

The Planning & Zoning Commission of the City of Fairhope met Monday, August 4, 2008, at 5:00 PM at the City Administration Building, 161 N. Section Street in the Council Chambers.

Present: Jean Wilson, Chairman; Fran Slade, Bob Clark, Gary Moore, Dick Charles, Lee Turner, Bob Gentle. Gregg Mims, Planner, staff Jonathan Smith, and Nancy Milford, Chris Gill, Attorney and Betty Rivenbark, Secretary. Absent Tim Kant, Dan McCrory

The minutes of the July 7, 2008 meeting were approved as written on motion by Dick Charles, 2<sup>nd</sup> by Bob Clark, with two abstentions by Jean Wilson and Gary Moore.

**ZC08-06 Rezone request of Charles Leon Saltz from R3 High Density Single Family Residential to B-4 Business and Professional Office.** The property is located 200 ft. west of the southwest corner of Fairhope Avenue and Bishop Road. Jonathan Smith gave the staff report saying the property is currently developed as a daycare that is considered a “grandfathered use” of the subject site. In April 2008 the parcel abutting the west lot line of the subject property was rezoned from R-5 to B-4. He said the request is not contrary to the Comprehensive Plan and not inappropriate for the subject site. Staff recommended approval of the rezoning request. The applicant was not present to speak to the request. Gary Moore had a conflict with the rezone request and excused himself from the room. The public hearing was opened and John Reimer of 5 Troyer Court spoke, reading a letter( in minutes) and presented a topo of the property, saying he does not object to the rezone but cited stormwater problems that have occurred in the past and if rezoned require a storm water pollution plan in compliance with Phase II of the Clean Water Act and that this condition be passed on to all future buyers/builders so as to minimize the increased potential damage from storm water to East Gate Subdivision. Mrs. Marion McKnight, 7 Sumac Circle, spoke also presenting a letter and pictures saying she is not opposed to rezoning but site and development plans should be presented before the rezoning is approved. She read from her letter citing stormwater problems she and her husband had incurred with standing water on their property and said that in 2004 after having water standing on their property for six months had to rebuild part of their backyard and could not logistically do this again after development of the lot behind them. She suggested conditional approval of the zoning change contingent to future submission of development and site plans in a public hearing. Mr. Mims said he and his staff are aware of the drainage issues in the area and said if rezoned approved could stipulate all federal state and local laws be tied to approval with the most stringent taking precedence. Lee Turner remarked that there is no retention now and the situation could only get better, he moved to accept staff recommendation, Dick Charles 2<sup>nd</sup> the motion, and motion and 2<sup>nd</sup> were later amended to include that all federal state and local laws

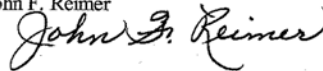
regarding stormwater be tied to approval. Motion carried with one abstention by Gary Moore, and one no vote by Jean Wilson.

Address To The Planning Commission

August 4, 2008

1. Madam Chairman and gentlemen of this board, my name is John Reimer and I live at 5 Troyer Court. Two of my neighbors are within 300 feet of Mr .Saltz's property and were notified by mail of this hearing.
2. My wife and I went to Bay Minuet to get a topo map of this affected area to use in developing factual data to aid in our study of the problem and our recommendations.
3. Mrs. Marian McKnight's property has a storm water open ditch 6 feet below the elevation of the Saltz's property and this same open ditch extends across Hoffren Drive where it becomes 10 feet below the Saltz's property. The actual elevations are shown on the topo map which I have given to you.
4. Mrs. McKnight has shown pictures of her flooded back yard after storm waters have accumulated. She and her neighbors are very concerned that when this property is re-zoned for B-4, larger buildings could be built thereby decreasing the percolation area and increasing the amount of storm water run off through her property and through East Gate Subdivision.
5. The City Council has recently passed an Ordinance stating that the City of Fairhope is not responsible for flooding of private property. However, the Clean Water Act of 1972 was amended in 2003 to include cities with a population of 10,000, or more, and where land disturbances of one acre, or more, for construction activity must comply with Phase II of the Storm Water Pollution Prevention Plan (SWPPP). This Clean Water Act Phase II amendment should be implemented in this re-zoning request.
6. It is recorded in the Planning Commission procedures, Article II, that at this public hearing, the board shall consider one of the following actions:
  - a. Grant of the requested relief,(R-3 to B-4).
  - b. Grant the requested relief with specific conditions.
  - c. Deny the requested relief, or
  - d. Continue discussion of the application for further study.
7. Mrs. Mc Knight does not object to the board granting the requested relief, as of paragraph b above, by allowing the Day Care Center property to be re-zoned from R-3 to B-4 but with specific conditions. These are :
  1. That future construction on this property require a Storm Water Pollution Prevention Plan (SWPPP) in compliance with Phase II of the Clean Water Act.
  2. That this condition be passed on to all future buyers/builders so as to minimize the increased potential damage from storm water to East Gate Subdivision.
8. I thank this board for allowing me an opportunity to assist my neighbors and hope that I have helped to explain Mrs. McKnight's and her adjacent homeowners concerns.

