

be performed under this agreement. The person designated as Representative shall have complete authority to transmit instructions and to receive information with respect to the work covered by this agreement.

- 3.8 The OWNER shall provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project. The OWNER shall also provide such legal services as the OWNER may require or the ENGINEER may reasonably request with regard to legal issues pertaining to the Project that must be resolved in order for the ENGINEER to carry out its obligations under this Agreement. It is expressly understood and agreed that the ENGINEER itself shall not furnish or render any legal opinions or legal interpretations as to matters of law or application of law.
- 3.9 The OWNER agrees to pay ENGINEER the Additional Services as may be required for the Project, as outlined in this agreement.
- 3.10 Be the Applicant for all permits and environmental clearances necessary to construct the Project and pay for any and all regulatory permitting and application fees.
- 3.11 Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings and Substantial Completion and final payment inspections. Routinely perform site visits to observe the progress and quality of the various aspects of contractor's work and to determine, in general, if such work is proceeding in accordance with the OWNER's requirements of the Project.

ARTICLE 4. Compensation

- 4.1 The OWNER agrees to pay to the ENGINEER the following fees which shall be paid in monthly installments as work progresses:
- 4.2 For the Preliminary Design Phase and the Final Design and the Bidding Phase, the OWNER will pay ENGINEER a lump sum fee of \$190,000.
- 4.3 For the Construction Phase, the OWNER will pay ENGINEER a lump sum fee of \$72,000.
- 4.4 For Geotechnical Borings and Report during the Design Phase, the OWNER will pay ENGINEER a lump sum fee of \$5,000. The fees shall be paid in monthly installments as work progresses.
- 4.5 For Geotechnical Engineering and Materials Testing Services during the Construction Phase, the OWNER will pay ENGINEER a fee based upon the attached Geotechnical Rate & Fee Schedule. A budget will be established in the amount of \$10,000. The ENGINEER shall not exceed this budget without prior approval from the OWNER. The fees shall be paid in monthly installments as work progresses.
- 4.6 For Stormwater Permitting costs, which include permit and BMP preparation, permit transfer, permit termination and monthly inspections, the OWNER will pay ENGINEER a fee based upon the attached GM&C Standard Rate & Fee Schedule and the fee will be included as a cash allowance in the construction contract.
- 4.7 For easement and deed surveys and preparation, if needed, the OWNER will pay ENGINEER a fee based upon the attached GM&C Standard Rate & Fee Schedule. The fees shall be paid in monthly installments as work progresses. Note: No costs are anticipated.
- 4.8 For engineering controls and construction staking costs, which include alignment, grade and benchmark control staking, the OWNER will pay ENGINEER a fee based upon the attached GM&C Standard Rate & Fee Schedule and the fee will be included as a cash allowance in the construction contract.



- 4.9 For environmental and regulatory permitting in accordance with Article 2, the OWNER will pay ENGINEER a fee based upon the attached GM&C Standard Rate & Fee Schedule. The fees shall be paid in monthly installments as work progresses. Note: No costs are anticipated.
- 4.10 Omit
- 4.11 The OWNER may, from time to time, request changes in the scope of the services of the ENGINEER to be performed hereunder. Such changes, including any increase or decrease in the amount of ENGINEER's compensation, that are mutually agreed upon by the OWNER and the ENGINEER, shall be incorporated in written amendments to this Agreement.
- 4.12 If the period of service for construction observation or for engineering services during construction is extended due to time extensions or time overruns to the construction contract, compensation for these additional construction observation and Engineering services during the extended Period of Service shall be at the rates shown in the GM&C Standard Rate & Fee Schedule. The OWNER and ENGINEER will mutually agree upon the level of additional construction observation at the time of such occurrence.
- 4.13 OWNER shall reimburse ENGINEER for all costs incurred for the OWNER's direct instruction to rebid the project at the rates shown in the GM&C Standard Rate & Fee Schedule.
- 4.14 Compensation for services performed by ENGINEER's employees as witnesses giving testimony in any litigation, arbitration or administrative proceeding shall be paid by OWNER at a rate of two times the ENGINEER's standard hourly rates. Whenever ENGINEER's bill to OWNER includes charges for ENGINEER's consultants for such services, those charges shall be the amounts billed by ENGINEER's consultant to ENGINEER times a factor of two.
- 4.14 Invoices are due and payable within 30 days of receipt. If OWNER fails to make any payment due ENGINEER for services and expenses within 30 days after receipt of ENGINEER's invoice therefore, the amounts due ENGINEER will be increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

