

**DESOTO COUNTY PLANNING COMMISSION
ORDER OF ITEMS
JULY 29, 2004**

1. Call to Order
2. Invocation
3. Roll Call
4. Approval of Minutes – July 1, 2004
5. Announcements: Comprehensive Plan Adoption

MINOR LOT SUBDIVISION

6. Fair Subdivision (6289) – Application is for three (3) lots of 3.4 acres each. Subject property is located on the south end of Angie Drive and east of Robertson Gin Road, zoned Agricultural.
Section 11, Township 4, Range 8
*****SUBDIVISION MUST BE PLATTED AND RECORDED*****

CONSENT AGENDA

MINOR LOT SUBDIVISIONS

7. Wesley Massey Minor Lot Subdivision (6282) – Application is for three lots of 1.5 acres, 1.5 acres and 3.0 acres. Subject property is located on the north side of Dylan Road and east of Craft Road East, zoned Agricultural.
Section 8, Township 3, Range 6
8. W.A. Melton, Jr. Minor Lot Subdivision (6286) – Application is for three lots of 1.5 acres, 3.3 acres and 2.5 acres. Subject property is located on the east side of Center Hill Road and south of Burton Road, zoned Agricultural-Residential.
Section 4, Township 2, Range 5
*****SUBDIVISION MUST BE PLATTED AND RECORDED*****
9. Clay Faulkner Minor Lot Subdivision (6288) – Application is for one lot of 1.5 acres. Subject property is located on the southwest corner of Highway 304 and Bluff Road, zoned Agricultural.
Section 17, Township 3, Range 9
10. Hinds Minor Lot Subdivision (6289) – Application is for three lots of 1.5 acres each. Subject property is located on the west side of Robertson Road and south of Hinds Lane, zoned Agricultural-Residential.
Section 15, Township 2, Range 8

FINAL SUBDIVISION PLATS (Consent)

11. Laughter Hills 1st Revision (6285) – Application is for a revision of a recorded plat with 9 lots on 22 acres. Subject property is located on the southwest corner of Byhalia Road and Laughter Road, zoned Agricultural.
Section 2, Township 3, Range 7

OLD BUSINESS

12. Grandview Grove Section A (6119) – Application is for preliminary subdivision plat approval for 34 lots on 23 acres. Subject property is located on the north side of State Line Road and east of Highway 301, zoned R-6.
Section 18, Township 1, Range 8

NEW BUSINESS

13. Markle Estates (6248) – Application is for preliminary subdivision plat approval for 38 lots on 31.19 acres. Subject property is located on the south side of Lester Road and west of Getwell Road, zoned R-30.
Section 28, Township 2, Range 7
14. Kyle's Creek Subdivision (6281) – Application is for preliminary subdivision plat approval with 191 lots on 156 acres. Subject property is located on the west side of Payne Lane and south of Highway 302, zoned R-20.
Section 33, Township 1, Range 5

The DeSoto County Planning Commission met at 7:00 p.m. on Thursday, July 29, 2004, in the Third Floor Board Room of the Administration Building of DeSoto County located at 365 Loshier Street, Hernando, MS. Commissioners present included Julius Cowan, Pat Hefley, Dennis Clemmer, Leonard Lindsey, Wade Carter, Joe Forsythe, Leigh Graves, Frank Calvi, James Mayfield, Robin James, Jimmy Maxwell, and Mike Robison. Planning Commission Staff present included Merritt Powell, Michael Garriga, Jim McDougal, Andy Swims, County Engineer, and Katie Jewell, Commission Attorney. Chairman Robison called the meeting to order at 7:00 p.m.

After the invocation, Chairman Robison asked if there were any additions or deletions from the Minutes of the Planning Commission meeting held on July 1, 2004. There being no suggested additions or deletions, Mr. Lindsey made a Motion to Approve the Minutes and the Motion was seconded by Mr. Maxwell. The Motion passed by a unanimous vote.

Mr. Garriga advised the Commission that the Planning Office had received a notice regarding a Planning Commission Seminar to be held in West Memphis, AR. He said that several of the members attended the seminar last year, and believed it to be worthwhile. Whereupon, there were some snide remarks regarding the quality of life in West Memphis that were objected to by Mr. McDougal, a resident of West Memphis.

