October 8, 2012
Council Workshop
12191 Magnolia Springs Hwy.
Magnolia Springs, Al.
5:00 P.M.

1. Call to Order
Mayor Houser called the workshop to order at 5:00 p.m.

2. Roll Call
Members present – Mayor Charles S. Houser - Council Members: Bob Holk, Rick Odess, Ken Underwood, Brett Gaar and Kenny Laurendine. Also present: Town Clerk - Karen S. Biel and Legal Counsel – Brad Hicks

3. Invocation and Pledge – led by Councilmember Underwood

Mayor Houser recognized the two new incoming Council Members – Ben Dykema and Tom Webb. He also stated that Dotty Johnson could not attend the meeting because her husband Ken is in the hospital and to keep him in our prayers.

4. Discussion of minutes:
9/5/12 Special Council Meeting
9/10/12 Special Council Meeting and Workshop
9/17/12 Special Council Meeting
9/24/12 Regular Council Meeting
There were no corrections noted.

5. Discussion of financials and expenditures for September
The Mayor reported: General Fund Balance 09/30/12 - $54,220.25. Income - $83,908.39, which $9,519.00 was grant money from Fish and Wildlife, and $59,870 was the Riviera franchise check. Expenses - $69,701.34. Money Market - $102,534.73. CD - $52,959.62. Deepwater Horizon - $163,930.92. Special Revenue 4, 5, & 7c Gas Tax - Income $332.47 - Balance $7,303.67. The Council also had a copy of the twelve month actual financial statement for fiscal year 2011/2012 - Revenue Income - $392,105.89 and Expenses - $433,029.65. The expenses were over budget because of legal fees ($24,000) and monies spent on the Magnolia Landing project.

6. Public Comment
Donna Esslinger: Read a letter that was submitted by her and her fellow poll workers regarding the wonderful support they received from Karen, the town clerk, during the municipal election. See letter attached.

7. Beasley Allen Agreement – Potential Claims Arising from BP Deepwater Horizon Oil Spill
Legal counsel, Brad Hicks stated that he filed on behalf of the town, with the town’s authorization, a short form joiner claim into the class action in the Louisiana Federal Court. It is multidistrict litigation where they have forced everybody that wants to file a claim in that matter of the BP oil spill to file it in that Federal Court. Brad went on to say since there is a settlement agreement in place, things have changed a little and we feel that the town needs to do more. Beasley Allen has put together a class action to handle these claims and it will be on a contingency basis. Brad believes the town owes it to the citizens to pursue the lawsuit should the town be due some compensation. Brantley Fry has been in contact with the clerk and requested some financial reports, which she has sent to Brantley and they are just awaiting the Mayor’s signature on the contract. Beasley Allen would receive 19% should there be any money awarded to the town. Agreement will be on the agenda.