ARTICLE 5. Relationship of the Parties

- 5.1 The parties intend that this Agreement create an independent contractor relationship between them. The ENGINEER is a professional corporation and is not an agent or employee of OWNER for any purpose. The ENGINEER cannot and will not represent that he has the authority to bind OWNER in any contractual manner. Nevertheless, with regard to the bidding and construction phases, it is understood that ENGINEER may serve as the OWNER's representative with full authority to participate therein as designated in Article 1, above. Moreover, OWNER agrees to defend and hold ENGINEER, its employees, directors, officers and agents, harmless from any and all claims, suits, damages and expenses, including but not limited to attorneys fees, resulting from or based upon ENGINEER's actions as OWNER's representative.
- 5.2 Neither party is to represent to others that the relationship between them is other than as stated above.
- 5.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the OWNER and the ENGINEER, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the OWNER and the ENGINEER and not for the benefit of any other party.



- 5.4 The OWNER and the ENGINEER each is hereby bound and the partners, successors, executors, administrators, legal representatives and assigns (to the extent permitted by Paragraph 6.5 below) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, legal representatives and said assigns of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- 5.5 Neither the OWNER nor the ENGINEER shall assign, sublet or transfer any rights under or interest in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent the ENGINEER from employing such independent professional associates, consultants, subcontractors, and vendors as the ENGINEER may deem appropriate to assist in the performance of services hereunder.
- 5.6 ENGINEER may employ such independent professional associates, consultants, subcontractors, and vendors as the ENGINEER may deem appropriate to assist in the performance or furnishing of services under this Agreement. ENGINEER shall not be required to employ any consultant unacceptable to ENGINEER.

ARTICLE 6. Ownership and Use of Project Documents

- 6.1 All documents are instruments of service in respect to the Services, and ENGINEER shall retain an ownership and proprietary property interest therein (including the right of reuse at the discretion of the ENGINEER) whether or not the Services are completed.
- 6.2 Copies of documents that may be relied on by OWNER are limited to the printed copies (also known as hard copies) that are signed or sealed by the ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by ENGINEER to OWNER are only for convenience of OWNER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
- 6.3 OWNER may make and retain copies of documents for information and reference in connection with the services by OWNER. Such documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the services or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's consultants. OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's consultants from all claims, damages, and expenses including attorneys' fees arising out of or resulting therefrom.
- 6.4 In the event of a discrepancy between the electronic files and the hard copies, the hard copies govern.
- 6.5 Any verification or adaptation of the documents for extensions of the services or for any other services will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

ARTICLE 7. Liability and Indemnity

- 7.1 The ENGINEER will not be responsible for delays, disruptions or obstacles attributable to acts of God, acts of third parties, weather, intervention of public authorities, work stoppages, changes in the applicable laws or regulations after the date of commencement of performance hereunder and any other acts or omissions or events which are beyond the control of the ENGINEER.