Mr. Garriga continued by saying the Comprehensive Plan had been adopted by the Board of Supervisors on a vote of 3 in favor and 2 against. He said that a Resolution was being prepared that would serve as the concluding document of the Comprehensive Plan process, and would include the Minutes or Order from the Board of Supervisors. Mr. Garriga advised the Commission that the Comprehensive Plan is an advisory document, and thus would not be published, inasmuch as it is not an Ordinance.

Mr. Powell suggested to the Commission that if any members of the Commission had any ideas or suggestions regarding the Subdivision and Zoning Ordinances, that it would be appropriate to submit them to him or to Michael Garriga. Mr. Garriga added that the purpose of the Subdivision and Zoning Ordinances Review was to simplify and streamline and update those Ordinances.

Mr. Robison stated that he recalled that there had been a "wish list" with regard to reviewing the Subdivision and Zoning Ordinances. More specifically, he recalled that there were some thoughts about the small lot setbacks. Mr. Garriga reminded the Commission that one of the goals of the Comprehensive Plan just adopted was to require that lots containing less than 8,000 square feet be placed within Planned Unit Developments. Mr. Robison recalled that a review of Ordinances occurred in the context of a page by page review. Mr. Garriga replied that a workshop may be good way to proceed in this review.

MINOR LOT SUBDIVISION

Fair Subdivision (6289) – Application is for three (3) lots of 3.4 acres each. Subject property is located on the south end of Angie Drive and east of Robertson Gin Road, zoned Agricultural.

Section 11, Township 4, Range 8

Mr. Garriga introduced the first case – the Fair Subdivision (6289) and advised the Commission that the issue in this application had to do with the length of the easement. The location of the both the existing and proposed easements was demonstrated on the computer map and it was explained that the proposed easement would extend off of Angie Drive with a width of 25’ on the northern part of the easement and widening to 50’ on the southern part of the easement. Mr. Garriga also mentioned that this easement would service four lots.

A general discussion then took place between and among various members of the Commission and the Staff. These discussions included the facts that this property involved family lands, that this proposed easement was the only land access to the lots, that in previous subdivisions of this property no stipulations had been attached, that the length of the easement would cover approximately 1800’ although if the beginning of the easement were deemed to be the end of the existing easement the subject easement would meet the 600’ requirement, that the current condition of the easement-way was that it was basically a “worn pathway”, and that a creek was in the pathway of this easement as it would extend farther to the south. At the conclusion of this discussion, Mr. Lindsey offered a Motion to Approve the Subdivision with the stipulations that it be platted and recorded, and that there be no further division of this property without a county specification road being built. The Motion was seconded by Mr. Maxwell, and approved unanimously.

CONSENT AGENDA

Mr. Garriga then announced the Consent Agenda.

MINOR LOT SUBDIVISIONS

Wesley Massey Minor Lot Subdivision (6282) – Application is for three lots of 1.5 acres, 1.5 acres and 3.0 acres. Subject property is located on the north side of Dylan Road and east of Craft Road East, zoned Agricultural.

Section 8, Township 3, Range 6

W.A. Melton, Jr. Minor Lot Subdivision (6286) – Application is for three lots of 1.5 acres, 3.3 acres and 2.5 acres. Subject property is locate on the east side of Center Hill Road and south of Burton Road, zoned Agricultural-Residential.

Section 4, Township 2, Range 5

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Clay Faulkner Minor Lot Subdivision (6288) – Application is for one lot of 1.5 acres. Subject property is located on the southwest corner of Highway 304 and Bluff Road, zoned Agricultural.

Section 17, Township 3, Range 9

Hinds Minor Lot Subdivision (6289) – Application is for three lots of 1.5 acres each. Subject property is located on the west side of Robertson Road and south of Hinds Lane, zoned Agricultural-Residential.

Section 15, Township 2, Range 8

FINAL SUBDIVISION PLATS

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Section 2, Township 3, Range 7

In response to a question from Mr. Robison, Mr. Garriga stated that when a final subdivision application is put on the Consent Agenda, the Staff reviews the Covenants and then places a copy of them in the Planning Commissioners' packets.

