**Tuesday**
**June 3, 2014**
**Gautier, MS 39553**

**BE IT REMEMBERED THAT A REGULAR MEETING the Mayor and Members of the Council of the City of Gautier, Mississippi was held June 3, 2014 at 6:30 P.M. in the City Hall Municipal Building, 3330 Highway 90, Gautier, Mississippi.**

**Those present were Mayor Gordon Gollott, Council Members Mary Martin, Johnny Jones, Hurley Ray Guillotte, Casey Vaughan, Rusty Anderson, Adam Colledge, City Manager Samantha Abell, City Clerk Cynthia Russell, City Attorney Joshua Danos and other concerned citizens.**

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# AGENDA
# CITY OF GAUTIER, MISSISSIPPI
# CITY HALL COUNCIL CHAMBERS
# June 3, 2014 @ 6:30 PM

**I. Call to Order**

**1 Prayer**

**2 Pledge of Allegiance**

**II. Agenda Order Approval**

**III. Announcements**

**IV. Presentation Agenda**

**1 United States Army Birthday Proclamation presented to Commander Capt. Louis Cook by Mayor Gollott**

**2 Overview of ICSC ReCon attended by City Manager and Mayor Gollott presented by City Manager, Samantha Abell**

**V. Public Agenda**

**1 Agenda Comments**

**VI. Business Agenda**

**1 Consideration of a Citizen-Initiated Comprehensive Rezoning of Property on Homestead Blvd. from R-1 to R-E. (GPC #14-01-RZ). William R. Finnicom, applicant (Quasi-Judicial Procedures).**

**2 Consideration of an amendment to Article XII of the Unified Development Ordinance to revise the Corridor Overlay District to incorporate a Sign Overlay District. (City Initiated) GPC Case #14-07-UDO.**

**3 Conduct public hearing (Quasi-Judicial Procedures) and receive public comments regarding 3677 Mackeral Drive, Gautier, MS. Barbara L. Aguillard, owner.**

**4 Potential adoption of an Ordinance Prohibiting Smoking in Public Places and Places of Employment.**

**5 Consideration of the Cultural Services Division hosting a NFL Punt Pass & Kick (PP&K) Competition for youths age 6-15.**

6 Order authorizing proposal for appraisal services for Lowe's Property donation on on William Payne Adams Blvd.

7 Order authorizing MDOT Memorandum of Agreement for the 1-10/Hwy. 57 area feasibility study.

8 Order authorizing the renewal contract for Inter-local Agreement with Multi-Agency Narcotics Enforcement Team.

9 Order approving Docket of Claims.

VII. Consent Agenda (All items approved in one motion)

1 Order approving Gautier Historic Preservation Commission appointments.

2 Resolution appointing Mississippi Municipal League 2014 Voting Delegates.

3 Order approving Minutes from Recessed Council Meeting held May 20, 2014.

4 Resolution requesting the Mississippi Department of Archives and History designate the Hilda Fire Tower as a Mississippi Landmark.

5 Resolution requesting the Department of Defense to recognize national defense and security value of Keesler Air Force Base and ITSC-130 Tactical Airlift Mission and to preserve and retain Mission Keesler during current fiscal re-organization.

## STUDY AGENDA
## CITY OF GAUTIER, MISSISSIPPI
## June 3, 2014

1 Discuss Citizen Comments

2 Discuss Council Comments

3 Discuss City Manager Comments

4 Discuss City Clerk Comments

5 Discuss City Attorney Comments

**Recess until June 17, 2014 @ 6:30 PM**
**www.gautier-ms.gov**

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**Motion made by Councilman Guillotte to table Business Item #8- Approval of Inter-local Agreement with Multi-Agency Narcotics Enforcement Team and approve the agenda order. Motion seconded by Councilwoman Martin and unanimously carried.**

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**Announcements – None**

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**Presentation Agenda**

1 United States Army Birthday Proclamation presented to Commander Capt. Louis Cook by Mayor Gollott. (Presentation moved to June 17, 2014 Council Meeting.)

2 Overview of ICSC ReCon attended by City Manager and Mayor Gollott presented by City Manager, Samantha Abell

# *Proclamation*

A Proclamation of the Mayor and City Council

of

The City of Gautier, Mississippi

WHEREAS, The United States Army traces its history to ten companies of riflemen that answered the call for a Continental Army and enlisted on June 14, 1775; and

WHEREAS, throughout its history, members of the United States Army have served our country at home and abroad, in defense of our nation and our allies around the world; and

WHEREAS, the bravery and courage of members of the United States Army has resulted in over 2400 Army personnel becoming recipients of our nation's highest award for valor, the Congressional Medal of Honor; and

WHEREAS, today over 700,000 Soldiers continue the rich traditions of the United States Army by serving in over 100 countries throughout the world; and

WHEREAS, JUNE 14, 2014 marks the 239th birthday of the United States Army;

**NOW, THEREFORE, I, Gordon Gollott**, Mayor of the City Of Gautier do hereby proclaim June 14, 2014, to be United States Army Day and encourage all our citizens to recognize the achievements of current and former members of the United States Army.

Dated this 14th day of June 2014

_____

Gordon Gollott, Mayor

**Motion made by Councilman Colledge to amend the initial motion to exclude the lots involved in the subdivision plats. Motion seconded by Councilman Anderson and unanimously carried.**

**Motion made by Councilwoman Martin to go into Closed Session to determine if there is a need to go into Executive Session. Motion seconded by Councilman Vaughan and unanimously carried.**

**Motion made by Councilwoman Martin to return to Open Session. Motion seconded by Councilman Vaughan and unanimously carried.**

**Motion made by Councilman Colledge to go into Executive Session to discuss potential litigation. Motion seconded by Councilwoman Martin and unanimously carried.**

**Motion made by Councilman Vaughan to return to Open Session. Motion seconded by Councilwoman Martin and unanimously carried.**

**There came for consideration of the Mayor and Members of the Council of the City of Gautier, Mississippi, the following:**

## ORDINANCE NUMBER 215-2014

**AN ORDINANCE OF THE CITY OF GAUTIER, MISSISSIPPI, RELATING TO THE COMPREHENSIVE REZONING OF ±443.13 ACRES MORE OR LESS TO R-E RESIDENTIAL ESTATE; GENERALLY DESCRIBED AS PROPERTIES AT THE EAST END OF HOMESTEAD BOULEVARD, NORTH OF SIOUX BAYOU, SOUTH OF LITE BAYOU, AND WEST OF THE PASCAGOULA RIVER; MORE PARTICULARLY DESCRIBED IN THE BODY OF THE ORDINANCE; PROVIDING AUTHORITY; MAKING FINDINGS OF FACT; PROVIDING FOR A ZONING MAP AMENDMENT; AND SETTING AN EFFECTIVE DATE.**

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GAUTIER, MISSISSIPPI, AS FOLLOWS:**

**SECTION 1. AUTHORITY.**
The authority for enactment of this ordinance is Section 17-1-5, Mississippi Code Annotated Section 17-1-15 (1972), Mississippi Statutes.

The City Council of Gautier finds that a comprehensive rezoning is necessary to implement the City's Comprehensive Plan adopted the 16th day of June 2009. A public hearing was held before the Gautier Planning Commission on May 1, 2014, and the Commission recommended that Council approve the change for a zoning map amendment to adopt the R-E Residential Estate District. The City Council has conducted a public hearing on June 3, 2014 after giving due public notice pursuant to the Public Hearing Process of the City's Unified Development Ordinance. The City Council has found that the requested rezoning is consistent with the City's Comprehensive Plan.

**SECTION 2. PROPERTY REZONED.**
The property generally described as all property except that owned by Mississippi Gulf Coast Wastewater, parcels 81807021.050, 81807040.430, and 81830020.050, within the boundary described as: beginning at the northwest corner of parcel 81807020.050; thence due south to a point where this line meets the northern boundary of the parcel 81830020.000; from that point due west to the northwest corner of said property; thence due south to the shoreline of Sioux Bayou; from that point eastward following the shoreline to the Pascagoula River; thence following the river shoreline in a northerly direction to the confluence of Lite Bayou and Pascagoula River, marked by the northernmost point of parcel 85070011.000; thence following the northern boundaries of all properties along the south side of Lite Bayou to the northeast corner of property first identified in this description; thence along the northern boundary of said property to the point of beginning, is hereby rezoned to R-E Residential Estate District.

**SECTION 3. FINDINGS OF FACT.**
The Planning Commission finds that the existing zoning in the subject area is not in accordance with the Comprehensive Plan in that the existing zoning is R-1 zoning and the Comprehensive Plan re-designates this area to Very Low Density Residential; and

The Planning Commission finds that there is a need for additional lands in the City to be designated RE to implement the Comprehensive Plan's Residential land use for the purpose of ensuring that existing large lot subdivisions or areas with a concentration of larger lots are not subdivided into smaller lots which may not be desirable in some areas; and

The Planning Commission finds that the development of homes on smaller lots is inharmonious with the character of the area and the 2009 Comprehensive plan, which designates this area for rezoning to allow large-lot residential areas for the development of very low density, single-family residential uses and compatible accessory structures. The Planning Commission further finds that there was a mistake in the original zoning. Now, therefore:

**SECTION 4. ZONING MAP AMENDMENT.** The Official Zoning Map of the City of Gautier is hereby amended to include a comprehensive change of classification from R-1 Low Density Residential to R-E Residential Estate for the specific parcels described in Exhibit A of this Ordinance.

**SECTION 5. SETTING EFFECTIVE DATE AND APPEAL.** This Ordinance shall become effective 30 days after approval by the City Council and signature of the Mayor.

Motion made by **Councilman Colledge** to approve the rezoning area to R-E Residential Estate based on clear and convincing evidence including the following:

1. The existing zoning in the subject area is not in accordance with the Comprehensive Plan, which it is not, its R-1 and Comprehensive Plan calls for R-E Residential Estate.

2. That there is a need for additional lands to be zoned as requested as R-E Residential Estate being there is currently no properties zoned that way in that designation, but the Comprehensive Plan does call for areas to be zoned R-E Residential Estate, there is a need for it.

3. There has been a substantial change in the land use character of the surrounding area that justifies the change in zoning.

Motion seconded by **Councilman Jones** and the following vote was recorded:

AYES: Johnny Jones
Rusty Anderson
Adam Colledge

NAYS: Gordon Gollott
Mary Martin
Hurley Ray Guillotte
Casey Vaughan

ADOPTED: **Motion failed**

_____
Gordon T. Gollott, Mayor

ATTEST:

_____
Cynthia Russell, City Clerk

Codification Instructions: Not Codified.

## QUASI-JUDICIAL PROCEDURES

1. Announcement of Matter. Read the matter title to be considered.

2. Swear the Witnesses. All witnesses, parties, citizen participants and City Staff who plan to speak at the hearing shall collectively be sworn at the beginning of the hearing by the City Attorney.

3. Ex Parte Disclosure. All members must disclose on the record any ex parte communications, to include any physical inspections of the subject property. The disclosure should include with whom any communication has taken place, a summary of the substance of the communication, and the date of the site visit, if any. If anyone has received written communications, the writing must be presented, read into record or a copy provided to all participants, and made a part of the official record.

4. Applicant Presentation.

5. Questions directed to Applicant. The applicant should answer any questions by the public, the Planning Commission, or others.

6. Staff Presentation. This includes presentation of the staff report into the official record.

7. Objections from Applicant. Confirm whether there are objections from the applicant regarding the staff report or development order.

8. Questions directed to Staff. The staff answers any questions by the public, the Planning Commission, or others.

9. Public Comments. Members of the public should be allowed to make comments regarding the application.

10. Applicant rebuttal/final comments

11. Staff rebuttal/final comments

12. Call for final questions.

13. Close public portion of the hearing.

14. Motion & Deliberation. Planning Commission makes a motion, and debates and deliberates regarding the application and development order.

15. Vote.

16. Close the quasi-judicial proceeding.

**CITY OF GAUTIER**
**MEMORANDUM**

**To:** Samantha Abell, City Manager

**From:** Chandra Nicholson, Economic Development & Planning Director

**Date:** May 27, 2014

**Subject:** Consideration of a Citizen-Initiated Comprehensive Rezoning of Property on Homestead Blvd. from R-1 to R-E. GPC #14-01-RZ

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**REQUEST:**

The Economic Development and Planning Department received a request from William R. Finnicum, resident of 704 Homestead Boulevard for a Comprehensive Rezoning of the property generally described as the eastern end of Homestead Boulevard south of Lite Bayou, north of Sioux Bayou, and west of the Pascagoula River. The application fee of $300 was paid on January 2, 2014. All public notice requirements have been met. The applicant provided signatures of owners of contiguous land in excess of 10 acres on Homestead Boulevard and members of the "Homestead Neighborhood Association" for a comprehensive rezoning.

**BACKGROUND:**

The subject property is located off of Martin Bluff Road at the eastern end of Homestead Blvd. The current zoning is R-1 Low Density Residential and the applicant is requesting a rezoning to R-E Residential Estate.

Section 4.16 of the City's Unified Development Ordinance (UDO) establishes the procedure to amend the City's Official Zoning Map. The Gautier Planning Commission (GPC) shall review a proposal for a comprehensive rezoning and shall make an advisory recommendation to the City Council as to the need and justification for the change and the relationship of the proposed change to the goals, objectives and policies of the Comprehensive Plan. The GPC shall include in its recommendation to the City Council findings and any information which it deems is relevant to issues relating to the proposed rezoning.

A Public Hearing was conducted on Thursday, May 1st, 2014 by the Gautier Planning Commission.

Staff provided findings that the request did not meet the requirements of applicable law. Staff did not find that there has been a significant change in the area, there is not a need for additional R-E designated land at this time, and there is not evidence to support that there was a mistake in the original zoning.

The Planning Commission finds that there was a probability of a mistake in the original zoning and recommends approval of the rezoning request. (GPC Minutes Excerpt Attached)

**DISCUSSION:**

On December 16th, 2013, Planning Staff received an e-mail from Mr. Bill Finnicum requesting a rezoning as a result of "a vacant request to sub-develop property along Homestead Boulevard in accordance with R-1 Guidelines" (see Finnicum E-mail as a part of the attached Staff Report Exhibit E).

The Comprehensive Plan's Future Lane Use Element establishes the general land use designation for Very Low Density Residential thus:

> *Very Low Density Residential/Agricultural—Areas with one acre or larger lots and which contain single family residential uses. Very low density residential neighborhoods should ideally be located adjacent to low density residential areas. The overall gross density is one (1) dwelling unit per acre.*

The City's Unified Development Ordinance describes the R-E Residential Estate Zoning District thus:

***5.3.2 R-E, Residential Estate District***

> *Purpose and intent. The purpose of this district is to provide for large-lot residential areas for the development of very low density, single-family residential uses and compatible accessory structures. Areas with these characteristics are typically developed as large-lot subdivisions with custom-built homes, suburban areas on the edge of the city and lots which contain environmentally sensitive areas. It is the intent of this Ordinance that these districts should be maintained without intrusive uses so as to minimize the impact of additional traffic or noise.*

Unified Development Ordinance Table 7 Intensity and Dimensional Standards (excerpt)

| Zoning District | Min. Lot Area (sq. ft.) | Min. Lot Width | Maximum Building Height | | | Setbacks | | | Maximum Density (units per acre) | | | Maximum Floor Area Ratio | | | Max % of area covered on lot | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Tier 1 | Tier 2 | Tier 3 | Front | Side | Rear | Tier 1 | Tier 2 | Tier 3 | Tier 1 | Tier 2 | Tier 3 | Tier 1 | Tier 2 | Tier 3 |
| R-1 | 9,600 | 80 | 35 | --- | --- | 25/ 35 | 10/ 25/ 35 | 25 | --- | --- | --- | --- | --- | --- | 25 | --- | --- |
| RE | 43,560 | 150 | 35 | N/A | N/A | 50/ 35 | 20/ 35 | 35 | none | N/A | N/A | N/A | N/A | N/A | 20 | N/A | N/A |

**REVIEW CRITERIA:**

To determine the appropriateness of the request, the City Council shall study and consider the following criteria to determine Findings of Facts, if applicable. Staff's comments are in italics.

A. The existing zoning in the subject area is not in accordance with the Comprehensive Plan; **and**

***Staff finds that the existing zoning is not in accordance with the Comprehensive Plan in that the Plan recommends the subject area be Very Low Density Residential. The rezoning of this area will place the Official Zoning Map in accordance with the Plan, however, the Comprehensive Plan specifies in Table No. 27, "create estate zoning district and rezone large lot development areas in select areas and with permission of property owners".***

***Staff finds that the Applicants collectively own 23% of the subject lands and at least one property Owner who owns 16.4% of the subject lands objects to the comprehensive rezoning at this time.***

B. The need for additional land in the City having the same zoning classification as the one proposed; **and**

***The Unified Development Ordinance, Section 5.3.2 describes R-E Residential Estate as being a transitional zone of suburban area between urban and rural areas and generally contains conservation land. Residential Estate zones are generally on the edge of the city to transition to more rural areas.***

***Urban areas denote medium high to high density development with smaller lots and structures in close proximity, and core census block groups with a population density of at least 1,000 per square mile, according to the US Census. Rural is any territory (area) that is not urban.***

***To recommend in favor of the rezoning, the Planning Commission must find that at this time, there is a need for additional lands to be zoned as R-E, and that the current land use designation does not meet this need.***

***The "need" for additional lands must be based on a change since the adoption of the Comprehensive Plan. Based on the definition of R-E, growth must have increased to an extent that an urban area now exists that makes the R-E zone a necessary buffer between urban and rural territories (areas).***

***Staff finds no analysis that the current designation does not provide an adequate transitional zone for suburban lots.***

C. A substantial change in the land use character of the surrounding area that justifies the change in zoning; **or**

***Staff finds that there has <u>not</u> been a substantial change in the land use character of the surrounding area. Specifically, there is no measurable increase in urban area to meet the statutory obligation of "change".***

D. The probability of a mapping error in the Comprehensive Plan or a Unified Development Ordinance has occurred.

***Staff finds no mapping error exists in the Comprehensive Plan or the Unified Development Ordinance. The Unified Development Ordinance show current zoning of the subject property to be R-1 Low Density Residential. The R-1 zoning fits the needs of the area at this time. The Comprehensive Plan is a vision document for the future through the year 2030. As intensity of development increases in the future years, development demands may increase the need for large tracts of residential land, but related to current development patterns, the need for large tracts of land to limit development intensity are not needed at this time.***

**<u>FINDINGS / APPROPRIATENESS OF THE REQUEST</u>:**

**Based on the data and analysis above and pursuant to the comprehensive rezoning criteria in section 4.16 of the Unified Development Ordinance, the Gautier City Council may:**

1. Find that the data and analysis <u>do</u> <u>not</u> support a Comprehensive Rezoning at this time and deny the rezoning; or

2. Find that clear and convincing evidence has been provided to prove items A, B, & C of the Review Criteria do support a Comprehensive Rezoning at this time and approve the rezoning; or

3. Uphold the GPC recommendation that a mapping error occurred, item D of the Review Criteria, which provides clear and convincing evidence that a Comprehensive Rezoning is appropriate at this time; and approve the rezoning.

**<u>ATTACHMENTS</u>:**

1. Draft Ordinance
2. Staff Report as Submitted to the GPC with Back-Up
3. GPC Minutes Excerpt Dated May 1, 2014

# ORDINANCE NUMBER 000-2014

**AN ORDINANCE OF THE CITY OF GAUTIER, MISSISSIPPI, RELATING TO THE COMPREHENSIVE REZONING OF ±443.13 ACRES MORE OR LESS TO R-E RESIDENTIAL ESTATE; GENERALLY DESCRIBED AS PROPERTIES AT THE EAST END OF HOMESTEAD BOULEVARD, NORTH OF SIOUX BAYOU, SOUTH OF LITE BAYOU, AND WEST OF THE PASCAGOULA RIVER; MORE PARTICULARLY DESCRIBED IN THE BODY OF THE ORDINANCE; PROVIDING AUTHORITY; MAKING FINDINGS OF FACT; PROVIDING FOR A ZONING MAP AMENDMENT; AND SETTING AN EFFECTIVE DATE.**

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GAUTIER, MISSISSIPPI, AS FOLLOWS:**

**SECTION 1. AUTHORITY.**
The authority for enactment of this ordinance is Section 17-1-5, Mississippi Code Annotated Section 17-1-15 (1972), Mississippi Statutes.

The City Council of Gautier finds that a comprehensive rezoning is necessary to implement the City's Comprehensive Plan adopted the 16th day of June 2009. A public hearing was held before the Gautier Planning Commission on May 1, 2014, and the Commission recommended that Council approve the change for a zoning map amendment to adopt the R-E Residential Estate District. The City Council has conducted a public hearing on June 3, 2014 after giving due public notice pursuant to the Public Hearing Process of the City's Unified Development Ordinance. The City Council has found that the requested rezoning is consistent with the City's Comprehensive Plan.

**SECTION 2. PROPERTY REZONED.**
The property generally described as all property except that owned by Mississippi Gulf Coast Wastewater, parcels 81807021.050, 81807040.430, and 81830020.050, within the boundary described as: beginning at the northwest corner of parcel 81807020.050; thence due south to a point where this line meets the northern boundary of the parcel 81830020.000; from that point due west to the northwest corner of said property; thence due south to the shoreline of Sioux Bayou; from that point eastward following the shoreline to the Pascagoula River; thence following the river shoreline in a northerly direction to the confluence of Lite Bayou and Pascagoula River, marked by the northernmost point of parcel 85070011.000; thence following the northern boundaries of all properties along the south side of Lite Bayou to the northeast corner of property first identified in this description; thence along the northern boundary of said property to the point of beginning, is hereby rezoned to R-E Residential Estate District.

**SECTION 3. FINDINGS OF FACT.**
The Planning Commission finds that the existing zoning in the subject area is not in accordance with the Comprehensive Plan in that the existing zoning is R-1 zoning and the Comprehensive Plan re-designates this area to Very Low Density Residential; and

The Planning Commission finds that there is a need for additional lands in the City to be designated RE to implement the Comprehensive Plan's Residential land use for the purpose of ensuring that existing large lot subdivisions or areas with a concentration of larger lots are not subdivided into smaller lots which may not be desirable in some areas; and

The Planning Commission finds that the development of homes on smaller lots is inharmonious with the character of the area and the 2009 Comprehensive plan, which designates this area for rezoning to allow large-lot residential areas for the development of very low density, single-family residential uses and compatible accessory structures. The Planning Commission further finds that there was a mistake in the original zoning. Now, therefore:

**SECTION 4. ZONING MAP AMENDMENT.** The Official Zoning Map of the City of Gautier is hereby amended to include a comprehensive change of classification from R-1 Low Density Residential to R-E Residential Estate for the specific parcels described in Exhibit A of this Ordinance.

**SECTION 5. SETTING EFFECTIVE DATE AND APPEAL.** This Ordinance shall become effective 30 days after approval by the City Council and signature of the Mayor.

Motion made by BLANK, seconded by BLANK and the following vote was recorded:

AYES:

NAYS:

ADOPTED: _____ _____

Gordon T. Gollott, Mayor

ATTEST:

_____ _____

Cynthia Russell, City Clerk

Codification Instructions: Not Codified.