- 7.2 OWNER may not utilize ENGINEER's construction cost estimate after thirty calendar days from the date of delivery to OWNER without ENGINEER's written consent. Estimates of cost are made on the basis of the ENGINEER's experience, qualifications, and professional judgment, but since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee or warrant that proposals, bids or actual construction costs will not vary from estimates of probable costs prepared by ENGINEER. Approvals, recommendations, estimates and decisions by the ENGINEER are made on the basis of the ENGINEER's experience, qualifications, and professional judgment and are not to be construed as warranties or guarantees.
- 7.3 Notwithstanding any other provision of this Agreement, the ENGINEER's total liability to the OWNER for any loss or damages from claims arising out of or in connection with this Agreement from any cause including the ENGINEER's strict liability, breach of contract, or professional negligence, errors and omissions (whether claimed in tort, contract, strict liability, nuisance, by statute or otherwise) shall not exceed the lesser of the total contract price of this Agreement or the proceeds paid under ENGINEER's liability insurance in effect at the time such claims are made. The OWNER hereby releases the ENGINEER from any liability exceeding such amount. In no event shall either party to this Agreement be liable to the other for special, indirect, incidental or consequential damages, whether or not such damages were foreseeable at the time of the commencement of the work under this Agreement.
- 7.4 Any and all liability resulting from conditions not created or caused to be created by the ENGINEER shall be the liability of the OWNER. Any and all liability that may arise from the construction, ownership and/or operation of the improvements is solely the responsibility of the OWNER, and the OWNER hereby agrees to indemnify and hold the ENGINEER harmless from such liability, claims, actions, loss or damage, including but not limited to attorney's fees, arising therefrom.

ARTICLE 8. Termination

- 8.1 This Agreement shall be subject to termination by either party hereto, with or without cause, upon twenty (20) days advance notice in writing. Payment due ENGINEER at such time shall be computed upon applicable terms of Article 4, the amount of work completed or in progress as of the termination date and ENGINEER's reasonable cost of winding down its services after termination.

ARTICLE 9. Binding Arbitration

- 9.1 The parties shall settle any dispute arising out of this Agreement by arbitration in Montgomery, Alabama. A single arbitrator shall be selected by the American Arbitration Association to conduct the arbitration. The arbitration will be conducted pursuant to the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. Judgment may be entered by any court having jurisdiction. The written award and any findings of the arbitrator must be filed within thirty (30) days after the final arbitration hearing. The parties agree that the Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision. If any court or finder of fact finds this arbitration provision to be unenforceable, the parties hereby waive all rights of trial by jury in any court in any action for the adjudication of such claims or disputes.



ARTICLE 10. Miscellaneous

- 10.1 This Agreement represents the entire and integrated Agreement between the OWNER and ENGINEER and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement may only be amended, supplemented or modified by written instrument executed by both the OWNER and the ENGINEER.
- 10.2 It is understood and agreed by the parties hereto, that if any part, term or provision of this Agreement is held by any court of competent jurisdiction to be illegal or in conflict with any applicable law, the validity of the remaining portion or portions of this Agreement shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.
- 10.3 It is expressly understood and agreed that the indemnity and insurance obligations of this Agreement, as well as the ENGINEER's proprietary interest in its Engineering plans and specifications, shall survive the termination of this Agreement under Article 8 above as well as the completion of services under this Agreement.
- 10.4 The laws of the State of Alabama govern all matters arising under this Agreement except the Federal Arbitration Act shall govern the arbitration provision.

WHEREFORE, the undersigned, by their signatures, certify that they have carefully read this Agreement, understand the terms and conditions contained herein, have proper authority to execute this Agreement, and do so as their own free act.

OWNER:

ENGINEER:

THE CITY OF GAUTIER, MISSISSIPPI

GOODWYN, MILLS & CAWOOD, INC.

By: _____
Hon. Tommy Fortenberry

By: _____
Chad N. Jordan, PE

Title: _____
Mayor

Title: _____
Project Manager

Attest:

Attest:



2012
Goodwyn, Mills & Cawood, Inc.
Standard Rate and Fee Schedule

Hourly Rates

<u>Classification</u>	<u>Rate/ hour</u>
Principal	\$225.00
Senior Engineer	\$170.00
Engineer I/Hydrogeologist	\$150.00
Engineer II/Land Surveyor/Ecologist	\$130.00
Engineer Intern I/Geologist/Biologist/Ecologist	\$110.00
Engineer Intern II/Geologist/Biologist	\$95.00
CADD Technical I	\$90.00
CADD Technical II	\$75.00
CADD Technical III	\$65.00
Construction Administration	\$110.00
Administrative	\$ 65.00
Surveying:	
Party Chief	\$75.00
Survey Crew (two-man survey crew)	\$100.00
Survey Crew (three-man survey crew)	\$135.00
Survey Crew (four-man survey crew)	\$145.00

