

June 26, 2012

The City of Opelika Planning Commission held its regular monthly meeting June 26, 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, Gary Fuller, Keith Pridgen, David Canon, Lucinda Cannon, Michael Hilyer

MEMBERS ABSENT: Arturo Menefee

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
Guy Gunter, City Attorney

CALL TO ORDER: Chairman Pridgen called the meeting to order at 3:02 p.m.

I. Approval of May 22, 2012 Minutes

Chairman Pridgen asked for any changes or corrections to the May 22, 2012 Planning Commission Minutes.

Mr. Silberman made a motion to accept the May 22, 2012 minutes of Planning Commission as written.

Mayor Fuller seconded the motion.

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

Nays: None

Abstention: None

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

1. Saugahatchee Hills Subdivision, Resub of Lot 4 and Lot 5, 2 lots, Grand National Parkway, Dale Looney, preliminary and final plat approval

Mr. Ogren reported the applicant is requesting preliminary and final plat approval for a two lot subdivision located on Grand National Parkway. This same property was approved by the Planning Commission at the February 28, 2012 meeting but the applicant is requesting revisions. The two lots meet the minimum one acre lot size requirement and 100 foot lot width for a subdivision in an R-1 zone.

Planning Department recommends preliminary and final plat approval.

Mr. Dorsey reported sanitary sewer service is not available to either undeveloped residential lot. Public street access is available via Grand National Parkway. An unpaved, one-lane road extends along the northern side of Lot 5A and through a small portion of Lot 4A; however, no access easement is shown.

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

1. Indicate the availability of public water and sanitary sewer service on the plat.
2. Revise the flood zone statement on the plat to state both lots are located entirely within Zone X (outside the 500-year storm event boundary).

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

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

Chairman Pridgen opened the public hearing.

Rusty Baker, William Bell, and Charles Gilland, adjacent or nearby property owners, expressed concerns about what will be built on these two lots. They also have concerns about the covenants and restrictions regarding these lots becoming smaller. They believe that the covenants and restrictions limit the subdividing of lots to smaller lots.

Mike Maher, surveyor representing the applicant, stated I understand the owners intentions are to build a house on the front lot and possibly build a garage on the rear lot.

Chairman Pridgen stated the applicant's purpose at this time is not to build a house and sell the other lot.

Mike Maher agreed. There are two lots of record. Unless you do something that does not allow that Mr. Looney or family could sell lots of record down the road. I do have a copy of the covenants and restrictions. They are correct. Mr. Looney asked that we leave this item on the agenda and discuss at a later meeting. One request today could be to allow us to have an opportunity where we can have preliminary and final plat approval subject to working out a deal with the neighbors to address the covenants and restrictions. As the covenants are written, Mr. Looney questioned what the definition of subdivision is if you are just moving a lot line and the lots are still the same size.

Mr. Gunter stated the City has no standing to enforce restrictive covenants. The City has standings to enforce the Subdivision Regulations and the Zoning Ordinance. The owners who acquired lots in this subdivision all have standings to enforce the restrictive covenants through a circuit court. Restrictive covenants appear to be valid and properly recorded. Just because the Planning Commission approves a subdivision does not mean the lot complies with the recorded restrictive covenants. Anyone owning a lot can file suit.

Chairman Pridgen closed the public hearing.

Mayor Fuller made a motion to deny preliminary and final approval.

Mr. Hilyer seconded the motion.

Mr. Kelley suggested we table this to give the property owners a chance to speak collectively together about the proposed subdivision as it relates to the covenants in order to resolve the differences. I do not think we can legally deny the subdivision. If they chose to take the matter to the court system that is up to the property owners.

Mayor Fuller made a motion to amend the previous motion to table this item until the July 24, 2012 Planning Commission Meeting.

Mr. Hilyer seconded the motion.

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

Nays: None

Abstention: None

Mr. Hawkins joined the staff table.

