

**MURRAY PLANNING COMMISSION
REGULAR MEETING
TUESDAY, MARCH 21, 2006
5:00 P.M.**

The Murray Planning Commission met in regular session on Tuesday, March 21, 2006 at 5:00 p.m. in the council chambers of city hall at 104 North 5th Street.

Commissioners Present: Ed Davis, Loretta Jobs, Howard Koenen, Mike Lovins, Marc Peebles, Nelson Shroat, Dave Ramey and Richard Vanover

Commissioners Absent: Tom Kind and Ed Pavlick

Also Present: Candace Dowdy, David Roberts, Mike Pitman, Kristen Taylor, Jed Workman, Bill Adams, Paul Garland, Bobby & Carol Falwell, John Downs and other public audience

Chairman Richard Vanover called the meeting to order at 5:00 p.m., and welcomed the guests and applicants. Chairman Vanover requested approval of the February 21, 2006 regular meeting minutes. **Marc Peebles made a motion to approve the minutes as presented. Ed Davis seconded the motion and the motion carried with a 7-0 voice vote. Nelson Shroat was not present.**

Review Of Minor Subdivision Plat—Greenhills Drive—Jed Workman: Candace Dowdy stated that this is a replat of lots 4 and 6 of a minor subdivision plat of Green Oaks Subdivision. Ms. Dowdy stated that the plat is extending a 50' dedicated right-of-way along Greenhills Drive for an additional 104.25' and that according to the subdivision regulations it would need to be reviewed and approved by the Planning Commission. Candace Dowdy stated that Fire Chief, Mike Skinner reviewed the site and found that the fire department had ample space to turn a fire truck around using Mr. Workman's driveway.

Nelson Shroat entered the meeting at 5:05 p.m.

Ms. Dowdy stated that Mr. Workman owns the property to the west of Greenhills Drive and that the dead-end street could possibly be extended for any future development to the south which would connect to Hermitage Place or Doran Road South. There is also a 50' right-of-way going back into the Clarence Goforth property, which is now owned by Eddie Schwettman. A note will be placed on the plat, stating that the developer is responsible for extending sewer to lots 4A and 6B. Ms. Dowdy stated that Mr. Workman plans to pave the new right-of-way. **Mike Lovins made a motion to approve the minor subdivision plat, creating 104.25' of additional right-of-way. Nelson Shroat seconded the motion and the motion carried with an 8-0 vote.**

Request For Final Plat Approval—AAA Mini-Storage Planned Development Project—1508 Diuguid Drive—David King: Sam Perry stated that the final plat has had some minor additions regarding numbering, type of screening and relocation of the sign. Mr. Perry pointed out the one proposed building on the west end of the project. New Leyland Cypress trees to fill

in the line of existing evergreen trees on the west property line have been noted on the plat. A professional landscaper determined that trees would not survive on the north property line because of the rip rap. Therefore, the owner is planning to erect a fence. Trees were required by the Board of Zoning Adjustments, but can not be grown due to the poor soil conditions. Mr. Perry presented a drawing of the 7' high proposed fence. The fence is not completely solid, having 4" boards, with 2" spaces in between. Planning staff does not have any problems with the fence because it seeks to provide the screening that the zoning ordinance calls for between business and residential. Mr. Perry presented photographs of the property. Commissioner Shroat asked where the fence would be located. Mr. Perry pointed out the rip rap on the photograph. Commissioner Shroat asked if the rip rap would stay the way it is. Mr. Perry stated that there would probably be some restructuring of it, since the stormwater detention structure is planned to be in that same area. Commissioner Shroat apologized to the commission and audience for being late. Mr. Perry asked Commissioner Davis, as representative of the BZA, if the issues which concerned the BZA had been addressed. Commissioner Davis stated that they had, in his view. Chairman Vanover asked for a motion. **Dave Ramey made a motion for the plat to have final approval, contingent upon meeting all city regulations. Mike Lovins seconded the motion and the motion carried with an 8-0 vote.**

