

**MINUTES OF THE
TUPELO PLANNING COMMITTEE
March 2, 2009**

A regular meeting of the Tupelo Planning Committee was held Monday, March 2, 2009 at 6:00 p.m. in the Council Chambers of City Hall. Committee members present were: Chairwoman Judy Brown, Vice-Chair Michael Gratz, Secretary Cindy Sanders, Mr. Dick Johnson, Mr. Russ Wilson, Mr. Bill Smith, Jr., Mr. Rud Robison, and Mrs. Mabel Murphree. Development Services staff present were: Director BJ Teal, City Planner Pat Falkner, Zoning Administrator Marilyn Vail, and Mrs. Nikki Burton.

CALL TO ORDER

Mrs. Brown called the meeting to order. Mr. Robison gave the invocation and Mr. Johnson led the Pledge of Allegiance. After the introduction of staff and committee members, Mrs. Brown gave an overview of the duties of the Planning Committee and explained the meeting's procedures.

REVIEW/APPROVE PREVIOUS MINUTES

There were no changes to the February 2009 minutes and they were approved unanimously.

REPORT ON COUNCIL ACTIONS

Mr. Falkner stated that the only item from the February agenda requiring action from the City Council will be on their agenda Tuesday, March 3, 2009.

NEW BUSINESS

- 1. Re-approval of SP07-01: Vista Ridge Apartments, 699 Nations Hills Drive.**

Mr. Falkner gave his analysis of the application stating that the Planning Committee had approved the site plan for the proposed Vista Ridge Apartments in 2007. He stated that subsequent to the approval, there were some delays in the planning of the apartments due to financing causing the allowed approval time to lapse. Mr. Falkner explained that according to the Development Code, the site plan must be re-approved by the committee before work can commence on the site. He stated that the project includes 160 units on a lot in a subdivision on North Gloster Street, across from the MDOT offices and is approximately 12 acres. He stated that the complex includes one, two, and three bedroom units. He further stated that the Department of Development Services staff has reviewed the parking, the landscaping, the utilities, and the street layout. Mr. Falkner stated that there had been some concern about the proposed complex having only one entrance and exit into the property, and the traffic on North Gloster Street, but the site plan met the standards of review of the Development Code, and also the inter-

departmental standards of review. Mr. Falkner closed by stating the Department of Development Services recommends approval of the project.

Mrs. Teal added that the Planning Committee's 2007 approval of the project was based on a preliminary plan, but this time the developer has submitted full construction drawings for the proposed complex. She stated that a full staff review has been completed and approved, including engineering, fire, water, sewer, and electricity.

Mr. Bill Skeen, Madison Interest, 709 Rocky River Road, Austin Texas, stated that what had been submitted to the Planning Committee is the exact same site plan, number of units, and overall layout that was presented and approved in 2007. He stated that due to issues related to the financial market, the project did not start as quickly as hoped, but now is in position to move forward, as evidenced by submittal of a full set of plans and specifications for the development, including the site plan, landscaping plan, and architectural plan.

Mrs. Murphree asked Mr. Skeen when the project is scheduled to start. Mr. Skeen replied work will begin in the middle of March. Mrs. Murphree also asked Mr. Skeen if he had checked with the Tupelo Public School District to verify if the schools could accommodate more children living in that particular school district. Mr. Skeen stated that he had not personally spoken with anyone from TPSD. Mr. Falkner stated that TPSD has been made aware of the project and have taken it into consideration planning the new lines of the school district. Mrs. Murphree also expressed concern about the traffic on North Gloster and how it has increased in the past two years. She asked if any consideration had been given to possibly having the entrance into the project line up directly with the entrance into the MDOT office on the opposite side of North Gloster for any future traffic enhancements. Mr. Skeen stated that the project is limited by the site's constraints, however, after meeting with Mr. Falkner and checking again with MDOT, there are no traffic issues with the current design of the streets and how they intersect with North Gloster.

