

The Planning Commission met Monday, December 7, 2009 at 5:00 PM at the City Administration Building, 161 N. Section Street in the Council Chambers.

Present: Jean Wilson, Chairperson; Dick Charles, Vice-Chair; Bob Clark; Tim Kant; Lee Turner; Jennifer Fidler; Fran Slade; Lonnie Mixon. Jonathan Smith, Planning and Building Director; Nancy Milford, Planner; Chris Gill, Attorney; Emily Boyett, Secretary.

Absent: Gary Moore

Chairperson Jean Wilson called the meeting to order at 5:00 PM. The minutes of the November 2, 2009 meeting were considered. Dick Charles moved to approve the minutes as written and was 2nd by Jennifer Fidler. The motion carried unanimously.

Chairperson Wilson announced that agenda item B. SD 09.15 would be heard first, due to the large turnout of the public.

SD 09.15 Final Plat approval of Phase II of Fairhope Village, a two lot minor division, Steve Pumphrey of Volkert & Associates, Inc. The property is located on the south side of Parker Road just east of U.S. Highway 98. Chris Gill addressed the Commission saying this case was before them on September 8, 2009 and was approved with the following three conditions 1) Submittal of a satisfactory flow model 2) Plat shall be signed by the surveyor 3) Applicant shall add a stream/wetland buffer to the plat that meets the requirements of the current City of Fairhope Subdivision Regulations. Mr. Gill indicated he was contacted by Mr. Corte's attorney and legally the applicant contends the project could not be approved based on the PUD contract. Mr. Gill stated that conditions 1 and 2 have been met and the Staff Recommendation is to approve as requested. He said the issue is buffers versus setbacks and the PUD Ordinance 1317 addresses buffers and setbacks for this property. The PUD Ordinance 1317 states Single Family Lots Where Rear Yards Abut Wetlands – Rear Setback – 30'. Mr. Gill said the applicant would have to submit a written request to change the PUD. The Commission discussed amending requirements to developments that have not been started. Steve Pumphrey said a lot has been invested in this project and he questioned why developers would apply for a PUD if it would be ever changing. Lee Turner asked if the applicant would just change the wording from "setback" to "buffer". Mr. Pumphrey stated that a buffer can not be touched and even though it seems simple to change the wording, it would be costly to redo the plat and plans for this project. Mr. Mixon added with the damage that will be done downstream by this project what is the economic cost of this change. Chairperson Wilson stated the issue is the legal impact of changing the wording. Chairperson Wilson opened the public hearing and Paul Ripp, 22985 Highridge Road, came forward saying this project is ruining Fly Creek and that Mayor Kant and Jennifer Fidler should not be allowed to vote on this case because of their involvement with the previous tree and right-of-way issues. He added the Commission should not be entertaining this bad behavior and he will be filing a lawsuit in the coming week. Gordon Cooper, 22651 Alice Lane, stated he is the President of the Flying Creek POA which has twenty-eight lots and is downstream from this project. He said his subdivision was designed with 450' deep lots so 200' could be left natural to protect Fly Creek. He added that since Publix

has been built there have been breaches that have deposited red clay and siltation into Fly Creek, which could cause possible flooding. Mr. Cooper said he was at the previous meetings and did not know why Mr. Corte's agreement to abide by the new regulations was not put into the contract. Jackie Wavrunek, 22440 Sea Cliff, showed pictures of breach that occurred on February 14, 2009. She said 50' buffers are needed to prevent the creek from becoming a drainage ditch. Debra Green, 415 Maple Street, stated that she attended the previous meetings and heard Mr. Corte agree to meet the City's ordinances. She noted the City has multiple lawsuits against it and the Commission is giving the impression that it gives into the developers. She added that she also felt Mayor Kant and Jennifer Fidler should not vote on this development. Lonnie Mixon said the State law clearly states that the Mayor makes the appointments to this Commission and that the Mayor sits ex-officio on the Commission. Jim Horner, 117 Volanta Avenue, said he is a member of the Fairhope Environmental Advisory Board and he remembers Council President Bob Gentle asking Mr. Corte to meet the new stormwater regulations and Mr. Corte agreeing. He stated the Commission voted in September to adopt 50' buffers and it is the Commission's responsibility to protect the citizens and they need to stand up for the City. Having no further comments Chairperson Wilson closed the public hearing. Chairperson Wilson asked what can be done with verbal commitments made to the City Council. Mr. Gill stated he was not at that meeting and can not speak to the discussion that took place and there was nothing in the Council minutes about it. He said the PUD stands as the agreement between the City and the Developer and in this case the PUD specifically addressed setbacks and buffers. Mr. Mixon asked about having a 40' buffer. Mr. Smith stated he did not feel that would satisfy the citizens. Dick Charles questioned whether a lot line goes to the wetland delineation line and if a buffer does not. Mr. Smith responded yes that was correct. He added that if the developer ever wanted to amend the PUD then the Commission and City Council could require a buffer be put in. Fran Slade stated everyone on the Commission wants the 50' buffer, but they are held to the approved PUD plan. Mayor Kant added that this project has gone through the approval process and the City Council is the deciding body for zoning approvals. He said the City Council wanted a setback not a buffer. Chairperson Wilson said the case before the Commission is for plat approval and they cannot revise the PUD. She added that Mr. Corte will have to decide to change it. Bob Clark said the Commission is legally handcuffed on this one and the Commission is also thinking about lawsuits. Mr. Gill stated his recommendation is to approve as requested. Mr. Mixon said he does not believe they are legally handcuffed because he can't see why Mr. Corte's statement would not be considered a verbal contract. Lonnie Mixon moved to grant Final Plat approval with a 50' buffer along the wetlands and was 2nd by Dick Charles. Motion failed to pass with the following votes: AYE – Dick Charles, Lonnie Mixon and Fran Slade. NAY – Mayor Kant, Jennifer Fidler, Bob Clark, Jean Wilson, and Lee Turner. Bob Clark moved to accept the recommendation of staff and legal counsel to approve as requested. Lee Turner 2nd and the motion passed with the following votes: AYE – Mayor Kant, Jennifer Fidler, Bob Clark, Jean Wilson, and Lee Turner. NAY – Fran Slade, Dick Charles and Lonnie Mixon.

