November 21, 2011
Regular Council Meeting
12191 Magnolia Springs Hwy.
Magnolia Springs, Al.
5:00 P.M.

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

2. **Roll Call**
Members present – Mayor Charles S. Houser. Council Members; Rick Odess, Brett Gaar, and Kenny Laurendine. Also present: Town Clerk - Karen S. Biel and Legal Counsel – Brad Hicks
Not present: Council Member Holk
Councilmember Underwood joined the meeting at 5:12 pm.

3. **Invocation and Pledge of Allegiance**
Invocation and Pledge by Councilmember Laurendine

4. **Approval of minutes – 10/10/11 Workshop – 10/24/11 Meeting**
No corrections or additions.
Motion by Councilmember Odess, 2nd by Councilmember Gaar to approve all minutes as presented. All in favor. Motion carried.

5. **Approval of financials and expenditures for 10/2011**
Special Revenue 4, 5, & 7c Gas Tax – Income $341.28 – Balance $3,973.48.
Motion by Councilmember Laurendine, 2nd by Councilmember Odess to approve all financials and expenditures as presented. All in favor. Motion carried.

6. **Public Comment**
No public comment

Mayor Houser stated that he was going to move further down the agenda and not open the public hearing since the property owner was running late.

7. **Contractual Agreement**
Mayor Houser stated that the two agreements on the agenda have been discussed at the workshop and he asked for a motion to approve them.

   a) **Resolution No. 2011-13** – Contractual Agreement with United Way in the amount of $500.00.
   Motion by Councilmember Gaar, 2nd by Councilmember Laurendine to adopt Resolution 2011-13. All in favor. Motion carried.

   b) **Resolution No. 2011-14** – Contractual Agreement with Baldwin County Economic Development Alliance, Inc., in the amount of $500.00.
   Motion by Councilmember Laurendine, 2nd by Councilmember Gaar to adopt Resolution No. 2011-14. All in favor. Motion carried.

8. **Committee recommendations**
**Finance:** Mayor Houser’s stated that Bob Zeanaah attended the committee meeting and is asking each chair person to come up with a list of projects the he could research for grant monies.
**Public Safety:** Chairman absent, but Councilmember Odess talked about some break-ins at Sunset Shores. He stated to Wayne that maybe more patrol cars in the area would help. Wayne said that Sunset Shores is way outside our police jurisdiction but the Sheriffs Department is working the cases.
Councilmember Underwood said with the part-time residents here or the vacant homes if anyone sees anything strange going on in your neighbor’s yards to call the Sheriffs Department.
**Parks & Recreation:** No recommendations
**Public Works:** No recommendations
**Planning Commission:** No recommendations
**Historic Preservation:** No recommendations
**Environmental Protection Committee:** No recommendations
10. Mayor Houser opened the scheduled public hearing at 5:26 pm, on the Rezoning Amendment, Case # Z1004, that was submitted by Barbara Sherman on September 15, 2011. The Planning Commission held a public hearing on October 13, 2011, with a recommendation to the Town Council of approval.

Ed Douglas – who lives at 14413 McCoy Lane stated that he realizes that the property in question has been used for 51 years for a business, but he is opposed to rezoning it from Single Family Residential to B2 – Business for two reasons; one because the property owners are planning on building a warehouse on that property which would diminish the view from my home, which I see junk now, but the trees would be gone. Second reason is there is no guarantee that if they sell the property as to what type of business can go in to there, so I could have a Seven-Eleven or a tattoo shop there, which would diminish the value of the property. I understand they own other property that is already zoned B2 that could be used for the purpose their intending. This diminishes the value of our home that I plan to live in for a very long time. We appreciate the consideration of not rezoning the property – thank you.

Jan Pruitt – is Ed Douglas fiancé and owns the property at 14417 McCoy Lane. She stated that she feels sympathy with the Sherman family for the desire to do what they want to do with their property that they have had for a long time. She also said that she is opposed to the rezoning because if a big warehouse is built it will change the character of the neighborhood, and her hopes for Magnolia Springs is that it will continue to be a beautiful community. She sincerely urged the Council to vote against the rezoning.