Sincerely, John F. Reimer



**SD06-37 Preliminary Plat Approval - One year extension request of Fairhope Falls.** The property is located on the south side of Highway 104 just east of Langford Road. Nancy Milford gave the staff report saying the property is located outside the city and is not zoned. Phases 1A, 1B and II of the project contain approximately 120.54 acres and 150 lots. The subdivision is following the village subdivision process and the site plan was approved on April 3, 2006 with preliminary approval given August 7, 2006. Under the sub regulations if final plat is not submitted within two years the approval expires. The applicant estimates that 96% of the subdivision infrastructure is built and approximately one month from total completion. She went on to say the original application was submitted prior to the most recent subdivision regulation amendments. She said the new subdivision regulations must be adhered to and the following minimum changes must be met: Finished floor elevation requirements must be revised; Buffer requirements (100 ft buffer from top of bank of Fish River); Drainage requirements ( a letter and/or revised drainage plan stating that the new drainage requirements have been met needs to be submitted with a watershed map); BMP Treatment ( a letter stating the requirements will be met); Operations and Maintenance Plan submitted, signed, stamped, by a professional engineer and recorded; All required maintenance and financial guaranty agreements and bonds submitted; a street lighting plan submitted; a topo map with an aerial overlay; new wording in the engineer's certificate on the plat as per sub regs Article IV Section D 18; final plans submitted on disc in ADOBE PDF format; storm sewers shall be videoed(reflecting a time and date stamp) and reviewed for approval by the County. Staff recommendation was to approve the one year extension and provide staff guidance regarding new subdivision regulation conditions since the subdivision is near completion. Russell Lomax spoke saying they are requesting a one year extension and that they are 96% complete with the infrastructure. He went over the things outlined by Nancy saying he could comply with most but the 100 buffer requirement will affect them the most. He said approximately 200 ft of Silver Creek Avenue and 10 lots may be inside the buffer line. Discussion followed and after all questions answered a motion was made by Dick Charles to approve staff recommendation with the exception of the 100 ft. buffer requirement **due to the advanced state of infrastructure installation, and the more stringent buffer requirements having been issued after the approval of the original site plan.** Bob Gentle 2<sup>nd</sup> the motion and it carried with one no vote by Gary Moore.

**SD08-08 Minor Subdivision plat approval of Orchard Gate.** Request of Monte Nesbitt, two lots being proposed. The property is located on the southwest corner of the intersection of Pecan Street and Dyson Avenue.

Nancy Milford gave the staff report saying the property is located in the city and zoned R-2 containing .72 acres. Lot 1 ////////////////contains .27 acres and lot 2 .45 acres. She said no new streets are proposed. Staff recommendation was to approve. A motion to approve was made by Dick Charles, 2<sup>nd</sup> by Lee Turner, motion carried unanimously.

**IR08-05 Informal Review of North Village PUD-** Amendment request of Volkert & Associates. The property is located on the east side of Highway 181 just southeast of where County Road 44 meets Highway 181. Jonathan Smith gave the staff report saying the property is located in the city and is zoned PUD. It contains approximately 63.61 acres and the applicant is proposing to modify the previously approved and amended North Village at Stone Creek PUD. He said the request is to change the residential layout and the previously approved site plan shows 110 residential units 1.73 units per acre arranged in townhouse fashion with two to four connected units positioned through lot 4. The previous plan shows a 20' wetlands buffer and the newly proposed plan indicates a 30' buffer. The approved plans show 35 building footprint areas covering a large percentage of lot 4. The proposed drawings show 14 building footprint areas. Proposed residential building height has not changed and the amenity area has been moved to a more central location. The parking appears to be greater and it is suggested using pervious materials for parking and heavier landscape materials to the north to create a buffer for the properties adjacent to the site. Staff recommendation was to provide insight and comment. Steven Pumphrey spoke on behalf of the developer saying that when PUD submitted Lot 4 had been reserved for multi-family and now after looking at the market the developer feels what now being proposed( high end luxury scale apartment homes for baby boomers) is what will sell. Bob Gentle asked if they had decided who would build these and the response was not yet. Dick Charles said the parking looks like four times more than before and asked Gregg if a traffic study had been done and Gregg said it did not require one. Lee Turner said he liked what being offered and said its closeness to Hwy 181 would handle added traffic. Bob Clark said he would rather have townhome-condo. Gary Moore offered he had the same concerns as Dick Charles about parking and use of pervious materials for these. Fran Faust asked how large would the units be and Pat Achee answered that when the PUD submitted they had to come up with something and now getting more defined plan, but did not know at this time, it would be something upscale, rustic lodge, maybe 2-3 bedroom. Fran said she too would like pervious paving, keep trees and growth. Jean Wilson had same concerns already expressed. Dick Charles asked if they would