Emily Boyett

From: Jackie Wavrunek [jwavrunek@bellsouth.net]
Sent: Friday, December 04, 2009 9:45 AM
To: Emily Boyett
Subject: Dec. 7 Planning Commission Meeting
To: Emily Boyett, Planning Administrative Assistant
City of Fairhope

Emily,

I would like to be on the Dec. 7 meeting agenda to briefly address the severe damage that has been inflicted Fly Creek by Shoppes of Fairhope Village development on the Fly Creek water shed.

I want to do this through photo documentation of numerous breaches from the site from 2008 through 2009. The intent is to give a set of these photos to the commission members.

As I mentioned, I have talked to Dick Charles about this and he wanted it known that he wants me to do this. There seems to be much misinformation about the impact the development has had, and continues to have, on Fly Creek. This photo-documentation leaves no doubt about the extent of the damage already caused and the vulnerability of the creek to further development, particularly without the protection of buffers.

Respectfully,

Jackie Wavrunek, President
Fly Creek Preservation Association

**Public Hearing Sign Up Sheet
Fairhope Planning Commission Meeting
December 7, 2009**

Phase II of Fairhope Village
SD 09.15

1. J. Paul Ripp ✓
2. Gordon Cooper ✓
3. Jackie Wavrunek ✓
4. Debra Green ✓
5. Jim Hornery ✓
- 6.

SD 06.38 Preliminary Plat approval for a one year extension of Stone Creek, Phase Two, Steve Pumphrey. The property is located on the east side of Highway 181, just south of Twin Beech Road. Nancy Milford gave the staff report saying the site is approximately 34.75 acres with 66 lots proposed. She stated preliminary plat approval was granted by the Commission on November 6, 2006 and a twelve month preliminary plat extension was granted on October 6, 2008. Staff recommendation is to approve with the following twelve conditions:

- 1) The most current ISO requirements for fire flow are met.
- 2) Articles of Incorporation are provided.
- 3) Drainage requirements (a letter and/or a revised drainage plan stating that the new drainage requirements have been met. This documentation shall include a watershed map.)
- 4) BMP Treatment (a letter stating the requirements will be met.)
- 5) Submission of an Operations and Maintenance Plan signed and stamped by a Professional Engineer.
- 6) All required maintenance and Financial Guaranty agreements and bonds shall be submitted.
- 7) A street lighting plan shall be submitted.
- 8) A letter signed and stamped by an approved professional traffic engineer, stating that the latest versions of the traffic requirements of the Subdivision Regulations are met.
- 9) Tree Survey and Landscape Plan must be submitted. The applicant shall meet all of the tree requirements per the Subdivision Regulations and Zoning Ordinance. A tree protection plan and barrier detail shall be submitted for all required street trees over 20" DBH.
- 10) All final plans shall be submitted on disc in an ADOBE PDF format.
- 11) Storm Sewers shall be videoed (reflecting a time and date stamp) and reviewed and approved by staff.
- 12) The Engineer's certificate on the plat shall be revised with the new wording provided in the Subdivision Regulations, Article IV, Section D, 18.

Steve Pumphrey, engineer, addressed the Commission saying the reason for the request is due to the slow economy. Jennifer Fidler asked if the buffer issue would apply to this situation as well. Mr. Smith confirmed that this is similar to the Fly Creek PUD situation. Lee Turner moved to accept the staff recommendation to approve with the twelve conditions. Dick Charles 2nd the motion and the motion passed unanimously.