2. Piney Woods Subdivision, 3 lots, Gabby Drive & Veterans Parkway, Danielly LLC, preliminary and final plat approval

Mr. Ogren reported the applicant is requesting preliminary and final approval for a redivision of 3 lots located in Piney Woods subdivision. Piney Woods is a 22 lot residential subdivision located off Veterans Parkway; the Planning Commission granted final plat approval at the November 2009 PC meeting. The redivision increases the lot size of two lots for the construction of single family homes and Lot 12-A is reserved as

open space. The lots meet the minimum 7,500 square foot lot size requirement. Staff recommends a note added to the plat stating "Lot 12-A is an unbuildable lot reserved for open space. The property owner of Piney Woods subdivision is responsible for maintenance of Lot 12-A until all homes are constructed in the subdivision. After all homes are constructed in Piney Woods subdivision then the Piney Woods Homeowners Association is responsible for maintenance of Lot 12-A"

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

Mr. Dorsey reported sanitary sewer service is available to all three undeveloped residential lots via an in-place gravity main within the Gabby Drive right-of-way. Due to its reduced size and building setbacks, Lot 12-A is now undevelopable.

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

1. Add a note to the plat indicating no building permit can be issued for Lot 12-A.
2. Remove Note 4 from the plat regarding access restrictions to Veterans' Parkway for Lot 12-A.
3. Revise the flood zone statement on the plat to state all three lots are located entirely within Zone X (outside the 500-year storm event boundary).

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

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

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

Mr. Cherry motioned for preliminary and final approval with staff recommendations.
Mr. Morgan seconded.

Mr. Hilyer and Mr. Cherry asked for clarification about the updated remarks and stamped drawings.

Mrs. Dennis stated we have the corrected drawings and the remarks are added along with a certificate stamp. Note: Lot 12-A is not a buildable lot.

Mr. Silberman asked about who will maintain the lot if there is no homeowners association.

Mr. Hilyer reviewed the corrected copy and read note #4. Lot 12 A is the responsibility of the owner and/or home owners association to maintain.

Mr. Silberman, Council Member Canon, Mayor Fuller and Mr. Gunter proposed similar motions. If the developer/builder went bankrupt and the homeowners association was never created, and the city cuts the grass on the unbuildable lot, then the city is left with an unbuildable lot of no value and to maintain.

Council Member Canon asked Mr. Gunter for the legal opinion about who is in control.

Mr. Gunter stated the problem I see is the homeowners association not being in place to control matters like this.

Chairman Pridgen stated I do not think that is a question we can answer for this particular plat. This matter should be established in the covenants and restrictions and/or the homeowners association and not something we can solve with the Subdivision Regulations.

Mike Maher, surveyor, said Mr. Lee Danielly, the developer, currently who owns Lot 11-A and the proposed Lot 12-A. He is responsible for maintaining the lots., Mr. Danielly intent is to store trees on Lot 12-A then the trees will be moved from Lot 12-A and transplanted on lots in the subdivision after a home is constructed. Once the lots in the subdivision are 100% built out, and the trees transplanted, then Lot 12-A will not be used as a storage yard for trees. Mr. Danielly will then convey this lot over to the homeowners association or he will be the property owner of Lot 12-A. He understands he is responsible to maintain that lot.

Chairman Pridgen stated in this particular case there is no homeowners association established.

Mr. Ogren asked if a homeowner's association was recorded at the courthouse.

Mike Maher stated no, I do not believe there is one set up yet.

Mr. Silberman stated concerns again.

Chairman Pridgen stated we can leave this to the planning staff to work this out.

Mr. Kelley stated in the subdivision where I bought a home I was aware that the homeowners association would be established. The covenants and restrictions would have a threshold in the number of homes that had to be constructed and sold before the developer would turn the maintenance of common neighborhood community areas over to the homeowners association. The construction and ownership of homes in my neighborhood never reached that threshold. Consequently, there is an unfinished pool and clubhouse. This situation will languish until that threshold is met.

