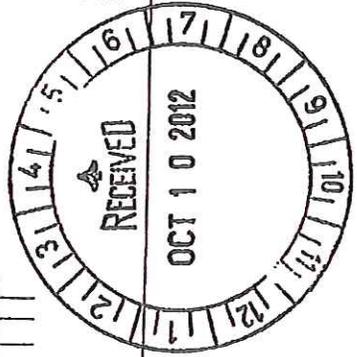
514 DAVINE CORP. LOTS
819 POINT OF COMMENCEMENT



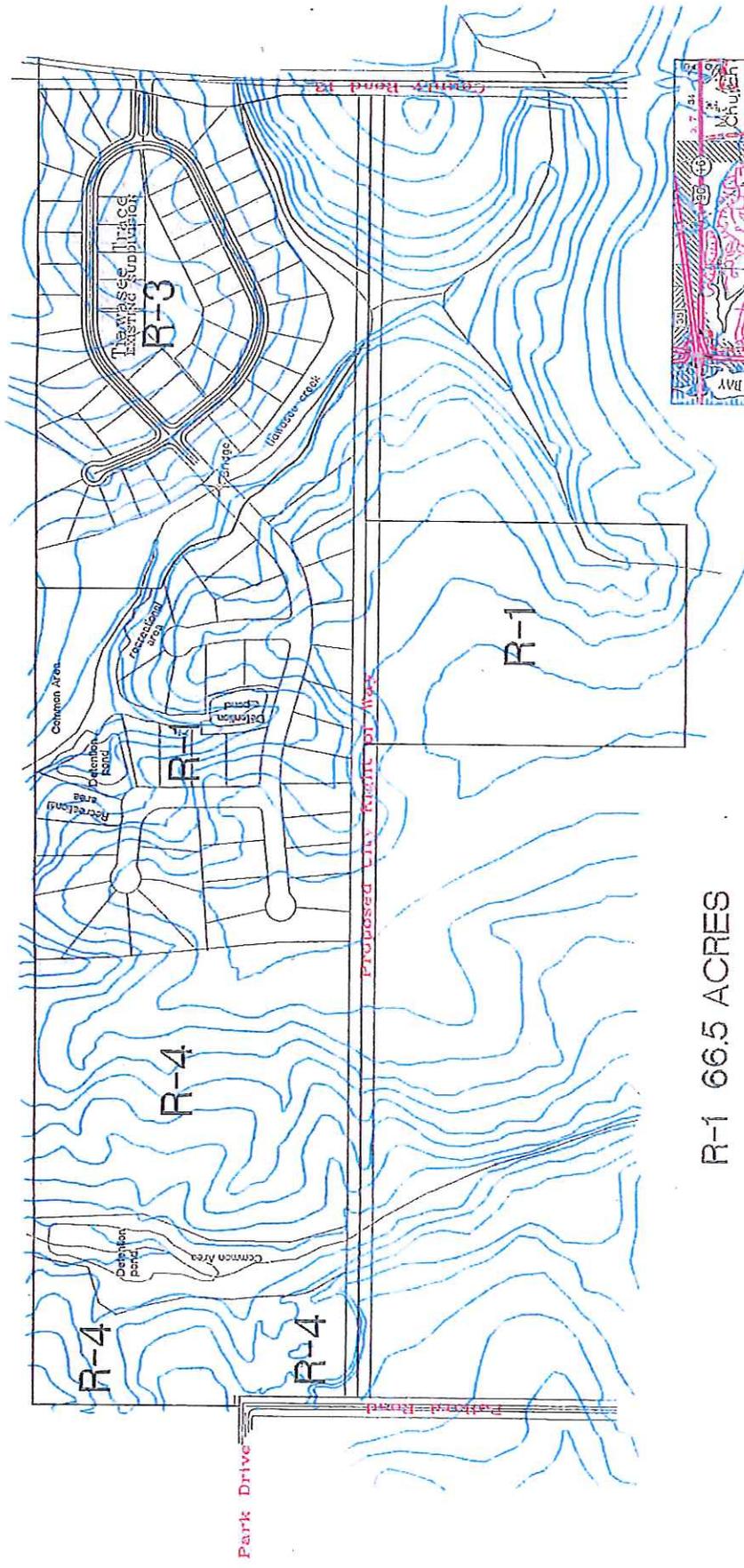
LEGAL DESCRIPTION
 COMMENCING AT THE NORTHWEST CORNER OF SECTION 6, TOWNSHIP 3 SOUTH, RANGE 2 EAST, BALDWIN COUNTY, ALABAMA AS RECORDED IN THE OFFICE OF THE JUDGE OF PROBATE, BALDWIN COUNTY, ALABAMA, REAL PROPERTY FILE TO THE NORTH RIGHT OF WAY OF SOUTH BAYWOOD (66 17/8); THENCE RUN ALONG THE S40 NORTH RIGHT OF WAY OF SOUTH BAYWOOD (66 17/8) TO THE EAST RIGHT OF WAY OF PEARLAND ROAD; THENCE RUN ALONG THE EAST RIGHT OF WAY OF PEARLAND ROAD; THENCE RUN ALONG THE EAST RIGHT OF WAY OF RICH SOUTH 89°50'14" EAST, 348.031 FEET; THENCE RUN SOUTH 31°02' FEET; THENCE RUN SOUTH 89°50'14" EAST, 1327.245 FEET; THENCE RUN NORTH 89°40'41" WEST, 876.46 FEET; THENCE RUN NORTH 00°07'07" WEST, 106.15 FEET; THENCE RUN NORTH 89°49'02" WEST, 2817.56 FEET TO THE EAST RIGHT OF WAY OF HARRISON'S TRAIL; THENCE RUN ALONG S40 EAST RIGHT OF WAY OF HARRISON'S TRAIL 40.51 FEET TO THE POINT OF BEGINNING. PARCEL CONTAINING 31.53 ACRES, MORE OR LESS, SECTION 6, TOWNSHIP 3 SOUTH, RANGE 2 EAST, BALDWIN COUNTY, ALABAMA.

