

October 23, 2012

The City of Opelika Planning Commission held its regular monthly meeting October 23, 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: Lewis Cherry, James Morgan, Ira Silberman, Mayor Fuller, Keith Pridgen, David Canon, Michael Hilyer

MEMBERS ABSENT: Arturo Menefee, Lucinda Cannon

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
Scott McBurney, Fire Marshall
Guy Gunter, City Attorney

CALL TO ORDER: Chairman Pridgen called the meeting to order at 3:00 p.m.

I. Approval of September 25, 2012 Minutes

Chairman Pridgen asked for any changes or corrections to the September 25, 2012 Planning Commission Minutes.

Council Member Canon made a motion to accept the September 25, 2012 minutes of Planning Commission as written.

Mayor Fuller seconded the motion.

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

Nays: None

Abstention: None

II. Update Previous Planning Commission Cases.

Mr. Kelley reported from the last City Council Meeting:

1. Resolution to go vacate that portion of 15th Street subject to the 16 in. water main had both the 1st and 2nd reading
2. The annexation of the 4.25 acres for the Carmike Theater had the 1st reading to C-3, GC-1 zoning.
3. Annexation of the 2 parcels on Lee Rd 390
4. Approved the 2nd reading of the 2nd lot on Society Hill Road for R-1 Zoning.

A. PLATS (preliminary and preliminary & final) – Public Hearing

- 1. Fox Run Industrial Subdivision, 1 lot – Lot line erasure, 600 block of Fox Run Parkway, Opelika Power Services, Preliminary and Final approval**

Mr. Kelley reported the City of Opelika is requesting preliminary and final approval for a lot line erasure between Lots 3C and 3D. A lot line erasure is necessary as the proposed administration building for Opelika Power Services will straddle the two lot lines.

Staff recommends preliminary and final plat approval.

Mr. Dorsey reported sanitary sewer service is available to this combined 11.27-acre industrial parcel via an in-place gravity main that passes through the southern portion of the parcel in a west-to-east direction. Vehicle access is available via a single curb cut on Lafayette Parkway (U.S. Highway 431). An additional private access is available to the City's Public Works Facility at the western parcel boundary. The parcel is presently being developed through the construction of the administration and fiber service buildings for Opelika Power Services.

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 Fox Run Parkway.

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

Chairman Pridgen opened the public hearing.

No comments from the public.

Chairman Pridgen closed the public hearing.

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

Mr. Morgan seconded the motion.

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

Nays: None

Abstention: None

2. Village Professional Park Subdivision, 1st Revision, 2 lots, Village Professional Parkway, Barrett-Simpson, Inc., Preliminary and Final approval

Mr. Ogren reported the applicant is requesting preliminary and final approval for a 2 lot subdivision in a PUD (Planned Unit Development) zoning district. Lot 2-B2 (1.9 acres) is subdivided out of an 86 acre parcel. A physician's office will be constructed on Lot 2-B2. Lot 2-B1 is 84 acres and reserved for future development. In December 2004 this PUD zoning district was approved by the Planning Commission. The mixed-use PUD is approximately 120 acres and consists of office, retail, and residential uses. A portion of the first phase fronting along Dunlop Road is constructed. Six buildings have been constructed; the buildings occupied are medical uses. Planning staff recommends minimum building setback requirements of 30' front yard, 10' side yard, and 30' rear yard for this PUD development. Planning staff also recommends that a conceptual master plan of the 83 acres be submitted prior to or together with the next subdivision.

Staff recommends preliminary and final plat approval with staff recommendations in this report.

Mr. Dorsey reported sanitary sewer service is available to both undeveloped commercial parcels via in-place gravity mains within the Village Professional Parkway right-of-way and within two easements that extend perpendicular to the right-of-way. Vehicular access is available via Village Professional Parkway. All public works improvements have been constructed, except for the placement of the wearing surface asphalt on Village Professional Parkway.

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

1. The Owner or Developer shall provide a performance bond or letter of credit to the Engineering Department. The amount of the bond or letter of credit shall be equal to 150 percent of the estimated cost of the placement of wearing surface asphalt and repair of in-place binder asphalt along the entire length of Village Professional Parkway. All required improvements under the bond shall be installed within one (1) year of the bond's issuance date.

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

Mr. Dorsey reported this subdivision is in the Opelika Power Services and Alabama Power Company territory.

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

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

Mr. Hilyer seconded the motion.