Mayor Houser thanked them for their comments. He reminded the Council that they discussed this issue at other meetings and wanted to remind the Council of the options that can be taken;

1. Deny the application
2. Approve the rezoning application as B2
3. Approve B2 with sunset and conditional use (CU) permit: Mayor Houser then asked Christopher Baker to explain this process. Christopher stated that the sunset provision would protect the Town and the surrounding property owners because it would require Mr. Sherman to develop a site plan of what he has now and/or what he might plan to do in the future and go to the Planning Commission as a CU and get approval from that body. In going through that process there would be another public hearing at the Planning Commission level, Mr. Sherman would have to submit a detailed site plan and the Town and all concerned citizens would have the opportunity to see what is proposed. If the CU is approved there would be an envelope that the Sherman’s or anybody else that bought the property would have to operate inside that envelope or they would be in violation of the Town’s ordinance. Mayor Houser asked about the business changing or if new owner no longer wanted to operate a marine construction business, then what would happen. Christopher stated that if they operate outside the box then they are in violation of the ordinance and the Town could take enforcement action. As for the sunset part, if Mr. Sherman does not make application in a time frame determined by the Council, then the B2 automatically goes away. This process is predicated on him turning in a detailed site plan and earning that box of approval from the Planning Commission. Councilmember Underwood asked if the sunset applies to a set time frame for the site plan submittal and Christopher answered yes. Councilmember Laurendine asked how specific can the CU (conditional use) be and Christopher said very specific because the point is to mitigate the impact to the adjacent property owners and the neighborhood. Councilmember Underwood asked is the CU is approved by the Planning Commission and that the Town Council has no authority with the CU and Christopher answered yes.

4. Applicant can be withdraw the application
5. Deny the application and instruct him to go for a Special Exception to the Board of Adjustment.

