

The City of Daphne
Planning Commission Minutes
Regular Meeting of January 23, 2014
Council Chamber, City Hall - 5:00 P.M.

Call to Order:

The regular meeting of the City of Daphne Planning Commission was called to order at 5:02 p.m. The number of members present constitutes a quorum.

Call of Roll:

Members Present:

Monty Montgomery
Charles Smith
Don Terry, Secretary
Larry Chason, Chairman
Ed Kirby, Vice Chairman
Ron Scott, Councilman
Hudson Sandefur
Chief James "Bo" White (left @ 7:12 p.m.)

Staff Present:

Adrienne Jones, Director of Community Development
Jan Vallecillo, Planning Coordinator
Jay Ross, City Attorney
Kevin Boucher, Attorney
Lonnie Jones, Code Enforcement Officer
Richard Johnson, Public Works Director
Rex Rentz, Code Enforcement Officer, Utilities Board of the City of Daphne

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

Chairman asked for Commission questions or comments and a motion for approval of the minutes.

A **Motion** was made by Mr. Kirby and **Seconded** by Mr. Sandefur *for approval of the regular meeting minutes of December 19, 2013. There was no discussion on the motion. The Motion carried. Mr. Terry and Chief White abstained due to their absence at the meeting.*

Mr. Scott commented that according to procedures adopted by the City Council and outlined in *Robert's Rules of Order*, a motion is not necessary for approval of minutes. If the Chair asks for discussion and there are no comments and/or corrections, the minutes are approved.

After Commission discussion, the Chairman asked for questions, comments or corrections to the minutes of **the work session of January 7, 2014. If there are none, the minutes are approved as submitted.**

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The next order of business is preliminary/final plat review for Trott Subdivision.

An introductory presentation was given by Mr. David Trott, owner, of a four-lot family division consisting of approximately nine point seven acres located at the intersection of County Road 54 east and Trott Lane for the purpose of selling lot 2, building on lot 1, and deeding lot 3 and 4 to his children.

Chairman opened the floor to public participation. No one came forth. He closed public participation and asked for Commission questions or comments and a motion for approval.

A Motion was made by Mr. Kirby and Seconded by Mr. Terry to grant preliminary/final plat approval to Trott Subdivision. There was no discussion on the motion. The Motion carried unanimously.

The next order of business is an administrative presentation for the City of Daphne Zoning and Street Map updates.

Ms. Jones asked to continue the agenda item to the end of the meeting. Chairman agreed.

The next order of business is site plan review for the Douglas Road Water Storage Facility.

An introductory presentation was given by Mr. Rob McElroy, the General Manager of the Utilities Board of the City of Daphne, of a water storage facility, north of U.S. Highway 90, three hundred fifty feet west of Douglas Road. For security reasons, the water tank is netted in the trees and hidden in plain sight by a fence. The only access to the facility is by a utility worker once a day for water samples.

Chairman commented at site preview, it was discussed that the Utilities Board would like access to remain low key, but would consider the use of some type of hard surface.

Mr. McElroy answered that the easement is not a right-of-way, but rather a meandering easement that is the access to the adjacent property. Mr. Strom, the project engineer, commented it is a privately held easement extending from the unnamed east/west right-of-way.

Chairman asked for Commission questions or comments.

Mr. Scott asked for clarification. Mr. Johnson responded it is a privately owned sixty-foot ingress/egress easement maintained by the property owner which is accessed from a City maintained right-of-way.

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Mr. Johnson stated once this site plan is approved, it may become a liability for the City. The adjacent property owner can now ask for acceptance of the right-of-way for maintenance. Mr. McElroy stated the Utilities Board is willing to pave and maintain the existing ingress/egress easement, but does not wish to incur the cost of the installation of drainage and/or curb & gutter. Mr. Johnson asked that the Utilities Board pave only the existing roadbed, preserve the mature trees, and ask the City to accept maintenance of the right-of-way.

Chairman asked for Commission questions or comments and a motion for approval.

A Motion was made by Mr. Kirby and Seconded by Mr. Sandefur to grant Planning Commission approval of a water storage tank in an R-3 zoned district and site plan approval of the Douglas Road Water Storage Facility, contingent upon pavement of the twelve-foot access by the Utilities Board of the City of Daphne with the assistance of the Public Works Department. There was no discussion on the motion. The Motion carried unanimously.