**Planning & Zoning Commission**  
**Page Five – August 4, 2008**

consider underwater storage tanks for runoff if use pervious materials and Pat said they would. He thanked them for their input.

**UR 0806 Request of Riviera Utilities for 11-52-11** review of a proposed Electrical Distribution Substation located on the south side of Highway 104, 900' east of Highway 98. Jonathan Smith gave the staff report saying the total site area is 2.42 acres and 1.95 acres of this will be disturbed. He said the substation has been designed to be as far back on the property as possible and staff recommended additional landscaping should be added on the north and east side of the site to create an adequate buffer. Approval was recommended contingent upon planting an evergreen hedge around the areas of the substation that can be seen from the public right of way (north and east sides) who at maturity will provide an impervious visual buffer. Gary Carnley was present to answer any questions. Dick Charles asked is this would provide an alternate feed to Rock Creek and he said yes. Lee Turner moved to approve staff recommendation including hedge. Dick Charles 2<sup>nd</sup> the motion and it passed unanimously.

The Building Height discussion was postponed until the September meeting.

Old/new business – Gregg asked that the November '08 meeting be changed from November 3 to November 4<sup>th</sup>. Bob Clark moved, Lee Turner 2<sup>nd</sup> and motion carried unanimously. He also recognized Fran Slade, newest member, for completing a planning course and receiving a certificate for doing so.

Chris Gill addressed the members saying that Paul Ripp had asked to address the Planning & Zoning Commission and currently Mr. Ripp has a lawsuit against the City therefore he asked that the members go into Executive Session, saying he is an attorney licensed to practice law in the State of Alabama and that he was giving an oral declaration in accordance with Paragraph 36-25A-7(a)(3) of the Alabama Code in that he needed to discuss with the members of the Planning & Zoning Commission the legal ramifications of pending litigation on the action of the Planning and Zoning Commission. A motion was made by Bob Gentle, Dick Charles 2<sup>nd</sup> to go into executive session. The vote was as follows: Fran Slade, yea; Bob Clark, yea; Gary Moore, yea; Jean Wilson, yea; Dick Charles, yea; Lee Turner, yea; Bob Gentle, yea. They went to Executive Session at 6:04 PM and returned at 6:08 PM.

Mr. Ripp addressed the members reading from a letter he asked be entered into the minutes as follows:

# Planning & Zoning Commission

## Page Six – August 4, 2008

Planning & Zoning  
Aug 4, 08

I request that this document be entered in the minutes of this meeting, not as an attachment.

Request the subject of Publix be put on the September Planning & Zoning agenda.

Since I only have 3 minutes, I will highlight major concerns and rely on the Board to provide answers at the September meeting.

More public information about this project has been requested from the city and will certainly develop further questions that will be submitted to Planning & Zoning in Sept.

What we have is a Big Box Strip Center with a traffic problem.

Issues:

NO TREE SURVEY, SR07-41 Dec 3, 07 staff recommendations #2 A revised landscape plan and a tree survey and protection plan meeting the approval of Jennifer Fidler. This responsibility is Jennifer Fidler's. How can you make issue with Shellbrook Point and not Publix? This is a serious issue and warrants a detailed explanation.

Buffer Areas discussed with specific guidelines - 50 ft. on 98 - 40 ft on Parker. ZC-06-12 Aug 7, 06, SD7-11 Dec 07, SD7-41 Dec 3, 07, SR07-11 Dec 3, 07, SD08-06 May5, 08. Six times the issue came up. The buffer zone on Parker was partially cleared, and on 98, from southern corner to 98 entrance and entirely around Wachovia. Please do not use any excuse relative to grade. The property is 213 acres; developers had plenty of room to comply. On 8-4-08 I spoke with the owner of the Wachovia building and he is very unhappy. He does not understand how Fairhope allowed this to happen and is taken aback that the project was allowed to establish such a monstrosity of a wall on his property line. You can be assured this has depreciated his property, monetarily and aesthetically. Now if a comparison can be made to Hamburger Hill or Airport Blvd, just view the wall of over 20 ft. that is wrapped around an existing business and stripped of any buffer.

