

The City of Daphne
Planning Commission Minutes
Regular Meeting of March 27, 2014 (PC Corrected Minutes @ 4/24/2014 Meeting)
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:

Don Terry, Secretary
Larry Chason, Chairman
Ron Scott, Councilman
Hudson Sandefur
Charles Smith
Chief White

Staff Present:

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

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

Chairman asked for questions, comments or corrections to the minutes of ***the regular meeting of February 27, 2014. There being none, the minutes are approved as submitted.***

The next order of business is subdivision replat review for the Colonnade of Eastern Shore, a replat of Lot 1, Springs at Eastern Shore.

An introductory presentation was given by Mr. Jaye Robertson, representative of Hutchinson, Moore, & Rauch, of a subdivision replat of Lot 1, Springs at Eastern Shore and the outparcel located southeast of the intersection of U.S. Highway 98 and Johnson Road to create an twenty point three one acre parcel to accommodate the site plan of the Colonnade at Eastern Shore.

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

A **Motion** was made by Mr. Scott and **Seconded** by Mr. Terry **to grant the subdivision replat for the Colonnade of Eastern Shore, a replat of Lot 1, Springs at Eastern Shore. There was no discussion on the motion. The Motion carried unanimously.**

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An introductory presentation was given by Mr. Jaye Robertson and Mr. Scott Hutchinson, representatives of Hutchinson, Moore, & Rauch, of a multi-family development seven hundred feet southeast of the intersection of U.S. Highway 98 and Johnson Road. Mr. Robertson commented that a turn lane is planned as a part of the improvements to the intersection of Johnson Road and U.S. Highway 98.

Commissioners asked will the development be subsidized housing.

Mr. Hutchinson stated no. The only association is the development has HUD financing.

Chairman asked will this development have a property owners association.

Mr. Hutchinson stated the property will be maintained by an apartment management company.

Chairman made reference to the Public Works Director's request for the developer to participate in the improvements at U.S. Highway 98 and Johnson Road. He asked does the developer have an ALDOT permit.

Mr. Johnson commented that the developer cannot have a preconstruction meeting or obtain a site disturbance permit until a permit is issued. He mentioned that the MPO is considering the improvement of Johnson Road and County Road 13 as a priority and a part of the County Road 13 interchange project.

Mr. Robertson stated a meeting is scheduled on Monday, March 31, 2014 with ALDOT to discuss the proposed geometric design of U.S. Highway 98 and Johnson Road.

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

A Motion was made by Mr. Terry and Seconded by Mr. Scott to grant site plan approval of the Colonnade at Eastern Shore, contingent upon: ALDOT approval of the improvements at the access to U.S. Highway 98 and the intersection of U.S. Highway 98 & Johnson Road.

During Commission discussion, Mr. Terry asked to amend the main motion to include a waiver of the sidewalk requirement along U. S. Highway 98. Mr. Scott accepted the amendment.

The Motion was amended by Mr. Terry and Seconded by Mr. Scott to grant site plan approval of the Colonnade at Eastern Shore, contingent upon: ALDOT approval of the improvements at the access to U.S. Highway 98, the intersection of U.S. Highway 98 & Johnson Road, and a waiver of the sidewalk requirement along U.S. Highway 98. There was no further discussion on the motion. The Motion carried unanimously.

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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 the previous Commission meeting of which a request was entered to table the plat review for two months pending resolution of the pending litigation between Malbis Lane/Vlahos Lane Property Owner's Association, Baldwin County, and the Foresite Group. Approximately three weeks ago, the Circuit Court of Baldwin County entered an order to uphold the decision of the Baldwin County and found that the Planning/Zoning Commission acted within its discretionary authority. The case found its actions were not arbitrary and capricious. Furthermore, the Court found based upon the evidence presented, Foresite is entitled to the setback waiver in order to meet the required number of parking spaces. Nothing was presented to the Court to substantiate the claim regarding additional traffic. All issues were addressed on this matter and heard on its merits; therefore, the Court will not entertain further discussion of the issues. Alabama law gives this Commission administrative capacity of review of the subdivision regulations. Approval of the plat is not a consideration of the use or zoning of this property. The Code also states if a subdivision meets all of the criteria of the conditions of the regulations, approval is not discretionary. The approval of the plat has been recommended by the City Attorney and the Director of Community Development. Five of the seven members of the Board of Malbis Plantation, Inc. which granted approval of the ground lease are present to answer any questions you may have.

