

STATE OF ALABAMA
SHELBY COUNTY

SHELBY COUNTY PLANNING COMMISSION

MINUTES

Regular Meeting – June 15, 2009 – 7:00 P.M.

Members Present: Kenneth Wilder, Vice-Chairman; Rachel Garrett; Bill Kinnebrew; Robert Taylor; and Ralph Thomas.

Members Absent: Bob Land, Chairman; and Scott Chambers.

Staff Present: Ray E. Hamilton, Manager, Department of Development Services; Tom Wilkins, Senior Planner; and Winston Sitton, Civil Engineer.

WORK SESSION

A work session was held at 6:30 p.m. prior to the regular meeting. All interested parties were invited to attend. *Note: This was not a public hearing.*

PUBLIC HEARING

The meeting was called to order at approximately 7:00 p.m. by Kenneth Wilder, Vice-Chairman. Approximately 46 people were present in addition to the Commission and the staff.

1. Approval of the Minutes of the Regularly Scheduled Meeting of May 18, 2009.

Commissioner Garrett made a motion to approve the minutes of the meeting of May 18, 2009. The motion was seconded by **Commissioner Thomas** and by a unanimous vote of five (5), with Commissioners Garrett, Kinnebrew, Taylor, Thomas and Wilder voting in favor, the minutes of the meeting of May 18, 2009 were approved.

Frazier Christie, representing the applicant for Case No. S-14-07, asked the presiding Vice-Chairman if the Commission would amend the agenda to hear this case first, due to the large number of people present for Case No. Z09-007. The Vice-Chairman agreed to hear Case No. S14-07 first.

2. S-14-07, The Summit at the Shoals, Phase I – Preliminary Plat Extension

Purpose: A request from Steve Davis, Alabama Development Properties, for an extension of the requirement for submitting an application for final plat approval within two years of the date of approval of a preliminary plat by the Planning Commission for The Summit at the Shoals, Phase I, dividing approximately 51.5 acres into 23 residential lots. (The preliminary plat was originally approved by the Planning Commission on May 7, 2007.) The property is *not* zoned.

Location: The subject property is located at the switchback on State Route 25 at Lake View Circle in the Dunnivant Valley North and Sterrett-Vandiver Zoning Beats and is situated in Sections 9 and 10, Township 18 South, Range 1 East, Parcel Identification Numbers 58-04-2-09-0-000-016.007; 58-04-2-09-0-000-015.000; 58-04-2-09-0-000-014.000; 58-04-2-09-0-000-014.001; and 58-04-2-10-0-000-009.001.

The case was introduced by Tom Wilkins, Department of Development Services. Mr. Wilkins explained that the Planning Commission approved the preliminary plat for this development on May 7, 2007. Pursuant to the Subdivision Regulations, application for the approval of the final plat must be filed within two years of the date of approval of the preliminary plat. The two (2) year time period for the subject case expired on May 7, 2009. The Planning Commission, however, may extend this time period.

Frazier Christie, Hatch Mott MacDonald, representing the applicants, presented the case. Mr. Christie noted that the developer has at least three obstacles to overcome to advance this development. The first issue is the provision of water service. Originally, it was assumed that the Birmingham Water Works would furnish water service. The Water Works later withdrew their offer. An independent group, Canaan Services Inc. in conjunction with the Birmingham Water Works, has proposed to furnish water service to the development. A second issue of concern is the approval of the design of the access to State Route 25 by ALDOT. This has been a deliberative process to reach agreement but it appears that the parties are very close to consensus. And lastly is the issue of the economy. Facilitating the provision of the water service and the assent of ALDOT has helped clarify funding sources.

Commissioner Taylor asked about the provision of water service to the residents of Lake View Circle on the west side of State Route 25. Mr. Christie stated that he understood that representatives of Canaan Services, Inc. have met with the residents across the Highway. He noted that it was his understanding that they were working on final agreements. He also stated that he would be involved in the discussions to reach an agreement and the final design. It should be noted that some of the property to be served lies beyond the Birmingham Water Works' jurisdiction. Waivers from the Sterrett Water Service and possibly the Shelby Water Service may be necessary to facilitate the water service. Mr. Christie said that he would personally meet with these parties to see that this is accomplished.

