October 13, 2011
Planning Commission
12191 Magnolia Springs Hwy.
Magnolia Springs, Al.
4:00 P.M.

1. **Call to Order**
The meeting was called to order at 4:00 p.m.

2. **Members present were**
   - Chairman Mike Costigan
   - Member Karen Biel
   - Member Rodney Hubble
   - Member Jessica Yarbrough
   - Member Jennifer Haffner
   - Member Steve Mobley
   - Mayor Charles Houser
   - Member Ed Stone
   - Vice Chair Bob Holk

3. **Invocation and Pledge – Chairman Costigan**

4. **Approval of September 8, 2011 minutes**
   There were no corrections or additions:
   Motion by Member Biel, 2nd by Member Haffner to approve the minutes as presented. All in favor. Motion carried.

5. **Public Hearing – Zoning Amendment – Barbara Sherman**
   Member Biel explained to the Commission that the Town received an application from Barbara Sherman to rezone a parcel of four lots located on Live Oak Ave. The property is presently zoned R2B – Single Family District, and she is requesting B2 – Local Business District. Eleven notices were mailed out to surrounding property owners.

   **Chairman Costigan** opened the public hearing at 4:08.

   **Harold Sherman** – son of Barbara Sherman, talked about the existing business and that it had been there for over 50 years. They are a general contractor, specializing in marine construction. There is no construction business that takes place at the property other than storing equipment on the four lots, it’s more a home based business for the office. He addressed the situation on traffic and stated the only traffic on the property is the five employees driving into work and picking up a company vehicle. If there are any large deliveries, to avoid any semi trucks coming down the street because of the canopy of oak trees, they utilized the parking lot of the old Gino’s Restaurant or they have it delivered to Bon Secour. Chairman Costigan added that the Commission received a letter from Ms. Jan Pruitt, her property is adjacent to one of the lots, he asked the secretary to read the letter – see letter attached. Ms. Pruitt is opposed to the rezoning of the property as well as her fiancé Ed Douglas, who was in attendance at the public hearing. Mr. Douglas owns the two lots adjacent to Ms. Pruitt’s lot and is opposed because once it is rezoned there is no control over what kind of business comes in there. He respects that the Sherman’s business has been there for 51 years and he has no objection to it continuing as is, but he wants protection for the value of his property and his quality of life. Mr. Douglas asked if the members would like a large metal building behind their houses. Mr. Sherman stated that there is no metal building on the property, if at such time any renovations to change the structure that is there, the plans will have to come before this Planning Commission and meet all requirements. Mr. Sherman added that being non-compliance situation, they can not improve or enhance anything that he has,
therefore, that puts them at a disadvantage to continue their business that has been there for 51 years. Mr. Douglas said he did not want it zoned business because of the fear that in the future Mr. Sherman or his heirs might change the business plans and it could have an adverse effect on his quality of life and the value of his property. Member Haffner asked if there was a possibility of granting the zoning change but should the property be sold it could revert back to residential. Mr. Sherman stated that he met with the members of the Town Council to discuss the situation. The Council agreed to hire a consultant to provide the Town with options that could be given to the property owner according to a Zoning Ordinance. Then Member Biel stated that HMR was hired and sent a report back to the Commission and Council that the only option was to rezone the property and then submit an application for conditional use. Then if the applicant decides to erect a building, they would have to come before the Planning Commission and submit a set of engineered drawings, setting out parking, landscaping, drainage, etc., what ever the zoning ordinance requires. Member Hubble asked Mr. Sherman if you occupied and performed the last 50 years in the same manner, what do you expect or anticipate doing differently if the other off site yard is in Bon Secour? Mr. Sherman stated that if the economy gets to the point where they can, they would like to build a building that would house all the equipment that is presently on the property. He also added that the building that is on the property now is about 25 years or more old and is just about in disrepair, and they have out grown, we need to continue and grow as a business. Mr. Douglas asked how a construction business falls within a B2 zoning. Mr. Sherman said that he was told that there is no way that a zoning ordinance can list every business in a zoning classification. Member Haffner stated that she lives in the neighborhood right across from the property for 13 years and has never had any issues with traffic coming and going, she feels sympathetic and respects his point of view due to the fact that his family has been there so many years, but she also feels very sympathetic to Mr. Douglas’s point of view. She feels there is something that can be done to accommodate both parties. Legal Counsel, Brad Hicks stated that the consultant, Christopher Baker’s finding were to have a two step process – rezone the property B2, and should the rezoning be approved then submit for conditional use. Member Haffner asked again if there were other options to find a middle ground to satisfy the Sherman’s needs and protect Ed (Mr. Douglas) so it doesn’t become the next Seven Eleven. Brad said not that he could think of, right now it’s a pre-existing, non-conforming use, so it is grandfathered in, so they can continue as long as the business continues operation, they can not improve upon that and make it bigger. He said that he believed there is no way to grant a variance and Member Haffner stated what about two sheds. Member Biel stated that the zoning ordinance states accessory buildings can not be more that 60% of the main residence. Member Haffner stated she didn’t want to put this off but that she wished we could look at this a little bit deeper and maybe go back to the Town Council and talk to them about not wanting to make a permanent decision on the rezoning but is there some way we can creatively look at a variance for the building. Member Biel stated that the Commission is only looking at the rezoning of this property and Chairman Costigan said with the current zoning ordinance they do not meet the regulations. Mr. Sherman said that according to Christopher Baker if rezoned and a conditional use is granted than any other business operation must come back before the Planning Commission. Mr. Sherman stated that their business has two phases; one is a construction business where all work is one off site, and an environmental consulting business. Brad Hicks stated that the only decision before the Planning Commission is either to recommend or not recommend to the Town Council the rezoning, then the Town Council will vote on the rezoning, if approved then he can ask for the conditional use. Chairman Costigan asked about spot zoning and Brad didn’t think it would be spot zoning since there is a business right across the street. Member Haffner wanted to know if it was a conflict of interest for her to vote on the issue because she is an adjoining property owner and doesn’t know what to say and does not want to upset either side. Mr. Sherman added that they own a vacant lot on Highway 98 zoned B2, and it was recommend to him not to put his business on Highway 98 and to stay on the property that the business has been on for 51 years. Chairman Costigan closed the public hearing at 5:02 pm.
Chairman Costigan asked if there was any other discussion among the Planning Commission members, there was no other discussion, and he called for a motion.