Reimbursable Expenses

Vehicle Transport	\$0.46 per mile
Travel/Meals/Hotel	Cost plus twenty percent
Subcontractors	Cost plus twenty percent
Blueprints and Xeroxes (outside)	Cost plus twenty percent
Blueprints and Xeroxes (in-house)	\$.16 per sf
Other Reprographics	Cost plus twenty percent
Film and Development	Cost plus twenty percent
Digital Photography	\$.50 per image
Fax incoming and outgoing	No charge
Overnight mail, regular mail & shipping	Cost plus twenty percent
Telephone (toll charges)	Cost plus twenty percent
CAD translations	\$27.50 per file
CAD plots (outside)	Cost plus twenty percent
CAD plots (in-house)	
A-Size (8.5x11)	\$1.25
B-Size (11x17)	\$3.50
C-Size (17x22)	\$7.80
D-Size (22x34 or 24x36)	\$18.00
E-Size (30x42)	\$27.50
Color Laser Prints (in-house)	
A-Size (8.5x11)	\$2.00
B-Size 11x17)	\$4.00
GPS equipment	\$240.00 per day

Stormwater Permitting

Preparation of Permit and BMP Plan	\$1,000
Permit Transfer	\$375
Permit Extension	\$375
Site Inspection and Reporting	\$300 per visit
Permit Termination	\$250

**2012 SCHEDULE OF FEES
GEOTECHNICAL SERVICES**

Drilling Services

Mobilization of Drilling Equipment, per rig, lump sum.....	\$ 200.00
Mileage above 50 miles from office, per mile.....	\$ 2.50
Furnish adverse terrain vehicle (ATV), if required by site conditions, per day.....	\$ 300.00
Soil Test Boring, including Standard Penetration Test	
0-50 ft., per linear foot.....	\$ 10.00
50-100 ft, per liner foot.....	\$ 12.00
Auger Boring without sampling, per foot.....	\$ 7.00
Time rate drilling, drilling through concrete or rubble, difficult moving on site, or delay time, per hour.....	\$ 175.00
Bulk Samples from borings, each.....	\$ 35.00
Undisturbed Samples, each.....	\$ 75.00
Drill crew per diem, per crew day	
2-man crew.....	\$ 200.00
3-man crew.....	\$ 250.00
Observation well installation, 1.5 to 2" diameter PVC, per linear foot.....	\$ 10.00
Water truck, per hour.....	\$ 175.00
Rock coring (NX or NQ), per linear foot.....	\$ 45.00
Set-up charge for rock coring, per boring.....	\$ 125.00
Temporary casing, per linear foot.....	\$ 9.50

Laboratory Testing

Standard Proctor, ASTM D698/ AASHTO T99, per test.....	\$ 100.00
Modified Proctor, ASTM D1557/ AASHTO T180, per test.....	\$ 125.00
Atterberg Limits Testing, ASTM D4318, per test.....	\$ 75.00
Grain Size Analysis (without Hydrometer), ASTM D422/ AASHTO T88, per test.....	\$ 75.00
Grain Size Analysis by Hydrometer, ASTM D422/ AASHTO T88, per test.....	\$ 150.00
Percent Finer than No. 200 Sieve, ASTM D1140, per test.....	\$ 65.00
Moisture Content, ASTM D2216, per test.....	\$ 10.00
Permeability Test, ASTM D5084, per test.....	\$ 300.00
Triaxial Shear Test (CU w/ pore pressure), ASTM D4767, per test.....	\$ 850.00
Triaxial Shear Test (UU), ASTM D2850, per test.....	\$ 400.00
Consolidation Test, ASTM D2435, per test.....	\$ 450.00
Resilient Modulus, AASHTO T-307, per test.....	\$ 400.00
Sample Preparation or Remolding, per sample.....	\$ 50.00