(DESCRIPTION OBTAINED FROM RECORDED DEED - REC # 1338052, WITH CONCERNING MAPS) (CIVILIAN DEVELOPER WITH PLAT OF THE ESTATES OF TIAWASEE)

PREBLE RICH LLC
 CONSULTING ENGINEERS & ARCHITECTS
 10000 W. UNIVERSITY BLVD., SUITE 100
 HOUSTON, TEXAS 77057-3800
 TEL: 281-416-1000
 FAX: 281-416-1001
 WWW.PREBLERICH.COM



*Presented
 to PC
 3.28.13
 From Ann
 Strickland
 in opposition
 to
 Requests*



R-1 66.5 ACRES
 R-3 34.5 ACRES
 R-4 45 ACRES

*Presented to
 P. C. 3/28/13
 From Ann Strickland
 in opposition to
 Requests*

ESTATES OF TIAWASEE

<p>3507 INTERNATIONAL DR., SUITE G MOBILE, ALABAMA 36605 PHONE (251) 261-8720 FAX (251) 261-8720 EMAIL: mcs@mcw.com</p>		<p>DATE: February 7, 2013 DRAWN BY: GANCO APPROVED BY: CHUGALL</p>
<p>McCroy Williams INCORPORATED Engineers Surveyors</p>		<p>MASTER PLAN THE ESTATES OF TIAWASEE PHASE I SCALE: 1"=40' SHEET 1 OF 1</p>
<p>REVISION</p>	<p>DATE</p>	<p>3507 INTERNATIONAL DR., SUITE G MOBILE, ALABAMA 36605 PHONE (251) 261-8720 FAX (251) 261-8720 EMAIL: mcs@mcw.com</p>

ORDINANCE 2013-29

Mobile Bay National Estuary Program

WHEREAS, Ordinance 2012-58 approved and adopted the Fiscal Year 2013 Budget on October 1, 2012; and

WHEREAS, subsequent to the adoption of the Fiscal Year 2013 budget, the City Council has determined that certain appropriations are required and should be approved and made a part of the Fiscal Year 2013 budget; and

WHEREAS, the Mobile Bay National Estuary Program (MBNEP) is instrumental in addressing environmental challenges in Daphne through its various programs and grants made available to the City; and

WHEREAS, the City Council has determined it to be in the best interest of the City to make a \$10,000 contribution to the MBNEP.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Daphne, Alabama, that funds from the Lodging Tax Fund are hereby appropriated and made a part of the Fiscal Year 2013 budget in the amount of \$10,000 for a contribution to the MBNEP. Furthermore, the Mayor is authorized to execute an agreement, on behalf of the City of Daphne, as necessary for such purpose.

APPROVED AND ADOPTED by the Mayor and City Council of the City of Daphne, Alabama, this _____ day of _____, 2013.

Dane Haygood, Mayor

ATTEST:

Rebecca A. Hayes, City Clerk

STATE OF ALABAMA)
BALDWIN COUNTY)
CITY OF DAPHNE)

MUNICIPAL AGENCY FUNDING CONTRACT

THIS AGREEMENT, made and entered into on this the ____ day of _____, 2013, by and between the **CITY OF DAPHNE**, a Municipal Corporation, of the State of Alabama (hereinafter sometimes referred to as "City" or "the City"), and the Mobile Bay National Estuary Program, (hereinafter sometimes referred to as the "Agency"):

W-I-T-N-E-S-S-E-T-H

WHEREAS, the Agency has requested that the City of Daphne appropriate funds for its use for the benefit, either directly or indirectly, of the residents of the City; and,

WHEREAS, the City of Daphne desires to have the Agency perform certain services during the 2013 fiscal year.

THEREFORE, in consideration of the benefits moving each to the other, it is mutually agreed by and between the City and the Agency as follows:

I. AUTHORITY

Agency represents and warrants to City that it is authorized by law to receive funding from City and that such funding will not be in violation of Article IV, Section 94, or amendments thereto, of the Constitution of Alabama, 1901, or any other constitutional or statutory provision.

Agency further warrants that funding from the City will only be used to perform public services and/or acts which the City is otherwise authorized to perform or to fund itself.

