August 6, 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

4. Discussion of minutes – 07/02/12 Special Council Meeting & Workshop and 07/16/12 Regular Council Meeting
There were no corrections noted.

5. Discussion of financials and expenditures for July
The Mayor reported: General Fund Balance 07/31/12 - $33,700.00. Loan Balance on turn lane is $23,781.50. Income - $17,432.13 - Expenses - $54,111.89. Money Market - 102,503.27. CD - $22,959.62. Deepwater Horizon - $168,645.87. Special Revenue A, 5, & 7¢ Gas Tax – Income $338.05 - Balance $6,667.98. Councilmember Holk asked about the sales tax revenue being up and if it could be because of later reporting or just a good sales month. Mayor Houser stated that it could depend on how many weekends are in the month. The clerk stated that gas tax revenue was also up from about $3,500 to $4,200 this month. Councilmember Gaar asked about using the gas tax account to pay for some of the paving that the town is getting ready to do, and the clerk stated that one of the gas accounts could be used and will she will find out which one and let Councilmember Gaar know.

6. Public Comment
Daniel Dyas - Co-owner of Dyas Construction. Dyas Construction is the company that the town awarded the bid contract for the Magnolia Landing project. Since the award of the bid the town has received notice from the General Contractors Licensing Board that Dyas Construction does not have the proper license to allow them to bid on the project. Mr. Dyas stated that an anonymous complaint had been made and that it what brought on this notice. The Licensing Board says that this type of project requires a MU License, which Dyas Construction does not have. Dyas Construction has a BCU4 License which allows them to build up to a four story building. Mr. Dyas read the requirements for a BCU4 License and he feels that his license would have covered this project. Mr. Dyas said that it is a disappointing circumstance that at disgruntle bidder has the authority they do to create this circumstance that will cost the town $40,000, because the next bidder was much higher. Mr. Dyas did ask if the town rebids the project or moves onto the next lowest bidder that Dyas Construction’s bid security be returned. Mr. Dyas stated that he has an appointment with the General Contractors Licensing Board on August 15th, he will respect the wishes of the town and that he had the opportunity to bid on the job. Mayor Houser said that the town has not decided yet and it will be discussed later in the meeting.

Burt & Reva Hinson: Mr. Hinson gave a brief history description of Jessamine Street. He went on to say that the County always took responsibility for the maintenance of Jessamine Street till the town incorporated then it became the town’s responsibility. Mr. Hinson said that they have met with town officials, Council Members Holk and Gaar to discuss the maintenance of Jessamine Street. Mr. Hinson said that the maintenance of Jessamine Street does not include paving they would like it to be returned to a drivable condition. Councilmember Gaar agreed that the following would be needed; to fill in the wash out at the southern end of Jessamine Street at Cougil Avenue, develop a proper drainage system for the runoff from Cougil Avenue, redirect runoff as required, sod appropriate areas to prevent further erosion, and road grading and replace gravel. To maintain that road in a drivable condition, that the east and west rights-of-way must be cleared of brush and limbs. Mr. Hinson asked that a 5 year maintenance plan be drafted to solve these immediate problems and to develop budget to reflect future maintenance. Mrs. Hinson stated that they don’t want the road improved just maintained like it use to, to make it passable. Councilmember Gaar stated that short term answer is to repair and cut right-of-ways. Mr. Hinson said he understands the town does not have funds available so the five year plan would be the drainage, grading, sodding and graveling. Mayor Houser suggested that when the contractor is here paving to have them grade Jessamine Street and Councilmember Gaar was in agreement.
Mayor Housier asked Tom Granger and Brad Hicks to discuss with the council the next step in the bid process on the Magnolia Landing project. Mr. Granger stated that the town accepted bids on July 11th, after opening the bids the firm takes them back to the office to evaluate them. Part of the evaluation is to check to make sure they provide a contractor’s license, which a couple of them did not have, make sure there are no errors in math, and to make sure all information the town asked for is in the package. If they did not provide that information then we let the town know if it was critical item or an item that could be waived. HMR did make a recommendation on low bid which was Dyas Construction, it was substantially lower than the other bidders. On that following Monday the clerk was visited by the Licensing Board and that representative told her that Dyas Construction was not licensed properly to bid on the job. Mr. Granger then notified Mr. Dyas of the situation and told him he needed to address it. The town was then notified in writing from the Board that Dyas could not do the job because they were not properly licensed. We do have other bidders, there were some items that were not provide with their bid, we asked for references and sometimes we get them later when contract signing, but the town has the right to waive any irregularity if it is in the best interest of the town. The town does have the next lowest bidder at approximately $40,000 more so the town has the option to award the bid to that bidder or reject all bids and rebid the project. Legal counsel, Brad stated that the town did write the Licensing Board because they told us that they were investigating whether Dyas had the right license and we told them what we did, why we thought their license was good. We did not want to get fined and we needed some guidance from them on what they expected us to do. Brad said since we have passed a resolution awarding the bid, unless the Board finds a reversal on their decision then Brad cannot advise the town to move forward on that resolution. Brad said that the town would have to pass a resolution to undo what has been done and then the town has to decide if it wants to go to the next responsive and responsible bidder or if it wants to rebid the project. He added that under to statute you shall award the bid to the lowest responsive and responsible bidder, unless the town finds that all bids are unreasonable or that it is not in the interest of the awarding authority to accept any of the bids. He also added that are some irregularities in the next bids, the statute clearly states that minor irregularities in the bids shall not defeat responsiveness and the Attorney General has stated in letters that it is a determination the town will make. Harold Sherman, owner of M&N Marine Construction that also bid on the project did want it stated in an open meeting that he is not the one that made the call to the licensing board. He stated that he knows Magnolia Spring being a new town wants to follow the rules and regulations to make sure everything is done by the proper chain of command, and that being said, his only hesitation moving to the next responsive bidder is based on what’s set forth in the bid documents. The very last thing in the bid documents states, Item G, Instructions to bidders - Required - Bidders qualifications statement and supporting data along with their subs and suppliers. He added whether you classify that as minor or not this is a board walk being built over a wetland and not taking anything away from E&J but do they have the experience to build a walkway over a wetland, I don’t know whether they do or not. It plainly states bidder qualifications statement and supporting data. Council member Underwood asked what if Dyas gets the situation resolved, Brad answered by saying that the Licensing Board did say they could not obtain the license after the fact. Daniel Dyas is hoping that the board will find that the license he has will be acceptable to complete this project and if not, hopefully he can obtain the license before it is put up for bid if the Council chooses to go that way. Mayor Housier stated that there are two choices, award to the next lowest responsive and responsible bidder or rebid the project. Mayor Housier said that Daniel should know before our next meeting what the boards determination is. Will be on the agenda.