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

Nays: None

Abstention: None

3. Sentinel Hills S/D, Phase 2, 20 lots, Lee Road 2192, Barrett-Simpson, Inc., Preliminary approval

Mr. Ogren reported the applicant is requesting preliminary plat approval for a 20 lot subdivision (Phase 2) located in the Planning Jurisdiction and about 2 miles northeast of Exit 66 on Interstate 85. Single family homes will be constructed on each lot. Phase one (41 lots) was approved at the March 23, 2010 Planning Commission meeting. The 20 lots range in size from 13,687 square feet to 64,314 sf. Each lot except Lot 11 meets the minimum 15,000 square foot lot size and minimum 100 foot lot width for a subdivision in the planning jurisdiction. Lot 11 (13,687 sf) needs to be revised to meet the minimum 15,000 square foot lot size requirement. The 35 foot minimum front yard setback line needs to be shown on all lots.

Staff recommends preliminary plat approval subject to Lot 11 meeting the 15,000 sf lot size requirements and adding a 35 foot front building line on the plat.

Mr. Dorsey reported sanitary sewer service is not available to any of the 20 lots in this residential subdivision phase, which is located outside the Opelika corporate limits off Lee Road 177. Each of the proposed lots ranges in size between 0.31 and 1.48 acres. All developable lots must meet minimum land area and percolation requirements for on-site septic systems in accordance with the Alabama Department of Public Health.

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

1. The skew angle at the intersection of the two new streets in the subdivision phase is approximately 53 degrees, which is 22 degrees less than the 75-degree minimum skew angle for street intersections, as stated in Section 3.4.4 of the Public Works Manual. The intersection shall be re-configured so this requirement is satisfied.
2. The Owner's Engineer shall submit public works construction plans to the Engineering and Public Works Departments for review and approval prior to final plat submittal.

Mr. Hawkins reported this Subdivision is in the Lee-Chambers Water Authority service area.

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

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

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

Mr. Silberman seconded the motion.

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

Nays: None

Abstention: None

4. Bence-Hartley Subdivision, 1st Revision, 2 lots, 1420 2nd Avenue, Bence-Hartley, Inc., Preliminary and Final approval

Mr. Ogren reported the applicant is requesting preliminary and final approval for a 2 lot subdivision at the corner of 2nd Avenue and Simmons Street. The purpose of the subdivision is to subdivide 1.2 acres (Lot 2) from a 7.4 acre parcel; a retail store will be constructed on Lot 2. The size of the lot is adequate to provide off-street parking, private driveways, and landscaping. The applicant is aware of utility easements on the lot and understands a structure cannot be built on the easements.

Staff recommends preliminary and final plat approval.

Mr. Dorsey reported sanitary sewer service is available to all three lots in this commercial subdivision via in-place gravity mains within the Second Avenue and Simmons Street rights-of-way and within sanitary sewer easements that extend through Lot 1A and Lot 2 in a north-to-south direction. Vehicle access is available via Second Avenue, Simmons Street, Fourteenth Street, and an unpaved road within the Norfolk Southern Railroad right-of-way. An 80-foot wide access easement across Lot 1A at the intersection of Simmons Street and Third Avenue provides access to Lot 2 along its entire northern boundary. A 20-foot wide utility easement is shown along the eastern boundary of Lot 3 to accommodate an in-place 16" water main within the abandoned 15th Street right-of-way. All three lots were previously developed for residential and/or commercial use.

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 2nd Avenue

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

Chairman Pridgen opened the public hearing.

No comments

Chairman Pridgen closed the public hearing.

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

Mr. Hilyer seconded the motion.

Mr. Cherry asked if staff determined if the house on the back of the lot has legal right-of-way.

Mr. Kelley stated we did determine it is on the Railroad R.O.W. It is a dirt road with full access between the two streets. The house you mentioned is an abandoned building and boarded up. It is labeled Hooper Street on the Railroad R.O.W.

Mr. McCrory the land surveyor. In my opinion this is a prescriptive easement for the dirt road fronting along this house and is an extension of Hooper Ave. Hooper Avenue runs into 14th Street. Hooper Avenue has been there 50 or maybe 75 years. The property with the house belongs to Bobby Sanks. They have always used that road along the railroad R.O.W. In my opinion, the road we are discussing is a prescriptive easement in the Railroad R.O.W. for access to that lot. I do not see how the railroad could come in and close that road because it has been existing for over 20 years. That is my understanding of a prescriptive easement. I believe the dirt road has been maintained by the City in years past. I will be glad to show the road on the plat.

Chairman Pridgen stated the Bobby Sanks lot is not part of the subdivision. I think this is an error that will have to be fixed at some point. Mr. McCrory could you add existing dirt road on the plat.

Mr. McCrory replied yes.

Mr. Silberman called for question.

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

Nays: None

Abstention: Council Member Canon

5. Hickory Grove Subdivision, Replat of Lots 23 & 24, 2 lots, 3304 Betty's Lane, James McGill, Preliminary and Final approval

Mr. Ogren reported the applicant is requesting preliminary and final approval to modify two lots in a 24 lot subdivision that was approved at the May 2007 meeting. At the 2007 meeting Lot 23A and Lot 24A had public road access to Betty's Lane. The applicant now desires Lot 23A and Lot 24A to access Autumn Way. In addition, a sign easement (248 sf) is added to Lot 1. The lots meet the minimum 15,000 square foot lot size and 100 foot lot width requirement for a subdivision in an R-1 zoning district. Staff recommends preliminary and final plat approval.