DRAFT

**ORDINANCE EXHIBIT A**

| PIDN | NAME | LOCATION | ACREAGE |
|---|---|---|---|
| 85070002.000 | BUGNER MICHAEL L & DEBRA L | 904 HOMESTEAD BLVD GAUTIER | 2.38 |
| 85070001.000 | NORTON WANDA P & BRUCE J | 908 HOMESTEAD BLVD GAUTIER | 2.86 |
| 85420005.000 | PATTERSON MITCHELL R & TAUNA M | 1000 HOMESTEAD BLVD GAUTIER | 4.80 |
| 85420002.000 | DORSETT JAMES A | 1004 HOMESTEAD BLVD GAUTIER | 10.92 |
| 85420001.000 | KINSEY JOHN M II & CYNTHIA L | 1104 HOMESTEAD BLVD GAUTIER | 2.82 |
| 81807020.310 | JOHNSON MILTON POPE III & KATHLEEN R | 1204 HOMESTEAD BLVD GAUTIER | 3.18 |
| 81807020.330 | GRAHAM JAMES R & DONICA L | HOMESTEAD BLVD GAUTIER | 3.16 |
| 81807020.320 | HOWARD MICHAEL C & ANASTASIA A | 1316 HOMESTEAD BLVD GAUTIER | 4.29 |
| 81807020.050 | KINSEY JOHN W & CHARLOTTE | 1322 HOMESTEAD BLVD GAUTIER | 7.89 |
| 81807021.000 | TUCEI F A & HAZEL M TRUSTEES | LOUIS ALEXIS TR GAUTIER | 4.87 |
| 81807040.460 | WATROUS JOSEPH D & DAPHNE C | LOUIS ALEXIS TR GAUTIER | 3.52 |
| 81807040.422 | SHAW TALMADGE D & ETTA P | LOUIS ALEXIS TR GAUTIER | 2.20 |
| 81807040.424 | WATROUS JOSEPH D & DAPHNE C | 1212 LOUIS ALEXIS TR GAUTIER | 2.00 |
| 81807040.420 | SHAW TALMADGE D & ETTA P | LOUIS ALEXIS TR GAUTIER | 2.57 |
| 81807020.100 | LUKE ROYCE B & ROSE MARIE | HOMESTEAD BLVD GAUTIER | 6.16 |
| 81807020.002 | SMITH JIMMIE F & BARBARA A | LOUIS ALEXIS TR GAUTIER | 4.49 |
| 81807020.000 | LUKE ROYCE B & ROSE MARIE | LOUIS ALEXIS TR GAUTIER | 3.78 |
| 81807020.350 | LUKE ROYCE B & ROSE MARIE | 1321 HOMESTEAD BLVD GAUTIER | 3.12 |
| 81807020.340 | MANIS STEVE CHARLES | 1281 HOMESTEAD BLVD GAUTIER | 3.06 |
| 81807020.300 | SMITH JIMMIE F & BARBARA | 1205 HOMESTEAD BLVD GAUTIER | 3.01 |
| 81807045.025 | DEES LIMITED PARTNERSHIP | HOMESTEAD BLVD GAUTIER | 18.41 |
| 81807045.030 | DEES LIMITED PARTNERSHIP | HOMESTEAD BLVD GAUTIER | 49.53 |
| 81807045.000 | DEES DORA VIRGINIA IRREV TRUST WILBUR G DEES, JR. | 701 HOMESTEAD BLVD GAUTIER | 4.87 |
| 81807040.400 | ROY ALLEN J JR | 700 HOMESTEAD BLVD GAUTIER | 4.79 |
| 85070011.000 | KREBS JOSEPH V & BETTY L | 702 HOMESTEAD BLVD GAUTIER | 28.80 |
| 85070012.000 | KREBS JOSEPH V JR & BETTY L | 702 HOMESTEAD BLVD GAUTIER | 0.28 |
| 85070010.000 | FINNICUM WILLIAM R & SARAH H | 704 HOMESTEAD BLVD GAUTIER | 9.78 |
| 85070009.000 | GAUTIER MELVIN DOUGLAS & PATRICIA F | 708 HOMESTEAD BLVD GAUTIER | 4.48 |
| 85070008.000 | SWANSON MARILYN | 712 HOMESTEAD BLVD GAUTIER | 4.38 |

| PIDN | NAME | LOCATION | ACREAGE |
|---|---|---|---|
| 85070007.000 | MORGAN JULIUS B JR & SANDRA B | 800 HOMESTEAD BLVD GAUTIER | 4.10 |
| 85070006.000 | TERRY MARY S | 804 HOMESTEAD BLVD GAUTIER | 3.53 |
| 85070005.000 | HENWOOD TYRRELL A & JEAN Y | 808 HOMESTEAD BLVD GAUTIER | 3.44 |
| 85070004.000 | HOOVER CELENA R | 812 HOMESTEAD BLVD GAUTIER | 3.34 |
| 85070003.000 | LADNER WILLIAM D & CARRIE ANN | 900 HOMESTEAD BLVD GAUTIER | 3.36 |
| 81830030.000 | COLUMBIA VENTURES INC ET AL C/O MAURICE REED | GAUTIER | 20.50 |
| 81830010.000 | MS STATE OF (TAX SALE 1980) | GAUTIER | 23.50 |
| 81830020.025 | TUCEI F A & HAZEL M TRUSTEES | LOUIS ALEXIS TR GAUTIER | 77.66 |
| 81830080.000 | SWANSON MARILYN | INDIAN POINT PKWY GAUTIER | 18.91 |
| 81830020.000 | TUCEI F A & HAZEL M TRUSTEES | JOHN DAILEY DR GAUTIER | 78.39 |
| | | TOTAL | **443.13** |

**Excerpt from May 1, 2014 Planning Commission Minutes:**

Commissioner Dailey made a motion to approve GPC Case #14-01-RZ, and that we find that we've heard evidence that this area was clearly being developed as residential estates, and as R-E did not exist at the time of incorporation of the area, it was brought into Gautier at the highest available zone available, which was R-1; we find that there is clear and convincing evidence that a mapping error occurred, and the Comprehensive Plan recognized the error by identify it to be rezoned R-E, which would protect the character and quality of the existing neighborhood. Commissioner Spanier seconded the motion and the following vote was recorded:

| | |
|---|---|
| AYES: | Larry Dailey<br>Jimmy Green<br>Greg Spanier |
| NAYS: | Sandra Walters |
| ABSENT: | David Wooten<br>James Torrey |

Motion carried.

# Gautier Planning Commission

## Regular Meeting Agenda

## March 6, 2014

## (Staff Report and Application Revised for May 1, 2014 GPC Meeting)

## Homestead Comprehensive Rezoning

**VII. NEW BUSINESS**

A. QUASI-JUDICIAL

1. REQUEST FOR A COMPREHENSIVE REZONING OF PROPERTIES TO R-E RESIDENTIAL ESTATE (CITIZEN-INITIATED) GPC CASE #14-01-RZ

*Synopsis: This is a citizen-initiated comprehensive rezoning of properties to R-E Residential Estate. The properties are located at the East end of Homestead Boulevard and generally described as properties north of Sioux Bayou, south of Lite Bayou, and west of the Pascagoula River.*

## QUASI-JUDICIAL PROCEDURES

1. Announcement of Matter. Read the matter title to be considered.

2. Swear the Witnesses. All witnesses, parties, citizen participants and City Staff who plan to speak at the hearing shall collectively be sworn at the beginning of the hearing by the City Attorney.

3. Ex Parte Disclosure. All members must disclose on the record any ex parte communications, to include any physical inspections of the subject property. The disclosure should include with whom any communication has taken place, a summary of the substance of the communication, and the date of the site visit, if any. If anyone has received written communications, the writing must be presented, read into record or a copy provided to all participants, and made a part of the official record.

4. Applicant Presentation.

5. Questions directed to Applicant. The applicant should answer any questions by the public, the Planning Commission, or others.

6. Staff Presentation. This includes presentation of the staff report into the official record.

7. Objections from Applicant. Confirm whether there are objections from the applicant regarding the staff report or development order.

8. Questions directed to Staff. The staff answers any questions by the public, the Planning Commission, or others.

9. Public Comments. Members of the public should be allowed to make comments regarding the application.

10. Applicant rebuttal/final comments

11. Staff rebuttal/final comments

12. Call for final questions.

13. Close public portion of the hearing.

14. Motion & Deliberation. Planning Commission makes a motion, and debates and deliberates regarding the application and development order.

15. Vote.

16. Close the quasi-judicial proceeding.

**CITY OF GAUTIER**
**STAFF REPORT**

**To:** Gautier Planning Commission Chairperson and Members

**From:** Chandra Nicholson, Economic Development & Planning Director

**Date:** February 28, 2014 (Revised April 25, 2014)

**Subject:** Consideration of a Citizen-Initiated Comprehensive Rezoning of Properties Comprising ±443.13 Acres to R-E Residential Estate.

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## REQUEST:

The Economic Development and Planning Department has received a request from William R. Finnicum, resident of 704 Homestead Boulevard for a Comprehensive Rezoning of the property generally described as the eastern end of Homestead Boulevard south of Lite Bayou, north of Sioux Bayou, and west of the Pascagoula River. The application fee of $300 was paid on January 2, 2014. All public notice requirements have been met. The applicant provided signatures of owners of contiguous land in excess of 10 acres on Homestead Boulevard and members of the "Homestead Neighborhood Association" for a comprehensive rezoning.

## BACKGROUND:

Section 4.16 of the City's Unified Development Ordinance (UDO) establishes the procedure to amend the City's Official Zoning Map. The Gautier Planning Commission (GPC) shall review a proposal for a comprehensive rezoning and shall make an advisory recommendation to the City Council as to the need and justification for the change and the relationship of the proposed change to the goals, objectives and policies of the Comprehensive Plan. The GPC shall include in its recommendation to the City Council findings and any information which it deems is relevant to issues relating to the proposed rezoning.

Following a February 16th advertised public hearing by the GPC on March 6th, the Ordinance to amend the City's Official Zoning Map will be considered for approval by the City Council on March 18th.

## DISCUSSION:

On December 16th, 2013, Planning Staff received an e-mail from Mr. Bill Finnicum requesting a rezoning as a result of "a vacant request to sub-develop property along Homestead Boulevard in accordance with R-1 Guidelines" (see Finnicum E-mail as a part of the attached Exhibit E).

The Comprehensive Plan's Future Lane Use Element establishes the general land use designation for Very Low Density Residential thus:

*<u>Very Low Density Residential/Agricultural</u>—Areas with one acre or larger lots and which contain single family residential uses. Very low density residential neighborhoods should ideally be located adjacent to low density residential areas. The overall gross density is one (1) dwelling unit per acre.*

The City's Unified Development Ordinance describes the R-E Residential Estate Zoning District thus:

***5.3.2 R-E, Residential Estate District***

*Purpose and intent. The purpose of this district is to provide for large-lot residential areas for the development of very low density, single-family residential uses and compatible accessory structures. Areas with these characteristics are typically developed as large-lot subdivisions with custom-built homes, suburban areas on the edge of the city and lots which contain environmentally sensitive areas. It is the intent of this Ordinance that these districts should be maintained without intrusive uses so as to minimize the impact of additional traffic or noise.*

Unified Development Ordinance Table 7 Intensity and Dimensional Standards (excerpt)

.

**<u>DATA AND ANALYSIS</u>:**

| Zoning District | Min. Lot Area (sq. ft.) | Min. Lot Width | Maximum Building Height | | | Setbacks | | | Maximum Density (units per acre) | | | Maximum Floor Area Ratio | | | Max % of area covered on lot | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Tier 1 | Tier 2 | Tier 3 | Front | Side | Rear | Tier 1 | Tier 2 | Tier 3 | Tier 1 | Tier 2 | Tier 3 | Tier 1 | Tier 2 | Tier 3 |
| R-1 | 9,600 | 80 | 35 | --- | --- | 25/ 35 | 10/ 25/ 35 | 25 | --- | --- | --- | --- | --- | --- | 25 | --- | --- |
| RE | <u>43,560</u> | <u>150</u> | <u>35</u> | <u>N/A</u> | <u>N/A</u> | <u>50/ 35</u> | <u>20/ 35</u> | <u>35</u> | <u>none</u> | <u>N/A</u> | <u>N/A</u> | <u>N/A</u> | <u>N/A</u> | <u>N/A</u> | <u>20</u> | <u>N/A</u> | <u>N/A</u> |

Homestead Boulevard is a non-striped local residential road with aging homes in generally well-kept conditions on lots greater than two (2) acres, with substantially undeveloped property on the south side of the road. In proximity to Homestead Boulevard is a bayou, a quiet fish camp, and conservation lands. Little to no development has occurred in the last thirty (30) years.

Property Listing for Comprehensive Rezoning Area: See attachment to Draft Ordinance attached.

Location: Ward 4

Current Zoning of the Request Property: R-1 Low Density Residential

Current surrounding existing land use and zoning:

| | Current Land Use | Zoning District |
|---|---|---|
| North | Bayou, Low Density Residential, Conservation | R-1 Low Density Single Family Residential |
| South | Single Family Residential | AG Agricultural, PL Public Land |
| East | River | N/A |
| West | Fish Camp, Conservation, Low Density Residential | R-1 Low Density Single Family Residential |

Comprehensive Plan Land Use Designation: The subject properties are designated Very Low Density Residential.

Surrounding Future Land Use Map (FLUM) designations:

| | FLUM Designation |
|---|---|
| North | Very Low to Low Density Residential |
| South | Recreational Commercial, Conservation |
| East | Low Density, Conservation |
| West | N/A |

Proposed Zoning: R-E Residential Estate

**REVIEW CRITERIA:**

The Planning Commission, in its report and recommendation to the City Council on the appropriateness of the request, should study and consider the following criteria and recommend whether or not each is met, if applicable. Staff has recommended findings for the GPC's consideration in italics.

A. The existing zoning in the subject area is not in accordance with the Comprehensive Plan; **and**

***Staff finds that the existing zoning is not in accordance with the Comprehensive Plan in that the Plan recommends the subject area be Very Low Density Residential. The rezoning of this area will place the Official Zoning Map in accordance with the Plan, however, the Comprehensive Plan specifies in Table No. 27, "create estate zoning district and rezone large lot development areas in select areas and with permission of property owners".***

***Staff finds that the Applicants collectively own 23% of the subject lands and at least one property Owner who owns 16.4% of the subject lands objects to the comprehensive rezoning at this time.***

B. The need for additional land in the City having the same zoning classification as the one proposed; **and**

***The Unified Development Ordinance, Section 5.3.2 describes R-E Residential Estate as being a transitional zone of suburban area between urban and rural areas and generally contains conservation land. Residential Estate zones are generally on the edge of the city to transition to more rural areas.***

***Urban areas denote medium high to high density development with smaller lots and structures in close proximity, and core census block groups with a population density of at least 1,000 per square mile, according to the US Census. Rural is any territory (area) that is not urban.***

***To recommend in favor of the rezoning, the Planning Commission must find that at this time, there is a need for additional lands to be zoned as R-E, and that the current land use designation does not meet this need.***

***The "need" for additional lands must be based on a change since the adoption of the Comprehensive Plan. Based on the definition of R-E, growth must have increased to an extent that an urban area now exists that makes the R-E zone a necessary buffer between urban and rural territories (areas).***

***Staff finds no analysis that the current designation does not provide an adequate transitional zone for suburban lots.***

C. A substantial change in the land use character of the surrounding area that justifies the change in zoning; **or**

***Staff finds that there has <u>not</u> been a substantial change in the land use character of the surrounding area. Specifically, there is no measurable increase in urban area to meet the statutory obligation of "change".***

D. The probability of a mapping error in the Comprehensive Plan or a Unified Development Ordinance has occurred.

***Staff finds no mapping error exists in the Comprehensive Plan or the Unified Development Ordinance. The Unified Development Ordinance show current zoning of the subject property to be R-1 Low Density Residential. The R-1 zoning fits the needs of the area at this time. The Comprehensive Plan is a vision document for the future through the year 2030. As intensity of development increases in the future years, development demands may increase the need for large tracts of residential land, but related to current development patterns, the need for large tracts of land to limit development intensity are not needed at this time.***

**<u>FINDINGS / APPROPRIATENESS OF THE REQUEST</u>:**

**Based on the data and analysis above and pursuant to the comprehensive rezoning criteria in section 4.16 of the Unified Development Ordinance, the Gautier Planning Commission may:**

1. Find that the data and analysis do not support a Comprehensive Rezoning at this time and forward a recommendation to deny the rezoning to council; or
2. Find that the data and analyses do support a Comprehensive Rezoning at this time and forward a recommendation of approval to council. **The Planning Commission must make the below findings to recommend approval:**

**RE Residential Estate:**

The Planning Commission finds that the existing zoning in the subject area is not in accordance with the Comprehensive Plan in that the existing zoning is R-1 zoning and the Comprehensive Plan re-designates this area to Very Low Density Residential; and

The Planning Commission finds that there is a need for additional lands in the City to be designated RE to implement the Comprehensive Plan's Very Low Density Residential land use for the purpose of ensuring that existing large lot subdivisions or areas with a concentration of larger lots are not subdivided into smaller lots which may not be desirable in some areas; and

The Planning Commission finds that the Official Zoning Map has no such Very Low Density Residential designated lands zoned on the Official Zoning Map. Furthermore, the City has an over abundance of R-1 Low Density Residential District lands leading to a lack of areas where owners of large residential lots are protected from adjoining land being subdivided into very small lots; and

The Planning Commission finds that there has been a substantial change in the land use character of the land.

**ATTACHMENTS:**

1. Draft Ordinance w/ Attachment
2. Applicant's Exhibit 1 – Application
3. Applicant's Exhibit 2 – Addendum Letter
4. City's Exhibit A – Location Map
5. City's Exhibit B – Existing Zoning Map
6. City's Exhibit C – Existing Land Use Map
7. City's Exhibit D – Future Land Use Map
8. City's Exhibit E – Ex Parte Communications

    Nicholson E-mail dated 3/3/14 (Agenda Items)
    Nicholson E-mail dated 3/3/14 (Attorney Opposition Letter)
    Letter Attachment from Russell S. Gill
    Nicholson E-mail dated 3/3/14 (Attorney Case Law Information)
    Finnicum E-mail dated 1/29/14
    Finnicum E-mail dated 1/27/14

# ORDINANCE

**AN ORDINANCE OF THE CITY OF GAUTIER, MISSISSIPPI, RELATING TO THE COMPREHENSIVE REZONING OF ±443.13 ACRES MORE OR LESS TO R-E RESIDENTIAL ESTATE; GENERALLY DESCRIBED AS PROPERTIES AT THE EAST END OF HOMESTEAD BOULEVARD, NORTH OF SIOUX BAYOU, SOUTH OF LITE BAYOU, AND WEST OF THE PASCAGOULA RIVER; MORE PARTICULARLY DESCRIBED IN THE BODY OF THE ORDINANCE; PROVIDING AUTHORITY; MAKING FINDINGS OF FACT; PROVIDING FOR A ZONING MAP AMENDMENT; AND SETTING AN EFFECTIVE DATE.**

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GAUTIER, MISSISSIPPI, AS FOLLOWS:**

**SECTION 1. AUTHORITY.**
The authority for enactment of this ordinance is Section 17-1-5, Mississippi Code Annotated Section 17-1-15 (1972), Mississippi Statutes.

The City Council of Gautier finds that a comprehensive rezoning is necessary to implement the City's Comprehensive Plan adopted the 16th day of June 2009. A public hearing was held before the Gautier Planning Commission on March 6, 2014, and the Commission recommended that Council approve the change for a zoning map amendment to adopt the R-E Residential Estate District. The City Council has conducted a public hearing on March 18, 2014 after giving due public notice pursuant to the Public Hearing Process of the City's Unified Development Ordinance. The requested rezoning is consistent with the City's Comprehensive Plan.

**SECTION 2. PROPERTY REZONED.**
The property generally described as all property except that owned by Mississippi Gulf Coast Wastewater, parcels 81807021.050, 81807040.430, and 81830020.050, within the boundary described as: beginning at the northwest corner of parcel 81807020.050; thence due south to a point where this line meets the northern boundary of the parcel 81830020.000; from that point due west to the northwest corner of said property; thence due south to the shoreline of Sioux Bayou; from that point eastward following the shoreline to the Pascagoula River; thence following the river shoreline in a northerly direction to the confluence of Lite Bayou and Pascagoula River, marked by the northernmost point of parcel 85070011.000; thence following the northern boundaries of all properties along the south side of Lite Bayou to the northeast corner of property first identified in this description; thence along the northern boundary of said property to the point of beginning, is hereby rezoned to R-E Residential Estate District.

**SECTION 3. FINDINGS OF FACT.**
The Planning Commission finds that the existing zoning in the subject area is not in accordance with the Comprehensive Plan in that the existing zoning is R-1 zoning and the Comprehensive Plan re-designates this area to Very Low Density Residential; and

The Planning Commission finds that there is a need for additional lands in the City to be designated RE to implement the Comprehensive Plan's Residential land use for the purpose of ensuring that existing large lot subdivisions or areas with a concentration of larger lots are not subdivided into smaller lots which may not be desirable in some areas; and

The Planning Commission finds that the development of homes on smaller lots is inharmonious with the character of the area and the 2009 Comprehensive plan, which designates this area for rezoning to allow large-lot residential areas for the development of very low density, single-family residential uses and compatible accessory structures. Now, therefore:

**SECTION 4. ZONING MAP AMENDMENT.** The Official Zoning Map of the City of Gautier is hereby amended to include a comprehensive change of classification from R-1 Low Density Residential to R-E Residential Estate for the specific parcels described in Exhibit A of this Ordinance.

**SECTION 5. SETTING EFFECTIVE DATE AND APPEAL.** This Ordinance shall become effective 30 days after approval by the City Council and signature of the Mayor.

ADOPTED: _____ _____

Gordon T. Gollott, Mayor

ATTEST:

_____ _____

Cindy Russell, City Clerk

Codification Instructions: Not Codified.