8. Johnson, Dotty & Ken – Dickinson Lane Petition
Mayor Houser stated that the petition is to vacate an unplatted street or easement. Councilmember Holk stated that his grandmother had four 50 ft. lots two on water front and two in the rear of those lots which would also have water front and they had a common 30 ft. driveway in between the lots. It was replatted as a subdivision with just a drive into it and no name was on it. The Johnsons own two lots on one side of the common driveway down to the river and the Brands own the other two lots on the other side of the driveway down to the river. Councilmember Holk did say that there is no evidence that his grandmother deeded that 30 ft. easement to anybody and the Johnson’s lawyer felt that if anybody owned it, it would still be in his grandmother’s estate. Councilmember Holk spoke with his brother and sisters and they feel like it should have gone with that property and will do whatever is needed to settle it.
The Holk family has signed quit-claim deeds over to the Johnsons and Brands. Councilmember Holk said that he knows that it has never been used as a road and has never been maintained by the county or the town, it’s always just been a private driveway. Councilmember Holk said he doesn’t think the town has any ownership in it. Mayor Houser agreed with Councilmember Holk and said that this is just for information only. Councilmember Underwood asked if there was a name on it, and Councilmember Holk said not on the original plat that he looked at. Councilmember Holk said later on probably because of 911 the County started calling it Dickinson Lane and that was because the Dickinson’s owned the property. Brad stated that he has met with Johnson’s attorney and they have filed the Petition for Vacation of Street or Alley and what I’ve seen doesn’t look like we need to do it, but they have filed for it and we need to act on it. He added that they (property owners) have said we don’t think it’s a street but just in case we’d like to vacate it. Councilmember Holk said that it also says they do not think the town has any ownership in it and Mayor Houser agreed. The plat does show it going all the way down to the river and Councilmember Holk said that was for the two lots that were not right on the river. Mayor Houser asked Brad what the town needs to do and Brad said that they want to know if it is a public street and the only way for them to really know that is to get a circuit court judge to tell them that. Brad thought they want to say we don’t think it’s a street but in case it is you would vacate it, in which case we would go through the process. The town would have to publish notice, post notice on the bulletin board at the county courthouse, you must notify the abutting property owners 30 days notice, and hold a public hearing. Then the town must determine whether to vacate or not and if so, pass a resolution. Brad stated that the town’s response could be we don’t think it’s a street so we don’t think there is anything to vacate, but the statute states that “following receipt of the written request the governing body shall act upon the request applying the same notice, hearing, voting and appeal procedures as set forth”. Mayor Houser asked if we should move forward with the process just as if it were a platted street, and Brad stated yes because we don’t have the authority to determine if something is a public street. Councilmember Laurendine asked if the town could do a resolution stating that the town doesn’t recognize it as a street and Brad said the town could but he didn’t know it that would be good. Councilmember Laurendine said they are trying to get clear title to it, Brad said if clear title is what they want then they need to ask their title company what will give them clear title, and the title company may say they don’t see a problem with it and they don’t need to do anything about it. Brad said that he could talk to their attorney again but he thought that they wanted to have it vacated just in case. Mayor Houser stated that if we need to go through the process then it will not be voted on until the earliest November. Steve Mobley asked who’s paying the taxes on it and Brad said there probably isn’t a tax parcel on it and the town doesn’t determine who and how much taxes are paid. Councilmember Gaar said it is platted on the tax plat and Brad said the tax plats don’t legally matter if it’s not a dedication purposes or who owns what. If it’s not a dedicated road then it is just a right-of-way for those four lot owners to use then it would be deemed owned by them. Councilmember Holk said it looks like it was never signed by his grandmother, it may fall the same as Rock Street, maybe be common law instead of statutory. Councilmember Gaar said that Rock Street has been used and improved where Dickinson Lane hasn’t. Brad said what also matters is the intent of the dedicator, and in the Rock Street case there are no living heirs of Otis Lyman and there are with Mrs. Holk and it was not her intent to make it a public right-of-way. Councilmember Underwood stated that the only way to know if it is a street or if it is owned by the estate of Mrs. Holk would be for the judge to determine it. Brad said that he could research the probate records and tell the town what he thinks, but if their trying to get title insurance on it, that’s not going to help them. Brad said in his opinion the only act that could make a difference would be to vacate or them filing a quiet title action. Mayor Houser stated that the town has an obligation to act on the petition, and Brad said unless they withdraw it, they could ask the town to quiet claim it and then the owners could ask the town to consider it. Mayor Houser asked if there was a down side for the town to go through the process as if it was a dedicated street and say whether we want to vacate it or not? The Mayor said we may or may not want to vacate it but he would rather go through the process and do it right, and this vacation is probably not the last one we receive. Brad added that there is no down side to going through the process. Councilmember Holk asked if this would be a good time to research the cost of this process and at the next meeting decide on the cost to the town? The clerk stated that a rezoning, which would be the same publications and notification is $250.00. Ben Dykema asked if this sets precedence for other people to come along with the same request. Ben Dykema said it would be better if the town wasn’t involved at all, and the Mayor said that if someone comes with a petition for vacation you’re obligated to act one way or another on it. Ben Dykema asked “aren’t they just asking for their driveway” and Councilmember Holk said they have it by possession and no one has ever used it but them. Councilmember Laurendine stated that he thinks they don’t want anyone to ever open it up and some day some governing body will say this is a public street. Ben Dykema suggested having the Johnsons at the next meeting to tell the council why they are doing this. The Mayor and Brad agreed that the town should move forward with the process unless they withdraw the petition. The clerk will call the Johnsons and let them know what happened at the meeting so they can make their decision whether to move forward or withdraw.
9. Committee Reports
Finance: No report
Public Safety: No report
Parks & Recreation: Councilmember Laurendine reported that he met with Shannon about the clean up along waters edge down at the Springs. Shannon estimates that it will take him three days and the cost will be about $1,200.00. Councilmember Laurendine also stated that he talk with Randy Arp from Stiffer Engineering, and Randy is going to provide the town with a design for a walkway along the waters edge down at the Springs. Councilmember Laurendine explained that Randy is a troop leader with the Boy Scouts and one of his scouts would like to do an eagle project, so the scouts will provide the labor for the project and the town will supply the materials.
Public Works: Councilmember Gaar reported the projects that have been completed are; Rose and Holly paving, cleaned out the culverts at Magnolia Ave., Island Ave. and Gates Ave, fixed the washout at the north end of Jessamine, fixed the washout at the bridge approach. Shannon is trimming the vegetation along Holly and Rose Street and installing stop signs there. Councilmember Gaar also received a phone call about a washout on Cougill, he doesn’t know if it will get fixed before the end of October. A tree in Village Green needs to be cut and some trimming in there also needs to be done.
Planning Commission: No report
Historic Preservation Commission: Councilmember Underwood stated that a committee is working on a driving tour brochure for the historic district and hope to have a draft to the council soon. He also added that the commission is working on signage and photographs. The council received a copy of the annual report that goes to the Alabama Historical Commission.
Environmental Committee: Councilmember Odess said that Joe Sankey had sent some emails with pictures of people parking on the easement (right-of-way) by his house and Councilmember Odess asked if anyone had a problem with him planting some azaleas there to stop that parking. Councilmember Odess also setup a meeting with Councilmember Underwood and Deputy Correa to discuss regulations to set a policy for the Bay Street pier. Mayor Parker and a citizen from Perdido Beach came over to check out the pier because they want to do one. This is what Fish and Wildlife wants, for something to be out there to demonstrate how to do it.

10. Council, legal counsel and staff comments
Mayor Houser announced that four companies went to the pre-bid conference. Bids will be opened on October 11th.
Mayor Houser asked that the Council go into executive session and wanted the incoming council members to attend the session.

Motion by Mayor Houser, 2nd by Councilmember Holk to go into Executive Session to discuss with the town attorney, Brad Hicks, the legal ramifications of and legal options for pending litigation. Legal counsel Brad Hicks stated that he is an attorney licensed to practice law in the State of Alabama, this Executive Session qualifies under Section 36-25A-7A(3) of the Open Meeting Act. Roll call vote: Councilmember Holk – Yea, Councilmember Odess – Yea, Mayor Houser – Yea, Councilmember Underwood – Yea, Councilmember Gaar – Yea, and Councilmember Laurendine – Yea. Motion carried. Mayor Houser stated the meeting will not reconvene.

Workshop ended at 6:15 pm
Approved this the 27th day of November, 2012

Kenneth Underwood – Mayor

ATTEST:

Karen S. Biel – Town Clerk