Mr. Dorsey reported sanitary sewer service is not presently available to either undeveloped residential lot in this two-lot re-division. Vehicle access is available via Autumn Way, which is inside the Opelika corporate limits, and Lee Road 152, which is outside the Opelika corporate limits. Existing easements for drainage and utilities are located along the northern boundary of Lot 23-A, along the western boundary of Lots 23-A and 24-A, and through the middle of Lot 24-A. An in-place electric transformer is now located in the middle of Lot 24-A that may need relocating so it is not in conflict with the proposed building pad. As part of this plat approval, a permanent easement for a monument identification sign for the subdivision will be placed at the southwestern corner of Lot 1.

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

1. Remove the text 'Boundary Survey' from the plat's title block and replace with 'Hickory Grove Subdivision, First Revision'.
2. Approval by the Lee County Health Department for the locations of the septic tanks and field lines for both re-divided lots. The following:

Mr. Hawkins reported Water service is accessible to this Subdivision by a water main in the R.O.W. of Autumn Way.

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

Chairman Pridgen opened the public hearing.

No comments.

Chairman Pridgen closed the public hearing.

Mr. Hilyer made a motion to grant preliminary plat approval with staff recommendations. Mayor Fuller seconded the motion.

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

Nays: None

Abstention: None

B. CONDITIONAL USE APPROVAL

6. E. A. Investments Corp., 230 Columbus Parkway, C-2, GC-2, Storage warehousing

Mr. Kelley reported the applicant is requesting conditional use approval to construct a warehouse for storage/distribution of product sold by Fastenal adjacent to their existing building. A building of 4500 square feet is proposed. Their landscape plan satisfies the Landscape Requirements in Section 10.6 of the Zoning Ordinance. Building material for the structure will be brick on front and two sides to meet Gateway II requirements of over 50% natural material. The rear of the building will be metal. Applicant is requesting the parking lot remain unpaved as no public retail or service activities will be generated in this proposed building, only storage of product. The City Engineer will elaborate on that issue in his report. Planning staff will support the recommendation of the City Engineer related to paving the parking lot.

City of Opelika sewer is less than fifty (50) from the property corner and should be extended to serve this property. Section V, Sanitary Sewer System of the Public Works Manual states: "Where a public sanitary sewer system is within three hundred (300) feet and reasonably accessible to a subdivision or development, the developer shall install a sanitary sewer system which meets the requirements of the City and shall connect such system at his expense to the public sanitary sewer."

On August 28, 2012, the Planning Commission granted final plat approval to erase two (2) lot lines providing one (1) lot of 1.286 acres. If after construction of the new building, the property owner decided later to subdivide, both lots would be nonconforming because a twenty (20) foot side yard is required. A Board of Adjustment decision to approve a variance would be necessary prior to any subdivision approval by the Planning Commission.

Planning Staff recommends conditional use approval subject to the following:

- 1) Extend city sewer to the proposed building conforming to city sewer extension policy as set-forth in Section V, Sanitary Sewer System; and
- 2) A bathroom shall be installed in the new building to satisfy building code requirements.

Mr. Dorsey reported this 1.29-acre parcel is presently service by an in-place septic tank and field lines located near the rear of the site. At the time this parcel was originally developed, the City's sanitary sewer maps did not accurately indicate the correct locations of in-place sewer mains in the vicinity of this site. As a result of these mapping inaccuracies, the Engineering Department determined that sanitary sewer service was not accessible, and the septic system was approved and installed. Our updated maps indicate an in-place 8" gravity main is located on the adjacent property to the north and within 50 feet of the northeastern property corner. Vehicle access to the site is available via a single curb cut on Columbus Parkway. Nine new paved, on-site parking spaces are indicated, of which one is proposed for use by the disabled. Storm water will be managed via an in-place detention pond located near the northern property boundary. A second on-site dumpster is proposed at the rear of the parking lot and beside the dumpster that serves the existing building.

The Engineering Department recommends conditional use approval as submitted.

If this building will be used for warehouse only then we would be willing to waive the requirement of paved parking spaces directly in front of this building, so long as the existing spaces would meet the parking requirements for both buildings.

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

Mr. Dorsey reported this use is in the Opelika Power Services territory.

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

Mayor Fuller seconded the motion.

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

Nays: None

Abstention: None

7. Glynn Smith, 1651 Columbus Parkway, C-3, GC-2, Sale & distribution of Airgas products

Mr. Ogren reported the applicant is requesting conditional use approval for the outside storage and distribution of industrial specialty gases at 1651 Columbus Parkway. This property is the former site of a construction equipment rental business (ITE, Inc.) that was approved in October 2006.