The next order of business is preliminary/final plat review for Malbis Plantation, Inc.

An introductory presentation was given by Mr. Dan Anderson, representative of CVS Pharmacy, of a two-lot subdivision southwest of the intersection of Alabama Highway 181 and U.S. Highway 90. He referenced work session discussion and the denial at a previous meeting in which there was a request for the submission of additional documents. The owner has complied with the request at the time of application in accordance with your regulations. He referenced the ALDOT 2013 Operations Manual, Minimum Standards, as a guide used for review on a case-by-case basis, Section 5, states "an access shall be a distance of six hundred and sixty feet from an intersection"; however, the ALDOT established by virtue of the issuance of a permit that four hundred and seventy-three feet is adequate; (if it were a distance more than that it would be extremely dangerous). He referenced Section 17-2 of the Land Use and Development Ordinance, Master Plan Submittal, states "Any subdivision or development which is to be developed in phases or units shall require a master plan of the proposed subdivision or development which shall be submitted to the Planning Commission." We are only subdividing property to develop a parcel of land, not phases or units, which does not constitute the submission of a master plan. CVS cannot be vouch for and/or discuss the potential development of the remaining property. It has been given at the Commission's request as one of the required documents. We have met all of the regulations and should be approved.

Chairman asked for Commission questions or comments.

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Mr. Montgomery asked who will own the property.

Mr. Anderson responded I represent CVS Pharmacy in the development of this parcel. The developer will have a ground lease, but Malbis Plantation will maintain ownership and control of the parcels.

Mr. Kirby stated a master plan is conceptual and may change. This is a subdivision of property: we have only dealt with an ALDOT permit, traffic study, and sidewalks when dealing with a site plan. These issues will be addressed during site plan review by Baldwin County. The requirement of the submission of an ALDOT permit and master plan at the previous meeting has been accomplished.

Chairman stated he contacted Vince Jackson, the Baldwin County Planning Director, to discuss: the conditional use, special exception, site disturbance permit, the subdivision plat, and the lack of a public hearing regarding drainage and traffic. The special exception will allow parking in the setbacks. This and the variance from the state highway setbacks may compromise any future widening of Highway 181. He also referenced the National Register, his concern about it, and indicated that CVS needed more land to build a store.

Mr. Yarbrough stated the plat has been reviewed and approved by Baldwin County, subject to the approval of the City of Daphne. The conditional use and special exception were granted by the Baldwin County Planning Commission. They have issued a land disturbance permit. Their regulations did not require a public hearing on drainage and traffic.

Chairman asked for Commission questions or comments.

Mr. Scott stated the Baldwin County Planning Commission granted a conditional use to allow for a greater than eight thousand square foot building to be constructed on this site, and a special exception for the setbacks. This particular site should be used for business, but the owner is subdividing the property to develop the parcels in phases; therefore, the plat should be denied for noncompliance until such time the owner submits a qualified master plan. Mr. Ross stated the owner has met the stipulation set by the Commission by the submission of a master plan. Mr. Scott asked the date of the pending litigation of the Vlahos and Malbis Lane POA vs. Baldwin County. Mr. Ross stated it has been continued to March 6, 2014.

Chairman opened the floor to public participation.

Mr. Lawler, representative for the Vlahos and Malbis Lane POA, spoke in opposition and discussed the pending litigation, submission of the master plan, the new subdivision application, and the conditional use.

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Mr. Lawler stated the approval of the special exception and the variance from the setbacks was a gross inequity for monetary purposes. A future widening of Highway 181 would require a condemnation, and the purchase of this property & improvements. This matter lies within the jurisdiction of the application and the subdivision regulations apply in the extraterritorial planning jurisdiction and the strict compliance thereof with regard to setbacks, crosswalks, sidewalks and/or landscaping. Compliance should follow your Ordinance and a waiver can only be given based on extraordinary topography or the shape of said property and/or adjacent property. Neither of which does applies to this site.

Mr. George Kalasountas, 9563 Malbis Lane, as a shareholder asked for support of the development.

Chairman commented that he thought a representative for Malbis Plantation should have been present at this meeting.