II. SERVICES

The Agency shall provide the following public services within the Corporate Limits of the City of Daphne:

- 1) Address regional environmental challenges such as comprehensive land use planning, storm water management, and smart growth practices by helping bay communities develop the tools necessary to strike a balance between growth and development and the wise use and protection of water, land, and living resources; AND
- 2) Promote the use of sound, science-based information; AND
- 3) Initiate programs and projects that benefit both the citizens and the environment; AND
- 4) Implement the community-developed Comprehensive Conservation and Management Plan.

If Agency provides public services both inside and outside the Corporate Limits of the City, then, if requested by the City or its representative, it shall submit an audit report demonstrating that services by the Agency, at least to the extent of the funding herein, shall be and were provided within the Corporate Limits of the City, including an identification of the number of City residents served by said agency.

III. APPROPRIATION

The City shall appropriate funds to the Agency in the following amount for the 2013 fiscal year: **\$10,000 (Ten Thousand Dollars)**, said amount to be paid pursuant to a method determined by the Finance Director of the City. The Finance Director of the City or his/her designee shall be the representative of the City for the administration and implementation of the provisions hereof on behalf of the City.

IV. SEPARATE AGREEMENTS

The City shall be under no obligation to the Agency except to the extent set out expressly in this Agreement. Provided, however, in the event there is a separate valid written agreement between the City and Agency, then this Funding Agreement is supplemental thereto and in the event of a conflict the terms of the latest written agreement shall prevail.

V. TERM; TERMINATION

The terms of this Agreement shall commence ***when adopted by Council, and shall continue in force until the 30th day of September, 2013***, unless sooner terminated. Provided, however, in the event a new contract is not executed by the commencement of the new fiscal year, the City may elect to continue funding if appropriated by budget or budget continuation provisions and if so, the Agency agrees to remain bound by the terms of this Agreement and to continue to provide all services hereunder until a new funding contract is executed. The contract is otherwise terminated as set forth herein or if the official City budget does not contain an appropriation for the Agency. Either party to this Agreement may, with or without cause, terminate this Agreement as to the first day of any month by giving the other party no less than thirty (30) days written notice thereof. In event of termination by either party, the Agency shall refund to the City an amount equal to the excess of the total amount appropriated over an amount which bears the same ratio to the total amount appropriated as the month(s) actually performed bear to the total months covered by this Agreement.

VI. NON-DISCRIMINATION AND COMPLIANCE

This Agency hereby covenants and agrees that in performing its responsibilities and obligations hereunder, the Agency, its officers, agents and employees will not, on the grounds of race, color, sex, religion, national origin, or disability, discriminate or permit discrimination against any person or group of persons, in any manner. The

Agency further agrees to comply with all applicable state and federal ordinances and regulations, including but not limited to the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Civil Rights Act of 1964, and any regulations promulgated thereunder. The Agency further agrees to appoint an ADA coordinator. Said coordinator will be responsible for ensuring that the Agency is in compliance with the Americans with Disabilities Act and will advise the City of Daphne ADA Coordinator for services and programs as to the Agency's state of compliance with the Americans with Disabilities Act.

VII. INDEPENDENT CONTRACTOR

It is agreed between the City and the Agency that the Agency is an independent contractor. Neither the City nor its officers, agents or employees shall be liable for damages, claims, actions, or causes of action, brought against the Agency, for the activities of the Agency.

Notwithstanding any of the provisions of this Agreement, it is agreed that the City has no financial interest in the business of Agency, and shall not be liable for any debts or obligations incurred by Agency, nor shall the City be deemed or construed to be partner, joint adventurer or otherwise interested party in the assets of Agency, or profits earned or derived by Agency, nor shall Agency at any time or times use the name or credit of the City in purchasing or attempting to purchase any equipment, supplies, or other thing or things whatsoever.

Agency in the performance of its operations and obligations hereunder shall not be deemed to be the agent of the City but shall be deemed to be an independent contractor in every respect and shall take all steps at its own expense as City may from time to time request to indicate that it is an independent contractor. City does not and will not assume any responsibility for the means by which or manner in which services by Agency, provided for herein, are performed, but on the contrary, Agency shall be wholly responsible therefore.

VIII. INDEMNITY

The Agency hereby covenants with the City that it will indemnify and hold the City and its officers, agents and employees harmless for or on account of any claim, suit, cause of action or judgment arising out of or in any manner associated with this Agreement or services provided or performed by Agency or any of its officers, agents or employees.

IX. NO THIRD PARTY BENEFICIARIES

It is the intent of the parties to this Agreement that they be the only parties to the Agreement and to expressly exclude third party beneficiaries; no person not a party to the Agreement may claim benefits under the Agreement.

X. SERVICE AREA

Agency shall submit, if requested by the City, to the Office of the Finance Director of the City, a written monthly report of the Agency's activities and expenditures, including, but not limited to, information demonstrating that services by the Agency within the Corporate Limits of the City at least equal, if not exceed, the funding from the City for that month. Should the City determine at any time during the term of this Contract that Agency is not providing services within the City Corporate Limits at least equal to the funding herein, then the City may terminate this Agreement immediately. Upon such termination, Agency may be, at the sole discretion of the City, required to refund any funds deemed by the City not to have been appropriately expended within the Corporate Limits.