DRAFT

## ORDINANCE EXHIBIT A

| PIDN | NAME | LOCATION | ACREAGE |
|---|---|---|---|
| 85070002.000 | BUGNER MICHAEL L & DEBRA L | 904 HOMESTEAD BLVD GAUTIER | 2.38 |
| 85070001.000 | NORTON WANDA P & BRUCE J | 908 HOMESTEAD BLVD GAUTIER | 2.86 |
| 85420005.000 | PATTERSON MITCHELL R & TAUNA M | 1000 HOMESTEAD BLVD GAUTIER | 4.80 |
| 85420002.000 | DORSETT JAMES A | 1004 HOMESTEAD BLVD GAUTIER | 10.92 |
| 85420001.000 | KINSEY JOHN M II & CYNTHIA L | 1104 HOMESTEAD BLVD GAUTIER | 2.82 |
| 81807020.310 | JOHNSON MILTON POPE III & KATHLEEN R | 1204 HOMESTEAD BLVD GAUTIER | 3.18 |
| 81807020.330 | GRAHAM JAMES R & DONICA L | HOMESTEAD BLVD GAUTIER | 3.16 |
| 81807020.320 | HOWARD MICHAEL C & ANASTASIA A | 1316 HOMESTEAD BLVD GAUTIER | 4.29 |
| 81807020.050 | KINSEY JOHN W & CHARLOTTE | 1322 HOMESTEAD BLVD GAUTIER | 7.89 |
| 81807021.000 | TUCEI F A & HAZEL M TRUSTEES | LOUIS ALEXIS TR GAUTIER | 4.87 |
| 81807040.460 | WATROUS JOSEPH D & DAPHNE C | LOUIS ALEXIS TR GAUTIER | 3.52 |
| 81807040.422 | SHAW TALMADGE D & ETTA P | LOUIS ALEXIS TR GAUTIER | 2.20 |
| 81807040.424 | WATROUS JOSEPH D & DAPHNE C | 1212 LOUIS ALEXIS TR GAUTIER | 2.00 |
| 81807040.420 | SHAW TALMADGE D & ETTA P | LOUIS ALEXIS TR GAUTIER | 2.57 |
| 81807020.100 | LUKE ROYCE B & ROSE MARIE | HOMESTEAD BLVD GAUTIER | 6.16 |
| 81807020.002 | SMITH JIMMIE F & BARBARA A | LOUIS ALEXIS TR GAUTIER | 4.49 |
| 81807020.000 | LUKE ROYCE B & ROSE MARIE | LOUIS ALEXIS TR GAUTIER | 3.78 |
| 81807020.350 | LUKE ROYCE B & ROSE MARIE | 1321 HOMESTEAD BLVD GAUTIER | 3.12 |
| 81807020.340 | MANIS STEVE CHARLES | 1281 HOMESTEAD BLVD GAUTIER | 3.06 |
| 81807020.300 | SMITH JIMMIE F & BARBARA | 1205 HOMESTEAD BLVD GAUTIER | 3.01 |
| 81807045.025 | DEES LIMITED PARTNERSHIP | HOMESTEAD BLVD GAUTIER | 18.41 |
| 81807045.030 | DEES LIMITED PARTNERSHIP | HOMESTEAD BLVD GAUTIER | 49.53 |
| 81807045.000 | DEES DORA VIRGINIA IRREV TRUST WILBUR G DEES, JR. | 701 HOMESTEAD BLVD GAUTIER | 4.87 |
| 81807040.400 | ROY ALLEN J JR | 700 HOMESTEAD BLVD GAUTIER | 4.79 |
| 85070011.000 | KREBS JOSEPH V & BETTY L | 702 HOMESTEAD BLVD GAUTIER | 28.80 |
| 85070012.000 | KREBS JOSEPH V JR & BETTY L | 702 HOMESTEAD BLVD GAUTIER | 0.28 |
| 85070010.000 | FINNICUM WILLIAM R & SARAH H | 704 HOMESTEAD BLVD GAUTIER | 9.78 |
| 85070009.000 | GAUTIER MELVIN DOUGLAS & PATRICIA F | 708 HOMESTEAD BLVD GAUTIER | 4.48 |
| 85070008.000 | SWANSON MARILYN | 712 HOMESTEAD BLVD GAUTIER | 4.38 |

| PIDN | NAME | LOCATION | ACREAGE |
|---|---|---|---|
| 85070007.000 | MORGAN JULIUS B JR & SANDRA B | 800 HOMESTEAD BLVD GAUTIER | 4.10 |
| 85070006.000 | TERRY MARY S | 804 HOMESTEAD BLVD GAUTIER | 3.53 |
| 85070005.000 | HENWOOD TYRRELL A & JEAN Y | 808 HOMESTEAD BLVD GAUTIER | 3.44 |
| 85070004.000 | HOOVER CELENA R | 812 HOMESTEAD BLVD GAUTIER | 3.34 |
| 85070003.000 | LADNER WILLIAM D & CARRIE ANN | 900 HOMESTEAD BLVD GAUTIER | 3.36 |
| 81830030.000 | COLUMBIA VENTURES INC ET AL C/O MAURICE REED | GAUTIER | 20.50 |
| 81830010.000 | MS STATE OF (TAX SALE 1980) | GAUTIER | 23.50 |
| 81830020.025 | TUCEI F A & HAZEL M TRUSTEES | LOUIS ALEXIS TR GAUTIER | 77.66 |
| 81830080.000 | SWANSON MARILYN | INDIAN POINT PKWY GAUTIER | 18.91 |
| 81830020.000 | TUCEI F A & HAZEL M TRUSTEES | JOHN DAILEY DR GAUTIER | 78.39 |
| | | TOTAL | **443.13** |

EXHIBIT 1

GAUTIER, MISSISSIPPI
ECONOMIC DEVELOPMENT/PLANNING DEPARTMENT
# PUBLIC HEARING APPLICATION

Public Hearing Number
GPC 14-01-RZ

PERMIT REQUESTED:

| TO BE HEARD BY GAUTIER PLANNING COMMISSION: | | FEE: |
|---|---|---|
| Change in Zoning District | X | $300.00 |
| Major Development | | No Fee |
| Home Occupation | | $100.00 |
| Variance (greater than 30%) | | $100.00 |
| Appeal to Staff Decision | | $100.00 |

**********

| TO BE HEARD BY ECONOMIC DEVELOPMENT/PLANNING DIRECTOR ON STAFF REVIEW: | | FEE: |
|---|---|---|
| Home Occupation | | $100.00 |
| Variance (30% or less) | | $100.00 |

**See Attachment for Application Procedure**

Name of Applicant: WILLIAM R. FINNICUM

Name of Business: NA Phone: 228-205-2228

Business Address: NA Mailing Address (if Different): 704 HOMESTEAD BLVD GAUTIER, MS 39553

Reason for request, location and intended use of Property: TO REQUEST ALL PROPERTIES (ATTCH 1) ADJACENT TO HOMESTEAD BLVD BE REZONED FROM R-1 TO R-E TO ACHIEVE THE GOALS AND OBJECTIVES OF GAUTIER COMPREHENSIVE PLAN 2030, DATED 15 JUNE 2009.

ATTACHMENTS REQUIRED AS APPLICABLE:

NA 1. Diagram of intended use, showing dimensions and distances of property, building with setbacks, parking spaces, entrances and exits.

ATTCH 1 2. Legal descriptions and street address.

ATTCH 2 3. A detailed project narrative.

ATTCH 3 4. Copy of protective covenants or deed restrictions, if any.

NA 5. Copies of approvals, or requests for approval, from other agencies, such as, but not limited to, the Mississippi State Department of Health, U.S. Army Corp of Engineers, Mississippi Department of Environmental Quality and Department of Marine Resources.

NA 6. Any other information requested by the Economic Development/Planning Director and/or members of the Site Plan Review Committee.

Signature of Applicant: William R. Finnicum

Date of Application: 2 JANUARY 2014

**FOR OFFICE USE ONLY**

**Date Received** 1/2/14 **Verify as Complete** BS

**Fee Amount Received** $300 CH# 1191 pd. 1/2/14

**Initials of Employee Receiving Application** SB

EXHIBIT 1

City of Gautier
Attn: Economic Development/Planning Department
Gautier, MS 39553

2 Jan 2014

To Whom It May Concern,

This letter transmits a public hearing application to consider property owner's request to rezone properties adjacent to Homestead Boulevard from R-1 (low density single-family residential) to R-E (Residential Estate or very low density single-family residential). This request is consistent with the Gautier Unified Development Ordinance (UDO), Article IV, Section 4.16 and the recommendations outlined in the City of Gautier Comprehensive Plan 2030, dated 15 June 2009.

The application includes the required attachments as follows:

- Attachment 1 (18 pages): Legal descriptions and addresses as obtained from the Webmapping Portal of the Jackson County Geographic Information Systems Division (Excel spreadsheet, diagrams of the related properties). An area map with boundary description is included for information/clarification.

- Attachment 2 (2 pages): A detailed project narrative (Homestead Boulevard property owners letter to the Gautier Director for Economic Development, dated 16 December 2013).

- Attachment 3 (7 pages): Copy of protective covenants (Bent Tree Point and LaVille de Courmont subdivisions).

A personal check for $300.00 is enclosed for the processing fee.

Please direct any questions, concerns, and/or updates to the undersigned.

Respectfully submitted,

William R. Finnicum
704 Homestead Blvd, Gautier, MS 39553
H: 228-205-2228
C: 703-336-7204
finnicumw@aol.com

EXHIBIT 1

| LINE # | SUBDIVISION | NAME | NAME2 | LOCATION | ADDRESS | CITY | ZIP | PIDN | MAPNO | GISP_1 | Legal Description |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | NA | ROY ALLEN J JR | | 700 HOMESTEAD BLVD GAUTIER | 700 HOMESTEAD BLVD | GAUTIER MS | 39553 | 81807040.400 | 764.19-07-001.00 | 764.19-04-0004.00 | BEG SWC CL SEC 7 E 1576' N 24 DEG E 1187.8' S 77 DEG E 667.5' S 74 DEG E 654' S 83 DEG E 398' N 14D E 220 POB N 14D E 150 S 80D E 1900 TO C/L PASC RIVER SLY 105' M/L N 80D W 1705' S 14D W 85' N 68D W 195.67' TO POB DB 1345-602 (4 Map764.19-04) |
| 2 | NA | DEES DORA VIRGINIA | | 701 HOMESTEAD BLVD GAUTIER | 15078 LAURELWOOD DR | GULFPORT MS | 39503 | 81807045.000 | 764.19-07-004.00 | 764.19-04-0003.00 | COM SWC CL 7 E 1576 N 24*E1201.3 N76*W 607.6 N26*E 148 TO S/M HOM ESTEAD SE 770.2 S 73*E 1133.3 S 81*E 78.03 POB S 10*W 477.4 S60 *E 78.5 S69*E 135.9 N64*E 102.15 N72*E 113.4 N55*E 70.4 NLY 348.3 N19*E226.3N56*W80SLY125M/L WLY POBDB196-211;344DB206-132DB484- 398DB614-112 (3 Map764.19-04) |
| 3 | NA | DEES LIMITED PARTNERSHIP | | HOMESTEAD BLVD GAUTIER | 15078 LAURELWOOD DR | GULFPORT MS | 39503 | 81807045.025 | 764.19-07-003.00 | 764.19-03-0052.00M | COM SWC CL 7 E 1576' TO POB N 24* E 1201.31' TO S/M HOMESTEAD N 76* W 607.6' S 26* W 148'S 76* E 607.6' N 26* E 148' SELY 350' S 1140' M/L W 870' TO POB DB 1162-257 (52M Map764.19-03) |
| 4 | NA | DEES LIMITED PARTNERSHIP | | HOMESTEAD BLVD DRO GAUTIER | 15078 LAURELWOOD DR | GULFPORT MS | 39503 | 81807045.030 | 764.19-07-003.00 | 764.19-04-0001.00 | COM SWC CLM 7 E 2446' TO POB N 1140'TO S/M HOMESTEAD SELY 1554' S 81*E 78'S 10*W 477.4'S 60* E 78.5'S 69*E 135.9'N 64*E 102' N 72*E 113.4'N55*E 70'NLY 348.35' N 19*E 226.3'S 56*E 115.6'N 14* E 85'S 80* E 1700' TO RIVER SLY 708' W 1970' W TO POB DB1162-257 (1 MAP764.19-04) |
| 5 | BENT TREE POINT | KREBS JOSEPH V & BETTY L | | 702 HOMESTEAD BLVD GAUTIER | 702 HOMESTEAD BLVD | GAUTIER MS | 39553 | 85070011.000 | 764.19-07-000.00 | 764.19-04-0005.00 | LT 11 BENT TREE POINT DB 729-262 (5 Map764.19-04) |
| 6 | BENT TREE POINT | KREBS JOSEPH V JR & BETTY L | | 702 HOMESTEAD BLVD GAUTIER | 702 HOMESTEAD BLVD | GAUTIER MS | 39553 | 85070012.000 | 764.19-07-000.00 | 764.19-04-0006.00 | A PARCEL OF LAND DESCRIBED AS 'RESERVED LOT' ON BENT TREE POINT S/D BOUNDED ON S & E BY HOMESTEAD BLVD ON W BY LOT 10 ON N BY LOT 11 BENT TREE POINT S/D DB 761-536 RESERVED AREA (6 Map764.19-04) |
| 7 | BENT TREE POINT | FINNICUM WILLIAM R & SARAH H | | 704 HOMESTEAD BLVD GAUTIER | 704 HOMESTEAD BLVD | GAUTIER MS | 39553 | 85070010.000 | 764.19-07-000.00 | 764.19-04-0007.00 | LT 10 BENT TREE POINT DB 1576-638 (7 MAP764.19-04) |
| 8 | BENT TREE POINT | GAUTIER MELVIN DOUGLAS & | PATRICIA F | 708 HOMESTEAD BLVD GAUTIER | 708 HOMESTEAD BLVD | GAUTIER MS | 39553 | 85070009.000 | 764.19-07-000.00 | 764.19-04-0008.00 | LT 9 BENT TREE POINT DB 1204-661 (8 Map764.19-04) |
| 9 | BENT TREE POINT | SWANSON MARILYN | | 712 HOMESTEAD BLVD GAUTIER | 700 TANTALLON DR | OCEAN SPRINGS MS | 39564 | 85070008.000 | 764.19-07-000.00 | 764.19-04-0009.00 | LOT 8 BENT TREE POINT S/D DB 1491-292 (9 MAP764.19-04) |
| 10 | BENT TREE POINT | MORGAN JULIUS B JR & SANDRA B | % J B MORGAN JR | 800 HOMESTEAD BLVD GAUTIER | 800 HOMESTEAD BLVD | GAUTIER MS | 39553 | 85070007.000 | 764.19-07-000.00 | 764.19-04-0010.00 | LT 7 BENT TREE POINT DB 685-607 (10 Map764.19-04) |
| 12 | BENT TREE POINT | TERRY MARY S | | 804 HOMESTEAD BLVD GAUTIER | 804 HOMESTEAD BLVD | GAUTIER MS | 39553 | 85070006.000 | 764.19-07-000.00 | 764.19-04-0011.00 | LT 6 BENT TREE POINT DB 1033-333 (11 Map764.19-04) |
| 13 | BENT TREE POINT | HENWOOD TYRRELL A & JEAN Y | | 808 HOMESTEAD BLVD GAUTIER | 808 HOMESTEAD BLVD | GAUTIER MS | 39553 | 85070005.000 | 764.19-07-000.00 | 764.19-04-0012.00 | LOT 5 BENT TREE POINT DB 1029-853 (12 Map764.19-04) |
| 14 | BENT TREE POINT | HOOVER CELENA R | | 812 HOMESTEAD BLVD GAUTIER | 812 HOMESTEAD BLVD | GAUTIER MS | 39553 | 85070004.000 | 764.19-07-000.00 | 764.19-04-0013.00 | LT 4 BENT TREE POINT DB 1399-800 (13 MAP764.19-04) DB 1621-1 |
| 15 | BENT TREE POINT | LADNER WILLIAM D & CARRIE ANN | | 900 HOMESTEAD BLVD GAUTIER | 900 HOMESTEAD BLVD | GAUTIER MS | 39553 | 85070003.000 | 764.19-07-000.00 | 764.19-04-0014.00 | LT 3 BENT TREE POINT DB 1133-812 (14 Map764.19-04) |
| 16 | BENT TREE POINT | BUGNER MICHAEL L & DEBRA L | | 904 HOMESTEAD BLVD GAUTIER | 904 HOMESTEAD BLVD | GAUTIER MS | 39553 | 85070002.000 | 764.19-07-000.00 | 764.19-03-0001.00 | LOT 2 BENT TREE POINT 1116-124 (1 Map764.19-03) |
| 17 | BENT TREE POINT | NORTON WANDA P & BRUCE J | | 908 HOMESTEAD BLVD GAUTIER | 908 HOMESTEAD BLVD | GAUTIER MS | 39553 | 85070001.000 | 764.19-07-000.00 | 764.19-03-0002.00 | LT 1 BENT TREE POINT DB 1067-7 DB 1565-423 DB 1565-425 (2 MAP764.19-03) DB 1595-476 |
| 18 | THE HAMMOCK | DINKEL COREY BRIAN & | DINKEL JULIA CLAIRE LANIUS | 1000 HOMESTEAD BLVD GAUTIER | 1000 HOMESTEAD BLVD | GAUTIER MS | 39553 | 85420005.000 | 764.19-07-000.00 | 764.19-03-0003.00 | LT 5 HAMMOCK S/D PB 15-36 DB 1644-757 (3 MAP764.19-03) |
| 19 | THE HAMMOCK | DORSETT JAMES A | | 1004 HOMESTEAD BLVD GAUTIER | P O BOX 487 | GAUTIER MS | 39553 | 85420002.000 | 764.19-07-000.00 | 764.19-03-0006.00M | LTS 2 3 & 4 HAMMOCK S/D PB 15-36 DB 583-363 DB 615-678 (6M Map764.19-03) |
| 20 | THE HAMMOCK | KINSEY JOHN M II & CYNTHIA L | | 1104 HOMESTEAD BLVD GAUTIER | 1104 HOMSTEAD BLVD | GAUTIER MS | 39553 | 85420001.000 | 764.19-07-000.00 | 764.19-03-0007.00 | LT 1 HAMMOCK S/D & A 18' STRIP ON W/SIDE PB 15-36 DB 1444-801 (7 MAP764.19-03) |
| 21 | NA | JOHNSON MILTON POPE III & | KATHLEEN R | 1204 HOMESTEAD BLVD GAUTIER | 1204 HOMESTEAD BLVD | GAUTIER MS | 39553 | 81807020.310 | 764.19-07-026.00 | 764.19-03-0008.00 | COM NWC SW1/4 CL SEC 7-7-6 E 269.6' S 877.05' TO CTY RD S 74 DEG E 279.14' S 73 DEG E 490.45' TO POB S 73 DEG E 163.49' N 24 DEG E 661.15' N 75 DEG W 262.5' S 15 DEG W 649.09' TO POB CONT 3.18 AC DB 624-29 (8 Map764.19-03) |
| 22 | NA | SMITH JIMMIE F & BARBARA | | 1205 HOMESTEAD BLVD GAUTIER | 1205 HOMESTEAD BLVD | GAUTIER MS | 39553 | 81807020.300 | 764.19-07-015.00 | 764.19-03-0050.00 | COM NWC SW1/4 CLAIM SEC 7-7-6 E 269.9' S 877.05' S 62.38' S 74 DEG E 262.56' S 73 DEG E 389.82' TO POB CONT S 73 DEG E 254.36' S 77 DEG E 71.84' S 18 DEG W 434.63' N 75 DEG W 276.71' N 11 DEG E 439.59' TO POB CONT 3.01 AC M/L SEC 7-7-6 DB 619-55 (50 Map764.19-03) |
| 23 | NA | SMITH JIMMIE F & BARBARA A | | LOUIS ALEXIS TR GAUTIER | 1205 HOMESTEAD BLVD | GAUTIER MS | 39553 | 81807020.002 | 764.19-07-014.00 | 764.19-03-0036.00 | COM NWC SW1/4 S 89 DEG E 269.6' S 1424.43' S 75 DEG E 553.41' TO POB S 75 DEG E 276.71' S 32 DEG W 578.07' TO N/M LOUIS ALEXIS TRL WLY & NWLY TO PT S 42 DEG W OF POB N 42 DEG E 560.75' TO POB DB 931-188 (36 Map764.19-03) |

| LINE # | SUBDIVISION | NAME | NAME2 | LOCATION | ADDRESS | CITY | ZIP | PIDN | MAPNO | GISP 1 | Legal Description |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 24 | NA | MANIS STEVE CHARLES | | 1281 HOMESTEAD BLVD GAUTIER | 1281 HOMESTEAD BLVD | GAUTIER MS | 39553 | 81807020.340 | 764.19-07-000.00 | 764.19-03-0049.00 | COM NW COR SW1/4 CL SEC 7 E 269.9' S 877.05' S 62.38' S 74 DEG E 262.56' S 73 DEG E 63.62' TO POB S 73 DEG E 326.20' S 11 DEG W 439.59' N 75 DEG W 276.70' N 5 DEG E 454.14' TO POB DB 1105-906 (49 Map764.19-03) |
| 25 | NA | HUNTLEY DEBORAH S & | GOOD KAREN A | HOMESTEAD BLVD GAUTIER | 1316 HOMESTEAD BLVD | GAUTIER MS | 39553 | 81807020.330 | 764.19-07-025.00 | 764.19-03-0009.00 | COM NWC SW1/4 SEC 7 E 269.9' S 877.05' S 74 DEG E 279.14' S 73 DEG E 326.96' TO POB CONT S 73 DEG E 163.49' N 15 DEG E 650' W'LY 263' S 6 DEG W 652' TO POB DB 1205-463 (9 Map764.19-03) |
| 26 | NA | HUNTLEY DEBORAH S & | GOOD KAREN A | 1316 HOMESTEAD BLVD GAUTIER | 1316 HOMESTEAD BLVD | GAUTIER MS | 39553 | 81807020.320 | 764.19-07-024.00 | 764.19-03-0010.00 | COM NW COR SW1/4 CL SEC 7 E 269.6' S 877.05' S 74 DEG E 279.14' S 73 DEG E 163.48' TO POB CONT S 73 DEG E 163.48' N 6 DEG E 652' NW'LY 326' S 3 DEG W 877' TO POB SEC 7-7-6 DB 1205-463 (10 Map764.19-03) |
| 27 | NA | LUKE ROYCE B & ROSE MARIE | | 1321 HOMESTEAD BLVD GAUTIER | 1321 HOMESTEAD BLVD | GAUTIER MS | 39553 | 81807020.350 | 764.19-07-017.00 | 764.19-03-0048.00 | COM NW COR SW1/4 CL SEC 7 E 269.6' S 877.05' S 62.38' TO POB S 74 DEG E 262.56' S 73 DEG E 63.62' S 5 DEG W 454.14' N 75 DEG W 276.71' N 470' TO POB DB 986-193 (48 Map764.19-03) |
| 28 | NA | LUKE ROYCE B & ROSE MARIE | | HOMESTEAD BLVD GAUTIER | 1321 HOMESTEAD BLVD | GAUTIER MS | 39553 | 81807020.100 | 764.19-07-010.00 | 764.19-03-0035.00 | COM NWC SW1/4 CL SEC 7 E 268.24' S TO N/M HOMESTEAD BLVD S 63.28' TO S/M HOMESTEAD S 74*E ALG S/M 262.56' S73*E ALG S/M 644.18' S 77*E ALG S/M 71.84' TO POB S77*EALG S/M 326.20' S24*W 790.35' TO N/M LOUIS ALEXIS RD S76*W ALG N/ M 450 N32*E 578.07 N18*E 434.6TO POBDB1199-41(35 Map764.19-03) ' |
| 29 | NA | LUKE ROYCE B & ROSE MARIE | | LOUIS ALEXIS TR GAUTIER | 1321 HOMESTEAD BLVD | GAUTIER MS | 39553 | 81807020.000 | 764.19-07-018.00 | 764.19-03-0037.00 | COM NWC SW1/4 S 89 DEG E 269.6' S 1409.44' TO POB S 75 DEG E 553.40' S 42 DEG W 560.75' TO N/M LOUIS ALEXIS TRL N 38 DEG W 99.85' N 41 DEG W 134.48' N 372.70' ALG S/D TO POB DB 1066-671 (37 Map764.19-03) DB 1080-786 (PER SURVEY) |
| 30 | NA | KINSEY JOHN W & CHARLOTTE | | 1322 HOMESTEAD BLVD GAUTIER | 1322 HOMESTEAD BLVD | GAUTIER MS | 39553 | 81807020.050 | 764.19-07-022.00 | 764.19-03-0011.00 | COM NEC SE1/4 SEC 24-7-7 S 33* E 476.2' TO POB S 484.60' S 74* E 442.14' N 3* E 876.86' TO W/B CANAL NWLY ALG CANAL 260' M/L S 73* W 160' M/L S 108.18' S 67* W 97.05' S 23* W 54.54' N 74* W 167.79' S 156' TO POB DB 1073-582 DB 1078-330 (11 Map764.19-03) (PER SURVEY) |
| 31 | NA | SHAW TALMADGE D & ETTA P | | LOUIS ALEXIS TR GAUTIER | 1631 MARY ANN DR | GAUTIER MS | 39553 | 81807040.420 | 764.19-07-008.01 | 764.19-03-0034.00 | COM SW COR CL SEC 7 E 928' N 24 DEG E 708.9' TO POB N 24 DEG E 639' S 77 DEG E 191.26' S 24 DEG W 531.32' SWLY ALG RD TO POB DB 455-177 (34 Map764.19-03) DB 1275-820 |
| 32 | NA | SHAW TALMADGE D & ETTA P | | LOUIS ALEXIS TR GAUTIER | 1631 MARY ANN DR | GAUTIER MS | 39553 | 81807040.422 | 764.19-07-008.02 | 764.19-03-0032.00 | COM SW COR CL SEC 7 E 928' N 24 DEG E 1347.9' S 77 DEG E 375.31' TO POB S 77 DEG E 224.39' S 24 DEG W 406.7' SWLY ALG RD 235' M/L N 24 DEG E 444.13' TO POB DB 455-177 (32 Map764.19-03) DB 1275-820 |
| 33 | NA | WATROUS JOSEPH D & DAPHNE C | | 1212 LOUIS ALEXIS TR GAUTIER | 1212 LOUIS ALEXIS TRAIL | GAUTIER MS | 39553 | 81807040.424 | 764.19-07-008.03 | 764.19-03-0033.00 | COM SW COR CL SEC 7 E 928' N 24 DEG E 1347.9' S 77 DEG E 191.26' TO POB S 77 DEG E 184.05 S 24 DEG W 444.13' TO RD S 85 DEG W 83.62' S 76 DEG W 135.66' N 24 DEG E 531.32' TO POB DB 1052-832 (33 Map764.19-03) |
| 34 | NA | WATROUS JOSEPH D & DAPHNE C | | LOUIS ALEXIS TR GAUTIER | 1212 LOUIS ALEXIS TRAIL | GAUTIER MS | 39553 | 81807040.460 | 764.19-07-006.00 | 764.19-03-0031.00 | COM SWC CL SEC 7-7-6 E 1368' TO POB CONT E 208' N 24 DEG E 742.3' N 79 DEG W 89' S 88 DEG W 100' S 87 DEG W 14' S 24 DEG W 756' TO POB DB 1199-690 (31 Map764.19-03) |
| 35 | NA | TUCEI F A & HAZEL M TRUSTEES | | LOUIS ALEXIS TR GAUTIER | 3212 OAK ST | GAUTIER MS | 39553 | 81807021.000 | 764.19-07-013.00 | 764.19-03-0028.00 | COM SWC CL SEC 7 E 275' TO POB N 735' TO S/M LOUIS ALEXIS TRAIL SELY ALG S/M TRAIL 525' S 20 DEG E 435' W 475' TO POB DB 411-485 DB 774-485 DB 1090-546 DB 1090-940 (28 Map764.19-03) |
| 36 | NA | TUCEI F A & HAZEL M TRUSTEES | | GAUTIER | 3212 OAK ST | GAUTIER MS | 39553 | 81830020.025 | 767.30-30-008.00 | 769.30-01-0003.00 | ALL GOV'T LOT 2 SECT 30-7-6 DB 373-327 DB 774-485 DB 1090-546 DB 1090-940 (3 Map769.30-01) |
| 37 | NA | TUCEI F A & HAZEL M TRUSTEES | | GAUTIER | 3212 OAK ST | GAUTIER MS | 39553 | 81830020.000 | 767.30-30-008.00 | 769.30-02-0003.00 | N1/2 GOV'T LOTS 3 & 4 LESS .95 AC IN NEC LOT 4 DB 373-327 DB 774-485 DB 1090-546 DB 1090-940 (3 Map769.30-02) |
| 38 | NA | SWANSON MARILYN | | INDIAN POINT PKWY GAUTIER | 700 TANTALLON DR | OCEAN SPRINGS MS | 39564 | 81830080.000 | 767.30-30-007.00 | 769.30-02-0002.00 | S1/2 GOVT LOTS 3 & 4 LYING N OF SIOUX BAYOU DB 1320-237 DB 1554-610 (2 MAP769.30-02) |