Mr. Gratz asked Mr. Skeen to explain specifically how the entrance into the project will be designed. Mr. David Moore, Engineer for the project of 1204 North Second Street, Booneville, Mississippi, stated that the street that comes off of North Gloster is Nations Hills Drive and will serve approximately five lots within the subdivision. Mr. Moore stated that Nation Hills Drive will make a 90 degree turn off of North Gloster Street and will run adjacent to the existing Titan Climate Control Storage and will go into a cul-de-sac and the apartments will be accessed from the cul-de-sac. Mrs. Sanders asked the length of Nation Hills Drive to which Mr. Moore replied approximately 300 feet. Mrs. Brown asked if Nation Hills Drive will include a left turn lane and if the developer can control whether or not a left turn lane is included since Nations Hills Drive will be a public street. Mr. Moore stated that no left turn lane has been planned and the developer of the apartments will not be responsible for the construction of Nation Hills Drive. Mrs. Brown asked Mr. Falkner if the Department of Development Services has any concern about no turn lane being planned for Nation Hills Drive. Mr. Falkner stated that the

traffic count is such that the engineering analysis did not dictate that a separate left turn lane is necessary.

Mrs. Sanders made a motion to accept the major site plan as presented. Mr. Wilson seconded the motion, which passed unanimously.

2. VAR09-02: Application from Mr. Freddy Norman for the sale of beer and light wine within 400 feet of a residence at 1270 Oakview Drive.

Mr. Norman was not present for the meeting at this time. Mr. Johnson made a motion to move the item to the end of new business of the agenda. Mr. Smith seconded the motion, which passed unanimously.

3. MJ09-02: Application for Eutaw Construction for resource extraction on a parcel just west of Willie Moore Road and North of Green Tee Road.

Mr. Falkner explained that the project came to the attention of the Department of Development Services by notice of the Department of Environmental Quality (DEQ) that an application had been filed by Eutaw Construction for a surface mining permit with the State of Mississippi. Mr. Falkner stated that after reviewing the DEQ permit, the Department of Development Services had contacted Eutaw Construction and requested the submittal of a major conditional use application in order to obtain zoning approval. He stated that part of the project is located in the county, but another part is located within the city limits. Mr. Falkner further stated that according to the application submitted by Eutaw Construction, the project is a 31 acre site that is just along the southwest corner of the city and adjoins the route of the proposed Highway 6 and the dirt excavated from the site will be used for the construction of the new highway. He stated that the property also adjoins Willie Moore Road and Green Tee Road and is adjacent to the Haven Acres Rental Complex and also to the City of Tupelo Waste Water Treatment Facility. Mr. Falkner stated that the other departments, including Tupelo Water & Light, Public Works, and the City Engineer, and they have no serious concerns with the proposal. He stated that the Planning Staff has reviewed the application with the four criteria required for a major conditional use which are: 1) That the proposed use or development of land will not materially endanger the public health or safety; Mr. Falkner stated that points that are relative to this are that the company, in their application to the State, proposed that the area would be completely surrounded by a ten-foot fence, and also plan to have their equipment access the road project area directly from the excavation site in order to avoid using the public roads. He further stated that Eutaw plans to use water trucks to control dust and will be reclaiming the site after the excavation is completed, which means the site will be closed and allowed to fill with water. 2) Whether the proposed use is reasonably necessary for the public health or general welfare, such as by enhancing a successful operation in the surrounding area in it's basic community functions, or by providing an essential service to the community or region; Mr. Falkner stated that the one issue with this type of application is that it is a fairly disruptive, sometimes noisy, sometimes dusty operation for a limited time, but once