The site plan shows a 20,000 square foot building on 5.7 acre parcel. The building is divided into three parts: customer display (5,000 sf), parts inventory (7,500 sf), and shop area (7,500 sf). The outside storage of industrial gases consists of a 5' diameter storage tank located near the rear lot line; this area is the designated outside storage area. An existing 6 foot high fence encloses the entire property providing security. The landscape plan meets the minimum landscape requirements based on the disturbed area (4.9 acres). Total landscape points required is 448 points; the landscape plan shows 510 points. After ITE, Inc. was approved in October 2006 the property was developed including landscaping. The property has been vacant since about 2008, and now, some of the landscaping has died. Landscaping needs to be replanted according to the landscape plan to meet requirements of the Landscape Regulations. Several months ago landscaping (trees & shrubs) was added along the fence fronting Columbus Parkway. The maximum 75% impervious surface is met; the large 'gravel' area shown on the site plan is pervious; the impervious area is only 21%. Minimum off-street parking spaces are met: 35 parking spaces including two handicap parking spaces are provided.

Staff recommends approval as submitted.

Mr. Dorsey reported sanitary sewer service is available to this 5.72-acre developed commercial parcel via an in-place gravity main within the Columbus Parkway (U.S. 280/431) right-of-way. A privately-maintained, on-site grinder pump and force main transports sewer flow to the nearest manhole, which is located in front of the adjacent restaurant to the east. Vehicle access to the site is available via a single curb cut on Columbus Parkway. 38 paved, on-site parking spaces are available for customers, employees, and company vehicles. Two of these spaces have been designated for use by the disabled. The rear of the site has been surfaced with gravel to accommodate materials storage and the maneuvering of large trucks. Two on-site detention ponds manage storm water generated on the site. No provisions for the on-site storage of garbage are shown on the drawing.

The Engineering Department recommends conditional use approval as submitted.

Mr. Hawkins reported Opelika Utilities currently serves this location.

Mr. Dorsey reported this use is in the Opelika Power Services territory.

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

Mr. Silberman seconded the motion.

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

Nays: None

Abstention: None

C. REZONING – Public Hearing

8. L. Jamaal Sankey, Lot 9 Executive Park Drive, 17,300 sf lot and City initiated zoning of 5,600 so on west side of Executive Park Drive, from PUD to C-2, GC-2

Mr. Ogren reported the applicant is requesting rezoning one lot (17,300 sf) from PUD to C-2, GC-2 (office-retail commercial). Planning staff is recommending rezoning a portion of a lot (5,600 sf) on the west side of Executive Park Drive (see map attached) from PUD to C-2, GC-2. This mixed use PUD development (purple color on map) was approved in 1992. The PUD consists of commercial uses fronting along Pepperell Parkway and the rear yard area condominiums accessed from Executive Park Drive. A 2.2 acre lot is reserved for future development. (Several months ago, a foreclosure occurred on the 2.2 acre lot and the 17,300 square foot lot; the applicant purchased the 17,300 sf lot.) If the rezoning is approved the applicant desires to construct a building for a barber shop & beauty salon business. The business has two employees

The adjacent land uses are primarily office to the west and south along Executive Park Drive, and retail uses to the north along Pepperell Parkway (see map attached). The

adjacent property to the east is condominiums and part of the PUD development. The C-2, GC-2 zone is classified as 'light commercial' and office & retail type uses are allowed.

Planning staff believes that the rezoning request is appropriate. The adjacent properties are office or retail uses. Planning staff recommends approval.

Mr. Dorsey reported sanitary sewer service is available to these two undeveloped parcels via an in-place gravity main within the Executive Park Drive right-of-way and via an in-place gravity main that extends through the subject parcel located on the eastern side of Executive Park Drive. Storm water from both parcels is managed via an in-place detention basin located near the cul-de-sac to the south. The future development of both parcels with a commercial zoning designation will have no noticeable impact upon vehicle traffic or storm water runoff if the parcels are developed in their current PUD designation.

Therefore, the Engineering Department has a positive recommendation for this rezoning request.

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

Mr. Dorsey reported no report.

Chairman Pridgen opened the public hearing.

Mr. Sanky stated the 5,600 sf. Is not mine, only the 17,300 sf is mine.

Chairman Pridgen closed the public hearing.

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

Mr. Silberman seconded the motion.

Ms. Cannon asked why are we rezoning both lots?

Mr. Kelley explained rather than leaving an island of PUD the staff is initiating to you as a Planning Commission to go ahead and rezone this parcel from PUD to into the C-2, GC-2 just like the applicant across the street.

Ms. Cannon asked that we contact the owner and get the permission of the property owner to rezone.