Review Of Preliminary Subdivision Plat—Saratoga Farms—Squire Road—Paul & Vickie Garland: Candace Dowdy stated this proposed development is located on Squire Road, just off Robertson Road South. The development is just over 46 acres and is not currently in the city limits, but is within the four-mile jurisdiction of the planning commission. Three (3) small residential lots are planned along Squire Road. The property is being divided into 14 three (3)-acre tracts, called mini-farms. Ms. Dowdy pointed out an overall drawing of Mr. and Mrs. Garland's developments, both proposed and existing. Ms. Dowdy stated that future, adjacent development would allow another means of access for this development. Ms. Dowdy also stated that there was a 50' right-of-way that extends from Oaks Country Club Road. There are several ways that could be an additional means of access to Wiswell, Oaks Country Club or Robertson Road. There is a notation on the plat that states the property will be serviced by private water and sewer. City water and sewer is not currently available to the property. When the plat was submitted, there was no temporary turnaround established. However, the development is planned to connect to future development to the south so a 50' temporary turnaround will be required on the plat. The fire department reviewed the site even though it was not in the city. It is approximately three (3) miles from Fire Station #2. The right-of-way is widened to 60' at the entrance because there are plans to beautify the entrance similar to Saratoga Springs, Unit I. Commissioner Shroat asked if any of the larger lots could be subdivided. Candace Dowdy stated that the purpose of the larger lots is so the owner could have one (1) horse per acre. Sam Perry read the restriction from the plat which designated that no lots could be subdivided for multiple residences. Candace Dowdy stated that Matt Jennings was also participating in this development. Candace Dowdy stated that the developers would like to leave the barn on Lot 17, which lies within the 100' front setback line. Chairman Vanover asked for a motion. **Loretta Jobs made a motion to grant preliminary approval for Saratoga Farms, with approval for the barn on Lot 17 to stay. Marc Peebles seconded the motion and the motion carried with an 8-0 vote.**

Review Of Preliminary Subdivision Plat—Falwell Estates Unit 3—Robertson Road South—Margaret Ann Calcott, Bobby & Carol Falwell And CPFF, LLC.: This property was annexed into the city in February 2004. The zoning was set as R-2, Single-Family Residential. Originally, the developers wanted to develop larger, five (5) acre tracts. Since the plat has been presented, there have been some minor subdivision plats done. Ms. Dowdy pointed to two (2) lots fronting Robertson Road South, and stated that they were part of Unit 2. Unit 3 consists of 63 lots. Since the plat was presented to the planning department, there have been some changes. Ms. Dowdy stated that one of the cul-de-sacs is going to be eliminated and there possibly would be one more lot added. Currently, the only access to the development is from Robertson Road South. Ms. Dowdy pointed out possible access to Charles Hoke's property, which is also in the city, for future development. Ms. Dowdy pointed out Newton Heights Unit 2 to the north and stated that the plat was never recorded, but it does show Martin Drive, which goes all the way to Quail Creek, so there would be access at that point. The fire department reviewed the site and found that from Station #2 it was 3.3 miles if taking Wiswell Road and 2.8 miles if taking Highway 94 West. The police department also reviewed the site. Water, sewer and gas are available to the properties along Robertson Road South. The design for utilities within the subdivision is still in process. Ms. Dowdy stated that Joe Sons, with VL Associates was present to answer any questions. Building setbacks and 15' utility easements are shown on the plat. Restrictions are also on the plat. Street names still need to be reviewed. Addressing and utilities will be added. Ms. Dowdy stated that the Falwells were also present for any questions. The proposed development is approximately 50 acres. Ms. Dowdy noted that one of the lots along Robertson Road South has an existing house on the lot. **Loretta Jobs made a motion to grant preliminary approval for Falwell Estates Unit 3, with the house being noted in the subdivision. Ed Davis seconded the motion and the motion carried with an 8-0 vote.**