EXHIBIT 1

EXHIBIT 1



# 700 Homestead Blvd

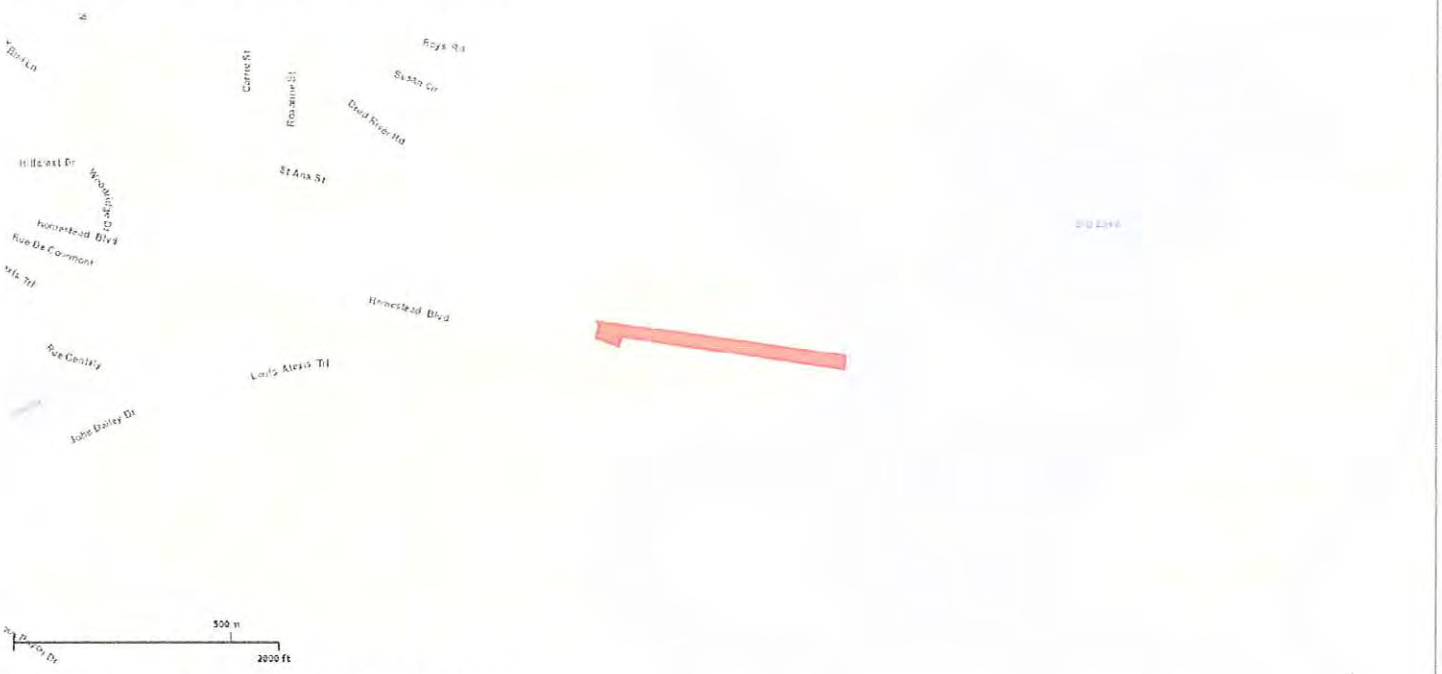


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EXHIBIT 1



# 701 Homestead Blvd

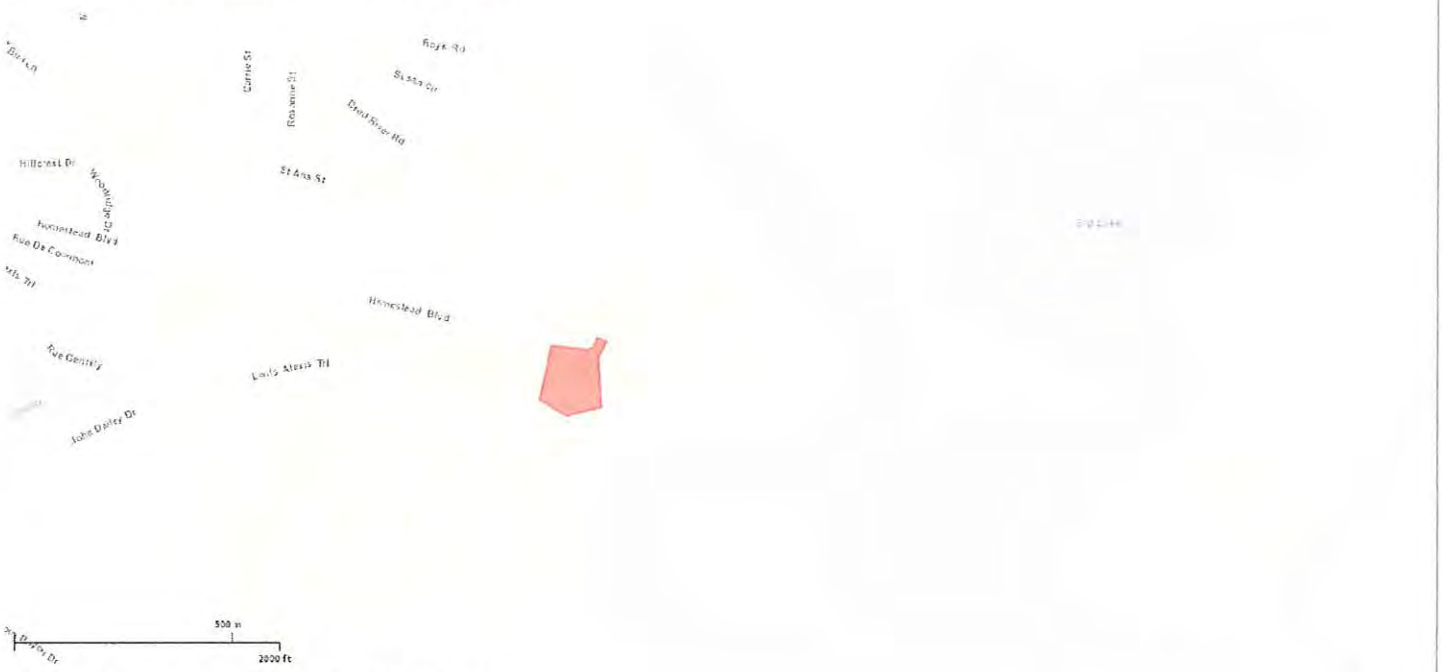


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EXHIBIT 1



# Bent Tree

## 702-908 Homestead (Lots 1-11)

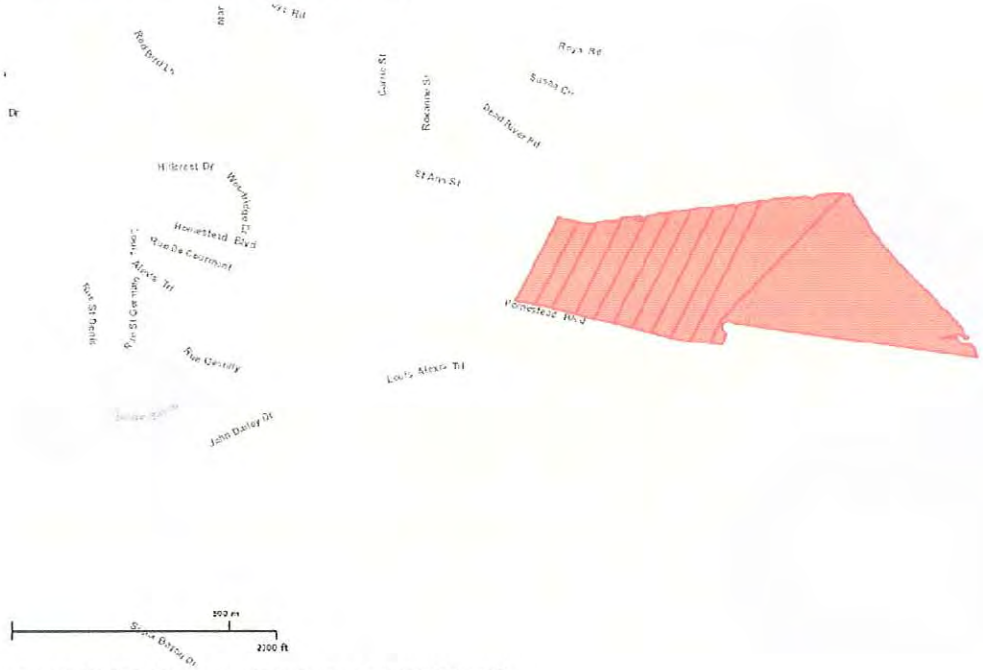


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EXHIBIT 1



# Homestead Blvd Properties

## From Woodbridge Drive East

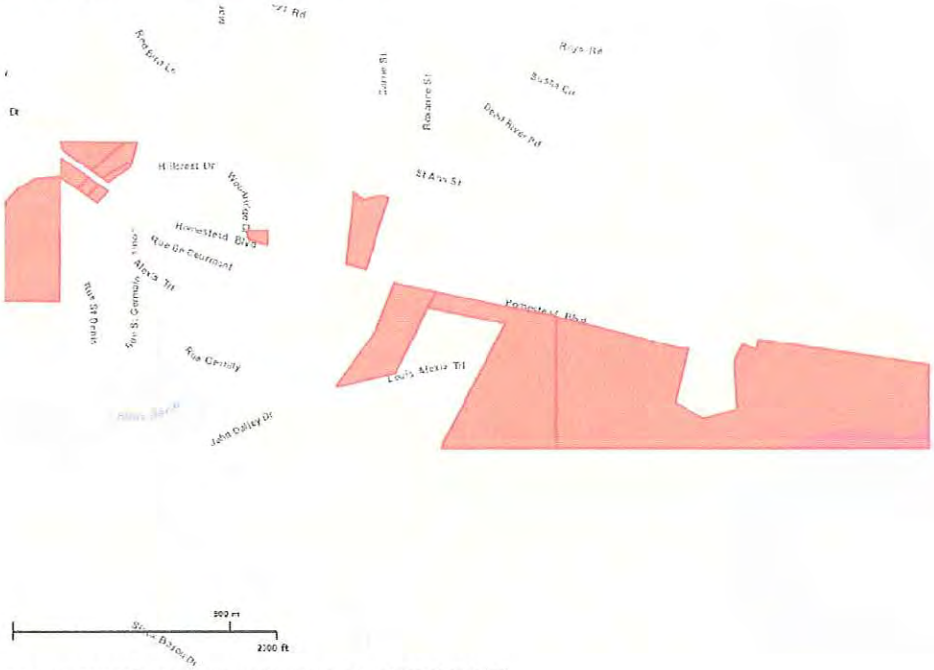


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EXHIBIT 1



# The Hammock

## 1000-1104 Homestead (Lots 1-5)

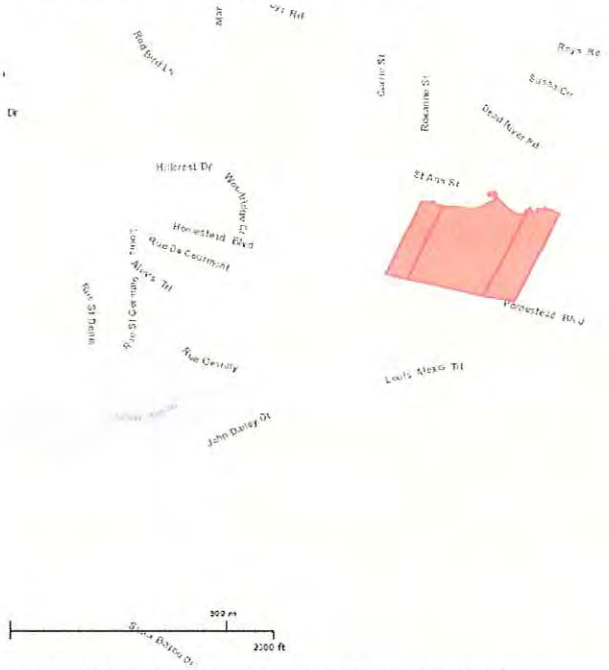


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EXHIBIT 1



# Shaw Property

## Louis Alexis Tr adjacent to Homestead Blvd

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# 1204 Homestead Blvd

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EXHIBIT 1



# 1205 Homestead Blvd

## incl property adjacent to Louis Alexis Tr

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EXHIBIT 1



# 1281 Homestead Blvd

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EXHIBIT 1

Homestead Boulevard Rezoning Application
GIS Webmapping extracts

# 1316 Homestead Blvd

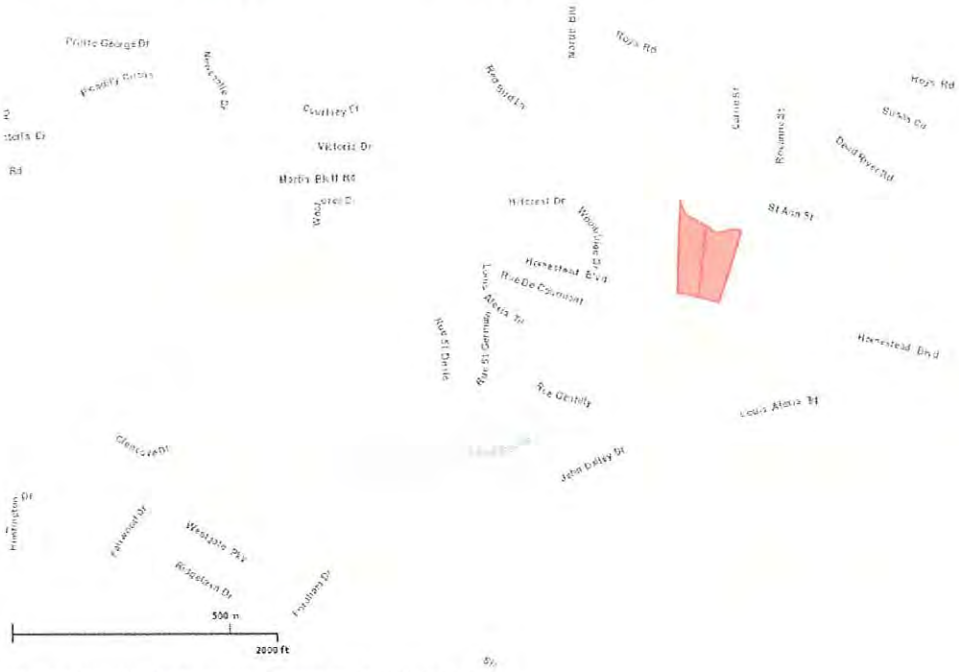


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EXHIBIT 1



# 1321 Homestead Blvd

## incl property adjacent to Louis Alexis Tr

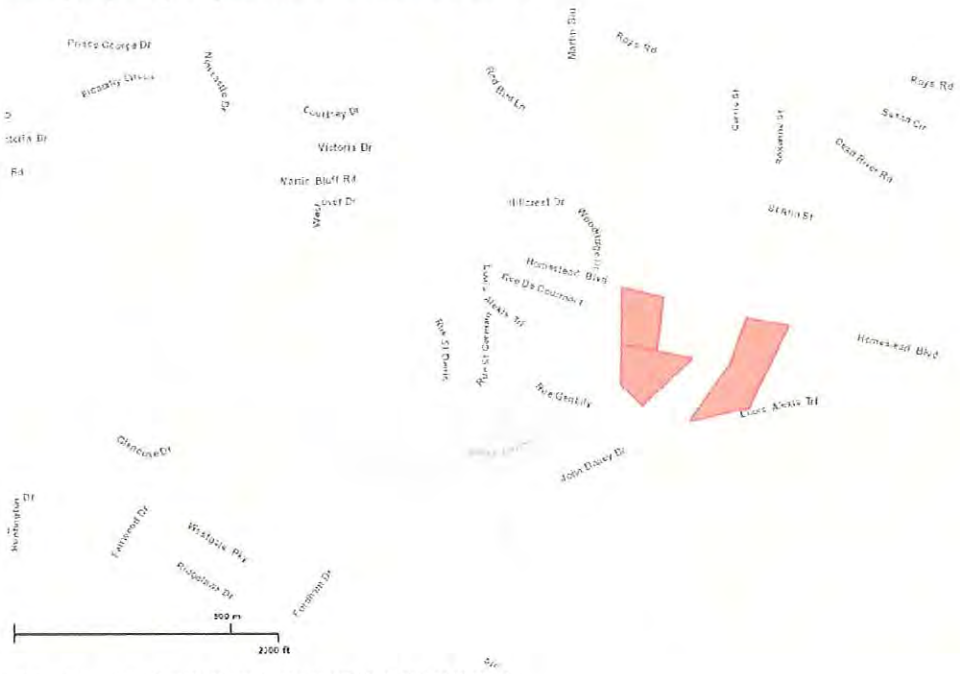


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EXHIBIT 1



# 1322 Homestead Blvd

**incl property adjacent to Woodbridge Dr**

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EXHIBIT 1



# Watrous Property

## Louis Alexis Tr adjacent to Hometead Blvd

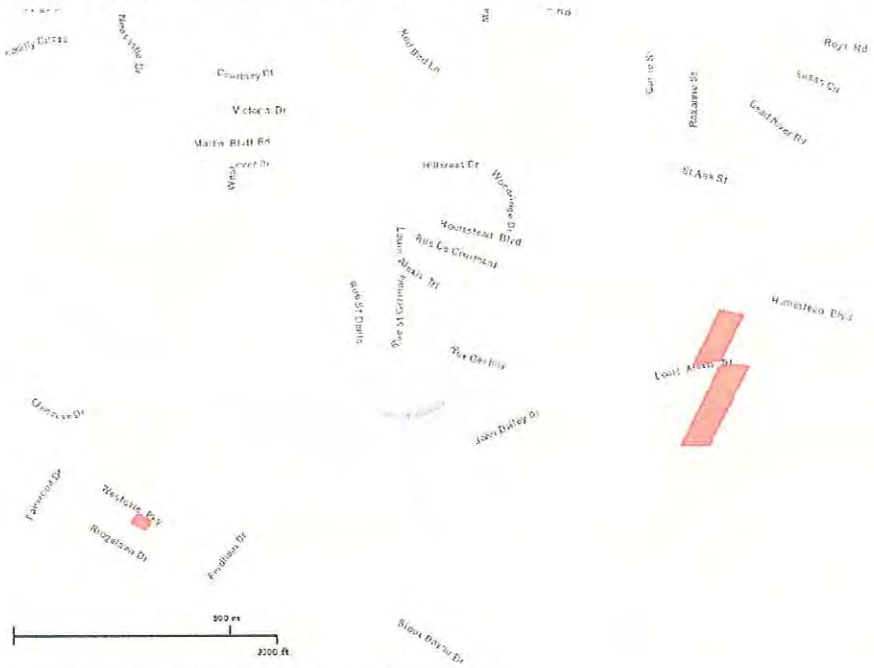


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EXHIBIT 1



# Tucei Property

## Louis Alexis Tr adjacent to Hometead Blvd

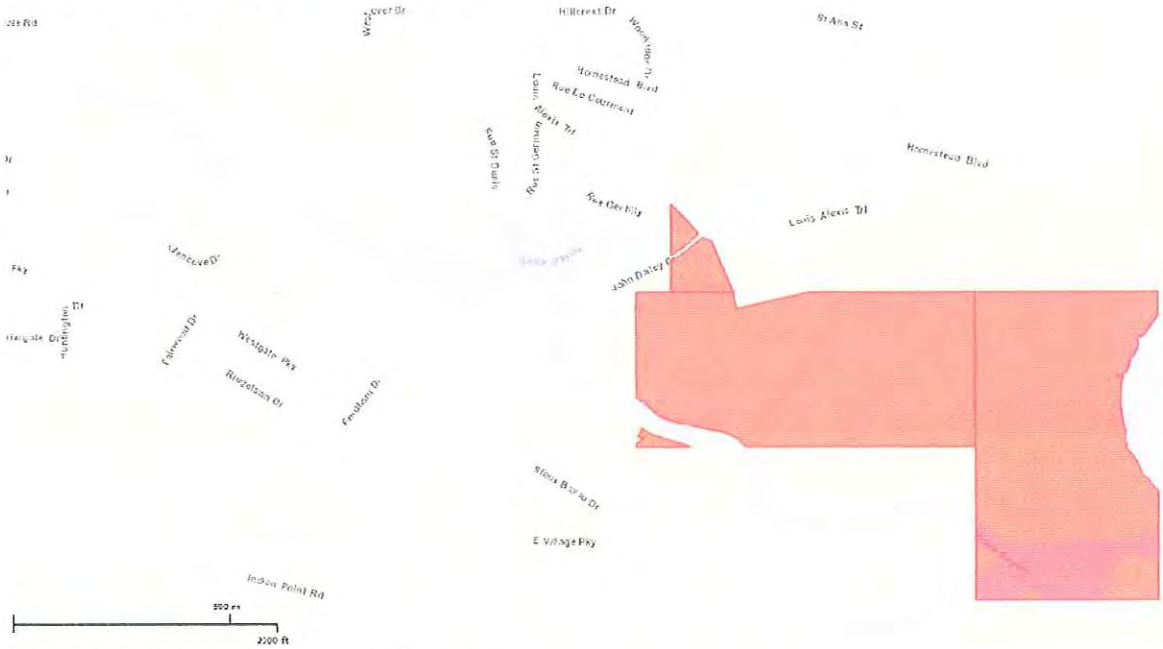


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EXHIBIT 1



# Swanson Property

## Adjacent to Homestead Blvd properties

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EXHIBIT 1



All property except that owned by Mississippi Gulf Coast Wastewater (blue shading), Parcel #: 81807021.050, 81807040.430 and 81830020.050, within the boundary described as: Beginning at the NW corner of the property owned by John and Charlotte Kinsey, Parcel #: 81807020.050; thence due south to a point where this line meets the northern boundary of the property owned by F A and Hazel M Tucei, Parcel #: 81830020.000; from that point due west to the NW corner of said Tucei property; thence due south to the shoreline of Sioux Bayou; from that point eastward following the shoreline to the Pascagoula River; thence following the river shoreline in a northerly direction to the confluence of Lite Bayou and Pascagoula River, marked by the northernmost point of property owned by Joseph and Betty Krebs, Parcel #: 85070011.000; thence following the northern boundaries of all properties along the south side of Lite Bayou to the NE corner of property first identified in this description owned by John and Charlotte Kinsey; thence along the northern boundary of said Kinsey property to the point of beginning.