Mr. Gunter stated in cases like Cedar Creek the City can require the developer to bond the improvements that were planned and reserved as neighborhood common areas such as a community clubhouse and pool.

The Commissioners agreed that bonding the amenities will be an action in future developments.

Chairman Pridgen stated at this point from a legal standpoint the Planning Commission has no remedy to solve the homeowners association situation.

Chairman Pridgen stated one option is to just not allow an unbuildable lot.

Mayor Fuller stated, we could erase the line between Lot 11-A and Lot 12-A, then whoever buys 11A that new property owner will maintain the green space.

Mr. Cherry withdrew the motion.

Mr. Cherry made a motion that 12-A be a part of 11-A and subject to all staff recommendations

Mr. Morgan seconded

Ms. Cannon stated we cannot make someone do something with their land as erase a line on a plat if the plat meets minimum subdivision requirements.

Mr. Kelley stated I recommend we get with the property owner and make Lot 12-A a buildable lot.

Mr. Cherry withdrew the motion.

Mr. Cherry amended the motion to table until July 24, 2012.

Mr. Morgan seconded

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

Nays: None

Abstention: None

Mike Maher stated the overall issue here for a subdivision is the Planning Commission does not want an unbuildable lot. Therefore, all common and open space areas from here on out shall be buildable lots?

Mike Maher stated the choices here are: Option A is Lot 11-A is a buildable lot and Option B is Lot 11-A is a home owner's association be established that says the association will be responsible in maintaining Lot 11-A.

Ms. Cannon state this case is not so much about today, but it is about 50 years from now, my grandchildren having to maintain that lot when everyone here is gone.

Mike Maher stated that with this discussion and decision here the Planning Commission then changes green/open space, common area policy for future developments.

Chairman Pridgen stated lets cover this issues and come back with a report next month or we could call a subcommittee if need be. In this setting, we need to move on.

3. Wyndham Industrial Park Subdivision, 6 lots, Wyndham Industrial Drive, Frontier Bank/Wyndham Properties LLC, preliminary and final plat approval

Mr. Kelley reported Planning Department Recommendation: At the request of the applicant; Mr. Brent Gladden desires to continue the hearing until July 24, 2012 as the plat is being revised from six (6) lots to four (4) lots.

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

Council Member Canon made a motion to table this item until July 24, 2012.

Mayor Fuller seconded the motion.

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

Nays: None

Abstention: None

4. The Chimneys, 19 lots, West Point Parkway, Brad Humber, Preliminary Approval

Mr. Ogren reported the applicant is requesting preliminary approval for a 19 lot subdivision located off West Point Parkway across from Lake Condy Road. (See revised subdivision plat attached). The subdivision is phase one of an 81 lot residential subdivision. At the November 2008 Planning Commission meeting, preliminary approval was given for 81 lots; the 81 lots included 62 lots on Parcel A. On the plat reviewed today, Parcel A (27 acres) is Phase 2 of this development. (At a later time, Parcel A will be subdivided into 62 lots and submitted for PC approval.) Single-family homes will be built on each lot. The lots meet the minimum 7,500 square foot lot size requirement. Most lots are over 70 feet wide. The 19 lots range in size from 10,840 square feet to 19,545 square feet. Planning staff recommends underground utilities and sidewalks installed on at least one side of all streets (Note #9 on the plat refers to this recommendation.)

The adjacent property owner (CJW LLC or Frederick S. Waugh) located adjacent to and south of Lot 10 will continue to have access on an existing gravel driveway until the new street "Soapstone Way is constructed. Staff recommends preliminary approval subject to the recommendations stated in this report.