7. Discussion – Beer/Wine License Transfer
Mayor Housier stated the Shell Station’s beer/wine license is currently licensed to Kush Petroleum Inc. and the new owners need to transfer the license into the name of MAA Enterprises, LLC. Will be on the agenda.

8. Discussion – Appointment of Library Board Member
Mayor Housier explained that Lisa May’s appointment is expiring and the Library Board is asking the town to reappoint her for another term. Council member Gaar asked the Council Members if they reviewed the material that Alida left, and said it looks like they are losing money every month, they’re spending more than they are taking in and we might want to look at that. Mayor Housier did say that the library will be discussed during the budget discussions. Will be on the agenda.

9. Discussion – Appointment to Historic Preservation Commission
Mayor Housier stated that the Historic Preservation Commission is recommending the appointment of Molly Klaas to fill the unexpired term of David Lawrence. Will be on the agenda.

10. Discussion – Resolutions – Elected without opposition
The clerk explained that the council will need to adopt a resolution for each candidate without opposition. They are Ken Underwood – Mayor, Dorothy Johnson – Place 1, James May – Place 2, Tom Webb – Place 4, and Ben Dykema – Place 5. Will be on the agenda.
11. Discussion – Proposed Budget
Mayor Houser stated that the Finance Committee met and went over a proposed budget that the clerk drafted using revenues and expenses from last fiscal year. Mayor Houser stated that the revenues are a little more than last year’s budget, we increased the sales tax and gas tax revenue a little. Councilmember Holk asked the town council to consider expending some monies for the 4th of July parade, and suggested it come out of Parks and Recreation. Mayor Houser said that on Debt Services we budgeted $23,000 but the balance at this time is about $21,000 and we have another two months. The budgeted amount should only be $18,000, suggested to add the extra $5,000 to Public Works making that budget $71,000. Historic Commission requested $12,000 and the Finance Committee suggested adding $25,000 to the $12,000 for a one time contract to the Community Association. Councilmember Holk suggested adding a special line item, such as Special Projects since this is a one-time project. Mayor Houser discussed the Library line item budget, the Finance Committee raised it from $5,000 to $9,000. The $9,000 would cover the Library’s rent for one year. They have requested more and at some point that number is going to grow. Councilmember Gaar said it appears they are spending more than they are taking in and he added what they are taking in is based on donations only. The clerk will make the change and have a draft for the September workshop.

12. Committee Reports
Finance: No report
Public Safety: No report
Parks & Recreation: No report
Public Works: Councilmember Gaar report that an agreement was signed with R&S Paving to go ahead with the paving on Rose Street and Holly Street using the width on Holly Street as a base line which is 18 feet.
Planning Commission: No report
Historic Preservation Commission: No report
Environmental Committee: Councilmember Odess reported that he had some conversation with Ron Turner and they were under the assumption that the town wanted to move the fence closer to the river on Rock Street. Ron Turner said that they would be interested in resuming settlement discussions and they were all on the same page with respect to where we ended mediation.

13. Council, legal counsel and staff comments
Mayor Houser would like the council to consider changing the meeting days to Monday for the months of September and October.

Motion by Mayor Houser to go into Executive Session to discuss with the town attorney, Brad Hicks, the legal ramifications and 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, 2nd by Councilmember Underwood. Mayor Houser stated the meeting will not reconvene. Roll call vote: Councilmember Holk – Yea, Councilmember Odess – Yea, Mayor Houser – Yea, Councilmember Underwood – Yea, Councilmember Gaar – Yea, and Councilmember Laurendine – Yea.

Motion by Councilmember Gaar, 2nd by Councilmember Holk to adjourn the meeting. All in favor. Motion carried.
Workshop ended at 7:10 pm
Approved this the 24th day of September, 2012

Charles S. Houser – Mayor

Karen S. Biel – Town Clerk