that use is discontinued, the character of the use becomes passive with no noise or activity associated with it. He stated that there will be two different phases of impact to the community to consider, one of which is the construction phase, and the other which is the closed or long term phase. Mr. Falkner stated that one aspect that should be mentioned is that there is essential service to the community and the region in that the availability of the dirt for use in the construction of the highway will help the road be completed in a timely and a cost effective manner. 3) The proposed use of the development or land will not substantially injure the value of the adjoining or abutting property; Mr. Falkner stated that the area to the west is the City's waste-water treatment facility, so there is no issue, the area to the south is primarily agricultural, the area to the south east contains some residences and there are some apartments to the east of the property. Mr. Falkner stated that immediately to the north is the right of way of Highway 6 which will eventually become a four-lane highway. He stated that a portion of the proposed highway will have an elevated section and go over Willie Moore Road, so there will be an actual embankment created for the road that would be a barrier between the excavation site and the community. He stated that this separation from the bulk of the residential property of the neighborhood would have some mitigating effects on any affects on property value. 4) That the proposed use or development of land will be in harmony with the scale, bulk, coverage, density, or character of the area; Mr. Falkner stated that the Haven Acres area is really at an edge between a developed residential community and the rural agricultural area that has very little development on it. He stated that the construction activity would be an issue, at least temporarily, for the neighborhood, but once the property is closed out for construction and is being used or existing just as a lake or borrow pit, it would be less of an impact with no real activity there and no development on the site property. 5) Whether the proposed use conforms to the Comprehensive Plan; Mr. Falkner stated that the Comprehensive Plan identifies the area as medium density residential attached to agricultural and open space. He stated that since the area is landlocked on the city's side and adjacent to the city's waste water treatment facility, it is really not likely to develop for residential use, so the Department of Development Services does not feel that it actually supports the Comprehensive Plan, but it's not that negative against that point. He further stated that the proposed use is appropriately located in respect to transportation, water supply, fire and police protection facilities. He stated that this use will not require any utilities at all but will have street access if necessary. 6) Will the proposed use cause undue traffic congestion or create a traffic hazard; Mr. Falkner stated that Eutaw Construction plans to have their trucks go directly into the right of the way of the road project and have limited use of the public streets. He stated that there will be some public truck traffic during the road construction, but once the highway is completed, there will be no further traffic generated. Mr. Falkner stated that the staff had made some recommendations about some potential conditions that could be raised as part of potential approval, since with a major conditional use the Planning Committee can make and apply whatever conditions they feel are appropriate to mitigate any impact on the community.

Mr. Ben Eakes, of Eutaw Construction, 109 Commerce Avenue, Aberdeen, Mississippi, stated that he is the project manager for Eutaw Construction.

At this point, Mr. Robison recused himself from the meeting for professional conflict of interest.

Mrs. Murphree asked Mr. Eakes if the posting of a performance or surety bond is required. Mr. Eakes stated that there is a reclamation bond that is posted on behalf of DEQ, which is necessary in order to get the permit for the construction of the mining site. He explained that the reclamation bond ensures that the site is completely reclaimed to or above DEQ standards. Mrs. Murphree clarified that this project is part of the Appalachian Development Highway System. Mr. Eakes agreed. Mrs. Murphree asked Mr. Eakes if the project will require Eutaw Construction to adhere to certain laws and acts, such as the Mississippi Clean Air Act and Mr. Eakes stated yes. He stated that DEQ will monitor the project throughout the construction to ensure that it's at or above its' required standards. He stated that OSHA will also make routine inspections. Mrs. Murphree asked if mining will continue after the construction of Highway 6 is complete. Mr. Eakes stated no. Mrs. Murphree asked if the excavation of the site will create more dust than the construction of the highway. Mr. Eakes replied no and the dust control will be at or above DEQ standards. He stated that a 1,000 to 3,000 gallon water truck will be kept on site to spread water around the area and control the dust. He further stated that dust on the road leading into the pit will be maintained by road graders and water trucks as required by DEQ.

Mrs. Teal asked Mr. Eakes to verify that Eutaw Construction is not the contractor for the construction of the proposed Highway 6. Mr. Eakes stated that Eutaw Construction hopes to be a subcontractor to Hill Brothers Construction, who was awarded the bid, and supply them with dirt from the proposed mining pit. He stated that if Eutaw Construction does not obtain a contract with Hill Brothers Construction, the proposed pit will not be excavated since Eutaw Construction owns the property.

Mr. Johnson asked Mr. Eakes if the project will need approval from Lee County as well as the City of Tupelo since the property lies on the city limits. Mr. Eakes stated that Eutaw Construction is seeking the city's approval first and plans to obtain approval from Lee County afterwards.

Mrs. Teal asked where the proposed pit would be located specifically. Mr. Eakes referred the staff and committee to a drawing submitted by Eutaw Construction and stated that if they are given approval by the city, the ten acres in the city will be mined and also the 20 acres in the county will be mined to keep the pits from being as deep as they would be if they were only excavated on a portion of the property. He stated that there is a restriction in the deed stating that after the property has been mined, it will go back to the original owners.

