

## August 28, 2012

The City of Opelika Planning Commission held its regular monthly meeting August 28, 2012 in the Planning Commission Chambers, located at the Public Works Facility, 700 Fox Trail. Certified letters were mailed to all adjacent property owners for related issues.

MEMBERS PRESENT: James Morgan, Ira Silberman, Arturo Menefee, Mayor Fuller, Keith Pridgen, David Canon, Lucinda Cannon, Michael Hilyer

MEMBERS ABSENT: Lewis Cherry

STAFF PRESENT: Gerald Kelley, Planning Director  
Martin Ogren, Assistant Planning Director  
Rachel Dennis, Planning and Zoning Technician  
Walter Dorsey, City Engineer  
Josh Hawkins, Opelika Utilities Board  
Brian Kriel, Opelika Power Services  
Scott McBurney, Fire Marshall  
Guy Gunter, City Attorney

CALL TO ORDER: Chairman Pridgen called the meeting to order at 3:04 p.m.

### I. Approval of July 24, 2012 Minutes

Chairman Pridgen asked for any changes or corrections to the July 24, 2012 Planning Commission Minutes.

Dr. Menefee made a motion to accept the July 24, 2012 minutes of Planning Commission as written.

Mr. Morgan seconded the motion.

Ayes: Morgan, Menefee, Silberman, Council Member Canon, Cannon, Hilyer

Nays: None

Abstention: None

### II. Update Previous Planning Commission Cases.

Mr. Kelley reported updates:

1. Riddle annexation of the two parcels south of the intersection of Society Hill Road and Gateway.
2. The Public Works Manual amendments will be at the City Council meeting on September 4, 2012.
3. Building Permits for July were over ten million. Five million was commercial Gander Mountain and 19 single-family homes that ranged from \$170,000 to \$300,000.

#### A. ANNEXATION and PUBLIC HEARING for Zoning District Requested

1. **Terry Yarbrough, 3565 Lee Road 390, 7 acres, PC recommendation to City Council, zoning request – R-1, PC zoning district recommendation to City Council**

Mr. Ogren reported Terry Yarbrough, the petitioner and property owner, is requesting the annexation of 7 acres on Lee Road 390 (See map in packet). The adjacent property west of the Yarbrough property was annexed in the City in February 2002.

The property will be located in Ward 5 (David Canon).

Staff recommends that the Planning Commission send a positive recommendation to the City Council to annex the seven acre parcel into the City limits and request City Council to hold a public hearing to zone the property R-1.

As with other annexations, the following paragraphs will be added to the annexation ordinance.

None of the provisions of the annexation ordinance shall become effective nor the proposed territory described herein shall be annexed unless the petitioner(s) filing for annexation agree(s) with the following. The property owner(s) signing of the annexation petition signifies an agreement to this section.

- a. Fire and police protection shall be provided to the territory annexed. Municipal services such as public water, sewer, right-of-way maintenance/improvements, and solid waste collection may not be available to annexed properties at the time of annexation. Provisions of said services will be extended solely at the option of the City of Opelika and/or Opelika Water Works Board. Municipal services concerning busing to and from Opelika City Schools shall be decided by the Opelika Board of Education.
- b. A subdivision or development of annexed territories that exceeds the existing use or intensity at the time of annexation shall be required to utilize public sewer and/or public water service when accessible, and in accordance with City of Opelika Public Works Manual, Opelika Water Works regulations, and/or other water authorities.
- c. The City shall not be obligated to upgrade roads that are part of an annexation. In the future, if the City deemed necessary to improve the right-of-ways from which the annexed properties takes access, one of the options available to the City to provide such improvements may be to assess the property owner/owners their proportionate share of the costs of such improvements.
- d. A Fire Tax shall be charged against each property owner of territory annexed as provided under Section 8, Act No. 89 390; the property owners of said territory agree to pay all such costs.

Mr. Dorsey reported sanitary sewer service is not presently available to these two developed residential parcels proposed for annexation. The nearest available sewer connection is located approximately one mile to the south at the Eastside Wastewater Treatment Plant. Both parcels have public street access via Lee Road 390, and the Yarbrough parcel also has public street access along the rear property line via Lee Road 154. The annexation of these parcels will not change the City's current planning jurisdiction boundary, nor will any segments of roads currently maintained by the Lee County Commission be changed to maintenance by the City of Opelika.

The Engineering Department has a positive recommendation for this annexation request.

Mr. Hawkins reported this location is served by Beulah Utilities District.

Mr. Kriel reported this parcel is outside the Opelika Power Services territory.

Chairman Pridgen opened the public hearing.

No comments were offered from the public.

Chairman Pridgen closed the public hearing.

Mr. Silberman made a motion send a positive recommendation to City Council with staff recommendations.

Mayor Fuller seconded the motion.

Ayes: Morgan, Menefee, Silberman, Fuller, Council Member Canon, Cannon, Hilyer

Nays: None

Abstention: None

## **2. Carl Floyd, 3661 Lee Road 390, 3 acre, PC recommendation to City Council, zoning request – R-1, PC zoning district recommendation to City Council**

Mr. Ogren reported Carl Floyd, the petitioner and property owner, is requesting the annexation of 3 acres on Lee Road 390 (See map in packet). This petitioner will be

contiguous to the City limits when the Yarbrough property (see agenda item #1) is approved for annexation.

The property will be located in Ward 5 (David Canon).

Staff recommends that the Planning Commission send a positive recommendation to the City Council to annex the 3 acres into the City Limits and request City Council to hold a public hearing to zone the property R-1.

The petitioner is requesting annexing 7 acres (See map in packet). The adjacent property south of the petitioner's property was annexed into the City in February 2002. The property will be located in Ward 5 (David Canon).

As with other annexations, the following paragraphs will be added to the annexation ordinance.

None of the provisions of the annexation ordinance shall become effective nor the proposed territory described herein shall be annexed unless the petitioner(s) filing for annexation agree(s) with the following. The property owner(s) signing of the annexation petition signifies an agreement to this section.