Mr. Kelley stated we could contact them and not move it forward with both unless they both would like to rezone.

Mr. Silberman asked if a landscape buffer was required.

Chairman Pridgen stated a landscape plan will be reviewed when it comes for Conditional Use approval.

Mr. Gunter asked what was this lot supposed to be in the development plan of the PUD Master Plan.

Mr. Ogren responded that condos were planned in the two areas to the East but other adjacent properties it was not clear on drawings except commercial was probably anticipated. This one section with the condos and commercial fronting along Pepperell Parkway developed but the other properties never developed. The 1992 site plan back in the Engineering Department did not have any specifics on the uses.

Ayes: Cherry, Morgan, Silberman, Fuller, Council Member Canon, Hilyer

Nays: Cannon

Abstention: None

D. ZONING ORDINANCE TEXT AMENDMENTS – Public Hearing
9. Amend Section 5 Amendments, Add new section 5.3 Annexation Zoning

Mr. Kelley reported Ordinance to permit residential zoning for annexed property at the time of annexation. Since the vast majority of annexation petitions are for residential properties, the combination of zoning and annexation will save considerable time for the applicant and legal expense to the City of Opelika in advertising.

Staff Recommendation: Amend Section V, Amendments; by adding a new Subsection 5.3 entitled Annexation Zoning to read as follows:

“All properties annexed into the City of Opelika shall receive the R-1 (Rural) District designation. If another zoning designation is desired, the owner or authorized representative shall make application for rezoning in accordance with the provisions of the Zoning Ordinance.”

STAFF RECOMMENDATION: Approve the text amendment as stated above.

Mr. Dorsey, Mr. Hawkins, and Mr. Kriel reported no report.

Chairman Pridgen opened the public hearing.

No comment.

Chairman Pridgen closed the public hearing.

Mr. Cherry made a motion to amend the zoning ordinance as staff recommended.

Mr. Silberman seconded the motion.

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

Nays: None

Abstention: None

E. SUBDIVISION REGULATIONS TEXT AMENDMENTS – Public Hearing

10. Amend Subdivision Ordinance Section 4.4, Final Plat Approval, Subsection C. by deleting the title Drawings and inserting Public Works Construction Drawings; and Subsection D. Final Plat Requirements by amending the language in Paragraph #10.

Mr. Kelley reported a subcommittee appointed Chairman Pridgen forwards to the Planning Commission two (2) recommendations to clarify the language in the subdivision ordinance concerning final plats.

Amend Section 4.4, Final Plat Approval; Subsection C. by deleting the title Drawings and inserting Public Works Construction Drawings.

Amend Subsection D. Final Plat Requirements by amending the language in Paragraph #10 to read as follows: Certification of surveyor certifying to accuracy of the survey via seal and signature; plus signature by owner and notary prior to 12:00pm (Noon) on the scheduled public hearing day of the City of Opelika Planning Commission.

Staff Recommendation: Recommend Approval of the Subcommittee Recommendation as set forth above.

Mr. Dorsey, Mr. Hawkins, and Mr. Kriel reported no report.

Chairman Pridgen opened the public hearing.

Mr. Hilyer stated the drawings should be submitted to the Engineering and Public Works Department.

Mr. Kelley stated we will insert that change.

Chairman Pridgen closed the public hearing.

Mayor Fuller made a motion to amend the Subdivision Ordinance with staff recommendations.

Mr. Hilyer seconded the motion.

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

Nays: None

Abstention: None

Mr. Kelley stated how many drawings are required and the time drawings are required. See paragraph C, Public Works Construction Drawings, five lines from the bottom. To clarify, we are saying two preliminary copies of drawings drawn to scale on 24x36 shall be provided and 4 final copies of the drawings drawn to scale of 24x36 shall be provided. That provides both Public Works and Engineering the required number of copies at original submittal. If there are corrections on the plans by Public Works or Engineering then those are corrected. Then four sets of final corrected drawings are submitted.

Mr. Hilyer stated if they are not to be given to our department also and Mr. Dorsey is out of town and it gets missed. The next thing you know it does not happen.

Chairman Pridgen stated make sure we send a copy of this to all surveyors

F. OTHER BUSINESS

~~11. **Corey Marmaduke, 25 Samford Avenue, auto storage yard approved at March 2012 PC meeting, Requesting revisions to conditions for approval**~~
WITHDRAWN

12. Petition from The Residents of Cedar Creek Subdivision, Phase 1, accessed off Lafayette Parkway (Hwy 431), Requesting assistance to prevent contractor from constructing low- value dwellings

(The property owners supplied a petition and background information. Please see the master file for this information.)

Mr. Kelley reported Mr. Lackey is here and would like to address the Commission about the points they brought about Cedar Creek Subdivision.