XI. BOOKS AND RECORDS/REPORTS

Agency shall, at the request of the City, throw open and provide, at a time and place designated by the City, all books, records, accounts, statements and other documents as needed by the City to enable it to conduct a financial and/or operational review or audit of agency operations and/or finances. If Agency refuses to honor the City's request within ten (10) days, it shall refund to the City all funds appropriated to it during the term of the contract. All reports, evaluations and audits required shall be provided by Agency to any person appointed by the City or the Mayor to the Agency's governing body.

XII. AUDIT

The City may require Agency to have its financial records audited by an independent CPA firm. A copy of the audited financial statements will be mailed to the City's Finance Director as soon as possible after the statements are issued.

XIII. OPEN MEETING, PUBLIC RECORDS, COMPETITIVE BIDS AND OTHER APPLICABLE LAWS

A. As Agency is receiving public funds and/or other things of public value, including in-kind services, use of City employees and/or equipment from the City pursuant to this agreement, Agency agrees as follows:

1. To the same and like extent as is applicable to the City of Daphne, all meetings of the governing or controlling body of the Agency or any committee or subcommittee thereof shall be open to the public when any issue or matter involving or relating directly or indirectly to this Agreement is discussed or considered and when there is any discussion or consideration of the use of public funds or things of value provided to the Agency by or through the City.

2. Public Records. To the same and like extent as is applicable to the City of Daphne pursuant to State law, all records, documents, letters, minutes, memoranda, etc. of the Agency shall be open to public inspection and copying when the same pertain to any issue or matter involving or relating directly or indirectly to the performance by Agency of this Agreement or the use of public funds or other things of

value provided to the Agency by or through the City.

3. Expenditure of Public Funds. To the same and like extent as is applicable to the City pursuant to State law, all expenditures or disbursements of funds received by the Agency, whether directly or indirectly, from the City shall be subject to competitive bidding.

XIV. SEVERABILITY

It is expressly understood and agreed by and between the parties hereto that in the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, or otherwise appears to both parties to be invalid, the invalidity of any such covenant, condition, or provision herein contained, shall not affect other remaining and valid covenants or conditions herein unless such invalidity renders performance of the essential elements of the contract impossible.

XV. MISCELLANEOUS CLAUSES

Capacity: Each Party to this Agreement represents and warrants to the other as follows:

A. That it is an individual of the age of majority or otherwise a legal entity duly organized and in good standing pursuant to all applicable laws, rules and regulations.

B. That each has full power and capacity to enter into this Agreement, to perform and to conclude the same including the capacity, to the extent applicable, to grant, convey and/or transfer, areas, assets, facilities, properties, (both real and personal), permits, consents and authorizations and/or the full power and right to acquire and accept the same.

C. That to the extent required, each Party has obtained the necessary approval of its governing body or board and a resolution or other binding act has been duly and properly enacted by such governing body or board authorizing this Agreement and said approval has been reduced to writing and certified or attested by the appropriate official of the Party.

D. That each Party has duly authorized and empowered a representative to execute this Agreement on their respective behalf and the execution of the Agreement by such representative fully and completely binds the Party to the terms and conditions hereof.

E. That absent fraud, the execution of this Agreement by a representative of the party shall constitute a certification that all such authorization for execution exists and has been performed and the other Party shall be entitled to rely upon the same. To the extent a Party is a partnership, limited liability company or joint venture, the execution of this Agreement by any member thereof shall bind the Party and to the extent that the execution of Agreement is limited to a manager, managing partner or specific member then the person so executing this Agreement is duly authorized to act

in such capacity for the Party.

F. That each party represents and warrants to the other that there is no litigation, claim, or administrative action threatened or pending or other proceedings to its knowledge against it which would have an adverse impact upon this transaction or upon either's ability to conclude the transaction or perform pursuant to the terms and conditions of this Agreement.

G. That each party has obtained any and all required permits, approvals and/or authorizations from third parties to enable it to fully perform pursuant to the terms and conditions of this Agreement.

Final Integration: This Agreement together with any amendments, constitutes the entire agreement of the parties, as a complete and final integration thereof with respect to its subject matter. In the event of a direct conflict between the provisions hereof and any prior agreement or amendment, the latter shall supersede the former. All written or oral understandings and agreements heretofore had between and among the parties are merged into this Agreement, which alone fully and completely expresses their understandings. No representation, warranty or covenant made by any party which is not contained in this Agreement or expressly referred to herein has been relied on by any party in entering into this Agreement.

Force Majeure: Neither party to this Agreement shall hold the other party responsible for damages or delay in performance caused by acts of God, strikes, lockouts or other circumstances beyond the reasonable control of the other or the other party's employees agents or contractors.

Amendment in Writing: This Agreement may not be amended, modified, altered, changed, terminated or waived in any respect whatsoever, except by a further agreement in writing, properly executed by all of the parties.

Binding Effect: This Agreement shall bind the parties and their respective personal representatives, heirs, next of kin, legatees, distributees, successors, and assigns. If any provision in this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Captions: The captions of this Agreement are for convenience and reference only, are not a part of this Agreement, and in no way define, describe, extend or limit the scope or intent of this Agreement.