Ms. Gertrude Malbis, 9655 Malbis Lane, mentioned that the board for Malbis Plantation has changed. The master plan was developed by the previous board and may not be accepted by the new members.

Mr. Kevin Spriggs, 29640 State Highway 181, expressed concern about traffic at this intersection and reiterated the need for a master plan of this property rather than piece meal.

Ms. Betty Godwin, 9780 Malbis Lane, spoke in opposition, and referenced the Comprehensive Plan. She commented on her appreciation for the Commission members diligently listening and respecting the articles contained within this document regarding: the quality of life, work/living environment, traffic, crosswalks, sidewalks, and the preservation of trees. The approval of the construction of a one thousand three hundred square foot building by Baldwin County is not responsible planning.

Ms. Leeann Lanham, 29240 Vlahos Lane, asked the Commission to consider the traffic issues at this intersection when making their decision.

Ms. Felicia McAllister, 9595 Malbis Lane, asked the Commission to deny the subdivision plat based on the traffic concerns at this intersection.

Mr. Normand McAllister, 9595 Malbis Lane, representative for the homeowners' association of Vlahlos and Malbis Lane, discussed the relocation of the access, the master plan, and requested to delay action until there is a decision on the pending litigation with the Vlahos and Malbis Lane POA vs. Baldwin County.

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Mr. Anderson reiterated the developer has the right to develop the property because ALDOT has approved the curb cut and the addition of a median cut; the conditional use and the special exception has been granted by Baldwin County; and due to adherence to the City of Daphne subdivision regulations.

Chairman asked for additional comments. None were presented. He closed public participation and asked for Commission questions or comments.

Mr. Montgomery commented that a board member should have been present to answer questions and/or comments about the master plan. Mr. Scott agreed.

Chairman stated in the extraterritorial planning jurisdiction, the stricter of the two sets of regulations shall apply. This subdivision has not been presented to the Baldwin County Planning Commission. Also, the vote of the Baldwin County Commission was four to three to approve the conditional use. The applicant should consider annexing into the City of Daphne.

Mr. Kirby reiterated there is still confusion in that we are only dealing with subdividing property and not site plan review.

Chairman asked if approval of the plat could be postponed until a decision is made on the pending litigation. Mr. Anderson stated our due diligence to the developer is approval of the plat by March 2014. Mr. Scott stated based on the comments regarding the traffic and setbacks, you should consider it. Chairman stated you should consider tabling the subdivision plat until a representative from Malbis Plantation is present to hear the comments and answer questions from the Commission.

A Motion was made by Mr. Scott and Seconded by Mr. Kirby to table the preliminary/final plat for Malbis Plantation Subdivision, until the regular meeting of March 27, 2014.

During discussion, Ms. Jones asked the Chairman to request a waiver of the thirty-day rule. Mr. Anderson agreed.

Commissioners discussed amending the motion to request in writing the presence of the owner, Malbis Plantation, at the regular meeting of March 27, 2014. Mr. Scott did not accept.

The Motion carried. Seven members voted in the affirmative and one dissented (Mr. Kirby).

Mr. Scott made reference to Mr. Lawler's comments and asked if jurisdiction is one of the things that he asked the court to determine in the pending lawsuit with Baldwin County. Mr. Ross stated he has asked for a determination on the validity of the conditional use approval and jurisdiction.

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The next order of business is an administrative presentation for a mobile food catering establishment.

An introductory presentation was given by Ms. Karen Barge of a mobile food catering establishment located at 1010 Stanton Road, southeast of U.S. Highway 98 and Stanton Road.

The Commissioners and the representative discussed the matter of mobility and/or placement of a nonpermanent structure for business purposes permitted on a temporary basis at this site.

Chairman asked Ms. Barge to address the setbacks, driveway, and the location of trailer, water/sewer, signage, and parking on a drawing to present the documentation at the regular meeting of February 27, 2014 for review. He asked for Commission questions or comments.

The matter was continued.

Ms. Jones requested a five minute recess.

The Commission adjourned at 7:12 p.m. and reconvened at 7:17 p.m.

Chief White asked to be excused at 7:12 p.m.

The next order of business is an administrative presentation for the City of Daphne Zoning and Street Map updates.