Mr. Wilson asked if the original owners will be responsible for maintaining the proposed fence once the project is closed. Mr. Eakes stated yes, but that specification had not been guaranteed in writing. He further stated that the proposed fence will be ten feet high, rather than the standard six feet high, to keep trespassers out and protect the site. Mr. Wilson asked if there are any plans to add a vegetation buffer around the fence for

aesthetics. Mr. Eakes stated there are no plans for landscaping around the fence at this time but a 25 foot setback has been proposed on the plans and the actual mining will be a considerable distance inside the perimeters of the fence. He stated that the fence does not need to be hidden by vegetation so that it will deter people from trespassing into the mining site. He stated that Eutaw Construction would be open to adding landscaping at the conclusion of the project. Mr. Wilson stated that the owner of the Haven Acres Rentals has requested in writing that Eutaw Construction wash the apartment complex and clean all of the air conditioning units and filters for each apartment at the close of the construction. Mr. Eakes stated that he could not guarantee that Eutaw Construction will be responsible for either of the requests since the highway construction would possible extend later than the mining pit excavation and construction.

Mrs. Teal asked Mr. Eakes if Eutaw Construction had considered planting a buffer around the Haven Acres Rentals prior to the construction of the mining pit. Mr. Eakes stated no but would be open to discussion. Mrs. Teal stated that a buffering landscape screen might be considered as a condition of the approval of the application.

Mr. Wilson asked about sewer pipe and supplies he noticed lying on the ground near Graham Drive and if it was related construction. Mr. Falkner stated that the sewer pipe and supplies were for the PUL Alliance construction of utilities for the Well Spring/Toyota Project in Blue Springs.

Mr. Smith asked about the high pressure sewer line lying to the north of the proposed site. Mr. Eakes stated that it has been located by their engineer and is drawn on the surveys. Mr. Smith asked the time line of the excavation. Mr. Eakes stated that the time line will depend on the construction of Highway 6 and how deep the pits will have to be to provide dirt. He further stated that Eutaw Construction will be responsible for maintaining the pit for two years after the mining is complete, including grass and landscaping maintenance. He stated that DEQ will continue to inspect the property during the two year period after the site is closed. Mr. Smith asked what would prevent the waste water from the city's treatment facility from working over into the proposed pit. Mr. Eakes stated that the city's treatment facility currently has a berm around the waste water and the proposed pits will be near the center of the site and will have a 25 foot off-set from the city's lagoon. Mr. Falkner stated that confirmation and approval has been given from Tupelo Water and Light regarding the waste water facility.

Mr. Johnson clarified that Eutaw Construction does not have a contract with Hill Brothers Construction to supply them with dirt for the construction of Highway 6 at this time. Mr. Eakes agreed. He stated that Hill Brothers has reached out to Eutaw Construction to potentially purchase dirt from the site, since Eutaw Construction now owns the property. Mr. Eakes stated that other property in the areas will not be accepted by DEQ due to the close proximity of the Natchez Trace and the number of Native American Burial Grounds. Mr. Eakes stated that the proposed property will allow access to the pit and the proposed Highway 6 without the use of public streets or roads.

Mrs. Brown asked the size and the depth of the proposed pit. Mr. Eakes explained that there will be a 25 foot set back around the proposed pit to keep from disturbing any of the city's utilities located near by. He stated that the proposed pit would be a minimum of 40 feet away from the nearest residence and at least 100 feet from the Haven Acres Rental Complex due to the future installation of a sewer line by the PUL Alliance to support the Toyota/Well Spring Project in Blue Springs. He stated that the size of the proposed pit, green space, and depth of the pit will be determined by the quantity of dirt necessary for the construction project. Mr. Eakes estimated the proposed pit could be five to 20 feet deep and cover as much as ten acres. Mrs. Brown asked if debris from clearing the site would be burned or buried. Mr. Eakes stated that since there are very few trees on the site, any burning to clear the site would be a minimum. Mrs. Brown asked the Department of Development Service staff for comment on the possible burning since the city has a "No Burn" Ordinance. Mr. Falkner stated that burning of any materials is prohibited inside the city limits and if any debris were buried on the site, it could not be used as any type of construction site in the future.