Member Haffner asked if it was a conflict for her to vote and Brad Hicks stated that she does not stand to gain financially, but if she wants to abstain it is her right to do so. Member Haffner said she’s just in the middle and wants to make everyone happy and doesn’t see why we can’t.

**Motion by Member Biel, 2nd by Member Yarbrough to recommend to the Town Council to amend the Zoning Ordinance for the property in question from R2B (Residential) to B2 (Local Business District), since the property has been a business for so many years.** Member Haffner stated she was going to abstain and Member Hubble stated he was going to abstain because he wants to make both of them happy, and he thinks there’s a way of doing it and wants to look at it. Chairman Costigan stated that based on the information the motion is not going to carry because of the two members abstaining. Member Biel stated a vote needs to be taken.

**Roll Call Vote:**
- Member Yarbrough – Yea
- Member Haffner – Abstained
- Member Hubble – Abstained
- Member Mobley – Yea
- Member Biel – Yea
- Chairman Costigan – Nay

Chairman Costigan stated motion failed. He called for another motion. Member Biel stated the motion didn’t fail it was 3 Yea’s and 1 Nay. Member Hubble said that he knows there are regulations and we are talking about changing them, why can’t we allow Mr. Sherman to build his building. Member Biel said we can’t change the zoning regulations to allow him to build his building, and Mr. Sherman added that would be giving him special treatment.

Mr. Sherman asked since the motion failed, where does this leave him. Member Biel stated that it will still go to the Town Council, and they will make the final determination on the zoning amendment. Member Haffner said that the Council will have to decide and they do not have to match ours. She added, I’m incredibly frustrated by this and I think it is ridiculous, I think we should be able to figure this out. Mr. Sherman said the thing to do is to amend the zoning on the property, if you want to protect this mans interest (Mr. Douglas) and protect my interest to, and make it all go away. Change the zoning on the property to current use as it should have been done to began with, and that way he gets his protection under current use, that is forever and always. Either it is going to be a construction business run by one of these two (himself or his brother) family members as it is right now and has been for over 50 years or it reverts back to residential, its original zoning. Member Haffner said that’s an option and she didn’t understand. Member Biel said that is not up to the Planning Commission, it is a Council decision. Councilmember Ken Underwood stated that Les Farmer’s business is not zoned B2 and the Bed and Breakfast is not zoned B2, and this is from the master plan that took into account some current use but that wasn’t the driving factor, it was where do we want business and residential in our town and the most overriding cause of controlling our map. Member Haffner stated she understands that and the map looks great, but I think for the particular issue, I understand why they want to upgrade their business, and can’t we make a recommendation that the use is just for them.

**Motion by Member Haffner, 2nd by Member Hubble to send to the Council that there is no recommendation for the Town Council as far as this issue is concerned. Vote: All in favor – Member Biel did not vote.**

6. **Subdivision Regulations**

The Commission members were given a final draft of the regulations and the Chairman asked that they review them before the November meeting, at which they will set a public hearing possibly for the December meeting.
7. **Public Comment**
No public comment.

8. **Other business or comments from Commission Member**
No other business.

Motion by Member Biel, 2nd by Member Mobley to adjourn the meeting.  
Meeting ended at 5:20 p.m.  
Approved this the 10th day of November, 2011

[Signature]

Mike Costigan – Chairman

ATTEST:

[Signature]

Karen S. Biel – Secretary