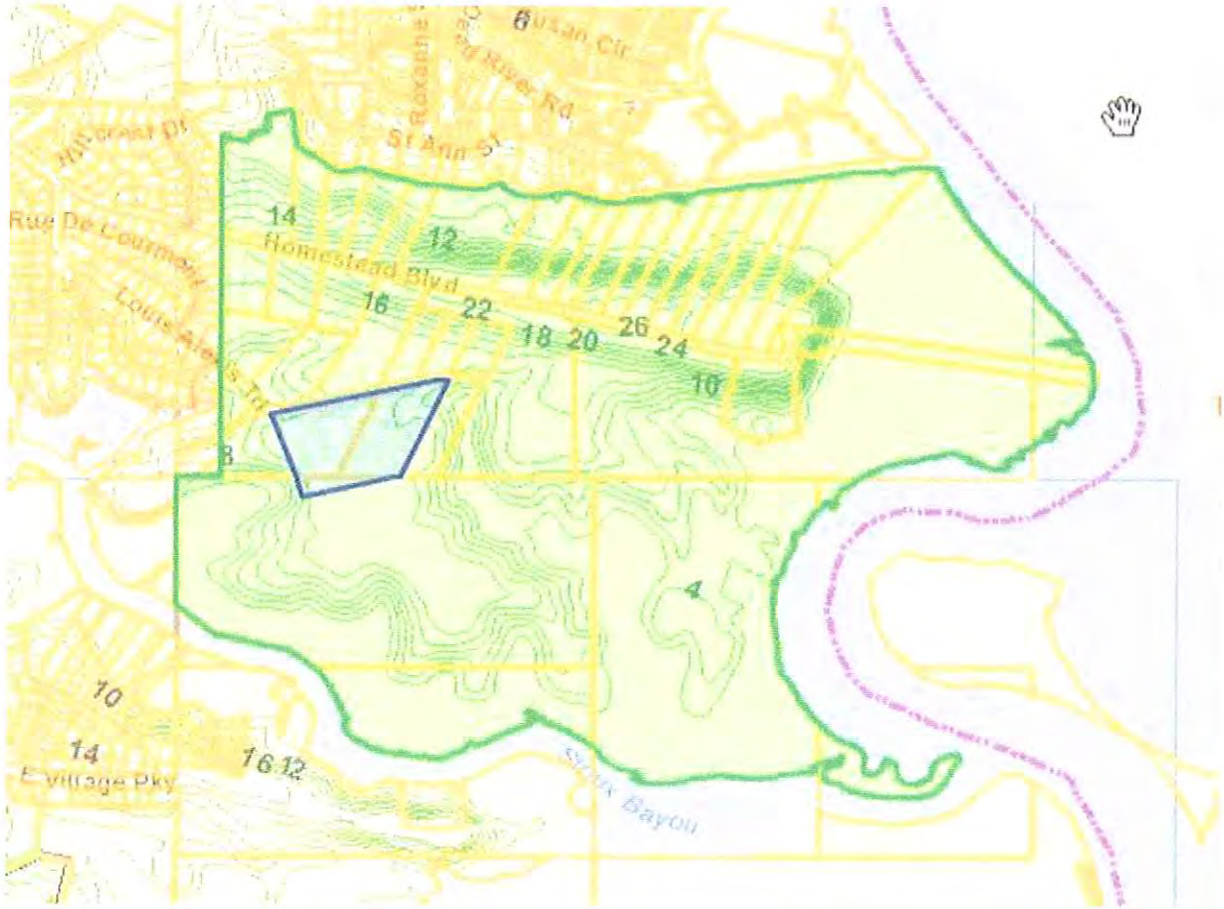


EXHIBIT 1



City of Gautier
Attn: Director, Economic Development
Gautier, MS 39553

December 16, 2013

Dear Ms Nicholson,

In accordance with the Gautier Unified Development Ordinance (UDO), Article IV, Section 4.16, the undersigned residents of Homestead Boulevard (owners of contiguous land in excess of 10 acres along Homestead Boulevard and members of the Homestead Neighborhood Association), request immediate action by the city of Gautier to rezone the properties adjacent to Homestead Boulevard from R-1 (low density single-family residential) to R-E (Residential Estate or very low density single-family residential). This request is consistent with the recommendations outlined in the City of Gautier Comprehensive Plan 2030, dated 15 June 2009 and should not be delayed any further.

Delay in implementing the Comprehensive Plan is now a threat to our general welfare as property owners, the value of our homes, and the viability of our neighborhood. These are protections clearly mandated in Article I of the Gautier UDO.

As you know, the Gautier City Planning Commission is considering a request to sub develop additional property (Dees Landing) adjacent to Homestead Boulevard. We welcome further subdivision of Homestead Boulevard property as a deterrent to questionable activities and potential crime in the vacant lots. We also understand that the proposed plat for the Homestead Boulevard subdivision (re: GPC #13-28-SD), as requested, is legally sufficient in accordance with existing R-1 zoning regulations. However, we believe the small lots (1/3 acre) proposed in the preliminary plat, although consistent with the current R-1 zoning, is contrary to the intended land use for this area as outlined on the Comprehensive Plan 2030 map 9, Future Use, which shows the City of Gautier intends this area to be Very Low Density Residential. All existing home sites on Homestead Boulevard currently fit this description and we believe the small lots proposed in the preliminary plat will not support dwelling units that compliment the area and promote a balanced and attractive residential area with the surrounding properties on Homestead Boulevard: a specified purpose and intent of R-1 zoning as outlined in Section 5.3.3 of the UDO. Furthermore, additional delay in implementing the Comprehensive Plan zoning recommendations for Homestead Boulevard could result in further sub development that is inconsistent with both the UDO and the Comprehensive Plan causing significant imbalance in the neighborhood character and appeal.

We understand that future R-E rezoning for Homestead Boulevard may not impact the Dees Landing sub development request. However, we believe the rezoning is necessary to ensure subsequent development of Homestead Boulevard is consistent with the current characteristics of the neighborhood and mirrors the design characteristics of the future land use in the Comprehensive Plan (i.e., one acre or larger lots, abundant setbacks, low traffic, adjacent to low density residential areas).

EXHIBIT 1



We believe the Homestead Boulevard neighborhood presently demonstrates the study requirements to qualify for a comprehensive rezoning, as outlined in Section 4.16 of the UDO. Therefore, we respectfully submit this rezoning request for your timely consideration and favorable disposition.

Respectfully,
Concerned citizens of Gautier and residents of Homestead Boulevard:

William R. Finnicum
WILLIAM R. FINNICUM
704 HOMESTEAD

Joseph V. Krebs Jr.
JOSEPH V KREBS JR
702 HOMESTEAD BLVD.

Pat Gautier
PAT GAUTIER
708 Homestead Blvd

J B Morgan Jr.
J B. MORGAN
800 HOMESTEAD BLV.

Mary Sue Terry
MARY SUE TERRY
804 Homestead BLVD.

Terry Henwood
Terry Henwood
808 Homestead Blvd - AH

Carrie Gautier
900 HOMESTEAD BLVD
CARRIE GAUTIER

Melodie Clay
Melodie Clay
700 Homestead Blvd
Gautier, MS 39553

Bruce J Norton
BRUCE J NORTON
908 HOMESTEAD BLVD

Tauna M Patterson
Tauna M Patterson
1000 Homestead Blvd

Kathleen R. Johnson
KATHLEEN R JOHNSON
1209 Homestead Blvd.

Barbara Smith
1205 Homestead
BARBARA SMITH

Charlotte Kinsey
1322 Homestead Blvd.
Gautier MS

Royce B Luke
ROYCE B LUKE
1321 Homestead

Copies furnished:
Samantha Abell, Gautier City Manager
Charles "Rusty" Anderson, Councilman, Ward 4

EXHIBIT 1



STATE OF MISSISSIPPI BOOK 616 PAGE 507

COUNTY OF JACKSON

PROTECTIVE COVENANTS

BENT TREE POINT SUBDIVISION

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned KENNETH O. SMITH, being the owner of that certain property situated in the County of Jackson, State of Mississippi, to-wit:

BENT TREE POINT SUBDIVISION, in Claim Section 7, Township 7 South, Range 6 West, Jackson County, Mississippi, as per plat thereof recorded in Book 15, Page 46, of the Records of Plats of Jackson County, Mississippi, do hereby agree and covenant with the purchasers and future owners of all lots in said BENT TREE POINT SUBDIVISION, according to said Plat, reference to which is hereby made, that the following Protective Covenants shall apply to property in said Subdivision, to-wit:

1. LAND USE AND BUILDING TYPE

All lots in said subdivision shall be known and used as residential lots only. No structure shall be erected, altered, placed or permitted to remain on any lot herein designated as residential lots other than one residential building constructed for the purpose of housing, not to exceed two families nor to exceed three stories in height, with a private garage for not more than three cars and other outbuildings incidental to residential use of the lots, including servants quarters separated from the dwelling or connected with the garage.

2. DWELLING COSTS, QUALITY AND SIZE

On any lot no dwelling shall be permitted under 1400 square feet heated area and each shall have two baths. It is the intention and purpose of the covenant to assure that all dwellings shall be of a quality of workmanship and materials substantially the same or better than that which can be produced on the date these covenants are recorded for the minimum permitted dwelling size.

3. BUILDING LOCATION

No building shall be located on any lot nearer to the front lot line as follows, to-wit:

| Lot Number | Front Set Back | Lot Number | Front Set Back |
|---|---|---|---|
| 1 | 60 feet | 7 | 225 feet |
| 2 | 80 feet | 8 | 250 feet |
| 3 | 125 feet | 9 | 275 feet |
| 4 | 150 feet | 10 | 300 feet |
| 5 | 175 feet | 11 | 35 feet |
| 6 | 200 feet | | |

EXHIBIT 1



No building shall be located nearer than 10 feet to a side lot line. For the purpose of this covenant as to lot lines, eaves and steps shall not be construed to permit any portion of a building to be located nearer than 3 feet to a side lot line.

4. EASEMENTS

Easements for installation of utilities and drainage facilities are reserved as shown on the recorded plat.

5. NUISANCES

No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No in-operative automobiles or other vehicles shall be allowed to remain in streets, yards or drives.

6. SIGNS

No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one square foot, one sign of not more than three square feet advertising the property for sale or rent, or signs used for the builder to advertise the property during the construction and sales period.

7. LIVESTOCK AND POULTRY

No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs or cats, or any other household pets, may be kept provided that they are not kept, bred or maintained for commecial purposes, but there shall be no more than four such pets at each residence.

8. GARBAGE AND REFUSE DISPOSAL

No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste.

9. TEMPORARY STRUCTURES

No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used as a residence on any lot, at any time, either temporarily or permanently.

10. VEHICLES AND TRAILERS

No vehicle (including campers on the back of pickups, camping trailers, hauling trailers, boat trailers, or other type of trailer) other than automobiles and pickups can be parked in front of any dwelling at any time. All such excluded vehicles shall be parked behind the house and screened from the street. No house trailer shall be parked on a lot at any time.

11. FENCES

No fences over 4 feet in height shall be erected on any portion of the premises from the front street line to the front sill line of the main building on any lots.

EXHIBIT 1



BOOK 616 PAGE 509

12. TERM

These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five years from the date these covenants are recorded, after which time, said covenants shall be automatically extended for successive periods of ten years unless an instrument signed by the majority of the then land owners of lots has been recorded agreeing to change said covenants in whole or in part.

13. ENFORCEMENT

Enforcement shall be by proceeding at law or in equity against any person or persons violating or attempting to violate any covenant herein contained, either to restrain violation or to recover damages. Any owner of any lot in said subdivision shall be vested with the rights under this paragraph.

14. SEVERABILITY

Invalidation of any one of these covenants by judgment or otherwise shall in no way effect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF the Owner has caused this instrument to be duly executed on this, the 18th. day of April, 1978.

KENNETH O. SMITH

STATE OF MISSISSIPPI

COUNTY OF JACKSON

Personally appeared before me, the undersigned authority in and for the aforesaid jurisdiction, the above named KENNETH O. SMITH, who acknowledged to me that he signed and delivered the above and foregoing instrument of writing on the day and in the year therein mentioned and for the purposes therein stated.

Given under my hand and official seal this, the 18th. day of April, 1978.

Hallie E. Netherland
Notary Public

HALLIE E. NETHERLAND, NOTARY PUBLIC
JACKSON COUNTY, MISSISSIPPI
MY COMMISSION EXPIRES AUGUST 26, 1980

STATE OF MISSISSIPPI — JACKSON COUNTY

I, Wilbert C. Davis, Clerk of the Chancery Court of said County, certify that the within instrument was filed in my office for record on the [illegible] day of [illegible] 1978 at [illegible] o'clock [illegible] M and was duly recorded on the [illegible] day of [illegible] 1978 in Land Deed Book No. [illegible] Pages [illegible] in my office.

EXHIBIT 1



STATE OF MISSISSIPPI

COUNTY OF JACKSON

BOOK 504 PAGE 111

RESTRICTIVE COVENANTS
**********

TRI-LAND DEVELOPMENT, INC., owners and developers, of the following described real property located in an unincorporated area known as Gautier, County of Jackson, State of Mississippi, same being the real property now platted as La Ville de Courmont Subdivision, per official plat of the subdivision being recorded in Plat Book 14, Pages 32 - 33, on file in the office of the Chancery Clerk of Jackson County, Mississippi, hereby make the following declarations as to limitations, restrictions, and uses to which the lots or tracts constituting such subdivision may be put, and hereby specify that such declarations shall and do constitute covenants running with all the land, as provided by law, and shall be binding on all parties and all persons claiming under them, and for the benefit of and as limitations on all future assigns and owners in such subdivision, and are in addition to the restrictions or requirements of zoning and other regulatory laws and ordinances.

GENERAL RESTRICTIONS
**********

1. No building whatever, except a private single-family dwelling house, with the necessary outbuildings, including a private garage, shall be erected, placed or permitted on any lot or any part thereof, and such dwelling house permitted on the lot shall be used as a private single family residence only.
2. No lot shall have a garage constructed thereon for more than three (3) cars.
3. No trailer, mobile home, camper, tent, shack, garage, barn, or other outbuilding erected in the tract shall, at any time, be used as a residence, temporarily or permanently, nor shall any structure of a temporary character be used as a residence.
4. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood. The keeping of hogs, cows, horses, chickens, or other similar animals or fowl, not con-

EXHIBIT 1





sidered normal house pets, is hereby declared to be an offensive activity and is prohibited.

5. All dwellings constructed upon any of said property shall be connected to a sanitary sewer, outdoor toilets being expressly prohibited.

6. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty (20) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a majority of the then owners of the lots has been recorded agreeing to change said covenants in full or in part.

7. Enforcement of these covenants shall be by proceedings at law or in equity against any person or persons violating or attempting to violate, either directly or constructively, any covenant, said enforcement to be for the purpose of restraining the violation or recovering damages or both.

8. Invalidation of any one of these covenants, by judgment or otherwise, shall in no wise affect any of the other provisions which shall remain in full force and effect.

9. The development of a commercial marina on land owned by the undersigned adjacent to this subdivision to the southeast is declared to be desireable and advantageous to this subdivision. All future owners and parties having an interest in any part of this subdivision are hereby restricted and prohibited from asserting in any manner any objection to the development and operation of such a marina, and by accepting title or an interest in said subdivision or part thereof do thereby express their agreement and consent to the development and operation of such marina.

10. Access onto Homestead Boulevard is prohibited from Lots 97 through 105 inclusive.

EXHIBIT 1





NON-WATERFRONT LOTS, Incorporates Two Groups, Group A and Group B
**********

11. Group A incorporates Lots 97 through 111, and Lots 76 through 85. The ground floor of living and habitable area of the main structure of this group of lots, exclusive of one story open porches and garages, shall be not less than 1250 square feet per family unit for a one story building, nor less than 1000 square feet for a dwelling of more than one story. The combined floor area of any structure having more than one story, exclusive of porches and garages, shall not be less than 1650 square feet per family unit.

12. Group B incorporates Lots 112, 113, 75, Lots 86 through 95, Lots 114 through 125, Lots 32 through 40, and Lots 43 through 74. The ground floor of living and habitable area of the main structure of this group of lots, exclusive of one story open porches and garages, shall be not less than 1400 square feet per family unit for a one story building, nor less than 1100 square feet for a dwelling of more than one story. The combined floor area of any structure having more than one story, exclusive of porches and garages, shall not be less than 1750 square feet per family unit.

WATERFRONT LOTS
**********

13. The ground floor of living and habitable area of the main structure, exclusive of open porches and garages, shall be not less than 1600 square feet per family unit for a one story building, nor less than 1200 square feet for a dwelling of more than one story. The combined floor area of any structure having more than one story, exclusive of porches and garages, shall not be less than 1850 square feet per family unit.

14. All boat docks, boat houses, walks, platforms, bulkheads, or appurtenance of any kind, shall be built so as to not extend into or over existing canals, other than a retaining wall built flush against the canal bank for the purpose of retaining said bank. Such permits as may be required by law shall be first obtained.

EXHIBIT 1



BOOK 504 PAGE 114

WITNESS OUR SIGNATURES on this, the ____ day of July, A.D., 1974.

TRI-LAND DEVELOPMENT, INC.

By: _____
Robert B. Beall, President

By: _____
Harold Lawrence, Secretary

STATE OF MISSISSIPPI

COUNTY OF JACKSON

PERSONALLY appeared before me, the undersigned authority in and for said County and State, the above named ROBERT B. BEALL, as President, and HAROLD LAWRENCE, as Secretary, of TRI-LAND DEVELOPMENT, INC., who acknowledged to me that they signed and delivered the foregoing instrument on the day and year therein mentioned.

GIVEN under my hand and seal of office on this the _____ day of July, A.D., 1974.

(SEAL)

_____
Notary Public

My Commission Expires:
_____

STATEMENT OF FEES

Filing ..... 5¢
Recording ..... Wds.
@ 15¢ per 100 .....
Certificate ..... 50¢
Indexing ..... 15¢ for each separate Subdivision
Total Fees .....

Form No. 106

STATE OF MISSISSIPPI — JACKSON COUNTY

I, Wilbur G. Dees, Clerk of the Chancery Court of said County, certify that the within Instrument was filed in my office for record on the 11th day of July, 1974 at 10:21 o'clock A M. and was duly recorded on the 11th day of July, 1974 in Land Deed Book No 504 Pages 111-114 in my office.

GIVEN under my hand and seal of office this 11th day of July A.D., 1974.

Wilbur G. Dees
WILBUR G. DEES, Chancery Clerk

EXHIBIT 2

City of Gautier
Attn: Economic Development/Planning Department
Gautier, MS 39553

21 March 2014

To Whom It May Concern,

1. Reference, Public Hearing Application for Change in Zoning District, attachment 2, dated 2 January 2014 (GPC-14-01-RZ).

2. This letter transmits an addendum to reference 1 (attached).

RECEIVED
MAR 21 2014

Respectfully submitted,

William R. Finnicum
704 Homestead Blvd, Gautier, MS 39553
H: 228-205-2228
C: 703-336-7204
finnicumw@aol.com

EXHIBIT 2

**ADDENDUM**

**Attachment 2**

**Application for Public Hearing**

**Dated 2 January 2014**

**Comprehensive Rezoning of Homestead Boulevard**

**GPC 14-01-RZ**

The following points are submitted for additional consideration:

- R-1 zoning (low density single-family residential) for properties/parcels adjacent to Homestead Boulevard is a mistake. These properties have exceeded one acre parcels since Gautier incorporation and initial development and presently satisfy the minimum criteria for R-E zoning (Residential Estate or very low density single-family residential). The Gautier Unified Development Ordinance (UDO) specifies that it was formulated and designed to implement the Comprehensive Plan. Article V of the UDO specifies that zoning district purposes are to be achieved in accordance with the Comprehensive Plan. The Comprehensive Plan recognizes the problem wherein R-1 zoning exists in estate type areas, allowing undesirable development in those areas. It then states, in Table 27, that estate zoning districts should be created and re-zoned to protect those areas. This action is listed as short term and ongoing. Short term is defined as within 3 years. The Future Land Use map shows us that Gautier did indeed identify the Homestead Boulevard area as R-E, however the city has not yet taken the action necessary to rezone as outlined in the Comprehensive Plan.