At this time, Mrs. Brown opened the meeting to the public for comment.

Mr. Willie Jennings, 2813 Beasley Drive, stated that he has been a resident of Haven Acres for 13 years. Mr. Jennings stated that he owns property on Robert Kennedy Drive, which is near the proposed pit. He stated that his current tenants of the property have children, thus he is concerned about their safety. He also stated that during the summer, there is a lot of foot traffic of children in the neighborhood who will be tempted to trespass into the pit site. Mr. Jennings stated that the Haven Acres Neighborhood Association has worked very hard to eliminate crime in the area and beautify the neighborhood and the proposed pit, once excavated, will be in the area for the concern of future residents. Mr. Jennings further stated that he is for the progress of Highway 6, but is against the proposed pit.

Ms. Mattie Mabry, 3138 Moore Avenue, stated that she has been a resident of Haven Acres for 30 years. She stated that she, too, is concerned about the safety issues of the proposed pit. She stated that a pit was excavated behind the old Mid-South Packers when Highway 45 was constructed, leaving a lake when the construction was complete. Ms. Mabry stated that one child drowned in the lake while swimming with two other children, and his body was not recovered for two weeks. She also stated concern for the maintenance of the public streets and the control of the dust. Mrs. Mabry closed by stating that she and the neighborhood are strongly opposed to the proposed pit.

Mr. Berdell Jones, 2278 Quail Creek Road, stated that he has been working with the citizens of Haven Acres for the past four years. He stated that he is opposed to the project and concerned about the noise and the dust and how it will impact the community. Mr. Jones questioned who would maintain the pit after the end of the construction and the end of the two-year period in which Eutaw Construction is responsible for it. He also expressed concern about the safety of children living near the proposed pit and the possibility of death by drowning.

Mrs. Vida Sue Rupert, 1005 Nixon Drive, stated that she and her husband have been residents of Haven Acres for 30 years. She stated that she is opposed to the application because it is in a residential area. She further stated that she did not think the city or the county should put a mining pit in the middle of a residential area. Mrs. Rupert stated that some of the senior residents of the area are on breathing machines and would suffer due to the dust. She also stated that the proposed pit would cause a mosquito problem in the summer.

Mr. Willie Rupert, 1005 Nixon Drive, stated that he is also opposed to the proposed pit. He stated that he owns the property on the corner of Willie Moore and Cayson Road, which is near the pit. He stated that the proposed pit will affect the value of his property, and he may not be able to sell or rent it.

Mr. Johnny Glasdacks, 2899 Green Tee Road, stated his opposition to the proposed pit. He stated that he had owned property in the area for 25 years. He stated that not only would mosquitoes be a problem, the pit would also be a potential for snakes.

Mr. Tommie Lee Ivy, Lee County Board of Supervisors, stated his opposition to the proposed pit. He stated the pit is a hazard to the community and lives could be lost due to drowning. He also expressed concern about increased traffic, dust, and the safety of pedestrians. Mr. Ivy further stated that the proposed pit could cause an increase in taxes.

Mr. John Hill, attorney for Mitchell, McNutt & Sams, and legal representation for the city was present at the meeting and available for legal counsel if needed.

At this time, the public hearing portion of the meeting was closed by Mrs. Brown and opened to the committee for discussion among themselves.

Mr. Gratz asked Mrs. Teal if she had ever experienced a dirt mining pit being turned into a park area and a public facility. Mrs. Teal stated that there were several properties in the Collierville, Tennessee area that have been reclaimed into beautiful park amenities to the city.

Mrs. Murphree asked how many other neighborhoods in the city have water features such as lakes in their vicinity. Mr. Johnson and Mrs. Sanders both stated that there are lakes in their neighborhoods, but Mrs. Sanders noted that they are not 30 feet deep, like the possibility of the depth of the pit.