Mr. Dorsey reported sanitary sewer service is available to all 17 residential lots via a northwesterly extension of an in-place gravity main within the Lizlin Drive right-of-way. Lots 1-4 will have public street access to Soapstone Way via a shared driveway along the rear of each lot. Lots 5-17 will have direct public street access via Soapstone Way. The residential lot just south of Lot 10, which is not part of this subdivision, presently has access to West Point Parkway via an unpaved drive that crosses six of the proposed subdivision lots. This lot will also have street frontage on, and be accessed

via, Soapstone Way upon the completion of its construction, and the unpaved drive will be removed.

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

1. Revise Note 7 to indicate Lots 1-4 and 17 shall have public street access only via Soapstone Way and that no direct access to West Point Parkway shall be permitted.
2. Revise Note 5 to reflect the current information on the 2011 flood maps and to state all lots are located entirely within Zone X (outside the 500-year storm event boundary).
3. The developer's engineer shall submit public works construction plans and storm water calculations to the Engineering Department for review and approval prior to final plat approval.
4. The developer's contractor shall coordinate his work with the owner of the CJW, LLC parcel to minimize the duration of the water supply outage while transferring sources.
5. Garbage pickup for Lots 1-4 shall only be on Soapstone Way and not on West Point Parkway.

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

Mr. Kriel reported this subdivision is in the Opelika Power Services territory. Easements shall be granted for any existing electrical facilities. If any electrical facilities must be moved, the developer shall incur the full cost to relocate. Underground electric utilities are available to this subdivision, the developer will be responsible for paying the estimated difference between overhead and underground service.

Chairman Pridgen opened the public hearing.

Fred Wu, the adjacent property owner, asked if his water line to his home will stay in the same location after the lots are sold because his water line runs along the rear yard of lots on the east side. My water line tap is on West Point Parkway. I also have concerns about my water service being interrupted as the subdivision is developed. In addition, the storm drain runoff from the development will create a wash-out on my property because the subdivision is elevated and has a very steep slope toward my property.

Chairman Pridgen stated that in this situation you should talk directly to the developer to ensure that he protects your water and utilities.

Josh Hawkins stated Mr. Wu's water meter is in the R.O.W. and the water line to his home is a private service line that he is responsible to maintain.

Mike Maher stated there is a recorded easement of ingress/egress. The easement is accepted since there is an existing water line. I am fairly certain in dealing with Mr. Humber, the developer of the subdivision, concerning water line part of the engineering plans he will do what is necessary to protect the water line. It may require cutting your waterline and moving it to the end of the construction area. You may have a few hours without water. The overall plan once the water main is installed is to have a water meter installed for Mr. Wu. Mr. Maher said he assumes the water meter for Mr. Wu would be a condition for approval for us coming from Engineering [or applicable department] when we submit the [civil] plans.

Chairman Pridgen closed the public hearing.

Mr. Cherry 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

B. CONDITIONAL USE APPROVAL

5. Auburn-Opelika Korean Church, 1800 Rocky Brook Road, R-2, Addition to Church

Mr. Ogren reported Auburn-Opelika Korean Church is requesting conditional use approval to construct an 8,000 square foot education building in the rear yard area near the existing sanctuary. The existing 12,548 square foot sanctuary was constructed following conditional use approval at the September 2004 Planning Commission meeting. In addition to constructing an education building, the church is adding 75 parking spaces - 63 spaces in front yard area along Rocky Brook Road and 12 spaces on the south side near the sanctuary. The 63 parking space will consist of a porous reinforced material that supports automobiles but allows grass to grow through the pores; the 12 spaces are gravel. The church met the minimum paved parking space requirements when the sanctuary was constructed. Minimum parking requirements are based on the maximum capacity of the sanctuary; one parking space required for every four seats at maximum capacity. (Church maximum capacity is 278 and 89 paved parking spaces are provided.)

The church will also add a "recreation field" on the south side of the property. The existing trees and undergrowth will be removed and grass planted. A 10 foot wide residential buffer consisting of evergreen trees (recurve ligustrum – max 12' tall, 8' wide) or a 20 foot wide undisturbed wooded area will be planted along the south and west property line. Landscaping will be provided for the new parking lot along Rocky Brook Road and south side of sanctuary. No additional outdoor lighting is proposed.