- A specified intent in the UDO is that R-E districts should be maintained without intrusive uses so as to minimize the impact of additional traffic or noise. Currently we have 20 homes in the area identified as R-E in the Comprehensive Plan. These homes sit on approximately 55 upland acres (marsh acreage not considered). Averaging two cars per household, that's 40 cars traveling up and down Homestead Boulevard. Presently, there is approximately 45 undeveloped upland acres on the south side of Homestead Boulevard. Assuming only 85% of that acreage is developed in accordance with or exceeding the existing R-1 zoning criteria (e.g., one-half acre parcels), we can expect an increase of about 145 cars moving on Homestead Boulevard, not including visitors. That's a 360% increase in the traffic we have now. One must also consider lawn mowers, leaf blowers and all the various sources of additional noise in a neighborhood.

EXHIBIT 2

- We understand there are presently no R-E zoned districts in Gautier. However, given that the properties on Homestead Blvd meet the minimum R-E zoning criteria, we believe an argument can be made that the existing R-1 zoning for the Homestead Boulevard area is a mistake. Furthermore, and IAW the UDO, we believe a zoning mistake is sufficient grounds to approve our application for comprehensive rezoning of Homestead Boulevard for Residential Estate (R-E) development in accordance the Comprehensive Plan.

EXHIBIT A

# Location Map

## Homestead Boulevard

## Homestead Comprehensive Rezoning

City Of Gautier
Economic Development/Planning

0 400 800
Feet

N
W E
S

Prepared by the
City of Gautier
GIS Division

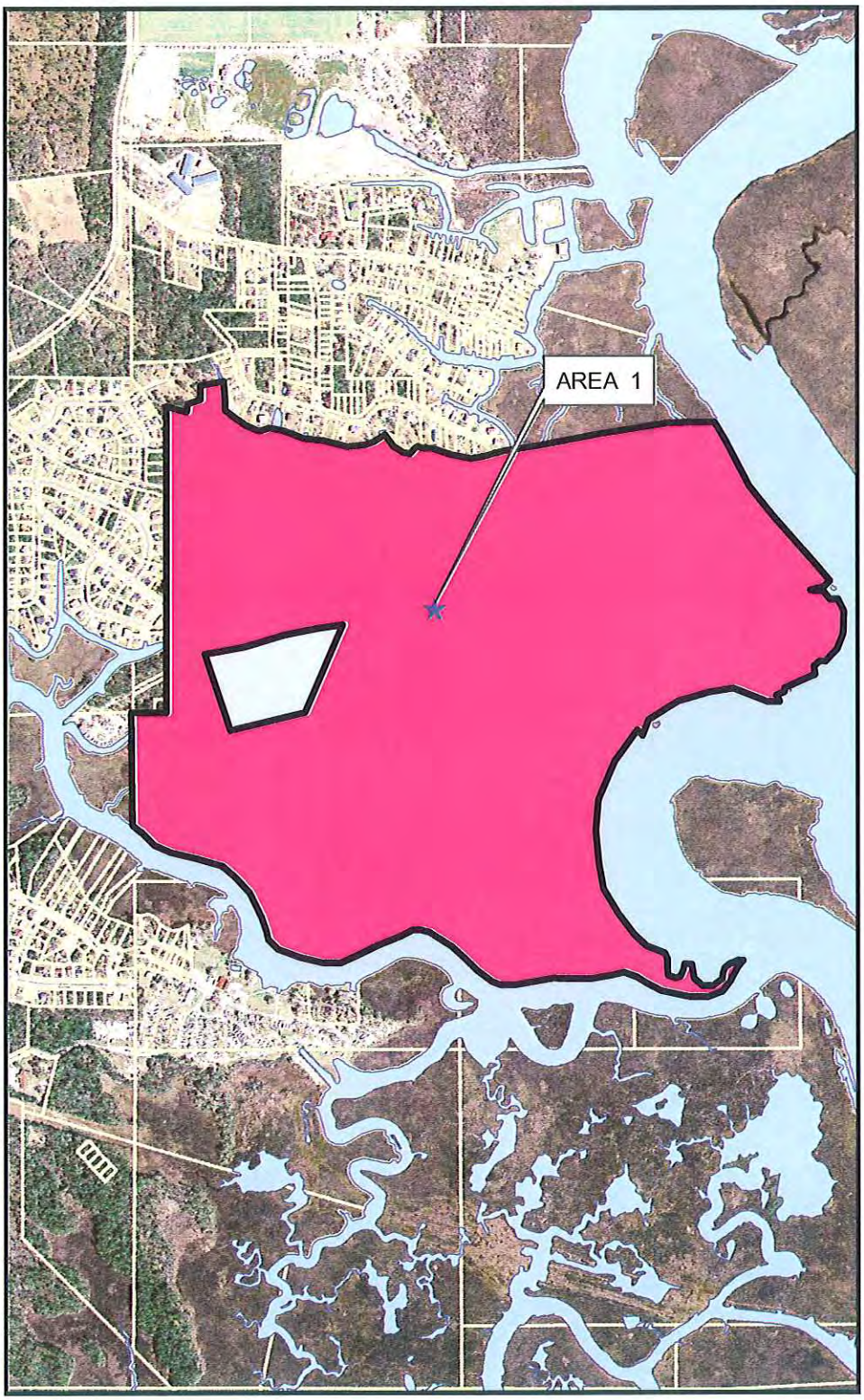


EXHIBIT B

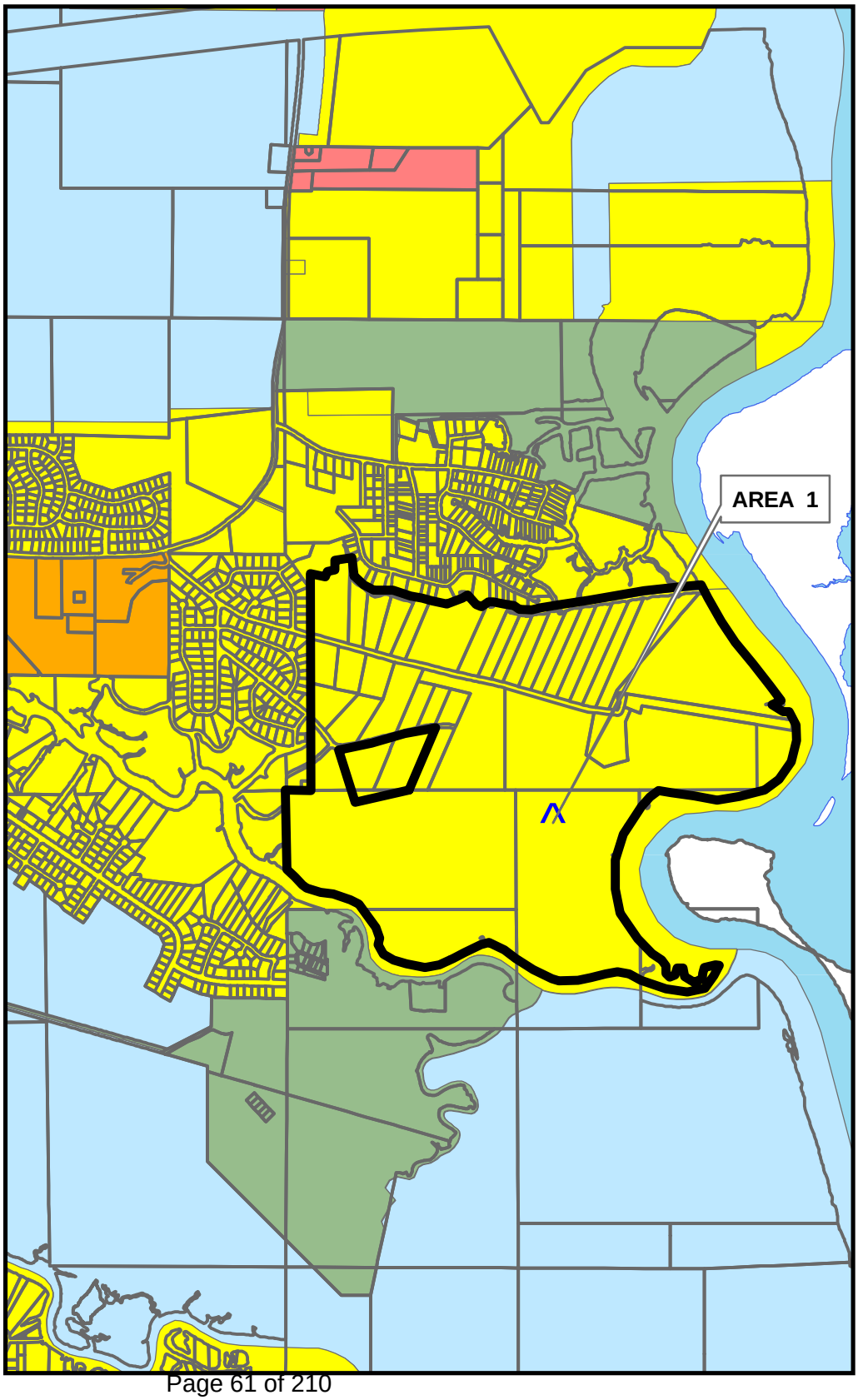
# Existing Zoning Map

**City Of Gautier**
**Economic Development/Planning**

0 400800
Feet

4

**Prepared by the**
**City of Gautier**
**GIS Division**




**Legend**

- AG Agricultural
- PL Public/Semi-Public
- PUD Planned Unit Development
- R-1 Low Density Residential
- R-2 Multi-Family Residential
- R-3 Mobile Home District
- MUM
- TC
- MURC-1
- MURC-2
- MURC-MW
- C-1 Neighborhood Commercial
- C-2 Community Commercial
- C-3 Highway Commercial
- I-2 Industrial

EXHIBIT C

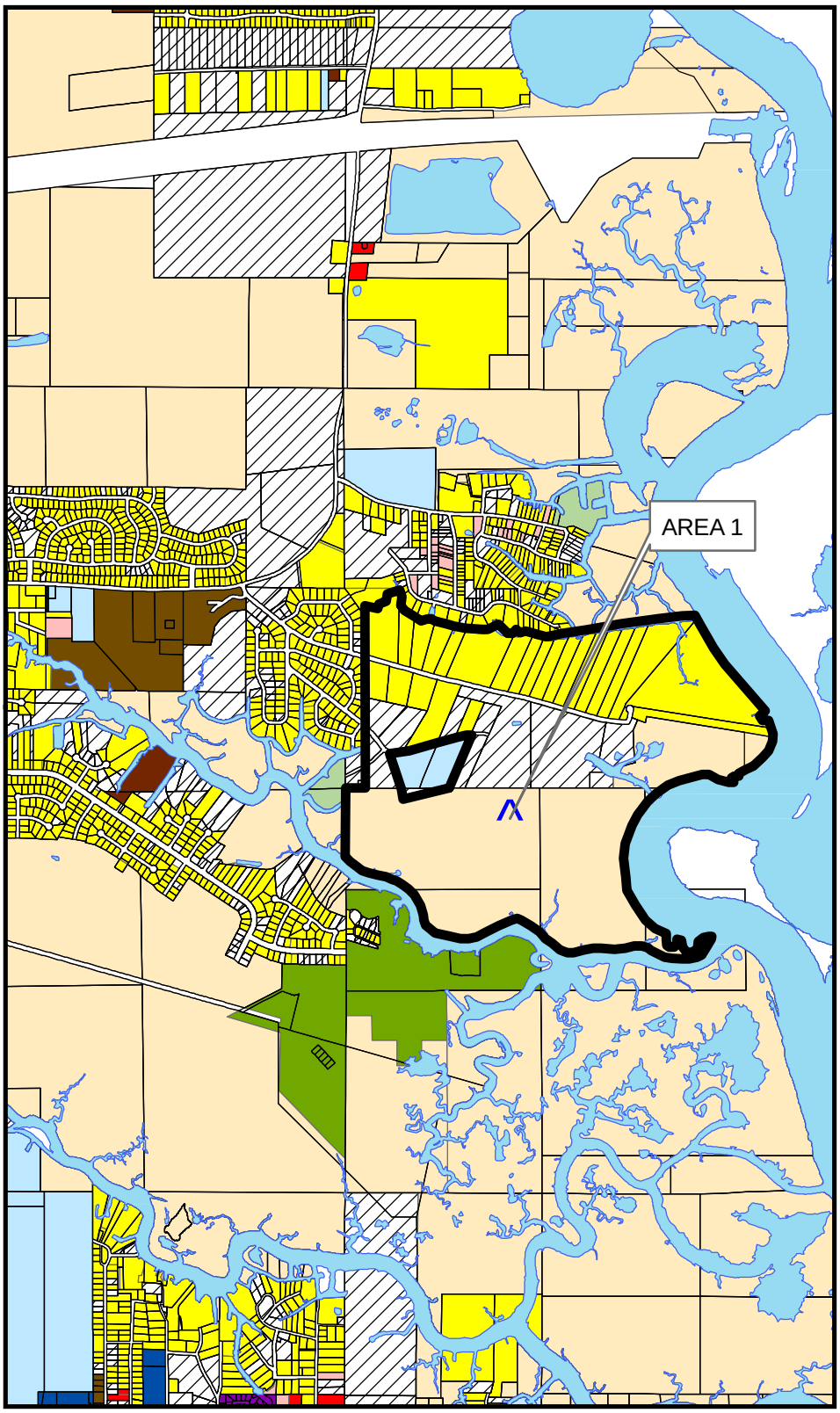
# Existing Land Use Map

**City Of Gautier**
**Economic Development/Planning**

0 400 800
Feet

4

**Prepared by the**
**City of Gautier**
**GIS Division**




## Legend

**EXISTING LAND USE**

- Commercial-Retail
- Conservation
- Civic
- Industrial
- Marina/Fish Camps
- High Density Residential
- Mobile Home
- Mobile Home Park
- Medium Density Residential
- Office
- Recreation
- Very Low to Low Density Residential
- Utility
- Vacant

EXHIBIT D

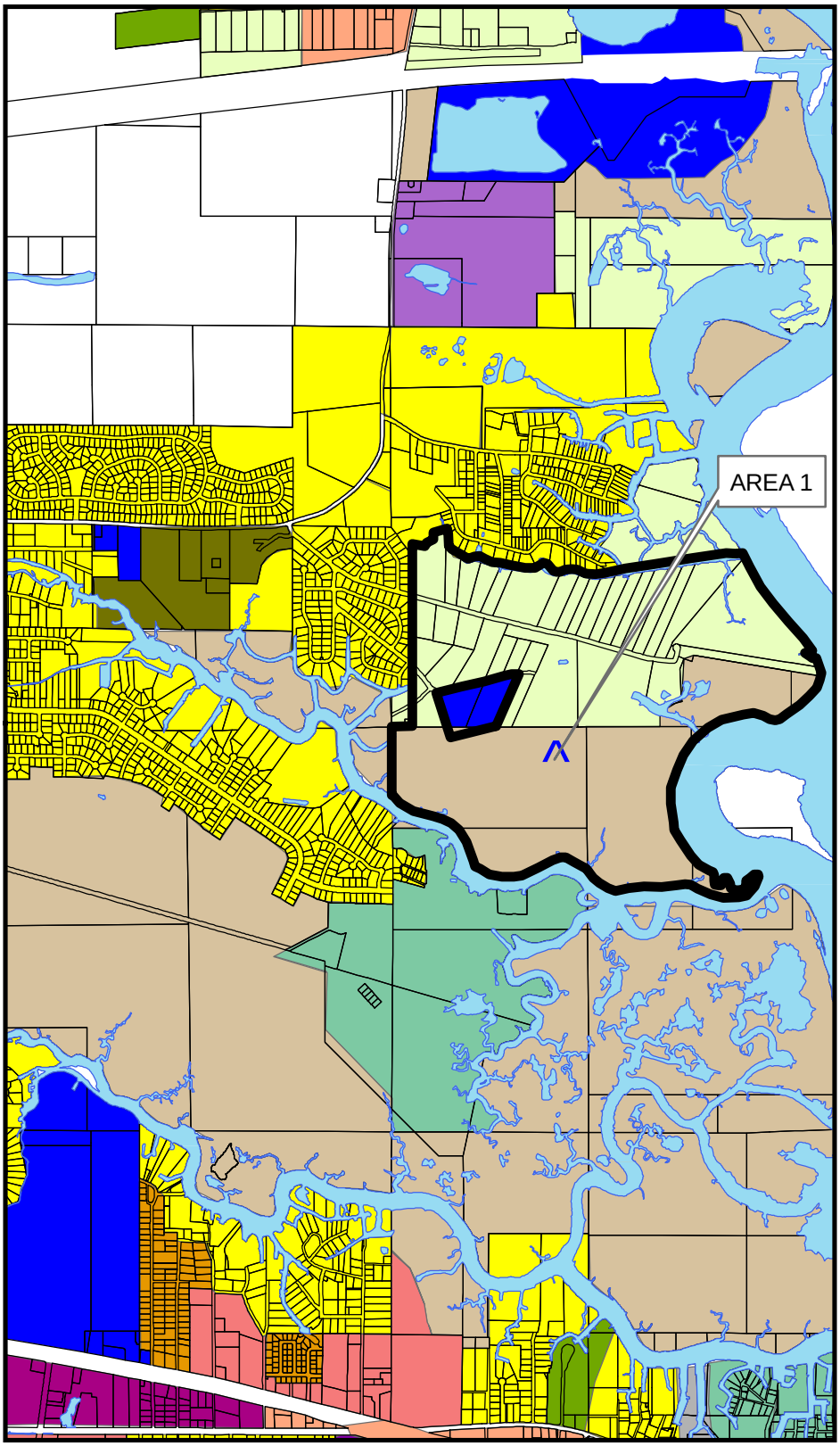
# Future Land Use Map

**City Of Gautier**
**Economic Development/Planning**

0 400 800
Feet

4

**Prepared by the**
**City of Gautier**
**GIS Division**




## Legend

- Civic
- High Impact Commercial
- Conservation
- High Density Residential
- Industrial
- Low Density Residential
- Medium Density Residential
- Mobile Home Residential
- Low Impact Commercial
- Recreational
- Recreational Commercial
- Regional Scale Commercial
- Mixed Use Residential
- Town Center
- Very Low Density Residential

EXHIBIT E

## Chandra Nicholson

**From:** Chandra Nicholson <cnicholson@gautier-ms.gov>
**Sent:** Monday, March 03, 2014 3:37 PM
**To:** William Finnicum (finnicumw@aol.com); bobby.h@heinrichassociates.net
**Cc:** 'Wilbur Dees' (wgdees@bellsouth.net); rsgill@rsgill-lawfirm.com; Samantha Abell; Rachael Honea (rhonea@gautier-ms.gov); Aron Chesney; Josh Danos (JDanos@dwwattorneys.com)
**Subject:** FW: Gautier Planning Commission Agenda Items March 6

Dear Applicants,

All new business items will need to be tabled until the next Planning Commission meeting on April 3rd. Please refer to the e-mail below for further explanation.

The New Business items include the Homestead Rezoning, Martin Bluff Road Rezoning, and the Sandhill RV Park Major Development Order.

I am sorry for any inconvenience this may cause. Thank you in advance for your patience, Chandra

---

**From:** Samantha Abell [mailto:sabell@gautier-ms.gov]
**Sent:** Monday, March 03, 2014 3:12 PM
**To:** cnicholson@gautier-ms.gov
**Cc:** Josh Danos; 'Adam Colledge'; Casey Vaughan; 'Gordon Gollott'; 'Hurley Ray Guillotte'; 'Johnny Jones'; 'Mary Martin'; Rusty Anderson
**Subject:** planning commission agenda items

Chandra,
I have spoken with legal counsel at Dogan & Wilkinson. In light of changing attorneys from Charlie McVea to Josh Danos and the imminent need to bring Josh up to speed on several items with looming deadline, we have agreed that unfortunately new business items will need to be tabled one month for the Gautier Planning Commission. With the departure of the Planning Technician, the GPC will understand the need. However, please forward this email to all new business applicants including Mr. Finnicum as representative to Homestead Boulevard residents. Please inform Mr. Finnicum that the rezoning application will be on next month's agenda. In discussions with Josh, the tabling for a month will not benefit or harm the rezoning request. But it will give legal counsel opportunity to transition planning commission items as well as other departments.

Thank you.

Samantha D. Abell
City Manager
City of Gautier, MS
(o) 228.497.8017 | www.gautier-ms.gov

## Chandra Nicholson

**From:** Chandra Nicholson <cnicholson@gautier-ms.gov>
**Sent:** Monday, March 03, 2014 3:59 PM
**To:** Charlie McVea; 'David Wooten'; 'David Wooten (E-mail)'; Greg Spanier; James Torrey; Jimmy Green; Larry Dailey; Sandra Walters (sandrasmithwalters@gmail.com)
**Cc:** Samantha Abell; Josh Danos (JDanos@dwwattorneys.com)
**Subject:** FW: Dees Objection and Opposition to Finnicum Rezoning Application/Request
**Attachments:** Ltr to City of Gautier Planning Commission, Mayor and City Councel with Objection and Opposition to Application for Zoning Change dated 2.28.14.pdf

The attorney for Wilbur Dees asked me to forward this e-mail/letter on to the Planning Commissioners with regards to the Homestead Rezoning case. The letter will be included in the Planning Commission packet.

Thanks, Chandra

---

**From:** Alicia Bond [mailto:ambgill1@gmail.com]
**Sent:** Friday, February 28, 2014 4:19 PM
**To:** Josh Danos; cnicholson@gautier-ms.gov; FinnicumW@aol.com
**Cc:** rsgill@rsgill-lawfirm.com; Austin Clark
**Subject:** Dees Objection and Opposition to Finnicum Rezoning Application/Request

Good Afternoon Josh and Chandra:

Attached please find a copy of Mr. Gill's letter on behalf of Mr. Wilbur Dees, Trustee of the Dora Virginia Dees Irrevocable Trust, property owner in response and opposition to Mr. William R. Finnicum's application and request for rezoning. Mr. Gill and Mr. Dees politely ask that this letter, exhibits and courtesy copies of case law be provided to the Planning Commission as soon as possible in advance of next week's meeting. Please note, case law to follow in second email due to size restrictions.

Additionally, we respectfully request that the City provide our office with any correspondence, study, or recommendation(s) with respect to Mr. Dees preliminary plat application and the rezoning request prior to the meeting.

We appreciate your assistance in this matter. Should you have any questions, please do not hesitate to call Rusty to speak with him directly.