Martin Howell, a resident on Lake View Circle on the west side of State Route 25 came forward with questions. He pointed out that he was not aware of any meetings or discussion of any sort between the developers or the Canaan Water Service and the residents on East Lake Circle. He stated that he had contacted the Birmingham Water Works earlier in the afternoon and they knew nothing about this proposal. He also said that he had spoken with the Alabama Department of Environmental Management (ADEM) and they were not aware of any plans either. He said that if the Commission were to approve this extension, he would ask that it conditioned upon the provision of water service.

Mr. Christie acknowledged that the water service was a big issue. He stated that he is meeting on Wednesday, June 17, 2009 with Canaan regarding the design of the water system.

Commissioner Thomas made a motion to *Continue* consideration of this request until the next meeting on July 20, 2009. The motion was seconded by **Commissioner Kinnebrew** and by a unanimous vote of five (5), with Commissioners Garrett, Kinnebrew, Taylor, Thomas and Wilder voting in favor, the following resolution was approved:

WHEREAS, Frazier Christie, Hatch Mott MacDonald, representing the applicant Steve Davis, Alabama Development Properties, has petitioned the Shelby County Planning Commission for a two-year extension of the requirement for submitting an application for final plat approval within two years of the date of approval of a preliminary plat, for The Summit at the Shoals, Phase I, dividing approximately 51.5 acres into 23 residential lots; and,

WHEREAS, the subject property is located at the switchback on State Route 25 at Lake View Circle in the Dunnivant Valley North and Sterrett-Vandiver Zoning Beats and situated in

Sections 9 and 10, Township 18 South, Range 1 East, Parcel Identification Numbers 58-04-2-09-0-000-016.007; 58-04-2-09-0-000-015.000; 58-04-2-09-0-000-014.000; 58-04-2-09-0-000-014.001; and 58-04-2-10-0-000-009.001; and,

WHEREAS, it is acknowledged that the provision of water service for this development is crucial to the advancement of the proposed development of at least the proposed 23 residential lots on the subject property; and,

WHEREAS, the developers have agreed to share the availability of water service with the residents of the properties across State Route 25 on Lake View Circle; and,

WHEREAS, the Commission feels compelled to continue consideration of this request, absent any affirmative documentation of the provision of water service, until the meeting of July 20, 2009;

NOW, THEREFORE, BE IT RESOLVED, by the Shelby County Planning Commission that the application of Steve Davis, Alabama Development Properties, for a two-year extension of the requirement for submitting an application for final plat approval within two years of the date of approval of a preliminary plat, for The Summit at the Shoals, Phase I, dividing approximately 51.5 acres into 23 residential lots, located on State Route 25 at Lake View Circle and situated in Sections 9 and 10, Township 18 South, Range 1 East, Parcel Identification Numbers 58-04-2-09-0-000-016.007; 58-04-2-09-0-000-015.000; 58-04-2-09-0-000-014.000; 58-04-2-09-0-000-014.001; and 58-04-2-10-0-000-009.001 be, and the same is hereby *Continued* until **July 20, 2009**.

3. Z09-007, Egger – Conditional Use Request

Purpose: A request from David Egger for the approval of a conditional use to permit the operation of a remote control model car race track in an A-1, Agricultural District.

Location: The subject property is located at 21 Egger Road, approximately one third of a mile north of the intersection of County Roads 51 and 55 in the Westover South–Wilsonville Zoning Beat and situated in NE ¼ of Section 5, Township 20 South, Range 1 East, Parcel Identification No. 58-16-3-05-0-000-003.001.

The case was introduced by Tom Wilkins, Department of Development Services. Mr. Wilkins explained that the applicants have operated a remote control model car race track in an A-1, Agricultural District for going on two (2) years. When an adjoining neighbor complained about the extent of the noise, fumes and the commercial activity on this site, the Department of Development Services investigated and determined that this was an illegal use in the A-1, Agricultural District, without the approval of a *conditional use*.