Constructions: This Agreement shall be construed in its entirety according to its plain meaning and shall not be construed against the party who provided or drafted it.

Mandatory and Permissive: "Shall", "will", and "agrees" are mandatory, "may" is permissive.

Governing Laws: The laws of the State of Alabama shall govern the validity of

this Agreement, the construction of its terms, the interpretation of the rights, the duties of the parties, the enforcement of its terms, and all other matters relating to this Agreement.

Prohibition on Assignment and Delegation: No party to this Agreement may assign or delegate its interests or obligations hereunder without the written consent of all other parties hereto obtained in advance of any such assignment or delegation. No such assignment or delegation shall in any manner whatsoever relieve any party from its obligations and duties hereunder and such assigning or delegating party shall in all respects remain liable irrespective of such assignment or delegation.

Waiver: Non enforcement of any provision of this Agreement by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remaining terms and conditions of the Agreement.

Ownership of Contract Documents: The Contract Documents, and copies of parts thereof, are furnished and owned by the City. All portions of the Contract Document, and copies of parts thereof, are the instruments of serve for this project. They are not to be used on other work and are to be returned to the City on request at the completion of the work. Any reuse of these materials without specific written verification or adaptation by the City will be at the risk of the user and without liability or legal expense to the City. Such user shall hold the City harmless from any and all damages, including reasonable attorneys fees, from any and all claims arising from any such reuse. Any such verification and adoption shall entitle the City to further compensation at rates to be agreed upon by the user and the City.

Fines and Penalties The Contractor shall be solely liable for any and all fines or penalties which may be levied by any governmental authority against the Owner and/or Contractor which are related to the Contractor's operations. The Owner shall deduct the amount of the levied fine or penalty from the Contract amount.

Agreement Date/Counterparts: The date of this Agreement is intended as and for a date for the convenient identification of this Agreement and is not intended to indicate that this Agreement was necessarily executed and delivered on said date. This instrument may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

Use of Words and Phrases: The following words and phrases, where used in this document, shall be given the following and respective interpretations. "Herein," "hereby," "hereunder," and other equivalent words refer to this document as an entirety and not solely to the particular portion hereof in which any such word is used.

The definitions set forth in any portion of this Agreement unless the text or context indicates differently shall be deemed applicable whether the words defined are herein used in the singular or the plural. Wherever used herein any pronoun or pronouns shall be deemed to include both singular and plural and to cover all genders.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and date first set forth above.

CITY OF DAPHNE, a Municipal Corporation

Dane Haygood, Mayor

ATTEST:

Rebecca A. Hayes, City Clerk

MOBILE BAY NATIONAL ESTUARY PROGRAM

BY: _____

TITLE: _____

Federal Tax ID#: _____

WITNESS:

By: _____

CITY OF DAPHNE

ORDINANCE NO. 2013-30

AN ORDINANCE REGULATING SOLICITATION

WHEREAS the City Council of the City of Daphne has determined that the solicitation ordinance currently in place is inadequate to protect the public health, safety and welfare of the citizens, and preserve the quality of life, property values and character of the City of Daphne;

WHEREAS the City Council of the City of Daphne has determined that Solicitation (as hereinafter defined) endangers public health, safety and welfare of the citizens, and is a public nuisance that damages the quality of life, property values and character of the City of Daphne;

WHEREAS it is the intent of the City Council of the City of Daphne to enact a content-neutral ordinance regulating Solicitation to further a compelling governmental interest of protecting the public health, safety and welfare of the citizens, and preserving the quality of life, property values and character of the City of Daphne; and

WHEREAS it is not the intent of the City Council of the City of Daphne to suppress any speech activities protected by the United States Constitution or the Alabama Constitution.

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

- I. DEFINITIONS.** For the purposes of this Ordinance, the following words shall have the following meanings:
 - A. “Solicitation” means the practice of going in and upon private residences or business establishment in the City of Daphne, without permission, invitation or consent of the owner or occupant, for the purpose of soliciting orders for the sale of goods, wares, merchandise, services or donations.
 - B. “Solicitor” means a person engaged in Solicitation.
- II. BACKGROUND CHECK AND BUSINESS LICENSE REQUIREMENT.** Solicitors within the City must submit a Solicitors Background Check Request and receive a Business License (pursuant to the City Business License Ordinance) prior to engaging in Solicitation.
- III. APPLICATION.**
 - A. Before a Business License may be issued to a Solicitor, an applicant shall provide complete information concerning the applicant and the business represented including, but not limited to: goods to be sold, description of vehicle, employer’s name and address, record of any convictions of any law

violation, identifying pictures, finger printing, and any other information which may be required to perform a criminal background check by the chief of police or his designee.

- B. A Business License shall be issued subject to the provisions of this section and inquiry of pertinent information to be made by the mayor, chief of police, or their designee after receipt of an application.
- C. No Business License shall be issued to any person who has been convicted of a federal or state felony, or a crime involving theft, harassment, sexual misconduct or moral turpitude.