Thank you,

**Alicia Bond, Law Clerk**
RUSSELL S. GILL, PLLC
638 Howard Avenue
Biloxi, MS 39530
Tel: (228) 432 0007
Fax: (228) 432 0025
Email: AMBGill1@gmail.com

**ATTENTION: Please note my email address will be changing in the coming weeks. I will note the change here when my account is upgraded.**

**Confidentiality Notice:**

**The information contained in this electronic message, including any and all attachments, is legally privileged and confidential information intended only for the use of the individual(s) or entity named herein. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this email is strictly prohibited. If you have received this email in error, please immediately notify Russell S. Gill, P.L.L.C. by telephone and return the original message to us at the address above via the U.S. Postal Service. Thank you.**

**RUSSELL S. GILL, P.L.L.C.**
ATTORNEYS AT LAW
638 Howard Avenue
Biloxi, Mississippi 39530
Telephone (228) 432-0007 Fax (228) 432-0025
rsgill@rsgill-lawfirm.com

RUSSELL S. GILL
AUSTIN CLARK

Legal Assistants:
Rhonda Charles
Ruth Snell
Carly Vandawalker

Marilyn H. David
of Counsel

Donald P. Sigalas
of Counsel

February 28, 2014

**SENT VIA EMAIL AND FAX TO (228) 762 – 3223**

FAXED 2/28/14

Josh Danos, Esquire
City Attorney, City of Gautier
Dogan & Wilkinson, PLLC
P.O. Box 1618
Pascagoula, MS 39567
JDanos@dwwattorneys.com

Chandra Nicholson, P.E.
Director of Economic Development & Planning
City of Gautier, MS
3330 Highway 90
Gautier, MS 39553
CNicholson@Gautier-MS.gov

City of Gautier, MS
Planning Commission

City of Gautier, MS
Mayor & City Council

**RE: Objection and Opposition to Application for Approval of Zoning Map Change (Rezoning)/Change in Zoning District for All Properties Adjacent to Homestead Boulevard filed by William R. Finnicum on January 2, 2014**

Dear City of Gautier Planning Commission, Mayor and City Council:

I represent Mr. Wilbur Dees, Trustee of the Dora Virginia Dees Irrevocable Trust, property owner of approximately eighty (80.3) acres (hereinafter the "property"), more or less, adjacent to Homestead Road, Gautier, Jackson County, Mississippi. The purpose of this letter is to object to the application for rezoning (change in zoning district) filed by the applicant/petitioner William R. Finnicum as all procedures and provision for a public hearing on rezoning (zoning map change) have not been met. Without waiving said objection or any objection as to notice or otherwise, Mr. Dees seeks to speak against Mr. Finnicum's rezoning request and respectfully requests that the Planning Commission does not recommend and City Council disapproves the zoning change request, as follows:

**Background & History**

On 15 November 2013, Mr. Wilbur Dees, as Trustee for the Dora Virginia Dees Irrevocable Trust, filed an Application for Subdivision Preliminary Plat & Final Plat Approval (GPC Case #13-28-SD) seeking to develop a portion of the property on Homestead Boulevard. Upon information and belief, the Economic Development Director for the City of Gautier, or her designee, as part of the general duties, mailed notices to all property owners to provide information regarding Mr. Dees' request. On 16 December 2013, in response to Mr. Dees request, Mr. William R. Finnicum and "Concerned citizens of Gautier and residents of Homestead Boulevard" requested action by the City of Gautier to rezone all properties adjacent to Homestead Boulevard in Gautier from R-1 to R-E in a Homestead Boulevard Rezoning Application Project Narrative (hereinafter referred to as "Project Narrative"). In the Project Narrative, the property owners do not oppose or object to Mr. Dees request. Rather, they specifically welcome further subdivision and admit that Mr. Dees proposed plat for the Homestead Boulevard Subdivision is legally sufficient in accordance with the existing R-1 zoning regulations as outlined in the *Unified Development Ordinance of the City of Gautier.*

Subsequently, on 2 January 2014, Mr. Finnicum as applicant filed a "*Public Hearing Application*" to be heard by the Gautier Planning Commission to request a "Change in Zoning District" to which he attached the aforementioned two-page Project Narrative (hereinafter referred to collectively as "Rezoning Application"). Mr. Finnicum's cover letter dated 2 January 2014 attached to the *Public Hearing Application* stated "to consider property owner's request to rezone properties adjacent to Homestead Boulevard" from R-1 to R-E. Mr. Finnicum paid the processing fee by a personal check for $300.00. Neither the *Public Hearing Application* nor Mr. Finnicum's cover letter made any request of "Comprehensive Rezoning."

Mr. Dees preliminary plat approval and request for development of land in R-1 Homestead Boulevard ("Dees Landing") was first on the agenda as "New Business" for the December 5th Gautier Planning Commission meeting. The matter was tabled for the benefit of the City until the February 6th Planning Commission Meeting. The Planning Commission again tabled Dees Landing until March 6th. Mr. Dees application request is still pending.

On Sunday, 16 February 2014, Public Notice of "Comprehensive Zoning Change GPC #14-01-RZ" was posted in the newspaper to advertise that the Planning Commission for the City of Gautier will hold a public hearing on 6 March 2014 to consider the "citizen-initiated comprehensive rezoning of properties." However, according to the Economic Development Director for the City of Gautier, no notification letters were mailed to adjacent property owners. Mr. Dees contends that the Finnicum's rezoning request is not a "Comprehensive Zoning Change," as will be explained in this objection.

Historically, all property adjacent to Homestead Boulevard has been and is currently zoned R-1, as evidenced by the City of Gautier **Official Zoning Map** attached hereto as **Exhibit A** (as also shown on **2030 Comprehensive Plan: Map 10: Existing Zoning**, attached hereto as **Exhibit B**). In the *Code of Ordinances, City of Gautier, MS (1988),* Section 1 established an official zoning map and provided districts but did not include any reference to an R-E, only R-1. Currently, there are no properties shown on the Official Zoning District Map zoned R-E.

The Gautier Comprehensive Plan 2030, by its own admission, is "advisory only" and does not guarantee any zoning changes; this document is not law or binding. *Gautier Comprehensive Plan 2030*, City of Gautier Planning Commission (2009), cover page.

**Procedure: Zoning Map Change (Rezoning) v. Comprehensive Rezoning**

The Rezoning Application filed by Mr. Finnicum **does not** qualify as a **Comprehensive Rezoning** but rather as a **Zoning Map Change (Rezoning)**. Furthermore, the proper procedures and provision for a public hearing on rezoning have not been met. Pursuant to Section 4.15 of the *Unified Development Ordinance of the City of Gautier, Mississippi* (hereinafter "UDO"), a **Zoning Map Change** involves the rezoning of property from one zoning classification to another or the extension of existing zoning district boundaries on the Official Zoning Map. *Unified Development Ordinance of the City of Gautier, Mississippi* (2013), page 94. A zoning map change may be initiated by a property owner or agent of the property owner provided that: (A) said property has not been denied a previous request for the same property or portion of property within the past twelve (12) months; **AND** (B) all procedures and provision for a public hearing have been met. *Id.* An application for a Zoning Map Change (rezoning) may be filed on the *"Public Hearing Application"* available from the Economic Development/Planning Department and shall contain certain information attached to it. *Id.* Additionally, in accordance with Section 4.14 of the UDO, such an application for Approval of Zoning Map Change (Rezoning) requires: a public hearing before the Planning Commission and approval by the City Council, advertised in the local newspaper in accordance with Mississippi Annotated Code of 1972, **AND Notification by Mail** for certain actions which are **not** a Comprehensive Rezoning. *Id. at Section 4.14*, pages 90-92.

Pursuant to Section 4.16 of the UDO, **Comprehensive Zoning** may be initiated by property owners of twenty-five (25) contiguous parcels of land, the owner(s) of ten (10) acres of contiguous land, a recognized association which includes the property involved and/or the Economic Development Director in consultation with the property owners affected. *Id. at Section 4.16*, page 95. Mr. Finnicum requests a public hearing "to consider property owner's request to rezone;" he does not request "Comprehensive Rezoning." Notwithstanding, Mr. Finnicum's *Public Hearing Application* does not qualify for "Comprehensive Rezoning" as he does not fall within the ordinance as to who may initiate such a request.

In his Rezoning Application, Mr. Finnicum initiated a zoning map change (rezoning) by filing a *"Public Hearing Application"* marked "Change in Zoning District" with the "required attachments" seeking to rezone property from one zoning classification to another. Such application would be consistent with Section 4.15.2 of the UDO pertaining to **Zoning Map Change**. The application was made by Mr. Finnicum as applicant and property owner. According to his letter attached to the public hearing application, Mr. Finnicum's "property owner's request to rezone" is made on behalf of himself as an individual property owner (and not on behalf of any other property owners) as evidenced by the fact he paid the processing fee by "personal check for $300.00." Both the application and letter are signed by Mr. Finnicum (not acting as agent for any other property owner or association, etc.) and not by any other property owners. There is no indication that a recognized association and/or the Economic Development Director with the property owners affected are involved in initiating this rezoning request.

As established above, Mr. Finnicum's *Public Hearing Application* is a request for **Zoning Map Change (Rezoning)** on the Official Zoning Map which does not qualify for "Comprehensive Rezoning," as suggested by the City's Economic Development Director.[1] As such, rezoning notification letters should have been mailed to adjacent property owners as the ordinance **requires** notification by first class mail to all property owners within 500 feet from the property under consideration for Rezoning, not less than fifteen (15) days prior to the hearing pursuant to Article IV General Procedures of the UDO. *Id. at 92.* Therefore, the ordinance requires, and all affected property owners, including Mr. Dees, are entitled to mailed notice before a Public Hearing to rezone property adjacent to Homestead Boulevard is considered.

Mr. Dees hereby objects to rezoning of his property without proper, timely, and due notice after publication, a fair hearing, full opportunity to be heard and due process of law, as provided in the Mississippi Annotated Code of 1972, *As Amended*, and in accordance with all applicable Federal, State and Local laws. *Mississippi Code Annotated § 17-1-17*(1972).

**Burden of Proof: Clear and Convincing Evidence**

Mississippi Code Annotated Sections 17-1-15 and -17 provide the statutory authority for establishing and amending zoning ordinances. *Id.* Pursuant to Section 4.15.3 of the UDO, **Criteria for Rezoning of Property**, the Planning Commission **shall not** recommend approval of a rezoning and the City Council **shall not** rezone property **unless** the applicant has proven by clear and convincing evidence that either (a) there was a mistake in the original zoning, or the character of the surrounding area has changed to such an extent to justify rezoning **AND** there is a public need for additional property to be zoned in accordance with the request. *UDO*, at page 94.

**Grounds or Basis for Rezoning: "Change and Need" or Mistake**

There are insufficient grounds or basis for rezoning as the applicant has presented no evidence to support such a change. Before the Gautier Planning Commission and City Council may approve the application for rezoning, Mr. Finnicum has the burden of proving by clear and convincing evidence either a mistake or a "change and need." The law in Mississippi is well-settled that before a zoning board may reclassify property from one zone to another, the applicant must prove either (1) that there was a mistake in the original zoning, or (2)(a) that the character of the neighborhood has changed to such an extent as to justify reclassification **AND** (b) that there was a public need for rezoning. *Burdine v. City of Greenville*, 755 So. 2d 1154, 1156 (Miss. App. 1999) (citing *Board of Aldermen v. Conerly*, 509 So.2d 877, 883 (Miss.1987). The "change or mistake" rule of municipal zoning, is based on the presumption that the original zoning is well planned and designed to be permanent. *Fondren North Renaissance v. Mayor and City Council of Jackson*, 749 So. 2d 974 (Miss. 1999).

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[1] Section 3.6.2 of the UDO, states that the Economic Development Director shall, in the event there is a question concerning any prevision of this Ordinance, require application of the more stringent provisions wherever the provisions of this ordinance appear to impose conflicting provisions.

In support of Mr. Finnicum's request to rezone the properties adjacent to Homestead Boulevard from R-1 Low Density Single-Family Residential to R-E Residential Estate, the Project Narrative alleges a threat to the general welfare as property owners of land along Homestead Boulevard as an attempt to justify rezoning. As further grounds for change in zoning, the applicant claims a need to protect the value of homes and viability of the neighborhood in support for this request for immediate action by the city. Mr. Finnicum presents no figures regarding the value of his home or homes in the neighborhood. With regards to Mr. Dees plat approval and subdivision request, there is also no evidence to substantiate how development of the property would allegedly depreciate the property in the surrounding area.

There is a presumption that the original and existing zoning R-1 is well planned, reasonable and for the public good. *Board,* at page 883. Mr. Finnicum fails to prove by clear and convincing evidence sufficient grounds or basis to justify rezoning the properties adjacent to Homestead Boulevard from its current R-1 to R-E. R-E zoned property does not currently exist in the City of Gautier. There is no evidence in his Rezoning Application of (1) a mistake in the original zoning or (2) change and need, to justify rezoning. There is no threat to the general welfare. With the property at issue being at all times zoned R-1, there are insufficient grounds or bases to justify rezoning, i.e. reclassifying property from its current classification to R-E, as there has been no change in the land use character of the surrounding area since adoption of the existing zoning classification. Moreover, there is insufficient evidence or proof that all properties and homes adjacent to Homestead Boulevard, and in the area, currently qualify for or would be consistent with an R-E Residential Estate zoning classification.

**Illegal Spot Zoning**

Rezoning the R-1 property located adjacent to Homestead Boulevard to R-E constitutes invalid "spot zoning" because, both before and after such a change in re-zoning, the subject property does not abut any area zoned R-E, thus creating an "island" of R-E in the midst of R-1 zoned property. *Collins v. Mayor and Council of City of Gautier*, 38 So. 3d 677 (Miss. App. 2010). According to the Official Zoning Map, there is no property or area currently zoned R-E in the City of Gautier. Mr. Dees contends that the proposed zoning change, if approved, would amount to illegal spot zoning in the neighborhood as it is not in harmony with the Official Zoning Map and is designed to favor certain land owners at the detriment or expense of others.

Although Mr. Finnicum and residents of Homestead Boulevard claim that they welcome further subdivision and state that "future R-E rezoning for Homestead Boulevard may not impact the Dees Landing sub development request," it appears that the only reason or basis for this request for rezoning is to prevent Mr. Dees from developing the property, and deprive him from reasonable use of the property. In this case, should the City Council choose to rezone the Homestead Boulevard property this would not only constitute "spot zoning" but it may also constitute a "taking" of property by substantially interfering with and limiting Mr. Dees' reasonable use and enjoyment of the property. If an applicant wants to rezone property in Gautier there are proper procedures and processes to go through in order to make changes, but "spot zoning" is not the right way to do so.

**Conclusion**

Mr. Dees respectfully prays that the Planning Commission and City Council approve his proposed Application for Subdivision Preliminary Plat & Final Plat Approval (GPC Case #13-28-SD) as it is legally sufficient in accordance with existing R-1 zoning regulations and consistent with the City of Gautier's Official Zoning Map, the UDO and the Comprehensive Plan.

For the foregoing reasons, Mr. Dees further requests that the Planning Commission and City Council disapprove Mr. Finnicum's application as it is factually, procedurally and legally insufficient. Additionally, Mr. Finnicum has not met his burden by clear and convincing evidence. As you know, the Planning Commission and City Council cannot arbitrarily change zoning from R-1 to R-E. The burden is on the City to justify rezoning, and the City must meet statutory requirements. The existing zoning classification in the subject area, and land use of the subject property, is consistent with the City's Official Zoning Map and the Comprehensive Plan and does not support rezoning at this time. Therefore, Mr. Finnicum's request for a zoning map change to rezone all properties adjacent to Homestead Boulevard should be denied.

Mr. Dees, an interested party and adjacent property owner, along with his attorneys, seek an opportunity to speak against the applicant's request and address the Planning Commission and the City Council at any and all public hearings held on this matter and request that such hearings be on the record.

We appreciate your prompt attention and professionalism in this matter.

Very Respectfully,

RUSSELL S. GILL, P.L.L.C.

Russell S. Gill

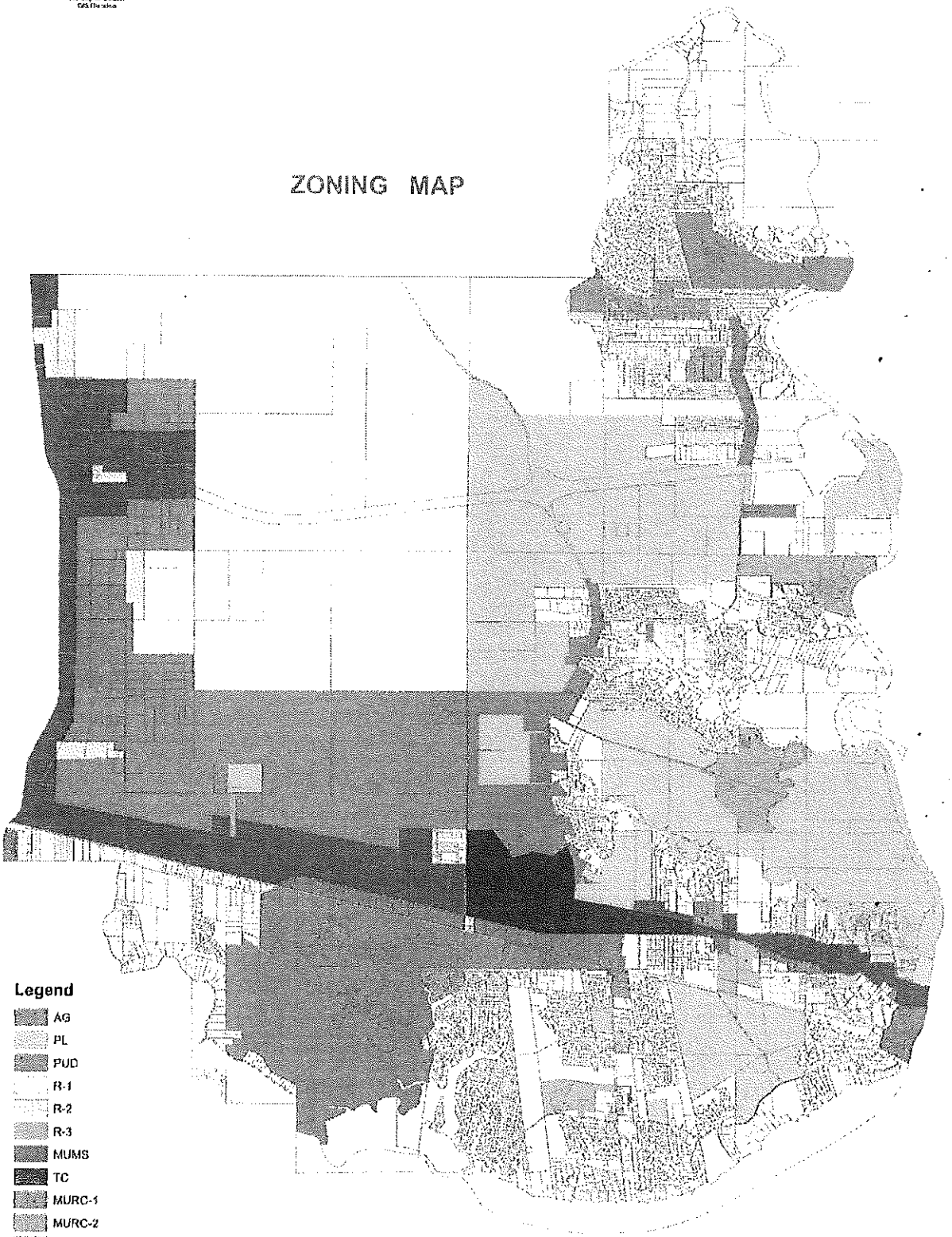
Cc: Mr. William R. Finnicum via email FinnicumW@aol.com
Mr. Wilbur Dees

Enclosures: **Exhibit A. Official Zoning Map**
**Exhibit B. 2030 Comprehensive Plan: Map 10: Existing Zoning**
Courtesy Copy of Applicable Case Law

City of
Gautier

Drawing by
the City of Gautier
GIS Division

# ZONING MAP

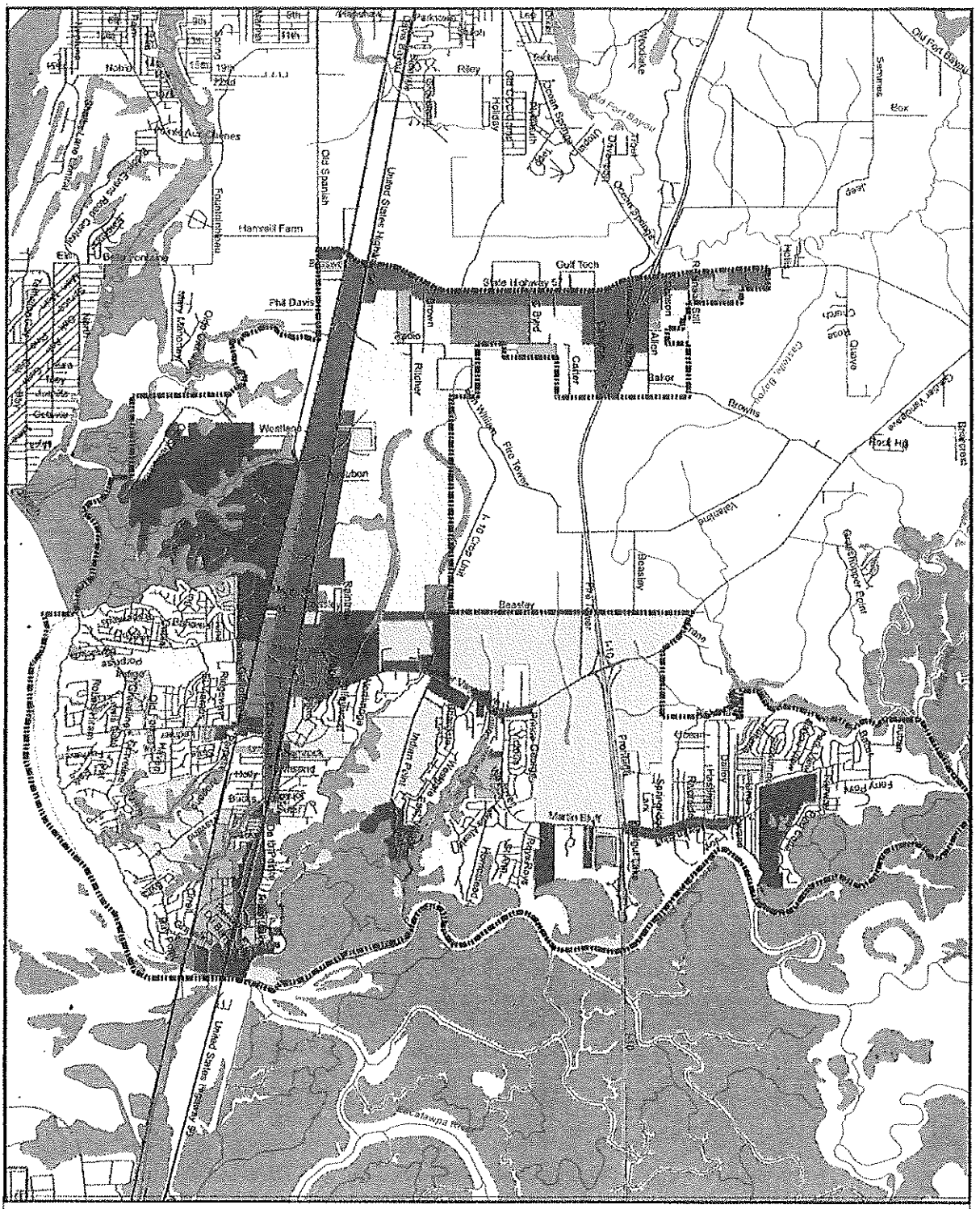


**Legend**

- AG
- PL
- PUD
- R-1
- R-2
- R-3
- MUMS
- TC
- MURC-1
- MURC-2
- MURC-MW
- C-1
- C-2
- C-3
- I-2

Ohlenberg No. 5119

EXHIBIT
A


Old Fort Bayou
Samuel
Box
Riley
Holiday
Old Fort Bayou
Fairway Acres Jones
Fountainbleau
Hannell Farm
Old Spanish
United States Highway 90
Gulf Tech
State Highway 57
Phil Davis
Brown
Richer
Cutler
Allen
Baker
Still
Clavo
Church
Browns
Cedar Landing
Rock Hill
Westland
Lubon
Big Tenney
Valentine
Beasley
Grasshopper Point
Martin Bluff
Pine Tree
Pine Creek
Fairway
Dolphin
Hollywood
Hillcrest
Holly
Brookside
Pecan Point
Pecan Point
Pecan Point

## Chandra Nicholson

| | |
|---|---|
| **From:** | Chandra Nicholson <cnicholson@gautier-ms.gov> |
| **Sent:** | Monday, March 03, 2014 3:58 PM |
| **To:** | Charlie McVea; 'David Wooten'; 'David Wooten (E-mail)'; Greg Spanier; James Torrey; Jimmy Green; Larry Dailey; Sandra Walters (sandrasmithwalters@gmail.com) |
| **Cc:** | Samantha Abell; Josh Danos (JDanos@dwwattorneys.com) |
| **Subject:** | FW: Dees Objection and Opposition to Finnicum Rezoning Application/Request |
| **Attachments:** | Board of Alderman v. Conerly, 509_SO_2D_877_2-28-14_1635.doc; Burdine v. City of Greenville, 755_SO_2D_1154_2-28-14_1632.doc; Collins v. Mayor and Council of the City of Gautier, 38_SO_3D_677_2-28-14_1639.doc; Fondren North Renaissance v. Mayor and City Council of the City of Jackson, 749_SO_2D_974_2-28-14_1636.doc |

The attorney for Wilbur Dees asked me to forward this e-mail on to the Planning Commissioners with regards to the Homestead Rezoning case.