The request was presented by Matthew Gordon, representing the owner of the property, David Egger. Mr. Gordon explained the configuration of the facility. He noted a portion of the facility was wheelchair accessible to accommodate handicapped individuals. The fuel that is used is an alcohol based fuel containing castor oil for lubrication, available either by mail order or in local hobby shops. He noted the track area is surrounded by evergreens that “contain” the sounds and block visibility. He noted that there are no community facilities in the area and that new developments are over a mile away. The website where the facility was advertised is a chat room that is open to public comments. Advertisement on the internet was to get more participation and interest. The activities typically are one day events. The recent three day event had over 100 cars entered.

Mr. Gordon stated that the cars are not noisy. He said that the noise range is approximately 80 decibels that he said was equivalent to standing at the side of a freeway. He noted that the competition teaches young people respect and promotes good morals.

Commissioner Kinnebrew asked what the owner did on this property before it was zoned. Mr. Egger stated that he has operated a dump truck business on this property for a number of years.

Commissioner Thomas asked how long has it been operating. Mr. Egger stated that this was the second year. What began as an activity for friends and family has been improved, enlarged and become a very popular site for model car racing enthusiasts. **Commissioner Thomas** asked if there had been any complaints. Mr. Egger said that they have had some complaints, mostly about the noise and the lights. Mr. Egger acknowledged that the sheriff had been there at least twice but said that they were not breaking any laws.

Janice Gordon spoke in support of the request. She stated that she was involved with the construction of a race track at Oak Mountain State Park in 2001. She said that there had been a track there for 25 years, under different operators. She noted there was a track in Wilsonville for a while. She pointed out that the both the fuel and the mufflers on the cars are strictly regulated. She noted that Mr. Egger was born right there and has lived there for 56 years. His business has been there for many years and is not new to the neighborhood. She said when she first went to the track she had difficulty finding it because it is behind Mr. Egger's home. She said even with the windows down in her automobile she couldn't hear the cars until she was right at the track.

Commissioner Taylor asked Ms. Gordon about the environment of the track in Wilsonville. Ms. Gordon said it was located at the flea market site on State Route 25. She said it was out in a field and that there were homes nearby. She added that her family had traveled to tracks all over the southeast. She said they are located in all kinds of environments from people's backyards to commercial and industrial areas.

Commissioner Garrett asked where the fuel is purchased. Mr. Gordon said that it was available from local hobby shops or even by mail order, in specially prepared containers.

Dwayne Wood, who lives off of CR 51, approximately one quarter mile away, spoke in support. He asked if the request could be approved with the caveat that the private generators be prohibited and accessory electrical power supplied for participants.

Marsh Acker, attorney-at-law, representing 12 surrounding property owners, spoke in opposition. He presented a prepared joint statement of opposition to this *conditional use*. He noted that the surrounding property owners objected to this facility due to the noise, the commercial activities, pollution and fumes from the racing fuel and the bright lighting. He said there were eight 1,000 watt lights and that the activities and noise lasted all day and continued to as late as 11:30 at night. He noted that granting this request was not appropriate because the "proposed activity is unsuitable and incompatible the [*sic*] surrounding rural residential area." Blake Turner, one of his clients, made a recording of the racing activity on the previous weekend from his back porch. The dvd was played for the Commission. Mr. Acker noted that the noise of the cars racing went on all day long.

Blake Turner, 5850 CR 51, spoke in opposition. He said when the activity first began it was only an occasional event and that he originally told the applicant that he would support these activities. He said as it has gotten more regular it has really become a nuisance. He objects to the noise of the cars as well as the public address system. He thought it was only going to be an occasional event but it has gotten too big. He said no one in the area thought it would be this big or this loud or operated until as late as 11:30 p.m.

Commissioner Garrett asked staff if there was any kind of noise ordinance in the County. Mr. Wilkins explained that the only noise ordinance in the County pertained to noises generated on a public right-of-way. Those regulations address noises such as radios in cars but only when they are operated on public streets.

Carol Morosky, 6144 CR 51, spoke in opposition noting that the noise was unbearable. She pointed out that the surrounding evergreen buffer is on another's property. She stated that she has complained to the Sheriff several times. The website posting identified the entry limit was 200, clearly showing that they want this activity to be even larger than it is today.