Planning Department recommends approval as submitted.

Mr. Dorsey reported sanitary sewer service is available to this developed, 4.94-acre site via an in-place gravity main at the northern end of the parcel. Storm water is managed via an in-place regional detention pond located on the adjacent property to the west. 86 paved, on-site parking spaces are currently provided, of which four are designated for use by the disabled. The church plans to add 12 gravel spaces along the southern side of the existing building and 63 spaces at the front of the site. The spaces at the front will be constructed with a porous, reinforced material that will support vehicle travel, yet allow storm water to percolate into the soil below.

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

1. The developer's engineer shall submit civil/site construction plans to the Engineering Department for review and approval prior to the issuance of a building permit.

Mr. Hawkins reported Opelika Utilities currently serves this location.

Mr. Kriel reported this use is presently served by Opelika Power Services.

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

Mr. Morgan seconded the motion.

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

Nays: None

Abstention: None

Mayor Fuller exited the meeting.

6. Toby Hughes, 2803 Lafayette Parkway, C-3, GC-2, new landscape company

Mr. Ogren reported the applicant is requesting conditional use approval for a landscape business on Lafayette Parkway. This same business was granted conditional use approval at the September 2010 meeting but a CU approval expires in one year. An

existing 1,100 square foot single family home will be used for storage. The applicant will also construct a 4,000 square foot (40' x 100') metal building that serves as an office, employee space, tool storage and shop. Along the rear property line storage bins for landscape products will be stored.

The site plan provided meets minimum development requirements for off-street parking and landscaping. The applicant is requesting metal panels for the exterior material of the new building including the front wall facing Lafayette Parkway right-of-way. The front wall is about 200 feet from Lafayette Parkway; the front wall is screened by existing trees and the single family home except a portion of the wall near the north property line. Staff recommends a row of arborvitae (evergreen tree) planted from the north side of the single family home to the north property line to screen the front wall.

The site plan shows 12 off-street parking spaces as required but the spaces are gravel. Staff recommends that the three parking spaces in front of the office be paved and one parking space designated for the handicapped. Staff recommends that the nine parking spaces in the rear yard be gravel. The property is narrow and long (100' x 872') therefore the best traffic circulation design for this property was to use the rear yard as a '180 degree turn-around area'. Traffic circulation is important for this type of business; the business has several trucks entering & exiting the property several times a day. Also eighteen wheelers delivering products will use the rear yard area to turn around. An asphalt area in the rear yard will gradually be destroyed as vehicles turn around every day. (A five foot side yard variance was granted by the Zoning Board at the June 12th meeting. The variance located the new building closer to the property line and allows more space for vehicles to park and circulate on the property.)

Landscape requirements are met by preserving existing trees and adding shrubs & trees. A fence and landscape buffer (arborvitae-evergreen tree) will be provided along the north and south property lines. The adjacent land use on the north and south of the business is single family homes. Most properties along the east side of Lafayette Parkway are zoned C-3, GC-2.

Planning Staff recommends conditional use approval subject to the recommendations in this report.

Mr. Dorsey reported sanitary sewer service is not available to this developed, 1.41-acre site on the eastern side of Lafayette Parkway (U.S. 431). The majority of the site drains to the east and toward the abandoned railroad line. A new paved commercial access drive between the edge of pavement on Lafayette Parkway and the front of the in-place residential structure will replace the in-place residential driveway. The majority of the rear of the site will be a graveled parking area to be used for company and employee vehicles. The front of the site near the existing structure will contain four paved parking spaces for customers and visitors.

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

1. Increase the pavement width on the commercial access drive from 15 to 24 feet and set the edge of the curb and gutter at least five feet away from the existing edge of pavement on Lafayette Parkway.
2. The developer's engineer shall submit civil/site construction plans to the Engineering Department for review and approval prior to the issuance of a building permit.
3. The developer shall secure a permit from the Alabama Department of Transportation prior to the construction of the new access drive.