IR 09.04 Informal Review of proposed Front and Rear Setback Variance for Quail Creek Estates, Unit V, Quail Creek Joint Ventures. The property is located off of Quail Creek Drive, just north of Covey Drive. Jonathan Smith gave the staff report saying the site is approximately 23.41 acres with 57 lots and is zoned R-2 Medium Density Single Family Residential District. The Commission approved the final plat on January 2, 2006 and the minimum lot size is 11,122 square feet which is above the required minimum lot size of 10,500 square feet for R-2 zoning. Mr. Smith stated the applicant is requesting a waiver for the front and rear building setbacks to be 30' instead of the required 35' (5' front and rear setback variance). If granted the wavier would provide and additional 10' of allowable building footprint area. Mr. Smith explained

there are three ways this request can be handled. The first is to allow the Board of Adjustments to hear the case. The second is for the applicant to request to rezone to PUD zoning. The third is to replat the phase and request the reduced setbacks. Ack Moore addressed the Commission on behalf of the applicant saying the developer wants 10' more in order to build houses with a larger footprint and it would be more consistent to change the setbacks for the entire phase. Mr. Charles asked if any other phases in Quail Creek have received variances and Mr. Moore responded they have not, but the other phases have larger lots. Mr. Moore said when this phase was originally designed it was a cul-de-sac, but was redesigned because the Commission wanted a looped street. Mr. Charles asked why the developer wants to build bigger homes when houses are not selling now. Miles Jones, applicant, said they just want a larger footprint. Mr. Smith stated if the applicant was to replat this phase and resubmit then lots would be lost due to the wetlands on the property. Bob Clark stated he felt the Board of Adjustments would be the fastest and best way to handle this request. Mayor Kant added the Board could approve a blanket variance for any lots owned by the applicant. Chairperson Wilson said the City and the developers have been working together for years and will hopefully be able to reach a solution.

Chairperson Wilson announced that the next two cases would be heard together.

UR 09.10 Request of AT&T for an 11.52.11 Utility Review of a 2" conduit with fiber optics for broadband services, Chris Dodd. The project will run along the west side of Scenic 98 from Nelson Drive to Orange Avenue, along the south side of Orange Avenue to Liberty Street, along the west side of Liberty Street to the south side of Fels Avenue.

UR 09.11 Request of AT&T for an 11.52.11 Utility Review of 200' of cable, Chris Dodd. The project will be located at 170 Pier Avenue. Nancy Milford came forward and gave the staff report saying the staff recommendation was to approve both as requested with the following two conditions: 1) All cable tie ins should be located outside of the drip line to protect the right-of-way 2) All mechanical equipment should be screened. Jonathan Smith stated he recommends the screening be achieved by painting the connect boxes green. Dick Charles moved to approve the staff recommendations with the two conditions. Lee Turner 2nd and the motion passed unanimously.

Old/New Business

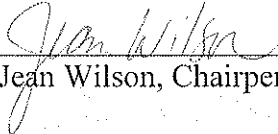
Sign Ordinance Amendments Discussion – Jonathan Smith – The Planning and Building Department staff has prepared several amendments to Article IV, Section G. Signs in the Fairhope Zoning Ordinance. Mr. Smith noted the following changes: a reduction in maximum height allowed for freestanding signs from 20' to 8'; establishing provisions specifically addressing political signs; establishing a 30 day time limit and maximum allowed face area of four square feet for temporary signs; reducing the face area allowed for certain real estate signs; reducing the additional maximum allowable face area for Complex Signs from 50 square feet to 20 square feet; and a provision to allow A-Frame signs in all commercial districts. Mr. Smith stated a small sub-committee would be an efficient way to handle these changes and Jennifer Fidler and Bob Clark agreed to be on this committee.

Subdivision Regulations Amendment Discussion – Jonathan Smith – The Planning and Building Department staff has prepared an amendment to address issues relating to lot access standards in the CBD and to Article VII (Waivers) in the Fairhope Subdivision Regulations. Mr. Smith stated a small sub-committee would be an efficient way to handle these changes and Lee Turner and Mayor Kant agreed to be on this committee.

Tree Ordinance Amendments – Jonathan Smith – The Planning and Building Department staff and the Tree Committee are working on amending the Tree Ordinance and incorporating it into the Fairhope Zoning Ordinance.

Jennifer Fidler stated the Commission needs to look at putting a time frame on PUDs. If a PUD is not completed within 2 or 3 years then the approval would expire and the Commission would be able to make them come into compliance with all City requirements. Mr. Smith said that he is working with Chris Gill on a type of Sunset Clause for PUDs.

Dick Charles moved to adjourn and was 2nd by Lonnie Mixon. Motion passed unanimously and the meeting was duly adjourned at 6:32 pm.



Jean Wilson, Chairperson



Emily Boyett, Secretary