Commissioner Garrett asked if she could hear the noise when she was inside of her home with the air conditioning on. Ms. Morosky responded that she could.

Della Fish is a real estate agent who lives nearly a mile away. Ms. Fish pointed out that the operation of this facility would impose a hardship on selling property in the vicinity.

Van Sykes, 5291 CR 51, said the first thing he heard was the obtrusive public address system one evening. He also expressed concern that if this is granted, there are no limitations on the size or the frequency of the events.

Mary Jo Quintana, 6030 CR 51, said that she and a friend spoke about this last summer and thought it would just go away. The applicant approached her in May 2009 after he received the first letter from Development Services and asked about complaints. She told him that she had complained about the noise and it going on until 11:00 p.m. She said the noise was unbearable and it could be heard inside of her home with the windows closed and the air conditioning and television on. She also said that the generators constantly running produced a droning sound that was extremely offensive. As a gardener who enjoys being outdoors, she is unable to do so when these activities are going on.

Commissioner Kinnebrew asked if there were different muffler systems for different tracks. Mr. Gordon said that the mufflers used in the sport are all about the same in terms of noise level and that there is nothing they can do to quiet the race cars down. The Commissioner asked about the length of the events. Mr. Gordon said they are generally within 12 hours, ending by 7:00 or 8:00 p.m.

Commissioner Kinnebrew also asked the applicant if he was conducting his business when zoning was implemented. Mr. Egger responded that he was. **Commissioner Kinnebrew** asked if anyone asked him if he wanted to be zoned A-1 or if that was just what he got. Mr. Egger said that was what he got. Staff noted that Mr. Egger's dump truck business was a legal non-conforming use and could be continued in perpetuity. The use could not, however, be expanded to the proposed activities because any outdoor activity is considered a conditional use in any zone district.

Commissioner Thomas made a motion to *Deny* this request. The motion was seconded by **Commissioner Taylor** and by a unanimous vote of five (5), with Commissioners Garrett, Kinnebrew, Taylor, Thomas and Wilder voting in favor, the following resolution was approved:

WHEREAS, David Egger, has petitioned the Shelby County Planning Commission for the approval of a *conditional use* to permit the operation of a remote control model car race track in an A-1, Agricultural District; and,

WHEREAS, subject property is located at 21 Egger Road, approximately one third of a mile north of the intersection of County Roads 51 and 55 in the Westover South–Wilsonville Zoning Beat and situated in NE ¼ of Section 5, Township 20 South, Range 1 East, Parcel Identification No. 58-16-3-05-0-000-003.001; and,

WHEREAS, subject property is located within an A-1, Agricultural District that is sparsely developed with single family homes; and,

WHEREAS, some adjoining properties are located within the corporate limits of the City of Chelsea and have recently been developed as single family homes on five acre and larger lots; and,

WHEREAS, the Shelby County Comprehensive Plan identifies the area as *rural landscape/residential*; areas that enjoy established rural characteristics; and,

WHEREAS, the evidence and testimony presented demonstrates that the requested use of the land for a commercial remote control race track is not an appropriate use of the subject property and is incompatible with the surrounding properties;

NOW, THEREFORE, BE IT RESOLVED, by the Shelby County Planning Commission that the application of David Egglar for the approval of a *conditional use* to permit the operation of a remote control model car race track in an A-1, Agricultural District, located at 21 Egglar Road, approximately one third of a mile north of the intersection of County Roads 51 and 55 situated in NE ¼ of Section 5, Township 20 South, Range 1 East, Parcel Identification No. 58-16-3-05-0-000-003.001 be, and the same is hereby *Denied*.

There being no further business, **Commissioner Wilder** made a motion to adjourn. The motion was seconded by **Commissioner Garrett** and by a unanimous vote of five (5), with Commissioners Garrett, Kinnebrew, Taylor, Thomas and Wilder voting in favor, the meeting was adjourned.

ADJOURNMENT 9:25 P.M. June 15, 2009.

Ray E. Hamilton, Manager
Department of Development Services

Kenneth E. Wilder, Vice-Chairman
Shelby County Planning Commission