Anthony Lackey of 3500 Village Creek Court in a portion of Cedar Creek Subdivision in North Opelika. Myself and a number of citizens that live in this Subdivision all came together recently due to the fact that the construction of a new house built on one of our streets on Maple Court by Grayhawk Homes in Columbus Ga. The house was built way below our covenant standards that were established when the subdivision was developed as a PUD development. This house has been built and in so doing the nearby home owners have lost quite a bit of money in selling their homes. This was not totally due to the depression of the housing market. The people just lost a lot of money and could not sell them. We have had some appraisals come in for refinancing because the rates are low and the appraisals are coming in extremely low due to comparisons. Most of us are upset about the quality of the homes that are being built. The homes we bought we thought were good quality homes. We thought we were getting into a nice restrictive subdivision with decent homes, nice developments, amenities, clubhouse, pool, underground utilities, and playground. We got some of that but as you are aware the clubhouse and pool are not complete. We spent good money based on our incomes to buy these homes. The houses that Grayhawk is wanting to build with pads that are built overnight. The pads were filled with five foot high fill-dirt and inadequate compaction. My house has settled and Dave Ericson refuses to do anything to resolve the issue. Others here have had problems with the homes and had no satisfaction with this guy. Our request is we need some help from the City to stand up against developers and contractors who want to build lower quality level homes that do not look

like our existing homes. We need some help from the City. I understand that Grayhawk owns 19 more lots. Our homes are our investments.

Bob Banks stated we are not against someone developing nice houses in our neighborhood. We are against building shotty houses. My house appraised for 50% of what it cost to build. At the time I bought my lot, I thought I was moving into a custom built housing neighborhood. It has changed. We would like some help.

Council Member Canon asked what year did you purchase your house?

I purchased the lot in 2006 and the next week Grayhawk bought the rest of the lots on that street. I was shocked to put it mildly when the appraisal came in. I found out that it was not a mistake.

Chairman Pridgen stated we had a discussion on Tuesday about you all forming a HOA.

Mr. Lackey stated we have looked into the cost of the attorney and everyone would have to participate to pay for the services. We looked at acquiring the architectural review committee from Scott McNay who is the remaining partner of that association and were unable to contact him. Another approach I have been told we can take is to go with the Alabama Home Owners association and suspending this contractor's license.

Chairman Pridgen said you understand we have no enforcement powers on covenants. All that we can do is look at the specific subdivision regulations. Mr. Gunter is there any remedy that you may be able to give a recommendation them as far as what their steps should be.

Mr. Gunter stated the law in Alabama is very clear that the City can enforce the Zoning Ordinance, Subdivision Regulations, and Building Codes. If the builder is not in compliance with any of those provisions the City has enforcement powers. If the problem is the developer or builder is not in compliance with the restrictive covenants the court cases are very clear that the city has no standing because they are private agreements between land owners. The City does not own any land in the subdivision. So the land owners will have to file suit.

Chairman Pridgen stated if I remember correctly they had the HOA and Architectural Committee set up to turn over the control to the property owners based on a percentage of sell rate. However, I understand that never occurred.

Chairman Pridgen asked that we pull the original agreements of the PUD and review the master plan to see what was included.

Mayor Fuller stated we ought to do anything and everything we can to help these individuals to help these folks. I have seen the clubhouse that has been abandoned. It just makes me sick to look at it. I am sorry about all of that. It makes me angry with us that we did not have in place a bond for the amenities. We ought to do whatever we can to help these folks and put whatever pressure we can bring to bear on this developer and builder to get them to do the right thing.

Chairman Pridgen stated it may be appropriate to send a motion to City Council from the Planning Commission to voice disapproval about the builder's activities.

Mayor Fuller stated I know what I would do if I were the building inspector inspecting some of those homes. It would be hard for them to get building codes approved if the construction work was poor.

Mr. Lackey said anything the City can do to stay on this guy about complying with building codes, addressing poor workmanship, or to enforce the quality of work this man is doing is appreciated. Thank you very much.

Mr. Silberman stated be careful what the home owners do because you have some houses that are already constructed that do not meet the covenants and restrictions.

Council Member Canon stated unfortunately this is one of those subdivisions that came about in a point in time when building was booming and there were not many lots available and those people saw an opportunity to develop some land that changed hands several times. From the surface everything looked great going in and then things soured and it changed. It wasn't just homes, the streets have issues, and there are a lot of problems there. I sympathize with you. The Mayor has indicated we will do whatever we can. I got an idea we will stand behind that.

13. Cost/benefit analysis for annexation properties on Lee Road 989

Mr. Kelley reported at last month's meeting staff was asked to take a look at a cost benefit analysis but exclude the primary issue of the road. There is a major design flaw with the "camel back hump" which cannot meet street design standards related to our Public Works Manuel. The street was constructed back in the early nineties. We have continued this annexation month after month with different property owners coming in with a petition to annex. We now have petitions of all property owners - nine homes and two vacant lots to petition annexation. We are at the point to answer questions you all have and review the cost benefit analysis factors that we have used in the past. We have some property owners here. As Mr. Pridgen mentioned last Tuesday that the goal is to move this out with some sort of recommendation today.