Mr. Hawkins reported Opelika Utilities currently serves this location.

Mr. Kriel reported Opelika Power Services presently serve this use.

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

Mr. Morgan seconded the motion.

Blake Rice stated I submitted revised plans that address all these issues stated in the reports.

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

Nays: None

Abstention: None

7. ~~Christopher Green, corner of Eighth Street & South Railroad Avenue, C-1, Mobile hot dog/food cart~~ WITHDRAWN

C. SITE PLAN APPROVAL FOR PUBLIC BUILDING

8. Opelika Power Services, 600 Fox Run Parkway, I-1,GC-2, Fiber Services Building

Mr. Kelley reported Opelika Power Service is requesting a site review approval to construct the Administration/Fiber Service Building at 600 Fox Run Parkway in an I-1, GC-2 zoning district. Although the Zoning Ordinance permits administrative approval for a public utility (except a power substation): the Alabama Code for Counties and Municipal Corporations; Chapter 52, Section 11-52-11 requires Planning Commission approval.

A property line will also need to be moved, and presented to the Planning Commission for subdivision approval at a future date.

Planning Department recommends site plan approval.

Beth Greenlee stated the site is 600 Fox Run Pkwy. There will be three buildings on the site. This will bring all of the OPS on to one site. As well as all the new building will house all the electronics for the new fiber, optic systems doing our smart grid stuff as well as the triple play services. The building that is being constructed first is the fiber building. It is a little over 6000 sf. The warehouse is 16,000 sf and has our office building and our fiber building. The satellite yard is in the rear corner. Customer entrance will be from Fox Run Parkway and employee and truck entrance will be through the Fox Trail entrance.

Mr. Dorsey reported sanitary sewer service is available to this undeveloped industrial site via an in-place gravity main that extends through the property in a west to east direction and near its southern boundary. Vehicle access to the site is available via a proposed driveway on Fox Run Parkway/U.S. Hwy 431. An additional access for company vehicles and employees will be provided via the in-place service drive at the adjacent Public Works Facility. Storm water will be managed via modifications to one of the two in-place ponds on the Public Works property. 95 paved, on-site parking spaces for employees and customers will be provided at the front of the buildings. Additional paved parking for service vehicles is provided at the rear of the buildings. The Engineering Department has previously reviewed and approved the site plans for this project for the purpose of issuing a building permit.

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

1. The developer shall secure a permit from the Alabama Department of Transportation prior to the construction of the new access drive on Fox Run Parkway.

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

Mr. Kriel reported this is in the Opelika Power Service territory.

Council Member Canon made a motion to grant conditional use approval with staff recommendations.

Ms. Cannon seconded the motion.

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

Nays: None

Abstention: None

12. Opelika Marketplace Subdivision, Redivision of Lot 5-A and Revision of Lot 5-B Redivision of Lot 5, Plat Correction, P/F approval

Mr. Kelley reported in January we reviewed a plat for Gander Mountain. Ledge Nettles had a call from Minneapolis yesterday. A few minor errors that need to be corrected in this plat. The closing is planned for Thursday or Friday.

Ledge Nettles stated the first version was recorded. In one of the lot descriptions, the word "first" was left out of Parcel 5A1. Concerning the detention pond, a leader symbol did not extend exactly to the easement.

Chairman Pridgen stated there are no real material changes. I interpreted this as an administrative change and not anything that needed to go into public advertising.

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

Mr. Hilyer made a motion to grant preliminary and final approval.

Mr. Silberman seconded the motion.