- a. Fire and police protection shall be provided to the territory annexed. Municipal services such as public water, sewer, right-of-way maintenance/improvements, and solid waste collection may not be available to annexed properties at the time of annexation. Provisions of said services will be extended solely at the option of the City of Opelika and/or Opelika Water Works Board. Municipal services concerning busing to and from Opelika City Schools shall be decided by the Opelika Board of Education.
- b. A subdivision or development of annexed territories that exceeds the existing use or intensity at the time of annexation shall be required to utilize public sewer and/or public water service when accessible, and in accordance with City of Opelika Public Works Manual, Opelika Water Works regulations, and/or other water authorities.
- c. The City shall not be obligated to upgrade roads that are part of an annexation. In the future, if the City deemed necessary to improve the right-of-ways from which the annexed properties takes access, one of the options available to the City to provide such improvements may be to assess the property owner/owners their proportionate share of the costs of such improvements.
- d. A Fire Tax shall be charged against each property owner of territory annexed as provided under Section 8, Act No. 89-390; the property owners of said territory agree to pay all such costs.

Mr. Dorsey reported sanitary sewer service is not presently available to these two developed residential parcels proposed for annexation. The nearest available sewer connection is located approximately one mile to the south at the Eastside Wastewater Treatment Plant. Both parcels have public street access via Lee Road 390, and the Yarbrough parcel also has public street access along the rear property line via Lee Road 154. The annexation of these parcels will not change the City's current planning jurisdiction boundary, nor will any segments of roads currently maintained by the Lee County Commission be changed to maintenance by the City of Opelika.

The Engineering Department has a positive recommendation for this annexation request.

Mr. Hawkins reported this location is served by Beulah Utilities District.

Mr. Kriel reported this parcel is outside the Opelika Power Services territory.

Chairman Pridgen opened the public hearing.  
No comments were given from the public.  
Chairman Pridgen closed the public hearing.

Mr. Silberman made a motion send a positive recommendation to City Council with staff recommendations.

Mr. Morgan seconded the motion.

Ayes: Morgan, Menefee, Silberman, Fuller, Council Member Canon, Cannon, Hilyer  
Nays: None  
Abstention: None

3. **Brenton Truitt, 161 Lee Road 989, 1 acre, PC recommendation to City Council, zoning request – R-1, PC zoning district recommendation to City Council**
4. **Melissa Martin, 122 Lee Road 989, 1 acre, PC recommendation to City Council, zoning request – R-1, PC zoning district recommendation to City Council**
5. **Michael Nixon, 312 Lee Road 989, 1 acre, PC recommendation to City Council, zoning request – R-1, PC zoning district recommendation to City Council**
6. **William T. Bartlett, 228 Lee Road 989, 1 acre, PC recommendation to City Council, (Tabled at July 24<sup>th</sup> PC meeting), zoning request – R-1, PC zoning district recommendation to City Council**
7. **Maudie R. Ates, 277 Lee Road 989, 1 acre, PC recommendation to City Council, (Tabled at July 24<sup>th</sup> PC meeting), zoning request – R-1, PC zoning district recommendation to City Council**
8. **Jack & Debra Stallings, 225 Lee Road 989, 1 acre, PC recommendation to City Council, (Tabled at July 24<sup>th</sup> PC meeting), zoning request – R-1, PC zoning district recommendation to City Council**

### **Items 3 – 8 will be reviewed together**

Mr. Kelley reported STAFF DISCUSSION: APPLIES TO THREE (3) PROPERTY OWNERS (BARTLETT, STALLINGS, & ATES) TABLED ON JULY 24; & (3) ADDITIONAL PROPERTY OWNERS (NIXON, TRUITT, & MARTIN) PETITIONING FOR ANNEXATION AUGUST 28, 2012.

The reason for staff suggesting a continuation till August 28, 2012 for the three petitioners (Bartlett, Stallings, and Ates); is the desire by six (6) additional residential parcels and possibly two (2) owners of vacant parcels in White Oak Estates to request annexation into the City of Opelika. Ms. Bartlett (a petitioner), conveyed this information via telephone July 17, 2012 to planning staff.

Nevertheless, these petitions to annex parcels in White Oak Estates have a history dating back to September, 1992 (See PC Minutes) concerning the subdivision of the property with stipulations recorded in a note on the plat map. The language on the plat map reads as follows: "Lee Road 989 has been constructed to Lee County Highway Department Standards and Not to the Standards of the Public Works Manual of the City of Opelika. The Planning Commission of the City of Opelika, at its regular meeting of September 22, 1992, granted its Final Approval to White Oak Estates, but recommended that this Subdivision Not be Annexed into the City Limits of Opelika until such time that Lee Road 989 be constructed to Fully Meet City Standards."

Walter Dorsey, City Engineer, has addressed in his report two (2) engineering design issues for Lee Road 989, and his recommendation for approval subject to three conditions.

Guy Gunter, City Attorney, has provided his opinion on the subject.

Therefore, the dilemma facing the administration is the desire of property owners within White Oak Estates to become residents of the City of Opelika unless all eleven (11) parcels collectively petition to annex together; and to underwrite extensive and expensive improvements meeting the standards of the City of Opelika Public Works Manual to Lee County Road 989.

For the City of Opelika to annex and accept maintenance of a flawed infrastructure in Lee County Road 989 (a linear distance of approximately 1,300 feet) is questionable and negates sound fiscal public policy for errors made twenty (20) years ago.

In conclusion, at this time the Planning Department does not support the annexation of White Oak Estates.

### **STAFF DISCUSSION AND RECOMMENDATION TO PLANNING COMMISSION FOR CONSIDERATION ON AUGUST 28, 2012 BY ALL PETITIONERS:**

At this time only three (3) additional property owners in White Oak Estates have petitioned for annexation. Three (3) single family property owner addresses at 186, 280, and 309 Lee Road 989 did not petition annexation. Also, owners of vacant lots one (1) and eleven (11) did not petition annexation.