Public Hearing—Proposed Amendments To The Sign Regulations—Zoning Ordinance Section III, Article I: Candace Dowdy handed out proposed amendments to the sign regulations. It is proposed that: any temporary signage in residential zones will not exceed 6.25 square feet, add Highway 121 North Bypass to the areas that require monument-style signs considering the future widening of the roadway to five (5) lanes, eliminate the proposal for a ten (10)-year phase out of nonconforming, freestanding signs on 12th Street. Ms. Dowdy noted that approximately 180 letters have been sent out to the 12th Street corridor business owners, notifying them that their existing freestanding sign is grandfathered in until such time that they alter or change their sign or until their business is no longer in existence. At that point, the city would require the sign to be removed and any new sign conform to the guidelines. At this point the commission discussed the factors that would require the replacement of a nonconforming sign: for an individual business, the sign would be allowed to stay in place as long as the business did not change. Commissioner Jobs asked about individual businesses in shopping centers. Ms. Dowdy stated that it has not been set forth how to bring the shopping center's signs into conformance. There are no provisions which state at what point the shopping center signs have to come into compliance. For that reason, staff is proposing a ten (10) year phase out for shopping centers. Ms. Dowdy stated that without some type of time limit, businesses could come and go within a shopping center, without the city having any idea when the sign would be brought into compliance. Commissioner Shroat asked about Southside Shopping Center and

outlots in front of shopping centers. Ms. Dowdy stated that Southside Shopping Center has more than four (4) stores, so they would be allowed the maximum of 80 square feet if the lot frontage requirement were met. If it is an individual business on a separate lot, than they would fall within the same guidelines as an individual business. Commissioner Shroat asked about the legality of the cow at Sirloin Stockade. Ms. Dowdy stated that it would be allowed to stay. Commissioner Jobs stated that she still had unanswered questions. Legal counsel, Mike Pitman, recommended that staff continue outlining the proposed amendments and that the commission avoids drifting into extended debate before the public hearing is opened. Ms. Dowdy stated that balloons would be permitted as temporary signage. Construction signs could not be erected prior to the submission of a building permit application and that they would have to be removed at the end of construction. Temporary subdivision signs would have to be removed at the completion of 80% of sales of lots. Mike Pitman reminded the commission of their function in ordinance changes.

Chairman Vanover opened the public hearing and asked if anyone wished to speak in favor of the proposed recommendations. Being none, Chairman Vanover asked if anyone wished to speak in opposition to the proposed changes. Chairman Vanover swore in Howard Brandon. Mr. Brandon stated that Brandon Auto World was governed by General Motors (GM), and if the ordinance was passed, than a monument sign would be required, which is preposterous. Mr. Brandon stated that GM requires them to have those signs in the contract, and if he sells the business, he is not sure whether the new owners would be able to operate under the new guidelines. Commissioner Shroat asked what the regulations were. Mr. Brandon stated that GM maintains the signs, and they pay rent on them. Mr. Brandon stated that the size sign that is there is what is required. Commissioner Shroat asked Mr. Brandon if he had ever asked GM if they would consider a different sign, if the city required it. Mr. Brandon stated that he had not and the new requirements are not fair to his business. Also, that a monument sign is not appropriate for a car lot, that it would be hit by a vehicle within 30 days. Candace Dowdy stated that the staff, Board of Zoning (BZA) and Planning Commission all agrees that there are some locations in which a monument sign may not be appropriate. Those are opportunities for an applicant to go to the BZA and request a variance for a different sign. Commissioner Lovins stated that there are other car dealers to deal with on the two (2) corridors. Ms. Dowdy stated that when dealing with Nissan on Chestnut Street, there were several variations of signs presented for review. It is likely that all car companies provide various alternatives for signage. Commissioner Ramey asked if Mr. Brandon had checked with GM to see if they would be receptive to a monument sign. Mr. Brandon stated that he had not, but that he is sure that they would not agree to it. Commissioner Ramey stated that there are a lot of communities, especially in high-growth areas, that are requiring monument signs, and that he would be surprised if GM did not want a piece of that market share. Mr. Brandon requested an exemption for car dealers. Mr. Brandon stated that it is discrimination against the car dealers located on one of the corridors. Sam Perry stated that the staff and sign committee decided to separate the recommendation for the 121 corridor into a separate ordinance for city council to vote on, so that the progress so far would not be delayed.