Mr. Johnson sympathized with the Haven Acres citizens regarding the safety issues, but stated the construction of Highway 6 will create more dust than the mining pit itself. He also expressed concern that no contract has been awarded to Eutaw Construction from Hill Brothers Construction for the dirt.

Mr. Wilson stated that his concern is what will be left when the construction is complete. He stated that a lake that is 30 feet deep is too dangerous for the area, unless the city and the county could work together and make the site an asset for the area.

Mrs. Brown asked the staff if their recommendation would change, based on learning that Eutaw Construction did not have the contract for the dirt work with Hill Brothers Construction. Mr. Falkner stated no. Mrs. Teal stated that her primary concern is that the application could be premature and suggested the application be tabled until Eutaw Construction is awarded the bid for the dirt.

Mr. Wilson made a motion to suspend the rules of the public hearing and allow Mr. Eakes an opportunity to address some of the committee's concerns. Mr. Johnson seconded the motion, which passed unanimously.

Mr. Eakes stated that if the application is not approved, he probably will not be awarded the contract with Hill Brothers Construction. He further stated that if it is not approved, the necessary paperwork with DEQ cannot be completed. Mr. Eakes stated that the only way the site can be accessed will be from the proposed Highway 6's right of way, so no public streets will be used. He further stated that if Eutaw Construction does have to mine outside of county roads, it is standard procedure to provide the county with a surety bond that will enable them to repair the roads when the construction is complete. As for the potential of drowning, Mr. Eakes stated that Eutaw Construction has the safest job sites anywhere in North Mississippi and will work with the neighborhood to ensure the site is protected and not tempting to pedestrian traffic. He further stated that the proposed pit would have a gradual slope into it that would keep the risk of someone falling into it at a minimum. Mr. Eakes stated that Eutaw Construction will try to maintain the water at the lowest point to keep the area from potential flooding.

Mrs. Sanders asked Mr. Eakes if the other pits construction by Eutaw Construction are infested with mosquitoes and snakes. Mr. Eakes stated no.

Mrs. Sanders made a motion to allow the hearing to be opened to the public and allow one person to speak. Mr. Gratz seconded the motion, which passed unanimously.

Mr. Jennings addressed the committee again, stating that no one in the Haven Acres neighborhood objects the construction of Highway 6. He stated the community is only opposed to the proposed pit.

Mrs. Murphree asked if the existing sewage lagoon in the area is fenced. Mr. Smith stated no. Mrs. Murphree then asked the depth of the lagoon. Mrs. Teal stated the depth is approximately 10 to 12 feet.

Mrs. Sanders asked if the committee would be in their legal realm to ask Eutaw Construction to work with the city and county at the close of the project to reclaim the property into a park and recreation facility with a permanent 10 foot fence surrounding the property.

Mr. Hill stated that once the property resorts back to the original property owners, Eutaw Construction will have very limited control over what will happen to it.

Mr. Falkner stated that he had spoken with Don Lewis, Director of Parks and Recreation for the City of Tupelo, and was told that the proposed property does not fit in with the city's long range plan for recreational facilities.

Mr. Gratz read a portion of the property deed included with the application, and stated that the deed reads as if the original property owners have the option to purchase the property for \$1 at the close of construction. He then asked Attorney John Hill for clarification. Mr. Hill agreed with Mr. Gratz.

Mrs. Murphree stated that Eutaw Construction has to bear the cost of the reclamation of the property whether the original property owners re-purchase it or not.

Mr. Smith asked Mr. Eakes if there is an alternative site to obtain the dirt. Mr. Eakes replied no, the proposed site is the best site for the project with its' close proximity to the proposed Highway 6.

Mrs. Brown asked Mr. Hill if he had reviewed the letter submitted earlier in the meeting to the Planning Committee requesting the committee place certain conditions on a possible approval of the application. Mr. Hill stated that he had not seen the letter. Mrs. Brown asked him to review the letter at that time. After reviewing the letter, Mr. Hill stated the Planning Committee has a broad discretion as to what type of conditions can be placed on a conditional use, so from a legal perspective, some of the requests might be considered as more reasonable than others and could be left to the committee to decided.