Mr. Maxwell made a Motion to Approve the Consent Agenda, and Mr. Cowan seconded the Motion. The Motion was approved unanimously.

OLD BUSINESS

Grandview Grove Section A (6119) – Application is for preliminary subdivision plat approval for 34 lots on 23 acres. Subject property is located on the north side of State Line Road and east of Highway 301, zoned R-6.

Section 18, Township 1, Range 8

Mr. Garriga announced the case and presented the Staff Report. He mentioned that the primary issues with regard to this application were home size and the floodplain. With regard to the floodplain, Mr. Garriga said that the applicant represented that he had completed the forms for a FEMA LOMR, but had not completed the submission process. He added that the plat before the Commission was the same plat that was presented to the Commission prior to a series of court actions taking place.

At this point, Commissioner Wade Carter announced that he recused himself from the consideration of this case because the subject property was near his home and he had been involved in some efforts to protest the application.

Commissioner Robison then asked Mr. Garriga about the zoning of this property, and asked Mr. Garriga to confirm that this application was for preliminary subdivision approval.

Mr. Ben Smith, the representative of the application, asked to address the Commission and was permitted to do so by the Chairman.

Mr. Smith stated that the minimum square footage of the heated space in the house on the lots, other than Lot No. 1, would be 1600. He added that the houses would contain 60 to 70% brick or masonry, and that the houses would contain double garages. He addressed the attributes of Lot No. 1 by saying that the house on that lot would contain a minimum square footage of 2000, and would face State Line Road. He said the house and the lot would be compatible with the surrounding neighborhood.

Mr. Smith said that he believed there were two issues that needed to be discussed and that these issues were improvement to State Line Road, and sidewalks. He said that he previously agreed to add a lane with curb and gutter and to build sidewalks on the outside of the loop.

Mr. Smith continued by saying that he would eliminate the stub road to the west of the subdivision and would install a knuckle (?) cove. He added that the application met the requirements of the Ordinance, and that he would file a LOMR with FEMA, with the latest Corps of Engineer information, and that the sidewalk plans would be shown in the construction plans.

At this point, Chairman Robison confirmed that Mr. Smith had concluded his presentation, and then opened the floor for audience comment.

The first speaker was Mr. Allen Ruhlman. Mr. Ruhlman said that he was against the application, and that he had seen the subject area under water in '03. In addition, Mr. Ruhlman said that he did not believe the lots matched the area, i.e., were not compatible.

Phylis Dale spoke next. Ms. Dale said that she had opposed this plan since '02, and that she still opposed the plan, even with its revisions. She asked about the access to the lake, whether Ben would build the fence he said he would build, and whether or not Walls Water would provide the sewage. She concluded by saying that approximately 40 people attended a community meeting and that everyone there was opposed to the project.

The next speaker was Deborah Doyle. Ms. Doyle said that she understood that Mr. Smith was supposed to present an alternate plan to this one, and she believed she could support the alternate plan.

There being no other persons who identified themselves as wanting to speak about this application, Chairman Robison closed the floor for comments and asked Mr. Smith to address the comments he heard.

Mr. Smith began his reply by saying that with reference to the flood question, an expert had been hired and that this expert had found no evidence of flooding in the area. Mr. Smith said that the majority of this property is not located within the floodplain. Moreover, Mr. Smith said that Walls Water Association will provide the water, but that

the sewage service will be provided by the City of Southaven. Mr. Smith admitted that an alternate plan for this property has been filed with the Planning Commission, but that he had been advised by the Planning Commission Staff not to present both plans in one meeting. He said that he would present the alternate plan to the Board of Supervisors, and that the alternate plan was basically a four lot minor subdivision.

Mr. Smith then addressed the Commission as to why he was bringing this application to the Planning Commission when he planned to present another plan to the Board of Supervisors. He said that in order for there to be good real estate development, it was necessary to be able to rely on zoning of property; that if a developer is not able to rely on the zoning of property, there would be no way to appraise that property, and banks would not know how to loan money on the property. He continued by saying that he wanted to assert the priority of zoning – that once a piece of property is zoned – it's zoned. In this case, the Court said that any aggrieved person could appeal a zoning, if done timely.

Mr. Smith added that he had met with the property owners and assured them that he would not develop this property as this application calls for, and that he would withdraw this application and pursue the four lot subdivision with 2000 minimum square feet homes.