Chairman Vanover asked if anyone else would like to speak in opposition to the proposed ordinance amendments. Chairman Vanover swore in Tom Karvounis. Mr. Karvounis stated that the way he understands the sign ordinance, the city's intent is not to make any exemptions for

anyone, not for him or anyone. Mr. Karvounis discussed his current, second freestanding sign that was currently being handled by staff. Ms. Dowdy explained the BZA ruling in September 2004 regarding his freestanding signs for Olympic Plaza. Chairman Vanover asked if there was anyone else wishing to speak. Chairman Vanover recognized Howard Brandon. Mr. Brandon stated that a simple solution would be to grandfather in all existing signs as long as the same type business was there.

Commissioner Jobs stated that there would be a lot of franchises that would not be able to conform to the city regulations. Commissioner Peebles and Chairman Vanover questioned the idea that the franchises would not be flexible. Commissioner Peebles stated that there are other communities that allow only monument signs and they have a lot of franchises. Commissioner Jobs stated that in her franchise there is a certain size that the sign must be. Commissioner Jobs stated that she would not be able to keep the franchise if the sign did not meet the franchise requirements. Commissioner Peebles questioned that much strictness of a franchise. Commissioner Ramey stated that he had a franchise agreement with Allstate, and that their policy is to design signs according to what is permitted in that planning jurisdiction. Commissioner Ramey stated that he is sure that there are agents with monument signs, if that is what was required for their community. Commissioner Ramey stated that it is a slippery slope to make exceptions for certain types of businesses. Commissioner Shroat stated that what Mr. Brandon proposed about grandfathering in made sense to him. Commissioner Lovins asked Commissioner Shroat what to do with shopping centers. Candace Dowdy stated that there were 18 sites on 12th Street with two (2) or more businesses using one freestanding sign. Sam Perry stated that some are conforming and some are not. Mike Pitman reminded the Planning Commission that the sign regulations are not set in stone, and that the BZA has the authority to vary regulations if there is an unusual circumstance that a property owner is facing. Chairman Vanover stated that he felt it was the BZA which initiated this sign regulation review because of the excessive variances that are being reviewed by the BZA. Commissioner Davis stated that it is imperative that when staff is presented with an application which cites the reasoning as "requirements of the franchise," that staff require a copy of said franchise regulations to avoid a delayed board decision. Commissioner Jobs reiterated that franchises require certain sizes and when there is more than one of a required size in a shopping center, those sizes will not fit in a monument sign. Commissioner Jobs questioned sending regulations to City Council, if it is known that variances will have to be issued under the new regulations. Commissioner Koenen asked Mike Pitman if a city has the right to tell a business that they have to put up a certain type of sign. Mike Pitman stated that cities do have that right and it has been tested in court. Mr. Pitman cited recent BZA examples of detailed quantity and dimensional regulations. Mike Pitman stated that governments do, however, have difficulty regulating the content of signage, because of free speech issues. Commissioner Koenen continued to question city regulation of signage and asked for an example. Commissioner Shroat stated that an example was Germantown, TN vs. Wendy's, and that the city won and a monument sign was erected. Commissioner Koenen also asked if Murray had the ability to enforce these regulations, and if not, than the regulations are questionable. Mike Pitman stated that staff frequently sends notices, and ultimately in an extreme situation, a suit could be filed if absolutely necessary. Planning Director, David Roberts, asked Commissioner Koenen if there was a need to take all sign regulations out of the zoning ordinance if they can not be enforced. Commissioner Koenen