Chairman asked for Commission questions or comments.

Mr. Scott stated he had hoped for annexation of the property into the City of Daphne. However, if the plat meets the subdivision portion of our regulations, there is no other recourse than approval of the plat.

Chairman opened the floor to public participation.

Mr. Lawler, representative for the Malbis and Vlahos Lane POA, spoke in opposition. State law gives this Commission jurisdiction over the subdivision of lands adjacent to a extraterritorial planning jurisdiction. The Land Use and Development Ordinance, Section 10-9, your subdivision regulations state that, "A traffic impact analysis shall be required for a proposed high density and/or intensity development". It also states, "The results and any corrective measures necessary shall be included as a part of, and in addition to the requirements of the preliminary subdivision plat and/or site review plan approval".

Mr. Scott stated this is not a preliminary subdivision plat and/or a site plan review, but only a two-lot subdivision. Mr. Ross stated a preliminary/final plat review does not require a traffic impact study.

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Chairman referenced his discussion and expressed his concerns regarding additional traffic at this intersection, but noted that ALDOT has reviewed the plans and issued a permit.

Mr. Lawler stated there are enabling legislation and an Attorney General's opinion regarding annexation of property in which the regulations are served by.

Mr. Demitrius Matthews asked who would address patrons of the business utilizing Malbis Lane as an access. Chairman stated traffic concerns would be addressed by Baldwin County.

Mr. Mike Sirmon spoke as the liaison for Malbis Plantation, Inc. He commented that he and the Mayor have discussed annexation and assured the Commission that CVS will adhere to the ground lease agreement.

Mr. Scott commented annexation rather than the property remaining in the extraterritorial planning jurisdiction would have given the Planning Commission more of an opportunity to require the developer to adhere to our subdivision regulations and minimize the impacts and require buffer zones. Mr. Lawler referenced case law, "It is unlawful to use conduct to specify rules that all citizens must not omit or exercise". In your municipal code, Section 11-14 (g), states "Proposed residential and/or commercial subdivisions in the extraterritorial planning jurisdiction which are contiguous to the corporate limits and are served by the public community water and sanitary sewer system of the Utilities of the City of Daphne, shall be required to annex into the City of Daphne prior to approval of said subdivision. If it is deemed to be by the Planning Commission to be in the best interest of the City.

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

Chief White asked if it is definite that ALDOT certified the intersection as safe.

Mr. Terry stated the Judge noted in the case the concern with traffic, but no evidence was presented.

Mr. Scott commented with the zoning of the adjacent properties, the CVS should have been zoned differently. The conditional use was granted for a setback waiver to allow the required number of parking spaces. This decision was affirmed by the court. Mr. Ross stated it is a compelling argument, the rules of which to follow to require annexation. The issue, however, strictly construed the Planning Commission is bound by the subdivision regulations as they move forward. The regulations to follow are the standard regulations which govern this body and which are contained in the Ordinance.

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

A **Motion** was made by Mr. Terry and **Seconded** by Mr. Sandefur **to approve the preliminary/final plat for Malbis Plantation Subdivision.**

Commissioners discussed amending the motion to include there will be no further subdivision of land without the presentation of a master plan. Mr. Terry accepted the amendment to the main motion.

Amended to add the following:

Chairman stated regardless of the fact that the ALDOT has issued the permit he felt that the access to CVS at Alabama Highway 181 was too close to the intersection, in his opinion someone will be injured and/or killed.

The **Motion** was amended by Mr. Terry and **Seconded** by Mr. Sandefur **to approve the preliminary/final plat for Malbis Plantation Subdivision, contingent upon a note being placed on the plat stating that no further subdivision of land shall be allowed without the presentation of a master plan.**

During discussion, Mr. Scott mentioned that the master plan application will have to be made by the owner of the property.

The Motion carried unanimously. Six members voted in the affirmative.

The next order of business is final plat review and petition for street acceptance for Bellaton Subdivision, Phase Three.

An introductory presentation was given by Mr. John Avent, representative of Preble-Rish, of a thirty-nine lot subdivision southwest of Alabama Highway 181 and Corte Road. He stated the infrastructure, utilities and landscaping are installed and requested approval of the plat and acceptance of the streets for maintenance.

Chairman asked for Commission questions or comments.

Ms. Campbell requested stabilization of the construction entrance.

Chairman asked for Commission questions or comments and a motion for approval and recommendation of acceptance of the streets.