Mr. Ogren reported the annexation area consists of 11 lots (11.3 acres). The largest household is six people (Nixon - 3 adults & 3 children attending public schools). There are three, one-person households (Ates, Blount, Truitt). The annexation area is accessed from Columbus Parkway to Lee Road 152 then Lee Road 989.

If the annexation is approved, the property will be located in Ward 5 (David Canon).

The following are totals for the eleven lots in this annexation:

Demographics

- Total number of people = 24
- Number of Registered Voters = 14
- Children attending Public Schools = 6
- Race - Caucasian

Expected Revenues

- Property taxes = **\$2,130** The City will receive \$2,130 per year from property taxes (10 millege rate).
- Occupational taxes = 0 There are no businesses located in the annexation area.
- Sales/Business tax = 0 There are no businesses located in the annexation area.
- Garbage/trash payments = **\$1,728** The nine annexed properties with single family homes will pay \$1,728 annually for garbage services (12 months x \$16 fee = 192 x 9 lots = 1,728).
- Opelika City Schools = **\$3,409** City schools will receive \$3,409 per year per student from property taxes (16 millege rate)
- Opelika City Schools = **\$31,170** City schools receive approximately \$5,195 per student per year from the State of Alabama. City schools will receive \$25,975 per year for the 6 public school students that live in the annexation area (6 students x 5,195 = 31,170)

Expected Costs

- Garbage and trash services = **\$2,322** Garbage and trash expenses and a 95-gallon garbage container costs approximately \$258 per household per year (9 home lots x 258 = 2,322).

- Road/Utility Maintenance¹ = **\$112** The annual maintenance of City streets average about \$455 per mile of City street (\$100,000 x 220 total miles of City streets). This annexation includes the annexation of about 1,300 linear feet of Lee Road 989. Therefore, given Lee Road 989 complies with City construction standards, the maintenance of Lee Road 989 is approximately \$112 per year
- Schools = **\$4,284** There are six children in the annexation area that will attend public schools. The City of Opelika currently contributes about \$714 per year per student (6 x 714 = 4,284)
 - Police and Fire service must be provided to every residence in Opelika. Increasing the size of the police and fire service area will impact the departments to some degree. The Lee County Sheriff Department said that from October 2007 to October 2012 there was one crime report (theft) on Lee Road 989.

TOTALS

Expected Revenues per year

Property taxes = 2,130
 Garbage fees = 1,728
 City Schools = 3,409 property taxes
31,170 State funds

Total Revenue = \$38,437

Expected Costs per year

Garbage services = 2,322
 City Schools = 4,284
 Street Maintenance = 112

Total Costs = \$6,718

City receives per year = \$3,858

City schools receive per year = \$34,579

Chairman Pridgen stated the Mayor asked for this information as with any other annexation. The situation still comes back to the road. Our task is in trying to watch out for the liability for the city and residence. Is not only from a liability to a monetary standpoint from a safety standpoint. We have a choice and we need to pass this on to City Council so they can make a decision.

1. Is to make a recommendation to City Council positive to accept this into the City of Opelika with no conditions.
2. Accept this into the City of Opelika with conditions that the streets being brought up to the standards of the City of Opelika.
3. The property owners creating a homeowners association and developing this as a private drive and they take liability of this.

Mayor Fuller made a motion to send a positive recommendation to City Council for annexation subject to Lee Road 989 being a private drive and approval of this from Lee County.

Mr. Hilyer seconded the motion.

Mr. Gunter stated the homeowners would have to ask the county to vacate the road.

Mayor Fuller commented on the road being in good shape and did not see any patching or pot holes.

Council Member Canon stated the motion accomplishes a few things. That if approved by City Council they would allow the property to be annexed into the City. The private road situation would elevate the City's responsibility of the road itself. If any problems did occur with the road itself it would be the property owner's expense to fix the road. If

¹ The \$112 cost is for routine street maintenance activities only; this street maintenance cost does not include street improvements.

they did not fix the road they would have no recourse to the City. Also, on the original plat recorded in 1992 the road was not built to specifications. All of the home owners I assume would have been aware of that at the time of purchasing.

Chairman Pridgen added the note on the original plat specifically stated that it will not be annexed into the City until the road is brought to current standards.

Mr. Silberman asked is that an acceptable direction for the property owners there?

Mr. Bartlett state the neighborhood is leaning toward not having to maintain the road. The county cuts the grass on the sides and basic maintenance. I think resurfacing is a major concern for us.