confirmed, yes that should be done. Mr. Roberts stated that he wholeheartedly disagreed with Commissioner Koenen in doing away with the sign regulations totally, because planning staff does make a genuine effort in enforcing existing regulations and that the zoning regulations serve a definite purpose. Ms. Dowdy stated that since the new guidelines had been adopted, staff has had success in removing several nonconforming signs on the 12th Street Corridor. Commissioner Koenen reiterated that there are not enough personnel and passing more regulations will require the city council to have to come up with more people in the planning department. Mr. Roberts stated that there is always and has always been a heavy work load, regardless of new regulations. **Mike Lovins made a motion to send the proposed amendments, with the exception of the addition of the Highway 121 North Bypass, to City Council for review. Marc Peebles seconded the motion and the motion failed with a tie vote of 4-4. Ed Davis, Mike Lovins, Marc Peebles and Dave Ramey voted yes. Loretta Jobs, Howard Koenen, Nelson Shroat and Richard Vanover voted no. Mike Pitman stated that in a tie vote for a map amendment the commission reviews it again within 30 days, but with a text amendment, the recommendation is not sent at all.** Candace Dowdy asked the Commissioners which items they would like staff to rework. Commissioner Shroat asked if it would be possible to contact the franchises that are represented in Murray and see if they would be willing to modify their requirements for Murray. The commission decided that would be a monumental task and could miss some franchises. **Mike Lovins made a motion to send the proposed amendment regarding the monument sign requirement for the Highway 121 Bypass corridor to City Council for review. Marc Peebles seconded the motion.** Commissioner Peebles explained that the reason that this was being recommended was that Highway 121 was going to be widened and that there were a lot of signs that would have to be replaced anyway. Candace Dowdy presented photographs of Highway 121 signs, explaining that about half of the signs on Highway 121 are already monument style. Ms. Dowdy reiterated that any nonconforming signs would be grandfathered in the same way that signs are on 12th Street. **The motion carried with a 5-3 vote. Ed Davis, Mike Lovins, Marc Peebles, Dave Ramey and Richard Vanover voted yes. Loretta Jobs, Howard Koenen and Nelson Shroat voted no.**

Discussion Of Chantilly Place Subdivision—John Downs: David Roberts stated that in January 2006, the commission briefly discussed the incomplete parking lot and fence. Mr. Roberts stated that there had been several inquiries from the public regarding the status of the subdivision and the incomplete improvements. Mr. Downs' presence was requested by the commission and he is here tonight to field any questions regarding the construction items that have not been completed. Commissioner Ramey requested a copy of the minutes since he was not present at the January 2006 meeting. Chairman Vanover recognized John Downs. David Roberts stated that after reviewing minutes and audio of the Planning Commission and BZA meetings, he finds that it was the intent of Mr. Downs to complete a common parking lot on the south side of Chantilly Drive, as well as a fence around the perimeter of the development. Mr. Roberts stated that he is seeking from Mr. Downs an answer as to why the items were not completed, if that was the intention. Mr. Downs stated that there was never any intent for the developer to pave the parking lot, in which the covenants say that when at least eight (8) houses have been built, the lot in question would be deeded over to the homeowner's association (HOA). Mr. Downs stated that he has attempted, on several occasions to form a HOA, but the property owners will have no part of it. Mr. Downs stated that the purchase agreement stated

that every homeowner had to become a member of the HOA, but it has not worked out that way. Mr. Downs stated that when a house is built, the fence is built. Mr. Roberts stated that every house in the development has a fence, which was the intent. Mr. Roberts reiterated that the presentation made to both the Planning Commission and BZA included a perimeter fence around the whole development and there is not and has not been any fencing around the parking area. Mr. Roberts stated that the plat shows delineation of parking spaces in the parking lot, which indicates that it, is a paved parking lot. Mr. Roberts stated that his conversations with property owners have indicated that the reason that they do not wish to join the HOA is because there are improvements that have never been completed. Mr. Downs stated that there was never any intent for the developer to pave the lot, not verbal or in writing. Mr. Downs repeated that he has tried to form the HOA, with no success. Mr. Downs stated that no one can force them to join. Mr. Roberts repeated again that it was presented to the Planning Commission and BZA that the perimeter would be fenced and parking be provided. Mr. Downs stated that parking was provided on the lot about five (5) years ago, by himself putting gravel there and covering it with white rock, than it sat there and the grass and weeds grew up through it until it disappeared. Mr. Roberts asked why there was not any fencing around the parking area, because he (Mr. Downs) addressed the adjacent property owners to the south (The Hales) directly and described the type of fence that would be there during the original approvals. The reason it was discussed was to keep cars from parking over on their property. Mr. Downs stated that Alpha-Omega Properties no longer exists. Mr. Downs stated that he did make the parking lot in a condition that was a good parking area and there was no need for perimeter fencing, because the perimeter was obvious. Mr. Downs stated that no one would maintain the parking lot. David Roberts stated that Mr. Downs made the determination that the fence around the parking area was not necessary after gaining approval from the Planning Commission and BZA with the statement that it would, however, be constructed. Mr. Roberts stated that Mr. Downs still has not adequately addressed the fence issue, even though it was a prerequisite for approval and it is still an outstanding improvement. Mr. Downs stated that it was never the developer's intent to do anymore to the parking lot. Mr. Downs stated that the fence comes with the house. If the house is built, the fence is built.