IV. FEES. Upon filing of the application for permit, the following fees shall be collected from the applicant:

- A. Solicitor Fee of seventy-five dollars (\$75.00) for each Solicitor.
- B. A deposit against sales tax in the amount of one hundred dollars (\$100.00), which deposit shall be held by the City and for each Solicitor credited to any sales tax owing, returned to the licensee if the City determines that all sales tax due has been paid, or applied by the Solicitor as a deposit for a Business License issued in future years.
- C. In the event the Business License is denied, the applicant shall be entitled to receive a refund of one hundred sixty-five dollars (\$165.00), and the remaining ten dollars (\$10.00) will be retained by the City as reimbursement for the expenses involved in conducting the background check.

V. VIOLATION. Any persons convicted of a Violation (as defined below) shall be fined the sum of not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00), and the Solicitor's Business License shall be revoked. Each Solicitation of a household or business establishment resulting in a Violation shall be considered a separate offense. It is a Violation to engage in any of the following activities:

- A. Solicitation within the City of Daphne by persons not holding a valid Business License.
- B. Intentionally or recklessly making materially false or fraudulent statements in the course of Solicitation.
- C. Using a fictitious name, an alias, or any name other than a true, correct and legal name.

- D. Solicitation at a business establishment that has properly displayed a “No Soliciting” placard as outlined in the “NO SOLICITING’ NOTICES” Section of this Ordinance.
 - E. Solicitation at a private residence.
- VI. REVOCATION.** A Solicitor’s Business License shall be revoked if the Solicitor otherwise becomes disqualified for the issuance of a Business License.
- VII. “NO SOLICITING” NOTICES.**
- A. Any owner or occupant of a business establishment who desires not to have Solicitors call on them shall give notice of the desire to refuse Solicitors by displaying a clearly visible weatherproof placard no smaller than sixteen (16) square inches and no larger than ninety-four (94) square inches stating “No Soliciting” which shall be posted on or near the main entrance of the private property and not within the public right-of-way.
 - B. The display of said placard shall be deemed to constitute notice to any Solicitor that the owner or occupant of the business establishment does not desire to invite Solicitors.
- VIII. TIME OF DAY RESTRICTIONS.** No Solicitor shall conduct Solicitation before 9:00 a.m. or after sunset.
- IX. EXCEPTIONS.** Persons, organizations or entities which are (1) exempt from the City Business License Ordinance or (2) exempt from payment for such Business License or City Sales Tax or (3) conducting fundraisers on behalf of primary or secondary schools of which the citizens of the City of Daphne attend (the “Exempt Parties”) are exempt from the Background Check and Business License Requirement as stated in Section II of this Ordinance. Accordingly, the Exempt Parties are also exempt from the Violations described in Subsections A and E of Section V.
- X. SEVERABILITY.** The provisions of this Ordinance are severable. If any provision, section, paragraph, sentence or part thereof shall be held to be unconstitutional or invalid, such decision shall not affect or impair the remainder of this Ordinance, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence and part thereof separately and independently of each other.
- XI. REPEALER.** Ordinance Nos. 1995-01, 1995-08 and 2010-47 are hereby repealed in their 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.

XII. 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.

ADOPTED AND APPROVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA ON THIS THE ___ DAY OF _____ 2013.

CITY OF DAPHNE

DANE HAYGOOD, MAYOR

ATTEST:

REBECCA A. HAYES, CITY CLERK

**CITY OF DAPHNE
ORDINANCE NO. 2013-31**

**AN ORDINANCE TO REPEAL ORDINANCE NO. 2003-09
CONCERNING PUBLIC INDECENCY**

WHEREAS, based on the evidence contained in Jules B. Gerard & Scott D. Bergthold, *Local Regulation of Adult Businesses* (2013 ed.) along with the studies and court cases cited therein, the City Council of the City of Daphne has determined that Adult Entertainment Establishments (hereinafter defined) have negative secondary effects and are often associated with crime, the downgrading of property values and sexual exploitation;

WHEREAS the City Council of the City of Daphne desires to minimize the negative secondary effects of Adult Entertainment Establishments in order to protect the public health, safety and welfare of the citizens, preserve the quality of life, property values and character of the City of Daphne and deter the spread of urban blight;

WHEREAS it is the intent of the City Council of the City of Daphne to enact a content-neutral ordinance regulating Adult Entertainment Establishments to further a compelling governmental interest of minimizing the negative secondary effects of Adult Entertainment Establishments in the City of Daphne; and

WHEREAS it is not the intent of the City Council of the City of Daphne to suppress any speech activities protected by the United States Constitution or the Alabama Constitution.

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

PUBLIC INDECENCY

(a)

Definitions. As used in this section, the following words and terms shall have the following meanings:

Adult Bookstore. An establishment which, as one of its Principal Business Purposes, offers for sale or rental books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videocassettes, slides, tapes, records, compact disks or other form of visual or audio representations which are distinguished or characterized by their emphasis on matters depicting, describing or relating to Nudity.

Adult Cabaret. A nightclub, bar, theater, concert hall, auditorium, restaurant or similar establishment which, having as a preponderance of its entertainment or staff, live performances or appearances by Topless females.