The dilemma remains for planning staff as to supporting annexation of White Oak Estates when five (5) property owners do not support annexation and Lee County Road

989 was constructed ignoring city road design standards. (See Engineering Report) Also, the County Engineer has no record of any construction plans being submitted for review. The developer simply built the road without either city or county approval. However, since 2000 when the County Engineer began keeping a log of paved county roads requiring maintenance, no maintenance has been requested by property owners and none provided by the county. Remarkably, the paved wearing surface of the road is in good condition.

One possibility which planning staff discussed with Ms. Bartlett would be if all eleven (11) property owners agreed to annexation, that annexation may occur if the road could be converted from a public right of way to a private right of way via the creation of a homeowner's association; whereby the association would assume maintenance of the road, not the City of Opelika. Ms. Bartlett stated that even with unanimous property owner consent to annexation, the financial responsibility of road maintenance would be too expensive for property owners.

Planning staff believes that a "hop scotch" approach to annex six (6) parcels along approximately 1300 linear feet of Lee Road 989 is not a prudent decision, and weakens public policy regarding annexation by accepting a road built without adherence to either city or county road standards.

#### RECOMMENDATION: DENY PETITIONS TO ANNEX

Mr. Gunter reported that the final decision whether to annex the properties or not must be made by the City Council. The Council may, if it desires, ignore the note on the plat and ignore the recommendation of the Planning Commission. The Council must weigh the advantages and disadvantages of the annexation and decide whether the annexation is in the best interest of the public and the City.

The City must assume the responsibility to control, manage, supervise, regulate, repair, maintain and improve all public streets or parts thereof lying within the territory annexed, provided such public streets or parts thereof are dedicated to, accepted by, and were controlled, managed, supervised, regulated, repaired and maintained by the County. The Council should consider the impact on City finances of maintaining and improving the streets within the annexed territory.

When property is annexed, the City must provide fire protection. An annexation automatically dissipates the strength of the firefighting forces of the municipality. For this reason, ISO maintains a close watch for annexations and, if a very large area is annexed to a municipality, ISO will reevaluate the fire defenses available to the whole area. This is a factor which the City Council should take into consideration when deciding to annex territory.

There are a number of other factors that the Council should consider in determining whether the annexation is in the best interest of the City. These factors include:

- (1) Will the annexation affect voting?
- (2) What costs will be involved to provide water and sewage extensions to the annexation area and to provide solid waste disposal services?
- (3) Will the annexation promote sound urban development?
- (4) What impact will the annexation have on City schools?
- (5) What benefits will the City derive from the annexation, i.e. additional taxes and revenues?

It is my suggestion that the Planning Department prepare an impact report regarding the proposed annexation. The report should include a cost/benefit analysis. The impact report will be a valuable tool for the Council to consider in deciding whether to approve the proposed annexation.

Mr. Dorsey reported sanitary sewer service is not presently available to these six developed residential parcels proposed for annexation. However, sanitary sewer service is available, since the subdivision, containing these lots is located approximately 600 feet east of the City's Eastside Wastewater Treatment Plant. All parcels have

public street access via Lee Road 989, which has been maintained by the Lee County Highway Department since its construction in 1992.

The Opelika Engineering Department has a long-standing policy with the Lee County Highway Department that all new streets within the City's planning jurisdiction shall be constructed to the more stringent standards of the two governmental agencies. When this subdivision was presented to the Planning Commission in 1992, the City had the more stringent standards, so the Engineering Department requested the developer provide construction plans for the street and storm water system for its review and approval. However, the developer proceeded to construct the streets and storm water system without the Engineering Department ever having an opportunity to review and approve its plans. In fact, due to the numerous design deficiencies, we do not believe that an engineer was ever hired by the developer to produce any plans for this subdivision. As the result of an absence of approved construction plans, the Planning Commission required the developer's surveyor to include a note on the recorded subdivision plat stating the road was not constructed to the standards contained in the City's Public Works Manual and that no properties in this subdivision be annexed until the road had been improved to meet the City's standards. The two southernmost lots in this subdivision were annexed in 1995, but only after the portion of Lee Road 989 that adjoins these lots had been improved to the City's public works standards.

The Engineering Department recently performed a visual inspection to evaluate the condition of the existing road and storm water system. Although the condition of the pavement on Lee Road 989 appears to be in very good shape after 20 years of use, there are two design concerns that, once the road becomes part of the City's maintenance responsibility, place the City at greater risk than normal:

1. The vertical geometry on this roadway does not appear to meet any acceptable and recognized standards for adequate sight distance by drivers. For example, there is a crest curve on the road with vertical grades estimated to be steeper than twelve (12) percent on both sides of the curve. In order for a driver to have adequate sight distance while cresting this hill and traveling at the proposed 30 miles per hour speed limit, the vertical curve length must be at least 450 feet. The length of this vertical curve is estimated to be approximately one-third of the required distance, which translates to an acceptable sight distance for a vehicle traveling less than 20 miles per hour. There are also similar sight distance restrictions for the sag curve to the south of the crest curve.
2. There are no provisions to allow storm water to drain under the roadway at its low point near the cul-de-sac. Water presently sheet flows across the road from the eastern side to the western side, which creates a greater risk of hydroplaning during and after rainstorms.

The Engineering Department has a positive recommendation for this annexation request, subject to the following:

1. The petitioners provide an as-built drawing of the road and its storm water system to the Engineering Department for review so an accurate assessment of the deficient design criteria can be made.
2. Once the deficiencies have been identified, construction plans shall be prepared by a professional engineer to correct those deficiencies in accordance with the City's Public Works Manual. These plans shall be reviewed and approved by the Engineering Department prior to construction.
3. All construction to correct the deficiencies shall be completed and inspected by the Engineering Department.

Mr. Hawkins reported Opelika Utilities currently serves this location.

Mr. Kriel reported this parcel is outside the Opelika Power Services territory.

Chairman Pridgen opened the public hearing.