Commissioner Shroat asked if every one of the lots have been sold. Mr. Downs stated that they had been on the north side, and all the lots on the south side have been sold to Habitat for Humanity. Mr. Downs stated that, even Habitat for Humanity is constructing the fence with the house on the south side, similar to the north side. Commissioner Lovins asked who the property owner of the parking area was. Mr. Downs stated that the HOA was. Candace Dowdy stated that according to the Property Valuation Administrator, John Downs is the property owner, and that he does pay the taxes. Mr. Downs stated that Alpha Omega pays the taxes. Commissioner Shroat asked who pays them now. Mr. Downs stated that he did, if they are paid, and that they are around \$8.00/year, which is negligible. Commissioner Peebles stated that would indicate ownership to him. Mr. Downs repeated that Alpha Omega owns the lot. Mr. Downs stated that he personally did not own any of it. Commissioner Shroat asked why he was paying the taxes if he did not own the property. Sam Perry asked Mike Pitman to explain the status of Alpha Omega Properties. Mr. Pitman explained that Alpha Omega Properties, Inc has been administratively dissolved because the Kentucky Secretary of State's office has determined that annual requirements have not been kept up. Mr. Pitman stated that lot 34 is still owned by deed

by Alpha Omega Properties, Inc. In 2004, after being administratively dissolved, Alpha Omega Properties, Inc conveyed lot 1 to Jane Ann Turner, who owns some adjoining property. The covenants stated that once the HOA contains 10 members, Alpha Omega Properties, Inc. will convey lots 1 and 35 to the HOA for maintenance. It further states that prior to the transfer of lots 1 and 35 to the HOA, the maintenance shall be the responsibility of the developer, Alpha Omega Properties, Inc. Mr. Pitman summarized the current facts:

- Alpha Omega Properties, Inc is administratively dissolved
- There is a protective covenant that is filed in conjunction with the approval of the plat that maintains the maintenance responsibility on the developer
- Alpha Omega Properties, Inc still owns the property

Commissioner Jobs stated that she questioned whether the south side of the development was in the city limits. Commissioner Shroat asked what the city wants Mr. Downs to do. David Roberts stated that the city would like to see Mr. Downs/Alpha Omega Properties, Inc., to construct the fence adjacent to the Hale property, pave the parking lot which was proposed to Planning Commission and BZA, as well as proposed to the property owners. According to the subdivision regulations, how does the commission get these items completed by Mr. Downs, according to the three options? Mr. Roberts stated that the only thing left that he sees is fines. Mr. Pitman stated that the fine can be between \$10 and \$500 per day, per violation, until the item was completed. If that fine is converted into a judgment in favor of the city, then the city can file a lien on the property. Commissioner Shroat asked Mr. Roberts if there were meeting minutes to support his statements. Mr. Roberts stated that he felt that the audio and written records supported his statements. Commissioner Shroat was inclined to levy fines if there were sufficient records. Commissioner Peebles stated that he would like to hear the tape because of the vast difference between planning staff's and Mr. Down's perspectives. Mike Pitman stated that his perception of what would take place tonight was for Mr. Downs to explain his point of view and see if there was simply a misunderstanding. Mr. Pitman stated that his recommendation would be to hold more of an evidentiary-type hearing before levying any fines. **Nelson Shroat made a motion for the commission to review the complete audio and written meeting minute records. Mike Lovins seconded the motion and the motion carried with an 8-0 vote.**

Sam Perry and Candace Dowdy briefed the commission on upcoming House Bill 55 continuing education opportunities throughout Kentucky, including one hosted by the City of Murray.

Being of no further business, Ed Davis made a motion to adjourn. Howard Koenen seconded the motion and the motion carried with an 8-0 voice vote.

The meeting adjourned at 7:01 p.m.