Adult Entertainment Establishment. Adult Bookstores, Adult Cabarets, Adult Novelty Stores, Adult Theaters or Tattoo Facilities.

Adult Novelty Store. An establishment which, as one of its Principal Business Purposes, offers for sale or rental books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videocassettes, slides, tapes, records, compact disks or other form of visual or audio representations or instruments, devices or

paraphernalia which are distinguished or characterized by their emphasis on matter depicting, describing or relating to Nudity.

Adult Theater. A commercial establishment where, for any form of consideration, films, motion pictures, or other photographic reproductions are regularly shown which are distinguished or characterized by their emphasis on matters depicting, describing or relating to Nudity.

Distinguished or characterized by. To be “distinguished or characterized by” means the essential character or quality of an item. As applied in this ordinance, no business shall be classified as an Adult Entertainment Establishment by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

Nude (Nudity). The showing, display or appearance of:

(1)

All or any part of the human male or female genitals, pubic area or anus with less than a fully opaque covering;

(2)

More than two-thirds (2/3) of the buttocks of the human male or female with less than a fully opaque covering;

(3)

Any portion of the human female areola or nipple with less than a fully opaque covering; or

(4)

The covered male genitals in a discernibly turgid state.

Principal Business Purpose. A business purpose shall be a Principal Business Purpose if said purpose accounts for thirty five percent (35%) of the business’:

(1)

Displayed merchandise;

(2)

Wholesale or retail value of displayed merchandise;

(3)

Revenues; or

(4)

Interior business space.

Public Place. Means any location which is frequently by the public, or where the public is present or likely to be present, or where a person may reasonably be expected to be observed by members of the public or is otherwise visible to members of the public. Public Places include, but are not limited to, streets, sidewalks, parks, beaches, business and commercial establishments (whether for profit or not-for-profit and whether open to the public at large or whether entrance is limited by age restrictions, cover charges, or membership requirements), bottle clubs, hotels, motels, restaurants, night clubs, country

clubs, cabarets and meeting facilities utilized by any religious, social, fraternal, charitable or other organizations. Premises used solely as a private residence, whether permanent or temporary in nature, shall not be deemed a Public Place. Public Place shall not include enclosed single sex public restrooms, enclosed single sex functional showers, locker and/or dressing room facilities, enclosed motel rooms and hotel rooms designed and intended for sleeping accommodations, doctor's offices, portions of hospitals and similar places in which Nudity or exposure is necessarily and customarily expected outside of the home and the sphere of privacy constitutionally protected herein.

Tattoo Facility. The geographic location at which an individual does one or more of the following for compensation:

- (1) Places an indelible mark upon the body of another individual by the insertion of a pigment in or under the skin.
- (2) Places an indelible design upon the body of another individual by production of scars.
- (3) The perforation of human tissue other than ear for a nonmedical purpose.

Topless. The exposing of any portion of the human female breast below a horizontal line across the top or the areola at its highest point or simulation thereof excluding any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit or outerwear apparel.

(b)

Public indecency. It shall be unlawful for any person in a Public Place in the corporate limits or police jurisdiction of the City of Daphne to knowingly, intentionally or recklessly:

- (1) Engage in actual or simulated sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, excretory functions;
- (2) Appear or suffer or permit another person to appear Nude or in a state of Nudity;
- (3) Fondle, touch or otherwise come in direct or indirect contact with the genitals of himself, herself, or another person; or
- (4) Fondle, touch or otherwise come in direct or indirect contact with the female breasts of another person or to permit another person fondling, touching or otherwise coming in direct or indirect contact with a female's breasts.

(c)

Public indecency in establishment dealing in alcoholic beverages.

(1)

No person shall expose, show or display to public view his or her genitals, pubic area, vulva, anus, anal clef or cleavage or any simulation of such act in an establishment dealing in alcoholic beverages.

(2)

No female person shall appear topless in an establishment dealing in alcoholic beverages.

(3)

No person maintaining, owning or operating an establishment dealing in alcoholic beverages shall suffer or permit any person to expose, show or display to the public view his or her genitals, pubic area, vulva, anus, anal clef or cleavage or simulation of such act within the establishments dealing in alcoholic beverages.

(4)

No person maintaining, owning or operating an establishment dealing in alcoholic beverages shall suffer or permit any female person to appear Topless within the establishment dealing in alcoholic beverages.

(5)

No person shall engage in and no person maintaining, owning or operating an establishment dealing in alcoholic beverages shall suffer or permit any sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, any sexual act which is prohibited by law, touching, caressing or fondling of the breasts, buttocks, anus or genitals or the simulation of such acts within an establishment dealing in alcoholic beverages.

(6)

No person shall cause and no person maintaining, owning or operating an establishment dealing in alcoholic beverages shall suffer or permit the exposition of any graphic representation, including, but not limited to, pictures or the projection of film or image, which depicts human genitals, pubic area, vulva, anus, anal cleft or cleavage, Topless female(s), sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, any sexual act prohibited by law, touching, caressing or fondling of the breasts, buttocks, anus or genitals or any simulation of such acts within any establishment dealing in alcoholic beverages.