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

Nays: None

Abstention: None

D. ZONING ORDINANCE TEXT AMENDMENT – Public Hearing

9. Amend Section 9 Sign Regulations, Add new section 9.7.2 concerning outside lighting (Tabled at May 22nd meeting)

Mr. Kelley reported during the past six (6) months there has been a rash of inquiries concerning outline lighting for building features of commercial businesses. A franchise is a typical commercial business which mandates such a feature such as Dairy Queen. A private business like Irish Pub is an example of outline lighting with their perimeter outline light tubing along the roofline. The sign ordinance is clear in Section 9.2, A. 4 that flashing strips or flashing strings of lights are prohibited except under certain parameters.

However, the City Attorney has suggested that staff consider an amendment to clarify Outline Lighting.

Staff recommends the following amendment: ADD SECTION 9.7.2 OUTLINE LIGHTING to read as follows: Outline Lighting includes any arrangement or display of lighting tubes or compact florescent bulbs used to highlight building features. Outline lighting includes both temporary and permanent arrangement of digital tubing or bulbs whether located inside or outside a building if such tubing or bulbs is visible to the public from a public right-of way. Outline lighting shall be operable and maintained at all times. Outline lighting is permitted in C-1, C-2, C-3, and Commercial PUD's including both overlay districts, GC-1 and GC-2. Outline lighting in the Downtown Historic District (that portion zoned C-1) shall outline only window and door features of a building and be only the color white. (At this time with current color technology for digital tubing and florescent bulbs, the color white casts a "light bluish" tint.)

On May 10, 2012 the Historic Commission recommended 5-0 that any light color be permitted in the Downtown Historic District. White lights only are "too boring" in the opinion of the Commission. At the request of the Commission, add for emphasis, cite Section 9.2, Subsection A, Paragraph 4 Prohibited and Illegal Signs as a part of the amendment.

Also, the State Historic Commission has neither a preference nor a position on color of lights in a historic district.

The Main Street Board met on May 21, 2012 and suggested outline lighting for windows and doors; and recommends only white color tubing/bulbs which has a ("light bluish") tint at the present time in the C-1 zoning district.

Recommend Approval of the Outline Lighting Amendment as set forth in Paragraph 3.

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

Mr. Cherry made a motion to amend the zoning ordinance with staff recommendations. Mr. Hilyer seconded the motion.

Chairman Pridgen stated downtown C-1 would be white. The rest of the City throughout can be any color.

Mr. Kelley stated we are seeing more of the tube lighting as part of the façade. An example would be Dairy Queen on Pepperell Parkway.

Ayes: Cherry, Pridgen

Nays: Hilyer, Cannon, Silberman, Morgan

Abstention: Council Member Canon

E. OTHER BUSINESS

10. Discuss specific changes to Section 4.4 Final Plat Approval, B. Improvements concerning performance bonds

Mr. Kelley reported Commissioners: Mr. Dorsey, Mr. Hilyer, and I are preparing for your discussion at the work session some ideas for improving our present performance security instruments set forth on p. 23 (enclosed) of the subdivision ordinance. Specifically, we will be asking your feedback on Security Instrument (Warranty Bond/a percentage), warranty bond time period (years), time period to correct deficiencies (# of days before calling the bond), administration and monitoring. We will have a draft ready for your review and proceed at your direction to set a public hearing in June to amend the subdivision ordinance.

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 risk of public nuisances."

Given either the overbuilding or over-platting that happened in Opelika, we are dealing with some unfinished or un-built subdivisions. However, we are encouraged that so far in 2012 Opelika has permitted as of May 11, 2012, sixty-four (64) single family homes in existing subdivisions.

Nevertheless, 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 is asking for your input and support on the following items:

1. Either require simultaneously after preliminary plat approval both a performance bond and a warranty bond, OR a performance bond with submission of construction drawings after preliminary plat approval and a warranty bond prior to Planning Commission giving final plat approval.
2. Increase the warranty bond from 25% to 50% of the construction cost to correct problems if necessary.