Mr. Wilson asked if Eutaw Construction could re-apply for a conditional use for the same piece of property with changes to the site plan if they are denied. Mrs. Brown stated no and explained that Eutaw would have to wait one year before making application again for the same property. Mr. Falkner stated that if the committee anticipates that possibility, they would need to simply table the application until recommendations by the committee could be met.

Mr. Wilson made a motion to table the application until Eutaw Construction could determine with the city and address some of the issues brought up during the motion. Mr. Johnson seconded the motion to table. Committee members in favor of tabling the application were Mr. Wilson, Mr. Johnson, and Mrs. Sanders and those opposing the motion were Mr. Gratz, Mr. Smith, and Mrs. Murphree. Since there was a tie of votes, Mrs. Brown, as Chair of the Committee voted against tabling the motion, thus breaking the tie. The motion failed 4 – 3.

Mrs. Murphree made a motion to approve the application with the conditions of the erection of a ten-foot fence around the property and landscaping be added around the fence on the side adjacent to the Haven Acres Rental Complex. Mr. Smith seconded the motion. Committee members in favor of the motion were Mr. Smith, Mrs. Murphree, and Mrs. Sanders and those voting against were Mr. Wilson, Mr. Johnson, and Mr. Gratz, thus causing a tie. Mrs. Brown, as Chair, voted against the motion breaking the tie. The

motion to approve the application failed and the application was denied. Mrs. Brown then explained the procedures of appeal to Mr. Eakes. She then stated that the property owners and the Haven Acres Neighborhood Association will be notified if the application is appealed.

At this time Mr. Robison returned to the meeting.

2. VAR09-02: Application from Mr. Freddy Norman for the sale of beer and light wine within 400 feet of a residence at 1270 Oakview Drive.

Mr. Falkner gave a staff analysis and stated that the application involves the Development Code and the city's Ordinance on the sale of beer and light wine. He stated that property had been operated as a restaurant for several years and had recently closed. He stated that the property has now been leased to a Mexican restaurant who would like to have a license to serve beer and light wine with their food. Mr. Falkner explained that Ordinance states businesses serving beer and light wine must be 100 feet from any building such as a church, government building, school, or a residence. He stated that any business serving beer or light wine in a residential zone must be at least 400 feet in distance from any protected building. He explained that in this case, there is a church to the south of the property that is more than 100 feet in distance, however, a residence is located to the east of the property that is only 368 feet away, which would prohibit the license from being issued. Mr. Falkner stated that there are special circumstances that would justify the waiver of the rule in this case. Mr. Falkner then stated that some of the issues to be considered would be a possible waiver of consent by the owner of the residential property in question. He then stated that the staff was not able to find that the applicant met any of the required criteria for a variance as stated by the Development Code, thus their recommendation is to deny the application.

Mr. Freddy Norman stated that he and his father are owners of the building at 1270 Oakview Drive. He stated that several years ago, a restaurant was operated from the building and enjoyed the sale of light wine, beer, and liquor. He stated that the sale of beer is imperative to the success of the restaurant. He stated the restaurant is a family restaurant and does not have a bar and will close nightly at 10:00 p.m. He further stated that the restaurant will not be a detriment to the community and will be the largest restaurant located near the birthplace of Elvis Presley.

Mr. Terry Pierce, Pastor of the Tupelo Free Will Baptist Church, stated that the actual property line of the church is approximately 20 feet from the restaurant. He stated that the church members frequent the restaurant on a regular basis and would help compensate the sale of alcohol. He stated his support of the restaurant, just not the sale of alcohol. Mr. Falkner explained that the Ordinance requires the distance to be measured from building to building and not from property lines.

Mr. Hoyt Curbow stated that he lives at the top of the hill from the restaurant and has been a resident for 43 years. He stated the restaurant was built first, before the church or

the residence in question. He stated that he is against the sale of alcohol in the neighborhood.

Mr. JD Johnson stated that he lives across the street from the restaurant and adjoins the property of the church. He stated his opposition to the sale of beer and alcohol being sold at the restaurant.

Mrs. JD Johnson stated that she can look out her window and see the restaurant. She stated her opposition to the sale of alcohol at the restaurant, stating that she has seen the effects of alcohol on children through her many years as a pastor's wife.