Teresa Bartlett stated I would like to correct Mr. Kelley. The other neighbors are not opposed. The Tomlins have completed their paperwork. The Goldens have their paperwork ready. Mr. Braverman has completed his paperwork. The other vacant lot owner I have not been able to contact. Lot 9 maybe the only person that is opposed. He believes he will be charged higher property taxes if annexed. All the other property owners are for the annexation except maybe Lot 9. We have lived there for 19 years and no accidents have occurred on Lee Road 989. The only water that we have a problem with is the property behind us (that is in the city limits) the water drains down between our property and Lot 7. Lot 7 has the most trouble with the water issue. We do not have traffic on the road due to the location.

Mr. Kelley apologized for the opposing statement. Stating we have just not received the paperwork for any other lots than the ones on the agenda today.

Maudie Ates stated the water problem comes to the north of my lot. The Goldens' have done a lot of work on their yard to solve the problem. We do not have a homeowners association. I think it would be very difficult for the number of residents living on Lee Road 989 to afford repairs of the road as a requirement. I would appreciate your consideration for approval.

Chairman Pridgen closed the public hearing.

Mayor Fuller made a motion to send a positive recommendation to City Council with staff recommendations.

Mr. Hilyer seconded the motion.

Mayor Fuller stated the road is a separate issue from the staggered lots in and out of the city limits for fire and police protection and solid waste services. To the Lot 9 neighbor that is opposed, I have had folks tell me that when you are annexed into Opelika's fire protection then it saves them more money than the offset cost of ad valorem taxes.

Chairman Pridgen stated we need to have all the lots together. We are a recommendation body in this particular case. The City Council decides if they want to go forward or continue to wait for the other three. The question I have from a legal standpoint the final plat clearly stated we cannot accept this property until the roads are brought up to standards.

Mr. Gunter stated first of all, the notation on the plat is not binding to the City Council. It is only the City Council that has the jurisdiction. If it is annexed the city will be exposed to additional liability because of the sight distance and accidents.

Council Member Canon stated because of the stipulations put on this recommendation by the City Engineer and addressing Ms. Ates comments someone other than the City will most likely have to prepare the engineering drawings for the road and have the study prepared. Do you feel like the rest of the property owners would be able to handle this? I have no idea what the cost would be.

Ms. Ates stated obviously, if this will be a \$15,000-dollar cost, then no.

Mr. Hilyer suggested I think what Mr. Dorsey recommended would be costly.

Mayor Fuller amended the original motion. To send a positive recommendation to City Council with staff recommendation including a condition by the Commission to have all 11 of the property owners participate in the annexation.

Mr. Kelley asked if we take these 6 property owners to City Council or do we wait until all the other 5 have joined and take the 11 properties to Council for annexation consideration.

Mayor Fuller amended his motion for clarity per Chairman Pridgen request to read:  
Motion: Send a positive recommendation to City Council given after all 11 property owners have come forward with their annexations request and engineering recommendations.

Ayes: Morgan, Menefee, Silberman, Fuller, Cannon, Hilyer

Nays: None

Abstention: Council Member Canon,

Chairman Pridgen stated we cannot take this forward until we have all property owners petitioning to annex.

**B. PLATS (preliminary and preliminary & final) – Public Hearing**  
**9. National Village Subdivision, Phase 7-B, 5 lots, Double Eagle Lane, Retirement Systems of Alabama, preliminary and final approval**

Mr. Ogren reported the applicant is requesting preliminary and final approval for a five lot subdivision on Double Eagle Lane off of Robert Trent Jones Trail. The purpose of the subdivision is to add eight feet to the side lot line on four lots in order to widen the lots. The property is located in a PUD zoning district. The lots meet minimum requirements for this subdivision.

Staff recommends preliminary and final plat approval.

Mr. Dorsey reported sanitary sewer service is available to all four reconfigured lots in this residential subdivision phase via an in-place gravity main within the Double Eagle Lane right-of-way. All other public improvements within the phase have been constructed and approved by the City of Opelika.

The Engineering Department recommends preliminary and final plat approval as submitted.

Mr. Hawkins reported water service is accessible to this subdivision by a water main in the R.O.W. of Double Eagle Lane. This subdivision resides in the Saugahatchee watershed protection area.

Mr. Kriel reported this subdivision is outside the Opelika Power Services territory.

Chairman Pridgen opened the public hearing.

No comments were given from the public.

Chairman Pridgen closed the public hearing.

Dr. Menefee made a motion to grant preliminary and final plat approval with staff recommendations.

Mr. Silberman seconded the motion.

Ayes: Morgan, Silberman, Menefee, Fuller, Council Member Canon, Cannon, Hilyer

Nays: None

Abstention: None

Mr. Hilyer stated we need stamped plans.

**10. Virginia Wood Subdivision, 2 lots, Hwy 280 & Thomason Drive, Rodney Jones, preliminary and final approval**

Mr. Ogren reported the applicant is requesting preliminary and final approval for a 2 lot subdivision on Thomason Drive. The purpose of the subdivision is to create a 1.5 acre parcel (Lot 3A-1); a bank will be constructed on the lot. Lot 3A-2 (5.7 acres) is reserved for future development. The two lots meet minimum requirements for a subdivision in the C-2, GC-2 zoning district.

Staff recommends preliminary and final plat approval.

Mr. Dorsey reported sanitary sewer service is available to both undeveloped lots in this commercial subdivision via in-place gravity mains along Pepperell Creek and parallel to Thomason Drive. A portion of Lot 3A-2 is located within the 100-year flood zone. An in-place detention basin near Pepperell Creek on Lot 3A-2 provides storm water management for both lots. An in-place access easement on Lot 3B provides vehicle ingress and egress to both lots from Thomason Drive.

The Engineering Department recommends preliminary and final plat approval as submitted.

Mr. Hawkins reported water service is accessible to this subdivision by a water main in the R.O.W. of Thomason Drive.