Legal Counsel, Brad Hicks stated that in researching and speaking to the League of Municipalities another avenue that Mr. Sherman could take was to apply to the BOA for a special exception, which allows the BOA under the prescribed standards and procedures – authorized construction or a land-use that is expressly permitted as a special exception in a particular zoning district. Mayor Houser went on to say that the first thing the Council would have to do is deny the rezoning application, and then the Council would have to amend the zoning ordinance to include a special exception to the R2 zoning district, to include a home-run marine construction business. Brad Hicks stated that after the Council created the special exception then Mr. Sherman could apply to the BOA for the Special Exception. Brad stated that it’s not as specific with a site plan control as is the CU, but you’re not rezoning the property, and Special Exceptions are only tied to the use of the property. Councilmember Laurendine stated if a special exception was created that would be for all properties in the R2 district and if it was the rezoning and CU process that would be for this one particular property that is a major difference to me.
Mr. Sherman joined the public hearing at this point. He stated that when he went to the Planning and Zoning they approved a recommendation to the Council and his neighbors concerns were what the future would bring to a B2 zoned property, and he thought he addressed their concerns at that time. At the Council workshop, Christopher Baker explained that if the Council was to approve the rezoning it would not be rezoned till the Mayor signed the ordinance, after Mr. Sherman goes back to the Planning Commission and makes a request for a conditional use. Should he want to build a new building, then he would have to go back to the Planning Commission with a site plan that would include engineered drawings, landscaping, parking etc., for an amended conditional use and at that time there is a time set for public comment. Mayor Houser agreed but added that with the sunset provision it would set a specific time frame for the Sherman’s to submit the CU request. Christopher stated to Mr. Sherman that it sounds like you are not ready to build your building and what you are trying to do now is to get the use of the property brought into come kind of conformance, and that would be the CU for now. Subsequent to that the sunset provision is if that process is approved that you would have a specified time frame to come and make that conditional use application. Mr. Sherman asked what that time frame is and Christopher said that has not been decided. Mr. Sherman stated that 5-6 years ago when the land-use certificate was issued and there would have been a building there today if we hadn’t gone into this economic crisis. He added that he doesn’t want the town to say if you don’t build the building within one year then it all goes away and I have to go through this process again. He went on to say that he feels that his neighbors concerns have been addressed with the conditional use. The Planning Commission feels that the two step process that Christopher recommended, a rezone to come in conformity for a business rather than being nonconforming, and a conditional use had to be approved strictly for that type of business would be the way to go. He added that registered letters had been sent out to his knowledge there was no other opposition to the rezoning, other that the same two neighbors. He said that if I have met the guidelines set forth by the planning person for the town, I have satisfied my neighbors concerns, I was told to go to the Planning Commission and they made a recommendation in favor of, I don’t see how there can be any other opposition to what my request is in this property, because we live in a democratic society and I believe that we have satisfied the concerns of every body. Mr. Douglas stated that his concern was what type of structure that Mr. Sherman might put on the property and Mr. Sherman stated that they didn’t know either and that it will have to go back before the Planning Commission for approval and at that time, Mr. Douglas will have opportunity to review those plans at a public hearing. Mr. Sherman stated that I was told by Mayor Houser, Councilmember Holk and Karen Biel, Town Clerk, that a special exception would not address my situation and according to the planner, he made the suggestion to rezone and that is what I went forward and did. Christopher Baker stated at the time of the application the only procedure that would allow him to move forward was to rezone the property with a CU because there was no special exception at this time. If the Council elects to amend the Zoning Ordinance to include the Special Exception, that then allows for another procedure for Mr. Sherman to utilize. Mayor Houser said that the basic difference is, one has a rezoning issue to it and the other does not. Brad Hicks added that technically rezoning is amending the ordinance to. Mr. Sherman stated that I am going through the current process, as it exits now, which I was guided to do, I am not the attorney, I am not the planner or the council, but common sense tell me, that as the rules are set forth today, if the property is rezoned and two months down the road his neighbor want to rezone, he would have to go through the same process that I went through. Mr. Sherman added that it looks like to me rather than changing the ordinance and making a special exception for a family owned and operated business of this age, that it is on that piece of property sets a larger precedent then following the rules and regulations as they are today, for someone to come back and say you made a special exception for the Sherman’s, why aren’t you doing to do it for me. Mayor Houser said that could be the case with either process. Brad Hicks stated that the special exception does not apply to just the Sherman’s, it is a permanent amendment to the zoning ordinance it is a special exception to R1 in the Town of Magnolia Springs. Mr. Sherman said that if the two neighbors that are in opposition are satisfied by the conditional use, that before I can change anything structural wise or if there is anything out on the property that would endanger your property values or your quality of life on that piece of property with the CU in B2 zoning, if your satisfied, then we shouldn’t have anything else to talk about, because there are no other complaints. Brad Hicks stated that we’re talking about different means to the same end, so we’re thinking about how it just applies to the Sherman’s, but how it applies to the Town going forward, it’s two different paths that the Council has the duty to consider, and which one is the best path to go down. Mr. Sherman stated his concern is that this meeting is the first conversation that he has had about a special exception and Brad Hicks said this is the first time it’s been brought up after talking with the Mayor about it. Mr. Sherman stated that he doesn’t care how we get there, as long as we get there and two things don’t happen, number one, is that he is not put in a box with a time frame during this economy and not meet that and have to go through this process again and go through the time laps that this has taken to get to this point tonight, and number two, if the special exception puts him in another box with another scenario where he has to write more checks to get to this
same point we are here tonight, bottom line is if these two people are satisfied or not. Brad Hicks stated that is not the bottom line, it is what is best for the Town. Mayor Houser stated that either way this is not about Harold Sherman, it is about a process on how we handle these situations going forward, and if we rezone, that is permanent and there is no do over. Mr. Sherman asked who makes the decision on the special exception. Brad Hicks stated that the Town Council would have to amend the zoning ordinance to create a special exception that is tied to R2 that would be a special exception for a building and use of a property of a pre-existing construction business, which would be tailored to be some what narrow and focused. After the special exception is created by the Council then the applicant makes application to take advantage of that special exception to the Board of Adjustments. Mr. Sherman stated this is a public hearing and that from M&N of Alabama’s stand point and Harold Sherman’s stand point I am not in favor of a special exception and I am in favor of the rezoning of the property with the conditions to go back to the Planning Commission, I have already been that route and do not want to have to go through some body else. I do not have a problem with the sunset provision as long as we can come to some kind of an agreement as to the time frame of that sunset provision, and it will still be a step by step process I go to change anything on the property.