At this time, the public hearing portion of the meeting was closed. Mrs. Brown asked for legal counsel from Mr. Hill regarding the sale of alcohol in the close proximity of a residence. Mr. Hill stated that if the Planning Committee were to adopt any of the exceptions stated in the Development Code, they should state the basis by which they believe the exceptions might fit if they chose to act on the variance favorably.

Mr. Wilson asked if the restaurant will be allowed to sell liquor, since the state governs the sale of liquor and the city governs the sale of beer and light wine. Mr. Falkner stated that the city's ordinance mirrors the language in the state's ordinance regarding the sale of liquor.

Mrs. Brown reminded the committee that a variance requires a two-thirds majority vote.

Mrs. Sanders stated that the only way the sale of alcohol would be a detriment to the neighborhood would be if a resident of the neighborhood purchased alcohol from the restaurant and drove home while under the influence. She stated that customers not living in the neighborhood would exit the property onto Veterans. She then stated that she would be for allowing the variance.

Mrs. Murphree asked if any other restaurant had been allowed the sale of beer and light wine in that location. Mr. Falkner stated that the staff could not find verification of that, but that Mr. Norman stated he knew alcohol had been served there before.

Mr. Robison asked if there were any other similar circumstances in the city. Mr. Falkner stated no, that most establishments selling beer and light wine and located on Main and Gloster Streets and only have to maintain 100 foot separation.

Mr. Gratz asked if the door located on the east end of the restaurant is a separate part of the building or part of the restaurant. Mr. Falkner stated that the ordinance does mention the possibility of part of a building not being accessible to the public to extend the distance of the sale of beer and light wine from a protected building, such as the residence in question.

Mr. Norman stated the east door is considered an emergency exit. He stated it is accessible to the party rooms that open into the restaurant. Mr. Norman stated that Mr.

Tommy Parker, the previous owner of the building had served alcohol and beer from a restaurant operated in that building, but it had been years ago. Mr. Falkner confirmed that he had spoken with Mr. Guy Mitchell, attorney for the city of Tupelo, and Mr. Mitchell stated that he, too, had memory of the sale of beer and alcohol at that location previously.

Mrs. Murphree questioned that since alcohol has been served at that location before, could the city be liable if the application is denied. Mr. Hill stated that the ordinance that allowed the sale of alcohol at the restaurant previously was probably not in effect now and had been replaced by a new ordinance.

Mrs. Brown asked Mr. Hill if the fact that the residence was built in 1993 and the restaurant was building in 1986 would have any bearing of a special or unusual circumstance for Mr. Norman. Mr. Hill stated that it is a factor, but it does not change the requirements of the ordinance.

Mr. Falkner stated that if the east 40 feet of the building were blocked off from public use, Mr. Norman would not need a variance.

Mr. Wilson made a motion to approve the variance request for a period of one year, recognizing that there is an absence of significant or material, social, moral, cultural or economic detriment to the protected building in relation to the amount of distance that is requested, and recognizing also the hours from 11:00 a.m. to 10:00 p.m. with no bar located in the facility. Mrs. Sanders seconded the motion, which carried 6 – 1 with Mr. Robison opposing.

Mrs. Brown then explained the procedure of appeals.

Mr. Wilson clarified that if the business were to change, the variance would no longer be valid and any other proprietor would be required to apply for a variance for the sale of beer or light wine. Mrs. Brown agreed.

OTHER BUSINESS

1. Election of Secretary to the Planning Committee

Mrs. Sanders nominated Mr. Mitch Ellett as Secretary to the committee. Mr. Johnson seconded the motion, which passed unanimously.

2. Application and Meeting Calendar for 2009

Mrs. Brown dispensed this item from the agenda at this time.

3. Comprehensive Plan

Mrs. Brown stated that the committee has all be given a final copy of the newly adopted Comprehensive Plan.

4. 2008 Annual Planning Department Report

Mrs. Brown asked that the committee review the report to be discussed that April 2009 meeting. She then commented on the Railroad Relocation meeting that was held the previous Thursday.

ADJOURN

Mr. Johnson made a motion to adjourn the meeting. Mr. Robison seconded the motion, which passed unanimously.