Personnel

Staff Professional, per hour.....	\$ 80.00
Project Manager, per hour.....	\$ 90.00
Project Engineer, P.E., per hour.....	\$ 120.00
Senior Engineer, P.E. / Division Manager, per hour.....	\$ 160.00
Word Processing, per hour.....	\$ 40.00
Senior Engineering Technician, per hour.....	\$ 55.00
Engineering Technician, per hour.....	\$ 45.00
Structural Steel Inspector, CWI, per hour.....	\$ 95.00
Laboratory Manager, per hour.....	\$ 75.00

Other

Mileage, company truck or personal vehicle, per mile.....	\$ 0.50
Per diem, per man, per day.....	\$ 125.00
Supplies or subcontractor mark-up, job related.....	Cost plus 20%
Technician Overtime Premium (for work on holidays, weekends, or before or after normal 8a.m - 5p.m. Monday - Friday business hours).....	Hourly rate x 1.5
Technician Overtime Premium (for work on Holidays and Sunday).....	Hourly rate x 2.0

All Hourly charges and mileage charges are portal-to-portal
Rates effective through December 31, 2012, unless otherwise agreed upon



2012 SCHEDULE OF FEES
CONSTRUCTION SERVICES

Laboratory Testing

Standard Proctor, ASTM D698/ AASHTO T99, per test	\$ 100.00
Modified Proctor, ASTM D1557/ AASHTO T180, per test	\$ 125.00
Atterberg Limits Testing, ASTM D4318/ AASHTO T89 & T90, per test.....	\$ 75.00
Grain Size Analysis (without Hydrometer), ASTM D422/ AASHTO T88, per test.....	\$ 75.00
Grain Size Analysis by Hydrometer, ASTM D422/ AASHTO T88, per test.....	\$ 150.00
Percent Finer than No. 200 Sieve, ASTM D1140, per test.....	\$ 65.00
Moisture Content, ASTM D2216/ AASHTO T265, per test	\$ 10.00
Specific Gravity of Soil, ASTM D854/ AASHTO T100	\$ 75.00
Sample Preparation or Remolding, per sample	\$ 50.00
Compressive Strength Testing of Concrete Cylinder, each.....	\$ 10.00
Compressive Strength Testing of Masonry Grout Prism, each.....	\$ 15.00

Personnel

Staff Professional, per hour	\$ 80.00
Project Manager, per hour	\$ 90.00
Project Engineer, P.E, per hour	\$ 120.00
Senior Engineer, P.E. / Division Manager, per hour	\$ 160.00
Word Processing, per hour	\$ 40.00
Senior Engineering Technician, per hour	\$ 55.00
Engineering Technician, per hour	\$ 45.00
Structural Steel Inspector, CWI, per hour.....	\$ 95.00
Laboratory Manager, per hour.....	\$ 75.00

Other

Mileage, company truck or personal vehicle, per mile.....	\$ 0.50
Per Diem, per man, per day	\$125.00
Equipment Charge, testing equipment and vehicle, per day.....	\$ 30.00
Supplies or subcontractor mark-up, job related.....	Cost plus 20%
Technician Overtime Premium (on or before or after normal 8a.m - 5p.m.	Hourly rate x 1.5
Monday - Friday business hours and Saturday).....	Hourly rate x 2.0
Technician Overtime Premium (for work on Holidays and Sunday)	Hourly rate x 2.0

Notes:

All hourly and mileage charges are portal-to-portal. A minimum of 1/2 hour per day will be invoiced for Project Manager/Engineer review time and 1/2 hour per day will be invoiced for report preparation or word processing. Project setup charge of 3 hours of Project Management time will be charged at the beginning of the project. Rates are effective through the completion of the project or December 31, 2012, unless otherwise agreed upon.



Public Hearing was conducted for a subdivision preliminary plat and a development Order for Cypress Landing.

Councilman Gollot recused himself from this agenda discussion.