Mr. Kriel reported this subdivision is in the Opelika Power Services territory.

Chairman Pridgen opened the public hearing.  
No comments were given from the public.  
Chairman Pridgen closed the public hearing.

Dr. Menefee made a motion to grant preliminary and final plat approval with staff recommendations.  
Mr. Morgan seconded the motion.

Mr. Hilyer stated we need stamped plans.  
Mike Maher provided a surveyor's viewpoint on the concerns of stamping plans, replacing pins, and the costs to the developer and/or property owner. .  
Ms. Cannon stated her experience about replacing pins  
Chairman Pridgen stated for clarity, the issue is the plat is incomplete because of the omission of a signature and surveyor's stamp and legally we should only accept it as preliminary.  
Mr. Silberman suggested this is a question of staff stating if the original full size (24" x 36") plat document has been stamped and signed and not the 11" x 17" hat the Commissioners receive.

Commissioners and staff discussed final plat requirements.

Dr. Menefee amended the original motion to grant preliminary and final plat approval with staff recommendations and add with staff review of the stamped and sealed plat.  
Mr. Morgan seconded the motion.  
Ayes: Morgan, Silberman, Menefee, Fuller, Council Member Canon, Cannon  
Nays: Hilyer  
Abstention: None

#### **11. Block 243 Subdivision, 1 lot, 230 Columbus Parkway, EA Investment Corp., preliminary and final approval**

Mr. Ogren reported the applicant is requesting preliminary and final approval to combine three lots into one lot. The property owner plans to build a 4,500 square foot building next to an existing 4,500 square foot building. Fastenal, an industrial and construction supply company, is located in the existing business; the new building is also for Fastenal. The 1.2 acre lot meets the minimum lot size and 100 foot lot width requirement for a subdivision in the GC-2 overlay zoning district.

Staff recommends preliminary and final plat approval.

Mr. Dorsey reported sanitary sewer service is not available to either lot in this combination subdivision. The in-place commercial structure on Lot 14 is presently

served by a septic tank and field lines. Public street access is available via an in-place curb cut on Columbus Parkway. Lots 15 and 16 are undeveloped.

The Engineering Department recommends preliminary and final plat approval as submitted.

Mr. Hawkins reported water service is accessible to this subdivision by a water main in the R.O.W. of Columbus Parkway

Mr. Kriel reported this subdivision is in the Opelika Power Services territory.

Chairman Pridgen opened the public hearing.

No public comments were given.

Chairman Pridgen closed the public hearing.

Ms. Cannon made a motion to grant preliminary and final plat approval with staff recommendations subject to signatures.

Mr. Morgan seconded the motion.

Commissioners and staff discussed final plat requirements.

Ayes: Morgan, Silberman, Menefee, Fuller, Council Member Canon, Cannon

Nays: Hilyer

Abstention: None

## **12. Capps-Palmer Subdivision, 8<sup>th</sup> Revision, 7 lots, Capps Landing, preliminary and final approval**

Mr. Ogren reported the applicant is requesting preliminary and final approval for a 7 lot subdivision on Capps Landing off Gateway Drive. The purpose of the subdivision is to add property to Lot 1M (10.2 acres) from three lots owned by the adjacent property owner to the northeast (Auburn Bank - Lot 1D1, Lot 1E1, Lot 2C1) and property from the adjacent property owner (Shelby Ward) to the south. A 130 foot wide strip is added from the Ward property along the south property line. Lot 1M is the site for the Carmike cinema. (Conditional use review for the 13 screen cinema site is agenda item #13.) The vicinity map (see revised plat provided for August 23rd work session) shows the larger parcel owned by the adjacent property owner (Ward property). A 30 foot strip along the south property line of Lot 1M is dedicated for a future street. The 30 foot dedication provides future opportunities to extend Capps Drive to the west connecting Capps Drive with Hamilton Road (see conceptual plan of future street on vicinity map). There are no immediate plans to extend a street from Lot 1M to Hamilton Road. Lot 1L and Lot 1N are reserved for storm water detention for the Carmike lot as well as all lots in the subdivision. Each lot meets the minimum 20,000 square feet lot size requirement and 150 foot lot width for subdivisions in the GC-1 overlay zoning district.

Staff recommends preliminary and final plat approval subject to recommendations in this report.

Mr. Dorsey reported sanitary sewer service is available to six of the seven undeveloped lots in this commercial subdivision via in-place gravity mains within the Capps Way right-of-way and within an easement beside the drainage ditch along the western side of the subdivision. Sanitary service is not presently available to Lot 1M, but is accessible via the in-place gravity main along the drainage ditch. Public street access is available via Capps Way, Capps Landing, and a proposed westward extension of Capps Drive. Lots 1L and 1P contain in-place regional detention ponds that manage the storm water for the entire subdivision. All of Lot 1N and portions of Lots 1L, 1M and 1P are located within the 100-year flood zone.

The Engineering Department recommends preliminary and final plat approval, subject to the following:

1. Add a note to the plat indicating no building permits shall be issued for Lots 1L and 1N until these lots have frontage on an improved public street.

2. Indicate a 30-foot right-of-way for a future westward extension of Capps Drive along the entire southern boundary of Lots 1M and 1N.
3. Modify the plat to indicate the existing and proposed acreage of the Ward parcel to the south, since its boundaries are being changed as part of this subdivision. The vicinity map should also be enlarged to more accurately depict the Ward parcel.
4. The developer's engineer shall provide construction plans of the sanitary sewer main to serve Lot 1M to the Engineering Department for review and approval prior to the issuance of a building permit on Lot 1M.
5. Indicate a sanitary sewer easement on the plat where the sanitary sewer main to serve Lot 1M will be extended across adjacent parcels.

Mr. Hawkins reported water service is accessible to this subdivision by a water main in the R.O.W. of Capps Landing.

Mr. Kriel reported lots in this Subdivision will be served either by Opelika Power Services or Alabama Power. An electronic copy of the plat needs to be submitted to Opelika Power Services to determine which entity will provide service to each lot.