Set back on Parker is only 40 ft. on the west ending with a drop in grade of 27 feet. We were told the Publix would be appx 80 ft from Parker with only a 7 ft drop. Now we will be looking at the roof tops, plus the drop will be next to a sidewalk. What about safety?

Parker Road driveway was more to the east than its present location. From the present location, at least 100 ft. of buffer is missing. Is this driveway supposed to accommodate 56 ft delivery trucks and exiting cars at the same time? Another concern is the limited distance to Hwy 98 from the driveway, allowing appx. 5-6 cars between. A major problem will exist at this location if left alone.

Traffic Congestion is already at max stage at Hwy 98 & Parker. Between 104 and Parker Road will become U-turn crazy. The entire traffic plan needs attention now, not upon completion. (See SD-08-06 May 5, 08) The plantation Pines cut through, as a result of "right turn only" off of Veterans Blvd. is presently a dangerous situation.

The project had major opposition and concerns dating back to Aug 7, 06, ZC06-12, from the Woodlands, Rock Creek, Parker Road only to be assured what has happened would not happen. Let's not forget there is already one lawsuit against the city relative to the same project.

Is the answer to the traffic to wait until the 11th hour and try to force the Woodlands or Rock Creek to take some of the load?

# Planning & Zoning Commission

## Page Seven – August 4, 2008

Let me remind you of your previous positions....

### QUOTES:

Dick Charles, Baldwin Press 8-9-06

“The majority opinion felt the positive factors outweighed the negative factors for this property”  
Many surrounding property owners had “unsubstantiated allegations”

Jean Wilson, Baldwin Press 8-9-06

“I thought there were too many outstanding issues for us to make a recommendation to the City Council”

Dan Moore, Baldwin Press 8-9-06

Said his concern centered on landscape buffers between Corte's development and surrounding properties and the distance between his proposed commercial buildings and nearby roads, such as 98. “Those are permanent fixtures” Moore said of the commercial buildings, “if they are not screened with distance and in a greenbelt manner, it can begin to look like Hamburger Hill in Daphne”.

Mayor Kant, Citizens for Responsible Government, July 16, 08

“If violations exist with Publix, regarding the buffer zone, report this to the tree committee. I will not issue a certificate of occupancy if the problem is not answered”.

August 7, 06, ZC 06 12

Bob Clark asked about the big box issue with Comprehensive Plan and Arthur said this was approved in 95 and pre-dated comprehensive plan adoption regarding Greeno Road.

August 7, 06 ZC 06 12

Gary Moore suggested at least 100 ft. greenbelt buffer around commercial with 75 ft. on Parker. Two nay votes - Moore and Wilson

SR 07 11 Dec. 3, Pg. 13

Gregg Mims said his staff would be monitoring this project and will have someone on site every day.

SR 07 11 Dec. 3, 07

Mayor Kant asked about clearing out the buffer area on Greeno Road and was told it would not be cleared out, they were only talking about the entrance area, that all areas on Hwy 98 and turning on Parker Road would not be touched.

SD 08 06 May 5, 08

Bob Gentle said the issue tonight is not traffic  
Lee Turner agreed saying that all traffic concerns would be addressed

ZC 06 12 Aug 7, 06

Arthur Corti 's reply to Bob Clark's reference to Big Box Store issue with Comprehensive Plan - Mr. Corti replied that B2 approved in 95 and pre-dated Comprehensive Plan adoption regarding Greeno Road.

IS IT TRUE??

Bob Gentle was the deciding vote on Publix property.

The Publix site is a part of a 49 acre parcel upon which Corte paid \$133.00 in taxes last year (2.72 an acre).

The county does not recognize that parcel as having been rezoned by Fairhope or they would have to re-access it and bill in arrears for 3 past years at a commercial rate rather than timber rates.

County revenue map also shows the two small parcels on Parker as separate from the larger 49 acres. Oddly they get current use rate as well!

A handwritten signature in black ink, appearing to read "A. Paul Rupp", with a horizontal line drawn underneath it.

Copies: All Mayor Candidates, Local Press, Rock Creek Homeowners Assoc., Woodlands Homeowners Assoc., City Council, League of Municipalities

He was thanked for his comments.

Meeting was duly adjourned at 6:15 PM.

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Jean Wilson, Chairman

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Betty Rivenbark, Secretary