Mr. Garriga commented that the Staff believed that it would not be a good idea to present two applications for the same property to the same Commission at the same meeting, and then have two applications for the same property to go to the Board of Supervisors.

Chairman Robison asked Mr. Smith about the lake ownership and use. Mr. Smith replied that in this application, the lake would be owned by the homeowners' association. Chairman Robison then asked Mr. Smith if he, Mr. Smith, owned the property when it was rezoned. Mr. Smith said that the property was owned by Mr. Whitehurst at the time of rezoning, but that he, Mr. Smith, bought the property at a bankruptcy proceeding.

Ms. Dale spoke again and said that she believed Mr. Smith had or has proposed another subdivision at Hwy 301 and State Line Road. She asked that if this application were approved, would this approval open the door to commercial development.

At this point, Mr. Garriga advised the Commission that the application Ms. Dale was referring to had been withdrawn. He further advised the Commission that the property in this area was basically zoned A-R, with the exception of the C-2 zoning on the corner.

Commissioner Robin James spoke next and said that he voted “no” when this application was in front of the Commission before, and that he would vote “no” now. He said that he did not like this subdivision. Whereupon, Commissioner Forsythe voiced his agreement with Commissioner James.

Commissioner James then offered a Motion to Deny this application due to its incompatibility with the neighborhood. Commissioner Forsythe seconded the Motion. A

roll call vote was commenced, and, at the conclusion of that vote, the Motion to Deny this application received 7 votes in favor and 4 votes against.

NEW BUSINESS

Kyle's Creek Subdivision (6281) – Application is for preliminary subdivision plat approval with 191 lots on 156 acres. Subject property is located on the west side of Payne Lane and south of Highway 302, zoned R-20. Section 33, Township 1, Range 5

Mr. Garriga presented the Staff Report.

Commissioner Robison asked about the improvements to Payne Lane. Mr. Garriga responded by saying that Mr. Payne had dedicated right-of-way along his property, and that additional improvements will take place on the property that is adjacent to him, but is owned by another party.

Commissioner Carter stated that the plats do not show detention attributes. Mr. Garriga responded by saying that stormwater and runoff issues will be governed by the Ordinance that will be adopted, but he agreed that the detention attributes do need to be shown on the plat. Commissioner Carter and Planning Commissioner Director Powell then engaged in a colloquy regarding the accounting for open space in a planned unit development.

There was then a general discussion between and among various Commissioners and the Staff concerning right of way for Payne Lane and the effect of right of way on some of the lots illustrated on the plat. Also, this discussion included the specificity of this plan and how this plan related to the planned unit development adjacent to it.

At this point, Mr. Vince Thillen, an engineer from ETI, Inc. and a representative of the application was asked to address the Commission. Mr. Thillen said that the applicant agreed with the Staff Recommendations, and that the applicant also agreed with the realignment of Smith Road and the “tie-in” from Payne Road was acceptable. He continued by saying that the lake on the property would be included in the first part of the detention plan because he said that the runoff from the north part of the property drained into the lake anyway. He added that the applicant was in talks with the owner of the church about detention issues.

Another discussion about the right of way along Payne Lane developed and Mr. Thillen replied that the applicant would improve Payne Lane, and would work with the developer to the east of the subject property.

Commissioner Carter asked about the type of spillway the applicant planned to build. Mr. Thillen replied that they would build an earthen dam with a concrete spillway. However, he said that these plans were preliminary and that the applicant had not surveyed the area and made final decisions on this issue.

There being no other Commissioner who had any questions of the applicant, Chairman Robison then asked if there was anyone present in the audience who wished to speak for or against this application. No one identified himself or herself as wishing to speak for or against the application.

Whereupon, Chairman Robison asked for discussion between and among the Commissioners. Several Commissioners expressed their opinions that the application was in need for additional work because it seemed to be too conceptual. Mr Thillen was asked if he wanted to take the Commissioners' comments and bring the application back for consideration. Mr. Thillen responded by saying that the application requested preliminary approval with the staff recommendations.

At this point there was a discussion between and among the Commissioners regarding the effects of preliminary approval. It was stated that some of the issues surrounding preliminary approval included a change of ownership of the property.