Mayor Fuller made a motion to grant preliminary and final plat approval with staff recommendations.

Silberman seconded the motion.

Ayes: Morgan, Silberman, Menefee, Fuller, Council Member Canon, Cannon

Nays: None

Abstention: Hilyer

Commissioners and staff discussed final plat requirements.

Chairman Pridgen asked for the vote to be rescinded.

Chairman Pridgen opened the public hearing.

No comments were given from the audience.

Chairman Pridgen closed the public hearing.

Fuller made a motion to grant preliminary and final plat approval with staff recommendations subject to signatures.

Silberman seconded the motion.

Ayes: Morgan, Silberman, Menefee, Fuller, Council Member Canon, Cannon

Nays: None

Abstention: Hilyer

### **C. CONDITIONAL USE APPROVAL**

#### **13. Opelika Land & Timber, Inc., Capps Landing, C-3, GC-1, Movie Theater**

Mr. Ogren reported the applicant is requesting conditional use approval to construct a 13 screen movie cinema on Capps Landing adjacent to the Holiday Inn Express. At full capacity the 13 screen facility will seat 2,844 people. The building is 55,228 square feet and 728 parking spaces are provided. The primary access from Gateway Drive to the cinema is Capps Landing. However, a second access from Capps Drive is provided. About six years ago a 450 foot section of Capps Drive was constructed from Gateway Drive to Capps Way. Capps Drive will be extended about 550 feet from the corner of Capps Drive & Capps Way to the Carmike property.

The plans provided meets minimum development requirements for off-street parking, landscaping, impervious surface ratio, and exterior material. The site plan shows 728 parking spaces including 16 handicapped spaces (721 spaces are required). The landscaping meets base point and parking lot point requirements. Plant material includes a total of 118 trees (five types) and 855 shrubs (seven types). The Landscape Regulations require a landscape island for every 25 parking spaces. The middle landscape island for three parking isles needs to be relocated to meet this requirement. The maximum impervious surface area for the GC-1 overlay zone lot is 70%.; the property meets the requirement with 68.6% of the lot as impervious. The exterior

building material is mostly split faced block (three tan/beige tone colors) on all elevations. Other exterior material is glass surrounding the front entrance and aluminum composite panel. A compactor (refuse container) is shown near the south property line. Staff recommends an opaque fence installed on all sides and a gate installed on the front.

Planning Staff recommends conditional use approval subject to the recommendations in this report and meeting development requirements of the Zoning Ordinance.

Mr. Dorsey reported sanitary sewer service is not presently available to this undeveloped 10.29-acre commercial parcel, but is accessible via an in-place gravity main near the northwestern corner of the parcel. Public street access is available via Capps Landing and a proposed westward extension of Capps Drive. 728 paved, on-site parking spaces are provided for customers and employees, of which 18 are designated for use by the disabled. Storm water will be managed via two off-site regional detention ponds that manage the storm water for the entire subdivision. Garbage will be collected by private carrier from an enclosed compactor located at the southwestern corner of the building.

The Engineering Department recommends conditional use approval, subject to the following:

1. Relocate the four disabled parking spaces along the western side of the parking lot so they are nearer to the main building entrance.
2. Sign and mark fire lanes along the perimeter of the building per the Fire Inspector's recommendations.
3. Provide a traffic impact study to the Engineering Department for review and approval. The study shall evaluate traffic impacts from this development to determine what, if any, capacity and traffic control improvements should be made to Capps Landing, Capps Drive, Gateway Drive, and their connecting intersections. The study shall consider the existing traffic volumes on these streets and intersections, as well as the impacts from the future development of the undeveloped lots in Capps-Palmer Subdivision. The study shall also evaluate the proposed on-site parking lot layout with regard to access management.
4. The developer's engineer shall provide a complete set of site construction plans and storm water calculations to the Engineering Department for review and approval prior to the issuance of a building permit.

Mr. Hawkins reported water service is accessible to this location by a water main in the R.O.W. of Capps Landing.

Mr. Kriel reported this use is outside the Opelika Power Services territory.

Mr. Silberman made a motion to grant conditional use approval with staff recommendations.

Mayor Fuller seconded the motion.

Mr. Hilyer added to staff recommendations, a set of site plans and drawings be submitted to public works.

Ayes: Morgan, Silberman, Menefee, Fuller, Council Member Canon, Cannon, Hilyer

Nays: None

Abstention: None

#### **14. E. Dave King III, Hwy 280 & Pepperell Pkwy, C-3, GC-2, Auto dealership**

Mr. Kelley reported in September, 2010 the applicant submitted for conditional use to construct a Honda dealership at the intersection of US 280, Pepperell, and Dunlop. That conditional use has expired and is resubmitted for Planning Commission consideration.

This submission differs from the 2010 proposal in that the dealership location is on 6.13 acres and includes both the new vehicle dealership and their used vehicle sales on the same parcel.

A total floor area of 53,000 sq. ft. is proposed with a total of 285 parking spaces to accommodate various types of parking choices.

The landscape plan satisfies the requirements of the Gateway Landscape Regulations.

Their lighting plan meets Illuminating Engineering Society (IES) Guidelines.

A building materials package, color palette options, and elevation drawings will be provided at the Planning Commission work session. These items have not changed from the original submission and approval in September, 2010.

**RECOMMENDATION:** Approve the conditional use subject to the following: 1) City Council approving a revised development agreement (original expired) before any building permit is issued. 2) Building materials shall meet the 50% threshold for natural materials, with preference given to brick, glass stucco, wood etc. 3) Signage shall meet the requirements of the Gateway Overlay District when building plans are submitted for review. 4) Planning staff will require that for lighted parking areas, Honda will use a "vertical burn, super metal halide, forward projection fixture using a cut-off type housing, i.e. shoe box type housing, poles be made of a platinum color to lessen their visibility during the day, and the height of the poles shall not exceed 25 feet." ( Footnote 1: GC-1 and GC-2 Overlay districts, Lighting Requirements).