Mr. Gunter stated one other consideration to think about. If you vacate that road the property owners are going to receive title to that property. Then it is going to be a private easement and there is a wreck out there you will have some liability and exposer. Because it will be a private road on your own property. Lawyers can be creative and potentially name you as responsibility. Right now Lee County has the liability as a public road.

Chairman Pridgen stated your choice is to pay for the road to be brought up to standards now or maintain the road yourself over a long term and pay for it over a longer time period while taking on additional liability, or leave it with the county as it is. I think we all want you in the City but it's just how do we do it. We are the recommending body for the City concerning annexations. If we recommend that you go forward you property owners can still bring up your own petition with what conditions you want before the City Council.

Mrs. Bartlett stated I think we could get all the property owners to an evening City Council meeting. Getting all the property owners here at the Planning Commission at three o'clock on a weekday is difficult when people are at work.

Mayor Fuller stated the benefits of being in the City of Opelika.

Chairman Pridgen called for question.

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

Nays: None

Abstention: Council Member Canon

14. Opelika/Lee County inter-local agreement for planning jurisdiction

Mr. Kelley reported this item is for information purposes only. Governor Bentley signed Act 2012-297 effective October 1, 2012 to allow county commissions in Alabama with a subdivision ordinance to regulate subdivision development in a municipal planning jurisdiction. The act also provides that by an agreement between the county and a municipal jurisdiction, a joint agreement to accommodate subdivision development is acceptable.

The City of Auburn, Lee County, and City of Opelika staff have drafted an inter-local agreement to accomplish this task.

The agreement provides in writing what the jurisdictions have done verbally since 2008 when Lee County enacted their subdivision ordinance.

This verbal agreement allowed within the planning jurisdiction of the City of Opelika, that whatever public right of way (streets) standards between the City of Opelika and Lee County are more restrictive, those standards would apply to subdivision development within the three (3) mile planning jurisdiction of the City of Opelika.

This agreement must be approved by the Planning Commission and City Council, and signed by the Chair of the Planning Commission and Mayor for the City of Opelika.

STAFF RECOMMENDATION: Approve the DRAFT Inter-Local Agreement for the Planning Jurisdiction between the City of Opelika and Lee County.

Chairman Pridgen stated that Bill English was to have a joint meeting. We have not heard a response from that.

Mr. Dorsey, Mr. Hawkins, Mr. Kriel reported no report.

Mr. Silberman asked if the road and subdivisions are all encompassing.

Mr. Kelley stated yes.

15. Discuss dates for November and December Planning Commission meetings – Recommendation: Tuesday, November 20th and Tuesday, December 18TH

Chairman Pridgen stated we will have the Work Session and Regular Meeting for November on the 27th and combined in December on the 18th at 3:00 p.m. on both dates.

G. VACATION OF RIGHT-OF-WAY

16. Vacate approximately 420 feet of both sides of Dunlop Drive right-of-way (approx. 40 feet wide each side) beginning from the intersection of Dunlop Drive & Hwy 280 to Linch Avenue, and vacate a portion of Linch Avenue (North & South side, approx. 13,100 sf)

Mr. Kelley reported this request just materialized yesterday. The ultimate goal is to get a recommendation from the Planning Commission to proceed on to City Council. So that on November the 6th of vacating the R. O. W. in the described areas (see map in master file). This is in conjunction with the Conditional Use application for the dealership changes.

Mr. Dorsey reported I do need to check with the surveyor about the legal description of this property. I am in agreement with Mr. Kelley about only vacating the R.O.W. shown in exhibit B. It was my impression at the start if you had a 160 foot wide R.O.W. and narrowed it to 80 you would be cutting 40 feet off on each side. But in looking at the legal description of some of these boundaries it appears that more R.O.W. is going to be taken off on the eastern side of Dunlap Drive than the west. It shows on exhibit B that the approximate width on this R.O.W. strip is 50 feet on the eastern side of Dunlap Drive. I want to confirm that with the surveyor as to why.

Mr. King commented that he thought the original agreement years ago with Mayor Patton were reflected in the proposed vacation. To the best of my ability, I complied to what I understand my agreement was with the City. In my original plan we highlighted what we gave.

Mr. King discusses the history of the agreement.

Mr. Kelley asked if there was a written agreement or if this was a verbal agreement.

Mr. King stated this was just a verbal agreement.

Chairman Pridgen asked for a motion.

Mayor Fuller made a motion to send a positive recommendation to City Council for vacation of all three areas.

Mr. Silberman seconded the motion.

Mr. Hilyer stated whoever is designing the sewer needs to get with the Public Works Department also.

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

Nays: None

Abstention: Council Member Canon

With no further business on the agenda, Chairman Pridgen adjourned the meeting at 4:42 p.m.

_____ Keith Pridgen, Chairman

_____ Rachel Dennis, Secretary