County Engineer Andy Swims then addressed the Commission and said that construction and detention plans are submitted to his office for approval prior to final approval of the subdivision.

Commissioner Hefley then offered a Motion to Table the application until the revisions are made. Commissioner Forsythe seconded the Motion. The Motion passed with only one "no" vote.

Markle Estates (6248) – Application is for preliminary subdivision plat approval for 38 lots on 31.19 acres. Subject property is located on the south side of Lester Road and west of Getwell Road, zoned R-30. Section 28, Township 2, Range 7

Mr. Garriga presented the Staff Report.

Mr. Ben Smith represented the application and stated that the applicant agreed with the Staff Recommendations. There was a brief discussion about circulation patterns within the subdivision and Mr. Smith agreed to build a stub road to the west side of the property. In response to a question, Mr. Smith stated that the wastewater from this subdivision would be sent to The Legends.

At this point, Mr. Jeff Berryhill introduced himself to the Commission. Mr. Berryhill is the president of The Legends Homeowners Association, and spoke in opposition to the wastewater from this subdivision being sent to The Legends. Mr. Berryhill quote the Board of Supervisors Minutes from a meeting in 1999 in which Danny Rutherford, an engineer, explained the construction of the treatment facility at The Legends. The quote said that facility would be screened with vegetation so as not to be seen from the road, and would be relocated from 150' to 75' from the property line. Mr. Berryhill said that are two lagoons at The Legends and that the second lagoon services the Grove Meadows

Subdivision. He said that Mr. Bill Robertson said there would be a third lagoon at The Legends site. There was then some discussion that the MS DEQ regulations required a lagoon to be at least 150' from an adjacent property line.

Mr. Berryhill continued to address the Commission and said that the Homeowners Association at The Legends did not feel as though it had a voice in this matter. He said he talked to representatives from DEQ and was told that DEQ's concerns are limited to quantitative measurement, not aesthetic design. Mr. Berryhill said that the Homeowners Association questioned whether or not the lagoon that serviced its subdivision was being operated correctly, and he showed some pictures of runoff from The Legends lagoon that he alleged was not being treated. He said he had taken this matter to the Board of Supervisors at the rezoning phase of this application, but was told that this issue was appropriately addressed at the subdivision application phase. He said that the representatives from DEQ had told him that there were alternatives to this type of wastewater service, and that the Homeowners Association believed an applicant should be required to show the necessity for the lagoon.

Ms. Faith Berkeen spoke next and said that her primary issue with the application was the lagoon. She suggested that the Planning Commission review the DEQ Regulations as well as the County Health Code Ordinance. She added that she was aware that property owners along Lester Road have been told that they could pump their wastewater into The Legends. She argued that the odor was terrible and that the lagoon had a very low berm and little vegetation. She said that home values are also at stake.

Ms. Lisa Fuller was the next speaker and she argued that The Legends lagoon is now serving 40 lots from The Legends, and additional lots from Grove Meadows, which is still being built. She also asked whether or not Markle Estates could build its own lagoon.

Mr. Merritt Powell, the Director of the Planning Commission advised the Planning Commission that DEQ has stated that they were not stopping permitting in the County, but that the permitting process will be tougher in the future.

At this point, there began a general discussion between and among the Commission, the Staff, and the applicant. The discussion revolved around the impairment of different streams in the County, what the consideration of water and sewer service meant in the context of a preliminary plat application, the capacity of the lagoon at The Legends, and what other wastewater service was available if the lagoon at The Legends was at capacity.

Mr. Smith asked to address the Commission and said that he asked the Commission to give preliminary approval to the application on all issues with the exception of the wastewater issue, and that he would take the application to the Board of Supervisors for resolution of the wastewater issue. Mr. Smith concluded by saying that the Planning Commission can recommend, the Board of Supervisors can approve.

Commissioner Lindsey offered a Motion to Approve the application, with staff recommendations, on all issues except the wastewater issue, and that the wastewater issue should be forwarded to the Board of Supervisors for its consideration and resolution. The Motion was seconded by Commissioner Mayfield, and the Motion passed unanimously.

There being no further business in front of the Planning Commission, the meeting was adjourned at 9:07 p.m.