(d)

Adult Entertainment Establishments location requirements.

(1)

Adult Entertainment Establishments are prohibited:

a.

Within one thousand (1,000) feet of any residential zone or any single family or multiple-family residential use.

b.

Within one thousand (1,000) feet of any public or private elementary or secondary school.

c.

Within one thousand (1,000) feet of any family day care, day care center for children, nursery, or preschool.

d.

Within one thousand (1,000) feet of any church or other facility or institution used primarily for religious purposes.

e.

Within one thousand (1,000) feet of any public park.

f.

Within one thousand (1,000) feet of another Adult Entertainment Establishment.

g.

Within a local business district, professional business district, overlay district or mixed use district.

(2)

The distances provided in this section shall be measured by following a straight line, without regard to intervening buildings, from the nearest point of the property parcel upon which the proposed use is to be located, to the nearest point of the parcel of property or the land use district boundary line from which the proposed land use is to be separated.

(3)

The table of permitted uses shall be updated to reflect the location restrictions contained herein.

(e)

Hours of Operation. No Adult Entertainment Establishment shall be open to do business before eight o'clock a.m. (8:00a.m.), and no Adult Entertainment Establishment shall be open to do business after twelve o'clock (12:00) midnight. No Adult Entertainment Establishment shall be open to do business on Sunday.

(f)

Permitting.

(1)

It shall be unlawful to operate an Adult Entertainment Establishment in the City of Daphne without a valid Adult Entertainment Establishment Permit.

(2)

An applicant for an Adult Entertainment Establishment Permit shall file in person with the Department of Community Development a completed application made on a form provided by the Department of Community Development accompanied by an application fee of \$50.00.

(3)

An application for an Adult Entertainment Establishment Permit shall contain:

(a)

Applicant's full name and any other names used by the applicant in the past five (5) years.

(b)

Written proof of the age of the applicant in the form of a driver's license or other picture identification document issued by a governmental agency.

(c)

Current business or mailing address of the applicant.

(d)

The proposed name of the proposed Adult Entertainment Establishment.

(e)

The proposed location of the proposed Adult Entertainment Establishment.

(f)

An application of an Adult Entertainment Establishment Permit shall be accompanied by a legal description of the property where the Adult Entertainment Establishment is proposed to be located.

(4)

An application containing all items required by this section shall be considered complete. Within thirty (30) days of the submission of a completed application, the Department of Community Development shall issue a permit unless:

- (a) The applicant is less than eighteen (18) years of age.
 - (b) The location of the proposed Adult Entertainment Establishment is not in compliance with the locational requirement of this ordinance.
 - (c) The application fee required by the Department of Community Development has not been paid.
- (5) Adult Entertainment Establishment Permit shall not, and does not, relieve the applicant of other relevant licensing or permitting requirements.
- (g) *City or state regulation.* Nothing in this section is intended to authorize, legalize or permit the establishment, operation or maintenance of any business, building or use which violates any city regulation or statute of the State of Alabama.
 - (h) *Penalty.* 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.

SEVERABILITY

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

REPEALER

Ordinance No. 2003-09 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. This Ordinance shall lift the moratorium placed on the “establishment of adult entertainment stores and tattoo parlors in the City of Daphne” enacted on February 4, 2013.

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.

ADOPTED AND APPROVED BY AND CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA THIS ___ DAY OF _____ 2013.

CITY OF DAPHNE

DANE HAYGOOD, MAYOR

ATTEST:

REBECCA A. HAYES, CITY CLERK

ORDINANCE 2013-32

Williams Property Acquisition and Remediation for Yancey Branch Sediment Control

WHEREAS, Ordinance 2012-58 approved and adopted the Fiscal Year 2013 Budget on October 1, 2012; and

WHEREAS, subsequent to the adoption of the Fiscal Year 2013 budget, the City Council has determined that certain appropriations are required and should be approved and made a part of the Fiscal Year 2013 budget; and

WHEREAS, it has been determined that large amounts of sediment are impacting Yancey Branch, Daphne's beachfront property, and ultimately Mobile Bay; and

WHEREAS, the source of such sediment deposits has been identified as property currently owned by Henry C. Williams, Jr; and

WHEREAS, future remediation of the property to control the flow of sediment into Daphne's beachfront areas and Mobile Bay will be needed and is estimated to cost \$ 50,000; and

WHEREAS, remediation needs will be evaluated and research will be done for any available grant monies for this purpose; and

WHEREAS, the acquisition and subsequent remediation of this property will preserve and protect the water quality and habitat of Yancey Branch and Mobile Bay, and thereby maintain the valuable and limited asset the City of Daphne has in waterfront property.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Daphne, Alabama, that the Fiscal Year 2013 Budget is hereby amended to include a General Fund appropriation in the amount of **\$96,000** for 1) the acquisition of the Williams property (\$ 92,000); and 2) title search, appraisal, taxes, legal and associated cost with closing (\$4,000).

APPROVED AND ADOPTED by the Mayor and City Council of the City of Daphne, Alabama, this _____ day of _____, 2013.

Dane Haygood, Mayor

ATTEST:

Rebecca A. Hayes, City Clerk