Motion was made by Councilman Colledge to deny a subdivision preliminary plat and a development Order for Cypress Landing according to Unified Development Ordinance section 4.1.8. (Section listed below)

4.1.8 Major Developments

The following procedures, in addition to those listed in Section 4.5, shall apply to all major development order applications:

A. The Technical Review Committee (TRC) shall review the proposal and submit comments, if any, in writing to the Chairman of the Committee. Once the TRC has come to the conclusion that the proposal can be approved, approved with conditions, approved with modifications or denied, the Chairman shall forward each TRC members written recommendation through the City Manager to the Planning Commission and City Council. In addition to the written recommendations of each TRC member, information provided to the Planning Commission and City Council shall include, but not be limited to, the following:

Unified Development Ordinance 12.07.10

1. Characteristics of the site and surrounding area, including important natural and manmade features, the size and accessibility of the site and surrounding land uses.
 2. Impact on concurrency requirements and level of service standards (LOS).
 3. The nature of the proposed development, including land use types and densities; the placement of proposed buildings and other improvements on the site; the location, type and method of maintenance of open space and public use areas, if any; the preservation of natural features or protection of sensitive lands, if any; proposed parking areas; internal traffic circulation systems, if any; the approximate total ground coverage of paved areas and structures; stormwater management, and water and sewage distribution, collection and treatment systems.
 4. Conformity of the proposed development with the Comprehensive Plan, this Code and other applicable regulations.
 5. Other applicable factors, rules, regulations or criteria prescribed by the Comprehensive Plan, this Code or other law.
- B. Following the required public notice and hearing, the City Council shall either approve, approve with conditions, approve with modifications or deny the Technical Review Committee's recommendation and shall:

1. Determine conformity of the proposed development with the Comprehensive Plan, this Code, other applicable requirements and the items enumerated in (A) above.
2. Hear and address concerns and desires of surrounding landowners and other affected persons.
3. Consider any rule, objective or policy of the Comprehensive Plan or any other criterion applicable to the particular development proposals in formulating its recommendation to either approve or deny the development proposal.
4. If the proposal is approved or approved with conditions, the City Council shall instruct the City Manager, or designee, to authorize the issuance of a development order that complies with Section 4.1.
5. If the proposal is approved with modifications, a development order may be authorized by the City Manager, or his designee, once the required modifications have been completed and approved by the appropriate TRC members.
6. If the proposal is denied based upon the applicant's failure to meet the requirements of this Code in the proposed development plan(s), the application will become null and void, the applicant will lose in-line priority consideration for concurrency. The applicant will have to submit a new application and start the review process over in order to secure consideration for approval of the proposal.

Motion was seconded by Mayor Fortenberry and the following vote was recorded:

AYES: Tommy Fortenberry
Johnny Jones
Hurley Ray Guillotte
Mary Martin
Scott Macfarland
Adam Colledge

NAYS: None

ABSENT: Gordon Gollott

Motion passed.

CITY OF GAUTIER
STAFF MEMORANDUM

To: Sidney Runnels, City Manager
From: Babs Logan, Planning Technician
Thru: Samantha D. Abell, Planning and Economic Development Director
Date: September 12, 2011
Subject: GPC Case #11-11-SD. Consideration of Subdivision Preliminary Plat Approval for Cypress Landing, a Subdivision Comprising ±17 Acres. Bob Diamond, P.E. Agent for Owner, Silvergirl LLC.

REQUEST:

The applicant, Silvergirl LLC, is proposing to divide two parcels into a 30-lot subdivision. The application was submitted on April 4, 2011 and application fee on April 7, 2011.

The application was determined to be a Major Development Plan and as such was processed in accordance with UDO Section 4.1.8 for major developments, Section 4.6. and 4.7 for preliminary approval, and Article X for required utilities and improvement for subdivisions.

The site will be served by public water and sewer, and is comprised of two parcels containing 15.67 acres and 1.62 acres, located east of Ferry Point Road and north of Fairway Drive. The property is zoned R-1 Single Family Residential.

BACKGROUND:

The Planning Commission continued this request from their June 16th 2011 special meeting until their regular meeting on September 1st 2011. The Planning Commission requested the applicant provide a traffic study for consideration with their application. The applicant provided the traffic study to Staff on August 26, 2011 and the study is attached.

The City Council granted approval of the proposed subdivision November 2008. Subsequently, the original developer, Trinity Development, absconded and the owner pursued litigation so that Silvergirl LLC now owns all of Cypress Landing Subdivision. Due to the time incurred for the litigation, the infrastructure was not completed subsequent to preliminary plat approval, the 2-year timeframe expired, and no final plat was submitted for approval.