Ms. Jones presented a request for the acceptance of the zoning and street map updates.

Chairman asked for Commission questions or comments and for a motion recommending acceptance.

A Motion was made by Mr. Kirby and Seconded by Mr. Scott to grant approval of the Street Map and of an affirmative recommendation by the Planning Commission to the City Council of Daphne for the adoption of the City of Daphne Zoning Map. The Motion carried unanimously.

The next order of business is a public hearing on the proposed revisions to the Sign Provisions.

Ms. Jones gave an introductory presentation of the final draft of revisions to the Sign Provisions. The zoning amendment ordinance consists of several sections, referencing: definitions, signage in which no permit is required, signage prohibited in all districts, signs that do require permits, electronic signage, real estate, builder, subdivision/directional signs (on-premise), and the Eastern Shore Park and Jubilee Retail Overlay.

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Ms. Jones stated you may vote to adopt each section, the document in its entirety, or amend a section.

Chairman asked if sections are adopted separately or in its entirety will it still move forward to the City Council. Ms. Jones stated yes.

The Commission discussed nits, the need for a nit gun, a thirty-second hold, and political signs in non-maintained portions of the right-of-way. During discussion, Mr. Kirby made the comment that the adoption of electronic signs is a mistake.

Chairman asked for Commission questions or comments and a motion for approval.

A Motion was made by Mr. Kirby and **Seconded** by Mr. Smith *for the favorable recommendation by the Planning Commission to the City Council of Daphne of the acceptance of Sections 1 through 4 and 6 & 7 of the proposed amendments to Ordinance 2011-54, Land Use and Development Ordinance, Sign Provisions. There was no discussion on the motion. The Motion carried unanimously.*

Chairman asked for Commission questions or comments and a motion for approval.

A Motion was made by Mr. Scott and **Seconded** by Mr. Sandefur *for the favorable recommendation by the Planning Commission to the City Council of Daphne of the acceptance of Section 5 of the proposed amendments to Ordinance 2011-54, Land Use and Development Ordinance, Sign Provisions. The Motion carried. Six members voted in the affirmative and one dissented (Mr. Kirby).*

Mr. Ross stated there are several issues relative to the Lamar Signs lawsuit which include: an application for an electronic sign, add language that if no decision is made on an application for a permit by the Code Enforcement Officer within thirty (30) days, the applicant has the right to appeal to the Board of Zoning Adjustment, pursuant to Article XXI, Section 21-1(f); on-premise/off-premise signage relative to real estate open house signs and non-commercial yard and/or garage sale temporary signs shall be placed on street frontage on site. All others shall be considered an off-premise sign and will be removed.

In regard to the City Attorney's proposal regarding signs, a **Motion** was made by Mr. Scott and **Seconded** by Mr. Montgomery *for the favorable recommendation by the Planning Commission to the City Council of Daphne of the acceptance of the various articles relative to the amendments to Ordinance 2011-54, Land Use and Development Ordinance, Sign Provisions. There was no discussion on the motion. The Motion carried unanimously.*

The next order of business is public participation.

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Chairman asked for public participation. No one came forward. He closed public participation.

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

Mr. Ross clarified for the Commission, after reviewing the pending litigation with Baldwin County and the Malbis Lane POA, the attorney does not ask the court to make a determination of jurisdiction. The issue was raised that is in a historical district. It is not. Ms. Jones has been subpoenaed by Mr. Lawler to raise the safety issues about traffic and crosswalks in that area. In the matter of the pending litigation with Tiawasee Trace POA, the attorney is asking for declaratory and not compensatory damages by declaring abuse of discretion. The case is now being handled by Adams and Reese and may require a brief executive session at the next meeting. Mr. Scott asked was the Council included in the lawsuit. Mr. Ross stated no.

The next order of business is commissioner's comments.

None were presented.

The next order of business is director's comments.

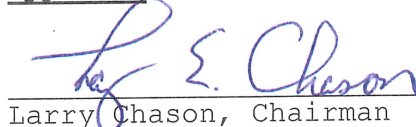
None were presented.

There being no further business, the meeting was adjourned at 7:41 p.m.

Respectfully submitted by:


Jan Vallecillo, Planning Coordinator

Approved: February 27, 2014


Larry Chason, Chairman