Mr. Dorsey reported sanitary sewer service is available to this undeveloped 6.13-acre commercial parcel via an in-place gravity main within the West Thomason Circle right-of-way. As part of the development of this site, a sanitary sewer main will be extended through the property in a northwesterly direction and under Dunlop Drive so gravity sewer access is available to the parcel on the northern side of Dunlop Drive. Public street access is available via a single curb cut with median on Birmingham Highway and three curb cuts on West Thomason Circle. Access will not be available on Dunlop Drive due to the need for a retaining wall along the right-of-way boundary. 285 paved, on-site parking spaces will be provided for customers, employees, new and used vehicle displays, and serviced vehicles. Two spaces designated for use by the disabled will be located at the front of each of the two dealership buildings. Storm water will be managed via an one-site detention pond at the eastern end of the site near West Thomason Circle. Garbage will be collected by private carrier from a dumpster located behind the new car dealership building. The Engineering Department recently reviewed preliminary site construction plans and provided review comments to the developer's engineer.

The Engineering Department recommends conditional use approval, subject to the following:

1. The curb cut on Birmingham Highway shall be permitted by the Alabama Department of Transportation (ALDOT).
2. The City Council shall enact a resolution to reduce the right-of-way width on Dunlop Drive by 40 feet on each side to a new width of 80 feet.
3. The developer's engineer shall provide a complete set of revised site construction plans to the Engineering Department for review and approval prior to the issuance of a building permit.

Mr. Hawkins reported water service is accessible to this location by a water main in the R.O.W. of West Thomason Circle.

Mr. Kriel reported this use is in the Opelika Power Services and Alabama Power territory.

Mayor Fuller made a motion to grant conditional use approval with staff recommendations.

Mr. Silberman seconded the motion.

Mr. Hilyer requested as a staff recommendation a set of site plans and construction plans be submitted to public works.

Ayes: Morgan, Silberman, Menefee, Fuller, Cannon, Hilyer

Nays: None

Abstention: Council Member Canon

**D. SUBDIVISION REGULATIONS TEXT AMENDMENTS (Public Hearing)**

**15. Amend Section 4.4 Final Plat Approval, B. Improvements (related to performance standards), Paragraph 1, By Deleting Subparagraphs 1(d) and (e) and replace with paragraphs d, e, and f**

Mr. Kelley reported the following summary is a comparison of current and proposed changes to paragraph (d), (e), and (f) which is provided in the staff report and resolution.

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>SUB-PARAGRAPH (d)</b>		
Performance Security Instrument	125%	150%
Administration Review	City Engineer	City Engineer & Public Works Director
Recreational Amenity Review	None	Planning Director
Recreational Amenity Security	None	125%
<b>SUB-PARAGRAPH (e)</b>		
Warranty Bond	25%	50%
Administration Review	City Engineer	City Engineer & Public Works Director
Final Wearing Surface Completed	None	One (1) Year
<b>SUB-PARAGRAPH (f)</b>		
Infrastructure Failures (Notification)	21 Days	30 Days
Final Release of Bond (Approval)	City Engineer	City Engineer & Public Works Director
(Recreational Amenity)		Planning Director

**STAFF DISCUSSION:** For the past three (3) months, the Planning Commission and staff have been working on revisions to update our performance guarantees. Staff is ready for Planning Commission to review and approve new language to strengthen these performance guarantees.

A quote from the Planning Advisory Services of the American Planning Association states: "Zombie subdivisions, entitled but incomplete residential projects, have become a powerful symbol of the Great Recession in many communities nationwide. When the housing market collapsed in 2008, many developers went belly up, leaving hundreds, if not thousands, of subdivisions in development limbo. These zombie subdivisions depress property values and run the risk of public nuisances."

Given either the overbuilding or over-plating that happened in Opelika, we are dealing with some unfinished or un-built subdivisions. However, we are encouraged that so far in this fiscal year through July 31, 2012, Opelika has permitted one hundred and twenty-one (121) single family homes primarily in existing subdivisions.

Nonetheless, our performance guarantees need updating. Performance guarantees for improvements gained popularity during previous downturns, but as Opelika has experienced, performance guarantees don't always cover the full cost of either correcting faulty infrastructure or completing the improvements.

Staff believes these amendments will provide the financial stability in future development of our subdivision infrastructure.

Staff Recommendation: Approve Amendment on Subdivision Performance Guarantees

Amend Section 4.4 Final Plat Approval, B. Improvements, Paragraph 1, By Deleting Subparagraphs 1 (d) and (e) and replace with the following language:

(d) A Performance Security shall be provided at the same time as construction drawings are submitted after preliminary plat approval and prior to submission of a final plat in the form of a cash escrow, an irrevocable letter of credit, or performance bond guaranteeing the installation of the infrastructure improvements and the conduit across roadbeds. The amount of said security (cash escrow, irrevocable letter of credit, performance bond) shall be 150% of the cost of the actual infrastructure cost as determined by a certified engineer's estimate with concurrence from the City Engineer and Public Works Director. Simultaneously, a performance security shall be provided to the Planning Director guaranteeing the installation of all recreational amenities (clubhouse, pool(s), trails, tennis courts, golf course and any other recreational amenity), if any. The amount of said security shall be 125% of the cost of the actual amenity cost as determined by a certified and/or licensed professional for the amenity.

(e) Upon final plat approval from the Planning Commission, including recordation of the plat, and acceptance of infrastructure improvements by the City Engineer and Public Works Director, plus acceptance of recreational amenities if any by the Planning Director; the developer/sub-divider shall post a Warranty Bond in the amount equal to 50% of the actual construction, design, or material defects or failures within the public rights-of-way or easements in the development, or required on-site improvements including recreational amenities, if any. No building permits will be issued until the Warranty Bond is submitted and approved by the City Engineer and Public Works Director. The form and manner of execution of said Warranty Bond shall be subject to the approval of the city attorney. The effective term of the Warranty Bond shall be at least three (3) years following the city approval and acceptance by the City Engineer, Public Works Director, and Planning Director (if necessary for recreational amenities). A final street wearing surface on all public rights of way shall be completed within ONE (1) YEAR of Planning Commission approval and recordation of the final plat.