A **Motion** was made by Mr. Scott and **Seconded** by Mr. Sandefur **to grant approval of the final plat for Bellaton Subdivision, Phase Three, contingent upon stabilization of the construction entrance; and affirmative recommendation by the Planning Commission to the City Council of the streets for maintenance. The Motion carried unanimously.**

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The next order of business is preliminary/final plat review for Broadway - AL HWY 181 Subdivision.

An introductory presentation was given by Ms. Judith McCutcheon, representative of the Broadway Group, of a two-lot subdivision south of Belgrove Avenue and Alabama Highway 181 for the purpose of development of a single tenant retail development on one and one-half acres. The owner will retain the remainder of the parcel.

Chairman asked for Commission questions or comments. He asked if the drawing was revised to reflect a dual access.

Ms. McCutcheon stated comments from ALDOT are still pending.

Chairman opened the floor to public participation.

Ms. Joy Davis asked who would address the issue of drainage and/or flooding in the area. Chairman stated site plan, grading, and drainage concerns would be addressed by Baldwin County.

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

A Motion was made by Mr. Terry and **Seconded** by Mr. Sandefur **to approve the preliminary/final plat for Broadway - AL HWY 181 Subdivision.**

Commissioners discussed amending the motion to include there will be no further subdivision of land without the presentation of a master plan. Mr. Terry accepted the amendment to the main motion.

The **Motion** was amended by Mr. Terry and **Seconded** by Mr. Sandefur **to approve the preliminary/final plat for Broadway - AL HWY 181 Subdivision, contingent upon a note being placed on the plat stating that no further subdivision of land shall be allowed without the presentation of a master plan. The Motion carried unanimously.**

The next order of business is an administrative presentation for Gator Alley.

An introductory presentation was given by Mr. Richard Johnson, Public Works Director, of site plan modifications to Gator Alley, northwest of North Main Street and entrance to the treatment plant. This project is a part of the TAP grant and is of high priority of Parks, Recreation, and the Beautification Committee.

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

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A **Motion** was made by Mr. Scott and **Seconded** by Mr. Terry *to approve the site plan modifications for Gator Alley. The Motion carried unanimously.*

The next order of business is an administrative presentation for a street acceptance request by Lake Forest Property Owners Association.

An introductory presentation was given by Mr. Richard Johnson, Public Works Director, presented a request for acceptance of the right-of-ways of Golf Terrace and Yacht Club Drive for maintenance, pending Lake Forest Property Owners Association providing the necessary legal documentation to the City Attorney for prepare the right-of-way deeds to the City of Daphne.

Chairman asked for Commission questions or comments and a motion for recommendation of acceptance of the right-of-ways.

A **Motion** was made by Mr. Scott and **Seconded** by Mr. Sandefur *for an affirmative recommendation by the Planning Commission to the City Council of the acceptance of the right-of-ways of Golf Terrace and Yacht Club Drive for maintenance. The Motion carried unanimously.*

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. Ms. Barge referenced the sketch presented which addressed setbacks, driveway, trailer location, signage, and parking.

Chairman asked for Commission questions or comments. He commented that approval requires ninety-day renewals. The maximum period of operation is one year. He asked for Commission questions or comments and a motion for approval.

A **Motion** was made by Mr. Scott and **Seconded** by Mr. Terry *to approve the mobile food catering establishment for Ms. Karen Barge, 1010 Stanton Road for a maximum period of one year in accordance with Section 13-7 (f), Daphne Land Use and Development Ordinance. There was no discussion on the motion. The Motion carried unanimously.*

The next order of business is public participation.

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

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

Mr. Ross stated that the case of Malbis Plantation, Inc. and CVS Pharmacy is not a simple issue. He commented on the pending cases with the Tiawasee Property Owners Association and Lamar Signs.

The next order of business is commissioner's comments.

None were presented.

The next order of business is director's comments.

Director invited the Commission to the Volunteer Appreciation Breakfast on April 9, 2014 at 7:45 a.m. at the Bay Front Pavilion.

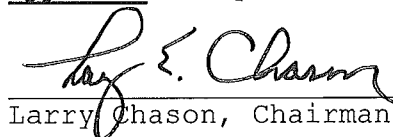
There being no further business, the meeting was adjourned at 6:49 p.m.

Respectfully submitted by:



Jan Vallecillo, Planning Coordinator

Approved: April 24, 2014



Larry Chason, Chairman