3. Increase the term of the warranty bond from two (2) years to three (3) years.
4. Provide thirty (30) days to correct problems instead of twenty-one (21) before calling the warranty bond.
5. Instead of the City Engineer and “appropriate city departments” providing administration and monitoring of the bonding procedure; the City Engineer shall administer this process.
6. Require two (2) signatures, the City Engineer and Public Works Director to release a bond.

Public Works, Engineering, and Planning know that requiring a financial guarantee ensure that owners/developers will carefully weigh their decision to subdivide. However, as we have experienced with some subdivisions in Opelika, performance guarantees don't always cover the full cost of completing the improvements. Depending upon the type of guarantee, Opelika must also be careful about collecting before an instrument expires. Also, in some cases, Opelika may have to go through costly legal proceedings to collect the money. Our subdivision ordinance does need revisions for financial guarantees so that taxpayer dollars do not underwrite for some developers flawed infrastructure.

Also, in Subsection A; Paragraph 2 states that preliminary and final plat approval shall not be given in the same meeting unless the plat does not involve the construction of any public improvements. Historically, which probably occurred in the “boom years” prior to the recession, staff and Planning Commission allowed preliminary and final plats to be approved simultaneously at the same meeting after a public hearing. This was undoubtedly due to heavy monthly caseload and shortage of staff. Unless the Planning Commission desires to amend the subdivision ordinance to allow same, the staff will begin enforcing the ordinance as written effective September 1, 2012. (This is a recommendation from Planning)

UPDATED STAFF REPORT INCLUDING A DRAFT OF THE PROPOSED CHANGES TO REVIEW AND MODIFY BEFORE SETTING A PUBLIC HEARING FOR JULY 24, 2012.

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 shall be 150% of the cost of the actual infrastructure cost as determined by a certified engineer's estimate. 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 acceptance of recreational amenities if any by the Planning Director, the developer/subdivider 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 offsite improvements including recreational amenities, if any. No building permits will be issued until the Warranty Bond is submitted to the City Engineer and/ or Planning 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 three (3) years of Planning Commission approval and recordation of the final plat.

(f) The City 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 bond shall be subject to the terms of the bond or released by the City at the expiration of its effective period.

How the current regulation reads. This portion will be deleted.

~~A Performance Security shall be provided before the final plat is recorded 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 shall be 125% of the cost of the actual infrastructure cost as determined by a certified engineer's estimate.~~

~~Upon final acceptance of said infrastructure improvements by the City Engineer or appropriate City department, the subdivider/developer shall post a Security Instrument (Warranty Bond) in the amount equal to 25% of the actual construction cost of the improvements for the purpose of correcting any construction, design or material defects or failures within the public rights-of-way or easements in the development or required off site improvements. The form and manner of execution of said security instrument shall be subject to the approval of the city attorney. The effective term for said security instrument shall be at least 2 years following the City's approval and acceptance of the installed or constructed improvements or less than a year as determined by the City Engineer and appropriate City departments. The City will give notice of observed failures in the infrastructure or improvements. Thereafter, the developer shall have twenty-one (21) calendar days to initiate corrective measures. If said corrective measures are not satisfactorily completed promptly the City may exercise its right under the security instrument and submit a written notice to the parties of the security instrument explaining the default. It is the responsibility of the subdivider/developer to ask for a release of the said security instrument. Eligibility for a final release of the security shall be determined by the City Engineer and appropriate City department's approval and acceptance of the installed infrastructure improvements. The final release of the security shall be subject to the terms of the security or released by the City at the expiration of its effective period.~~

Chairman Pridgen called for a subcommittee. The Chair of the Subcommittee is Mike Hilyer. Mr. Cherry was also appointed to serve on this board.

11. Mr. Hilyer would like to make a presentation regarding an amendment to the Public Works Manual related to the type of manhole covers required.

Mr. Hilyer stated we just need to clarify a few things and I just wanted to make you aware that this was coming.

With no further business on the agenda, Chairman Pridgen adjourned the meeting at 4:25 p.m.

Keith Pridgen, Chairman