Mayor Houser called for a short break at 6:30 pm. Meeting reconvened at 6:40 pm.
Mayor Houser went over the seven options (listed above) again with the Town Council.

Mayor Houser closed the public hearing at 6:45 pm.
Councilmember Odess asked about the sunset time frame, who determines that and at what point. Christopher Baker stated that the Council sets the time frame and when it starts. Councilmember Underwood stated that he did know what advantage it is to anybody to change the zoning, it’s an R2 with a grandfathered use and it could be that way for another 151 years, it doesn’t change anything. There’s no limit on the amount of equipment he has there, but with R2 if the use ceases then it can no longer be used for a business, so I don’t see what the advantage it is for the Town or neighborhood to change it to B2. Councilmember Laurendine stated that it seems like at some point in time he wants to change it, but wants to get the rezoning done now. Mayor Houser reminded the Council that they only need to think about the rezoning, not what Mr. Sherman might do in the future. Mr. Sherman stated the reason for applying now is because there is a specific set of rules and guidelines that we have and a council in place now, I don’t know what the future is going to bring for Magnolia Springs on the changing or modifying the rules and regulations and I know what I’m dealing with today and I want to get this done. When it comes time to modify the structure on the property then I will address those issues at that time. Christopher Baker stated the only reason that B2 is on the table for rezoning; it is the only way currently by the regulatory document to consider the request, with the special exception the Council has to create that avenue. Councilmember Laurendine stated that the Council does not have to vote on the ordinance tonight it could be a first reading. Mayor Houser stated that he would like to table the application till the next meeting because he would like to research the options further. He added that there are strong pros and cons with both processes and he is not in favor of rezoning but at this time it is the only way to address this issue or to deny the application.

Motion by Mayor Houser, 2nd by Councilmember Gaar to table the consideration of Rezoning Ordinance 2011-01 till the next regularly scheduled council meeting.

Discussion: Councilmember Underwood stated we need to do it right because we will be setting precedence for the future. Councilmember Gaar stated that he was not in favor of creating a new district because we have been down that road before when we were redoing the zoning ordinance, and the Council wanted to create a PUD and there was a lot of opposition to that. Mayor Houser called for a vote.

All in favor. Motion carried.

11. Council, legal counsel and staff comments
An executive session was suggested by legal counsel.

Motion by Mayor Houser, 2nd by Councilmember Underwood to convene into executive session to discuss with the attorney legal ramifications and legal options for pending litigation, controversies not yet being litigated but imminently likely to be litigated if the governmental body pursues a proposed course of action. Brad Hicks, legal counsel stated that he is attorney licensed to practice law in the State of Alabama which is applicable to the planned discussion. Roll call vote: Councilmember Odess – Aye, Mayor Houser – Aye, Councilmember Underwood – Aye, Councilmember Gaar – Aye, and Councilmember Laurendine – Aye. Motion carried.

Mayor Houser stated the meeting will not reconvene.

With no other business:
Mayor Houser adjourned the meeting at 7:00
Approved this the 13th day of December, 2011

ATTEST:

Charles S. Houser – Mayor
Karen S. Biel – Town Clerk