Silvergirl LLC desires to continue with subdivision development and therefore, has submitted the attached preliminary plat for approval, which is substantially unchanged from the original submittal approved by City Council November 2008.

DISCUSSION:

The Technical Review Committee met to review the proposed preliminary plat on April 28th and May 16th. Attached to the Staff Report are memos from TRC staff members submitted to the ED Director. All comments from TRC members have been satisfied by the owner’s engineer at this time. The TRC deems the request technically sufficient for Planning Commission review.

Section 4.1.8 Major Developments, established that the Technical Review Committee (TRC) shall review the proposal and submit comments, if any, in writing to the Chairman of the Committee. Once the TRC has come to the conclusion that the proposal can be approved, approved with conditions, approved with modifications or denied, the Chairman shall forward each TRC members written recommendation through the City Manager to the Planning Commission and City Council. In addition to the written recommendations of each TRC member, information provided to the Planning Commission and City Council shall include, but not be limited to, the following:

1. Characteristics of the site and surrounding area, including important natural and manmade features, the size and accessibility of the site and surrounding land uses.

Analysis:

	Current Land Use	Zoning District
North	Single Family Residential and pond, (possible wetlands)	R-1 Low Density Residential,
South	Single Family Residential	R-1 Low Density Residential
East	Vacant (possible wetlands)	R-1 Low Density Residential
West	Ferry Point Road, Single Family Residential, and a pond	R-1 Low Density Residential

Total area of developable lots: 15 acres. Estimated total maximum impervious service: 5.2 acres—from paved road plus 25% of developable lots.

The majority of the land is upland pine plantation. The northern portions of lots 17, 18 and 19 are wetlands and are clearly identified as such on the subdivision plat.

2. Impact on concurrency requirements and level of service standards (LOS).

Analysis:

The City has adequate levels of service for the proposed subdivision, including fire and police. The value and desirability of the subdivision will be protected by Covenants and Restrictions and Architectural Standards (see attached).

Initial utility construction will require only the clearing of Lot A (0.06 acres) which is designated to be released to the City of Gautier as part of the utility Right of Way. All other utility Rights of way have been cleared as part of prior development.

3. The nature of the proposed development, including land use types and densities; the placement of proposed buildings and other improvements on the site; the location, type and method of maintenance of open space and public use areas, if any; the preservation of natural features or protection of sensitive lands, if any; proposed parking areas; internal traffic circulation systems, if any; the approximate total ground coverage of paved areas and structures; stormwater management, and water and sewage distribution, collection and treatment systems.

Analysis:

The existing property is wooded. The applicant proposes to build a road in the center of the "L" shaped property and create 30 new R-1 residential lots on both sides of the new road. The owner has an agreement with an adjacent property owner to provide access to the property to the east of this parcel. (A gravel drive was completed subsequent to the 2008 preliminary plat approval). An existing 30-ft wide drainage easement will be maintained from the Magnolia Bluff Subdivision through this property. No recreational facilities are proposed at this time.

The south section of this land adjacent to the Magnolia Bluff Subdivision is level and the lots will accommodate construction of new homes. At the north section of the property there are wetlands. The lots have been made larger at the north end to provide areas for the house to be built outside the wetlands area. There are no protected trees on the land. However, the owner plans to save as many of the trees as possible to provide a buffer with the adjacent properties.

4. Conformity of the proposed development with the Comprehensive Plan, this Code and other applicable regulations.

Analysis:

The UDO requires the following setbacks and density for the R-1 zoning district: Minimum lot area of 9,600 square feet. Front setbacks 25', Side setbacks 10', Rear setbacks 25', and minimum living area 1,325 S.F. The development conforms with the requirements of the UDO and zoning district, and furthermore proposes to build to a minimum of 1600 S.F. (See 12 attached building plans in applicant's application.)