(f) The City Engineer and Public Works Director will give notice of observed failures in the infrastructure or improvements. Thereafter, the developer shall have thirty (30) days to initiate corrective measures. If corrective measures are not satisfactorily completed promptly, the City may exercise its right under the bond and submit a written notice to the parties of the bond explaining the default. It is the responsibility of the developer to ask for a release of the bond. Eligibility for a final release of the bond shall require two (2) signatures, the City Engineer and Public Works Director for approval and acceptance of the installed infrastructure improvements. If recreational amenities are included, the Planning Director signature shall be required. The final release of the performance security shall be subject to the terms of the security or released by the City at the expiration of its effective period.

Mr. Dorsey, Mr. Hawkins, and Mr. Kriel had no reports.

Chairman Pridgen opened the public hearing.

No comments were given.

Chairman Pridgen closed the public hearing.

Mr. Hilyer made a motion to accept the subdivision amendments as written.

Mayor Fuller seconded the motion.

Ayes: Morgan, Silberman, Menefee, Fuller, Council Member Canon, Cannon, Hilyer

Nays: None

Abstention: None

## **E. OTHER BUSINESS**

### **16. Michael T. Maher P.L.S. (& other surveyors) Discuss preliminary and final plat signatures on subdivision plats**

Michael T. Maher reported in respect to the changes to the requirements for final plats being proposed by the Opelika planning commission, I would like to address one of those changes.

The requirement to place a surveyor's signature and seal on plats prior to approval has numerous negative consequences for the surveyor, the property owner and the City of Opelika as follows:

#### City of Opelika

- By law, the surveyor is required to set all pins prior to signing the survey. Requiring a signature at final plat means pins will be set before construction is complete. This will result in missing front pins on lot corners. This is a problem for the new property owner since they will purchase lots whose pins have been destroyed or are buried.

#### The property owner – developer

- The developer – owner will have to deal with missing pins.
- The cost of setting pins during construction is expensive due to the safety issues and the need to avoid debris piles, soil stacks and heavy equipment.
- The project may be set back a month or more due to scheduling with surveyor and planning commission.
- The plat may have to be altered due to planning commission concerns resulting in added survey costs to add or remove monuments.

#### The Surveyor

- The Standards of practice require that everything on the plat is true and correct. This means that all pins must be in place as of the date of the plat. The Planning requirement creates the following hardships:
- Setting the pins prior to completed construction, will force surveyors to place pins they know will be destroyed.
- The added requirement that the reduced copies be signed and sealed violates the Standard of Practice since the drawing is a non-uniform reduced scale which is in violation of that stated scale on the plat.
- The plat, not being approved by the City of Opelika can be changed at final approval resulting in either a confusing number of iron pins on the site which can create boundary disputes, or the need for the surveyor to remove pins and set new pins.

I suggest the following requirements to assure the City of Opelika that:

- (a) a professional surveyor has actually surveyed the property;
- (b) the legal owners of the property are in agreement to subdivide the property; and
- (c) the surveyor will set final pins on all lot corners prior to submitting the plat to the City of Opelika for signatures:
  - Require a surveyor complete a certified survey of the outer boundary of the property to assure the City that the property being divided does, in fact, exist and has been inspected by a licensed surveyor
  - Require an affidavit or a signed contract with the owner that a licensed surveyor has been retained for the purpose of setting the final pins
  - Require a statement of intent by the licensed surveyor to have all pins set and the plat signed and sealed prior to submission for signatures.
  - Require that either the owner sign the application forms or the owner and representative sign an affidavit to act as applicant.

Thank-you,  
Michael T. Maher, P.L.S., AI Reg No 29993

Mr. Hilyer stated our regulations say that a certified drawing saying this is finished or complete before we vote to approve it. What you are presenting is in fact true, correct, and certified.

Chairman Pridgen stated according to the interpretation of the regulation, the plat should not be able to be submitted or accepted for a subdivision application until it is signed. As a mediation between what you are required to do and what we as a Planning Commission feel are our new interpretation is: we will not be able to have a preliminary and final in the same meeting unless everything is correct.

Mr. Maher stated there is a price to be paid to set and reset pins. Is that really what you want to do in the regulations?

Mr. Kelley asked Michael Maher about Auburn, do the pins have to be in at the final plat submission.

Mr. Maher stated no.

Mr. Kelley stated in other states I have heard similar arguments. Pins are going to get torn out. Then it is the property owner bears the brunt. Do we make sure the pins are in, and so be it if they get knocked out, and they have to be reinstalled. Or do we look at a different choice?

Mr. McCrory stated I would like to ask the Planning Commission to continue to allow the review the way it is.

Mr. Gunter stated the ordinance says the plat that is recorded has to be certified and signed by the surveyor. That is mandatory by the state law. Your regulations are what you require. You can require what you want at each stage of submission: sketch plan, preliminary, and final. It is up to you to decide at each phase what you want submitted. The state law gives you that flexibility. Right now the regulations say they "shall be certified" for construction drawings by a registered land surveyor or a professional engineer.

Mr. McCrory stated that if construction bonds need to be posted or if right-of-way needs to be dedicated. Those are the reasons we have been submitting preliminary and final separate.

Chairman Pridgen requested a subcommittee to meet on this issue and try to hammer this out with all parties involved here. Chairman Pridgen stated himself, Mr. Hilyer, Mr. Kelley, Mr. Ogren, Mr. Dorsey, Mr. Maher, Mr. McCrory are on the subcommittee. We should review the current rules and process and make sure all these are correct and follow what is set in place.

With no further business on the agenda, Chairman Pridgen adjourned the meeting at 4:49 p.m.

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Keith Pridgen, Chairman

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Rachel Dennis, Secretary