The existing zoning district does not comply with the City's Comprehensive Plan. The Comprehensive Plan, adopted September 2009, reflects a new land designation called RE Residential Estate on the Future Land Use Map. The RE designation would require a minimum of one acre per single family dwelling, and a minimum living area of 1,800 square feet.

5. Other applicable factors, rules, regulations or criteria prescribed by the Comprehensive Plan, this Code or other law.

Further Analysis of the Comprehensive Plan:

In order to identify specific needs and appropriate intervention strategy, residential neighborhoods in Gautier have been placed in 4 categories within the Comprehensive Plan. The proposed subdivision is located within a category of "Reserve". The Plan states: "Reserve: Areas which are natural habitat, wetlands, or areas which are to be preserved in their natural state and are primarily without manmade buildings.

The proposed subdivision would develop approximately 30% of the total 17± acres, or 5.2 acres.

Page 53-57 addresses New Neighborhoods and encourages using alternative site layout including a variety of housing styles and types. Infill housing and development is also encouraged. Page 55 states: "Existing large lots in desirable areas may be further subdivided into smaller lots if development regulations permit. Some types of infill development are desired; however, care must be taken to insure the new development fits in contextually with surrounding development.

REVIEW CRITERIA:

The Technical Review Committee has reviewed each of the technical items required on the preliminary subdivision plan as established by Section 4.6 and found that the engineer has satisfied all items as necessary for approval. Section 4.6 and the applicants' response are attached in the GPC Staff Report.

CONCLUSION AND RECOMMENDATION:

At the September 1st Planning Commission meeting, a motion was made to recommend approval of the subdivision based on the review criteria by the TRC, the engineer and Staff findings. Staff recommends approval of the preliminary plan as appropriate for new residential infill. To ensure compatibility, the owner proposes to leave a wooded buffer zone around the entire development. Covenants and Restrictions will protect the value and desirability of the development. Lastly, 5.2± acres will be developed with impervious surface, including streets and homes, from a total of 17± acres in an area zoned for residential use.

The motion did not receive a majority vote.

A motion was then made to recommend denial of the subdivision based on the following findings:

Unified Development Ordinance

Article 1 Section 4.2 of the UDO states that the UDO has been formulated following a Comprehensive Plan for the future of the community and contains regulations designed to:

- (A) to implement the adopted Comprehensive Plan;
- (H) to examine the most appropriate use of land;
- (I) to conserve the value of buildings;
- (J) to protect existing neighborhoods;

This development will negatively effect the existing property, is not the most appropriate use of land, and it does not protect existing neighborhoods.

Comprehensive Plan

Chapter 4 Section 3 of the Comprehensive Plan shows the following:

- Neighborhood character and condition must be included as an integral part of any long-range planning strategy. *The existing lots are large acreage lots.*
- The subject area is classified as reserve neighborhood. Reserve neighborhoods are areas which are natural habitat or areas which are to be preserved in their natural state and are primarily without manmade buildings. *All other areas in the neighborhood respect that classification. They have large lots small house footprint on lots.*
- Care must be taken to insure that new infill development “fits-in” contextually with existing development. *This development does not fit in regarding lot size and home size.*

Chapter 4 Section 4 states that as new homes are being built, a concentrated and sustained effort must be made to preserve the integrity of existing neighborhoods. *This development has no consideration of the context of those neighborhoods.*

In Chapter 7 of the Comprehensive Plan the future land use of the development area is identified as a very low residential district. *The Planning Commission has reviewed, accepted and taken action so that that occurs.*

The Comprehensive Plan and the UDO must be used as a directive as the Planning Commission makes decisions.

The motion did not receive a majority vote.

Based on the Technical Review Committee's review, the analysis of the site data, zoning, existing and future land use maps, impact on the availability of infrastructure, consistency with the Comprehensive Plan, and the appropriateness of the request relevant to the criteria established by Section 4.17 of the Unified Development Ordinance, the City Council may:

1. Approve the Preliminary Plat; or
2. Deny the Preliminary Plat.

ATTACHMENTS:

Development Order

Staff Report and backup

Exhibits submitted at June 16, 2011 GPC meeting

Exhibits submitted at September 1, 2011 GPC meeting