Thanks, Chandra

---

**From:** Alicia Bond [mailto:ambgill1@gmail.com]
**Sent:** Friday, February 28, 2014 4:44 PM
**To:** 'Josh Danos'; cnicholson@gautier-ms.gov; FinnicumW@aol.com
**Cc:** rsgill@rsgill-lawfirm.com; 'Austin Clark'
**Subject:** RE: Dees Objection and Opposition to Finnicum Rezoning Application/Request

Attached please find courtesy copies of case law to be provided to the Planning Commission on the rezoning issue. Thank you and have a nice weekend.

**Alicia Bond, Law Clerk**
RUSSELL S. GILL, PLLC

**ATTENTION: Please note my email address will be changing in the coming weeks. I will note the change here when my account is upgraded.**

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**From:** Alicia Bond [mailto:ambgill1@gmail.com]
**Sent:** Friday, February 28, 2014 4:19 PM
**To:** Josh Danos; cnicholson@gautier-ms.gov; FinnicumW@aol.com
**Cc:** rsgill@rsgill-lawfirm.com; Austin Clark
**Subject:** Dees Objection and Opposition to Finnicum Rezoning Application/Request

Good Afternoon Josh and Chandra:

Attached please find a copy of Mr. Gill's letter on behalf of Mr. Wilbur Dees, Trustee of the Dora Virginia Dees Irrevocable Trust, property owner in response and opposition to Mr. William R. Finnicum's application and request for rezoning. Mr. Gill and Mr. Dees politely ask that this letter, exhibits and courtesy copies of case law be provided to the Planning Commission as soon as possible in advance of next week's meeting. Please note, case law to follow in second email due to size restrictions.

Additionally, we respectfully request that the City provide our office with any correspondence, study, or recommendation(s) with respect to Mr. Dees preliminary plat application and the rezoning request prior to the meeting.

We appreciate your assistance in this matter. Should you have any questions, please do not hesitate to call Rusty to speak with him directly.

Thank you,

**Alicia Bond, Law Clerk**
RUSSELL S. GILL, PLLC
638 Howard Avenue
Biloxi, MS 39530
Tel: (228) 432 0007
Fax: (228) 432 0025
Email: AMBGill1@gmail.com

**ATTENTION: Please note my email address will be changing in the coming weeks. I will note the change here when my account is upgraded.**

**Confidentiality Notice:**

**The information contained in this electronic message, including any and all attachments, is legally privileged and confidential information intended only for the use of the individual(s) or entity named herein. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this email is strictly prohibited. If you have received this email in error, please immediately notify Russell S. Gill, P.L.L.C. by telephone and return the original message to us at the address above via the U.S. Postal Service. Thank you.**

**Chandra Nicholson**

| | |
|---|---|
| **From:** | William Finnicum <finnicumw@aol.com> |
| **Sent:** | Wednesday, January 29, 2014 8:51 AM |
| **To:** | blogan@gautier-ms.gov; cnicholson@gautier-ms.gov; 'Samantha Abell' |
| **Cc:** | 'Rusty Anderson'; 'Bruce & Wanda Norton'; 'Kathleen Johnson'; 'Joe & Betty Krebs'; 'Mitch Patterson'; DORSETTJAMES@aol.com |
| **Subject:** | RE: Wilbur Dees and Homestead Boulevard Residents Meeting, re: Dees Landing Preliminary Plat, 7 January 2014 |

Ms Abell et al,

In preparation for the 6 Feb 14 meeting of the Gautier Planning Commission, I wish to confirm that our response to Mr. Dees (9 Jan email subsequent to our meeting below) will be read aloud during the public hearing portion of the Dees Landing Subdivision Planning Commission case, as previously assured. I assume this will be a resident's responsibility during the public comments portion of the hearing? I believe a full reading is appropriate, given the matter was tabled at the December hearing in order to give Homestead residents and Mr. Dees an opportunity to meet and discuss the matter.

Thank you very much.

Respectfully,
Bill Finnicum
704 Homestead Boulevard

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**From:** Babs Logan [mailto:blogan@gautier-ms.gov]
**Sent:** Monday, January 13, 2014 7:41 AM
**To:** 'William Finnicum'
**Cc:** cnicholson@gautier-ms.gov
**Subject:** FW: Wilbur Dees and Homestead Boulevard Residents Meeting, re: Dees Landing Preliminary Plat, 7 January 2014

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Mr. Finnicum,

We will treat your e-mail comments as Public Comments and read them aloud during the Public Hearing portion of the Dees Landing Subdivision Planning Commission case.

We appreciate your input.

**Babs Logan**
Planning Technician

City of Gautier, MS
3330 Highway 90

Gautier, MS 39553

(O) 228-497-8026
e-mail: blogan@gautier-ms.gov
web-site: www.gautier-ms.gov

**From:** William Finnicum [mailto:finnicumw@aol.com]
**Sent:** Thursday, January 09, 2014 8:55 AM
**To:** Babs Logan
**Subject:** FW: Wilbur Dees and Homestead Boulevard Residents Meeting, re: Dees Landing Preliminary Plat, 7 January 2014

Babs,

Would you mind forwarding a copy of this email to the Planning Commission members? I do not have their email addresses.

Thanks.

Bill Finnicum

**From:** William Finnicum [mailto:finnicumw@aol.com]
**Sent:** Thursday, January 09, 2014 8:02 AM
**To:** Wilbur Dees (wgdees@bellsouth.net)
**Cc:** 'Bruce & Wanda Norton (bnorton@cableone.net)'; 'Kathleen Johnson'; 'Joe & Betty Krebs'; 'DORSETTJAMES@aol.com'; Mitch Patterson (mitchellr.patterson@gmail.com); Babs Logan (blogan@gautier-ms.gov); Samantha Abell (sabell@gautier-ms.gov); Rusty Anderson (Councilmanward4@gautier-ms.gov); 'cnicholson@gautier-ms.gov'
**Subject:** Wilbur Dees and Homestead Boulevard Residents Meeting, re: Dees Landing Preliminary Plat, 7 January 2014

Mr. Dees,

First of all, let me say we appreciate you and your wife meeting with us in Gautier on such a frigid day. We believe the deliberations were informative and concluded with a potential solution on agreement to minimum lot size. However, in our discussions after the meeting and the following day, concerns were raised that we want to share with you.

We have anticipated the Dees estate development for years, and always expected it probably would look like 2 to 4 acre or more parcels with large homes, much the same as the north side is now. You can imagine our shock and dismay when we learned of the proposed 1/3 acre lots, and modest homes to be built on them. And if you put yourself in our shoes, you can understand the pushback you received when your plan was unveiled. We were, therefore, anxious to meet with you and hopefully come to a compromise satisfactory to all of us.

In our meeting with you, we came to a gentlemen's agreement on ½ acre parcels for the panhandle portion of your property, which is a tremendous departure from our initial desire, and we're not reneging on that agreement. However, even the one acre parcels that we first requested is considerably out of character with the existing neighborhood, and we remain steadfast in our belief that anything smaller would be very detrimental to our property values and quality of life. We are of

the firm belief that your own property would be de-valued by development of the density you've proposed. We really are happy to see your property being developed, but extremely saddened by the significant change your proposed plat, even at ½ acre lots, would make to our community. Homestead Boulevard is characterized by estate size lots; spacious development with stately live oak and magnolia trees; quiet peaceful surroundings; breathtaking views of the Pascagoula River and surrounding marshland; and a walking, jogging, bicycle friendly neighborhood where parents can encourage their children to play outdoors without the fear of high volume traffic. These are the quality of life features that attracted our investment to begin with and we simply wish them preserved. We believe, along with the city planners, that preserving Homestead Boulevard's estate character will guarantee it remains one of the most desirable places to live in Gautier or on the Gulf Coast. Properties and neighborhoods of this design are very scarce, and very desirable. Maintaining the character of Homestead would be beneficial to you and us. We therefore make one more appeal to you to reconsider your plan. Please give us a plan that we can all get excited about, support and help you with. Dees Landing can be a jewel for Gautier, and an honor to your mother and father.

Please bear in mind, that we cannot speak for every individual in the affected area, but as best as we can represent the whole, should you remain fast on the ½ acre lots in the panhandle, we will not interfere. But we do wish you would give the one acre per home site serious consideration. We really do want to work together as a community, not be at odds with each other.

Again, thank you for meeting with us and sharing your thoughts.

Respectfully,
William R. Finnicum, on behalf of Homestead Boulevard residents
704 Homestead Boulevard
finnicumw@aol.com
H: 228-205-2228
C: 703-336-7204

**Chandra Nicholson**

| | |
|---|---|
| **From:** | William Finnicum <finnicumw@aol.com> |
| **Sent:** | Monday, January 27, 2014 12:14 PM |
| **To:** | 'Samantha Abell' |
| **Cc:** | 'Babs Logan'; 'Rusty Anderson'; cnicholson@gautier-ms.gov; 'Bruce & Wanda Norton'; 'Kathleen Johnson'; 'Joe & Betty Krebs'; DORSETTJAMES@aol.com; 'Mitch Patterson' |
| **Subject:** | RE: Wilbur Dees and Homestead Boulevard Residents Meeting, re: Dees Landing Preliminary Plat, 7 January 2014 |

Samantha,

Thanks for your response. I think we are all on the same page now. Please be assured that Babs Logan did brief us on the 45 day standard processing time for our rezoning application. We expect nothing more or less.

Regards,

Bill Finnicum

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**From:** Samantha Abell [mailto:sabell@gautier-ms.gov]
**Sent:** Monday, January 27, 2014 10:26 AM
**To:** William Finnicum
**Cc:** Babs Logan; Rusty Anderson; <cnicholson@gautier-ms.gov>; Bruce & Wanda Norton; Kathleen Johnson; Joe & Betty Krebs; <DORSETTJAMES@aol.com>; Mitch Patterson; William Finnicum
**Subject:** Re: Wilbur Dees and Homestead Boulevard Residents Meeting, re: Dees Landing Preliminary Plat, 7 January 2014

Mr. Finnicum, I am on my way to Jackson but wanted to respond Promptly. First, in regards to a Marina I believe that I misspoke. With your clarification, I recall that the word used was wet slips. Not a commercial marina. I agree with the clarification. And regards to the processing of the rezoning application, please be assured that your application is following standard procedures and process calendar timeline. Please confirm that Babs Logan briefed you on the process requiring approx 45 days to advertise and place on an agenda. Lastly, and most crucially, my impression was that Mr. D's felt satisfied a compromise had been reached for the development of his land. He was not aware of a rezoning application being made. Hence my email to clarify any confusion. Send sure agreement was not for the development of his land in its entirety, Staff will proceed with the rezoning request.

Thank you for your email. A copy will be included in the packet for ex parte disclosures.

Regards.

Samantha Abell
Gautier City Manager

On Jan 27, 2014, at 7:51 AM, "William Finnicum" <finnicumw@aol.com> wrote:

Samantha,

Thank you for taking the time to comment on our email to Mr. Dees, following our 7 Jan 14 meeting with him. We appreciate you sharing your understanding with us. We fear, however, it may be somewhat parochial as a result of your meeting with staff and Mr. Dees and wish to offer clarification from the Homestead Boulevard residents' perspective. I would also offer a 10 Jan email (below) that summarizes Mr. Dees' final position with regard to our 7 Jan 14 meeting and response. He understands the compromise position is not our wish, but will get no opposition from those of us who were at the meeting. However, he also understands there may be opposition from other residents/parties who were not in attendance.

Let me address your comments first by stating that **under no circumstances** do we wish to withdraw our request to rezone Homestead Boulevard (GPC 14-01 RZ), dated 2 Jan 2014. The majority of residents with Homestead Boulevard addresses have shared in the cost of the fee and expect timely processing. We certainly hope that consideration of Mr. Dees' Preliminary Plat (i.e., GPC 13-28-SD) has not affected or delayed the processing of our rezoning request, since they are mutually exclusive actions. We hope to receive consideration by the Planning Commission in the very near future.

Continuing with regard to your comments:

*Your understanding: Mr. Dees agrees to alter the existing preliminary plat to increase the lot road frontage to a minimum 150', in order to be compatible with existing lots. This impacts Mr. Dees financially. He makes the concession because neighbors stated this would be copacetic.*

Homestead understanding: Your understanding is accurate with regard to the preliminary plat alteration and 150' frontages on Homestead Boulevard. While we appreciate your concern for Mr. Dees' financial situation, we, the residents, the people who live here and have lived here for years, have a considerable financial investment in our neighborhood and wish it preserved. We hope you are also concerned with how Mr. Dees' proposal will impact current Homestead residents financially. Mr. Dees' proposal is not "copacetic"; it is the only compromise he offered. We remain steadfast in our belief that any parcel smaller than one acre would be very detrimental to our property values and quality of life (9 Jan email).

*Your understanding: Mr. Dee's agrees to increase lot size from the permissible 1/3 acre to ½ acre along Homestead Boulevard.*

Homestead understanding: Your understanding is accurate with regard to Mr. Dees' agreement to increase lot size from the permissible 1/3 acre to ½ acre along Homestead Boulevard. We still believe 1 acre minimum lots is a reasonable compromise from the existing 2-4 acre estate size lots. However, he was unsympathetic to our request for reconsideration.

*Your understanding: Mr. Dees agrees that lots at the east end (as you turn into Homestead) will be a minimum of an acre and a half.*

Homestead understanding: Your understanding of the east end lots is partially correct. The two lots at the east end of Homestead Boulevard will be changed to one lot approximately 1 ½ acre in size (see the 10 Jan email below). This is also reflected on the preliminary plat to be considered by the Planning Commission on 6 Feb 14.

*Your understanding: Mr. Dees will develop a marina that Homestead residents will be able to utilize as an amenity.*

Homestead understanding: Your understanding with regard to Mr. Dees developing a Marina is totally inaccurate, as it pertains to our 7 Jan meeting. No mention was made of a marina. The handshake agreement we made with Mr. Dees was only with respect to the ten lots he had initially proposed. There was no agreement on any further development. He did indicate new property owners would have access to the water rights, either incorporated into the purchase or obtained subsequent to purchase, but he hadn't decided which. Regardless, any development for purposes other than residential with its increased traffic volume would be unacceptable.

*Your understanding: Mr. Dee's intends to move forward with platting eight lots presently in order to determine the market for these size homes and lots. He has agreed that in no case will he break from his agreement and plat smaller lots at a later time. He will not press and replat all lots at this time, as he felt confident with the conversation with residents that he will be able to plat future lots so long as it is keeping with the agreement.*

Homestead understanding: Your understanding of the east end lots is partially correct. The handshake agreement we made with Mr. Dees was only with respect to the ten lots he had initially proposed. There was no agreement on any further development.

*Your comment: Again, this seems to be a constructive compromise reached by you and fellow residents, understanding that Mr. Dee's is allowed by right to develop smaller lots. I congratulate you. The Planning Department will refund the application fee for the rezoning application,*

*unless all residents who attended the meeting with Mr. Dees indicate otherwise.*

Homestead response: Under no circumstances do we wish to withdraw our request to rezone Homestead Boulevard (GPC 14-01 RZ), dated 2 Jan 2014. As you've previously implied, our rezoning application will have no bearing on Mr. Dees' proposal (i.e., GPC 13-28-SD) and vice versa. Therefore, we are not sure why you consider the rezoning application an issue related to our meeting with Mr. Dees and/or contingent on any compromise we may have reached. We would be happy to meet with you and your staff to further discuss this matter at any time.

Please ensure this email string is attached to the application file (GPC 14-01 RZ) and our application is processed expeditiously and impartially.

Thank you very much.

Respectfully,
William R. Finnicum, on behalf of Homestead Boulevard residents
704 Homestead Boulevard
finnicumw@aol.com
H: 228-205-2228
C: 703-336-7204

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**From:** Samantha Abell [mailto:sabell@gautier-ms.gov]
**Sent:** Saturday, January 25, 2014 9:25 AM
**To:** 'William Finnicum'; 'Bruce & Wanda Norton'; 'Kathleen Johnson'; 'Joe & Betty Krebs'; DORSETTJAMES@aol.com; 'Mitch Patterson'
**Cc:** 'Babs Logan'; 'Rusty Anderson'; cnicholson@gautier-ms.gov; 'Wilbur Dees'
**Subject:** RE: Wilbur Dees and Homestead Boulevard Residents Meeting, re: Dees Landing Preliminary Plat, 7 January 2014

Mr. Finnicum et al,
I want to congratulate you and fellow residents of Homestead for extending an invitation to Mr. Dees and having what appears by any measure to be a constructive compromise. Last we talked, I will be honest and say that I was doubtful such compromise could be reached. However, upon returning from a week out-of-office, I met with staff and Mr. Dees to follow up on your below email. It is clear to me that all parties realize that in today's volatile economy, it is difficult for an investor to confidently predict homeowner demand and market finance. However, based on the comments from Homestead residents, Mr. Dees conveyed to staff that he has committed to you certain concessions. In return, as your email indicates, you have committed that residents will not pursue opposition to Mr. Dees development of his property. My understanding is the following:

Mr. Dees agrees to alter the existing preliminary plat to increase the lot road frontage to a minimum 150', in order to be compatible with existing lots. This impacts Mr. Dees financially. He makes the concession because neighbors stated this would be copacetic.

Mr. Dee's agrees to increase lot size from the permissible 1/3 acre to ½ acre along Homestead Boulevard.

Mr. Dees agrees that lots at the east end (as you turn into Homestead) will be a minimum of an acre and a half.

Mr. Dees will develop a marina that Homestead residents will be able to utilize as an amenity.

Mr. Dee's intends to move forward with platting eight lots presently in order to determine the market for these size homes and lots. He has agreed that in no case will he break from his agreement and plat smaller lots at a later time. He will not press and replat all lots at this time, as he felt confident with the conversation with residents that he will be able to plat future lots so long as it is keeping with the agreement.

Again, this seems to be a constructive compromise reached by you and fellow residents, understanding that Mr. Dee's is allowed by right to develop smaller lots. I congratulate you. The Planning Department will refund the application fee for the rezoning application, unless all residents who attended the meeting with Mr. Dees indicate otherwise.

Chandra, please copy receipt of this email and related correspondence as attachment to the application file.

Highest regards,

Samantha D. Abell
City Manager
City of Gautier, MS
(o) 228.497.8017 | www.gautier-ms.gov

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**From:** William Finnicum [mailto:finnicumw@aol.com]
**Sent:** Thursday, January 09, 2014 8:02 AM
**To:** Wilbur Dees
**Cc:** 'Bruce & Wanda Norton'; 'Kathleen Johnson'; 'Joe & Betty Krebs'; DORSETTJAMES@aol.com; Mitch Patterson; Babs Logan; Samantha Abell; Rusty Anderson; cnicholson@gautier-ms.gov
**Subject:** Wilbur Dees and Homestead Boulevard Residents Meeting, re: Dees Landing Preliminary Plat, 7 January 2014

Mr. Dees,

First of all, let me say we appreciate you and your wife meeting with us in Gautier on such a frigid day. We believe the deliberations were informative and concluded with a potential solution on agreement to minimum lot size. However, in our discussions after the meeting and the following day, concerns were raised that we want to share with you.

We have anticipated the Dees estate development for years, and always expected it probably would look like 2 to 4 acre or more parcels with large homes, much the same as the north side is now. You can imagine our shock and dismay when we learned of the proposed 1/3 acre lots, and modest homes to be built on them. And if you put yourself in our shoes, you can understand the pushback you received when your plan

was unveiled. We were, therefore, anxious to meet with you and hopefully come to a compromise satisfactory to all of us.

In our meeting with you, we came to a gentlemen's agreement on ½ acre parcels for the panhandle portion of your property, which is a tremendous departure from our initial desire, and we're not reneging on that agreement. However, even the one acre parcels that we first requested is considerably out of character with the existing neighborhood, and we remain steadfast in our belief that anything smaller would be very detrimental to our property values and quality of life. We are of the firm belief that your own property would be de-valued by development of the density you've proposed. We really are happy to see your property being developed, but extremely saddened by the significant change your proposed plat, even at ½ acre lots, would make to our community. Homestead Boulevard is characterized by estate size lots; spacious development with stately live oak and magnolia trees; quiet peaceful surroundings; breathtaking views of the Pascagoula River and surrounding marshland; and a walking, jogging, bicycle friendly neighborhood where parents can encourage their children to play outdoors without the fear of high volume traffic. These are the quality of life features that attracted our investment to begin with and we simply wish them preserved. We believe, along with the city planners, that preserving Homestead Boulevard's estate character will guarantee it remains one of the most desirable places to live in Gautier or on the Gulf Coast. Properties and neighborhoods of this design are very scarce, and very desirable. Maintaining the character of Homestead would be beneficial to you and us. We therefore make one more appeal to you to reconsider your plan. Please give us a plan that we can all get excited about, support and help you with. Dees Landing can be a jewel for Gautier, and an honor to your mother and father.

Please bear in mind, that we cannot speak for every individual in the affected area, but as best as we can represent the whole, should you remain fast on the ½ acre lots in the panhandle, we will not interfere. But we do wish you would give the one acre per home site serious consideration. We really do want to work together as a community, not be at odds with each other.

Again, thank you for meeting with us and sharing your thoughts.

Respectfully,
William R. Finnicum, on behalf of Homestead Boulevard residents
704 Homestead Boulevard
finnicumw@aol.com
H: 228-205-2228
C: 703-336-7204

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RUSSELL S. GILL
AUSTIN CLARK

Legal Assistants:
Rhonda Charles
Ruth Snell
Carly Vandawalker

Marilyn H. David
of Counsel

Donald P. Sigalas
of Counsel

June 2, 2014

**SENT VIA EMAIL AND FAX TO (228) 762 – 3223**

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Mayor Gordon Gollott
Mayor & City Council
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Chandra Nicholson, P.E.
Director of Economic Development & Planning
City of Gautier, MS
CNicholson@Gautier-MS.gov

**RE: Wilbur Dees Objection and Opposition to Rezoning Application of All Properties Adjacent to Homestead Boulevard filed by William R. Finnicum**

Dear Mayor Gollott and Gautier City Council:

I represent Mr. Wilbur Dees, Trustee of the Dora Virginia Dees Irrevocable Trust, property owner of approximately eighty acres (hereinafter the "Dees' property"), more or less, adjacent to Homestead Road, Gautier, Jackson County, Mississippi. This letter is to express Mr. Dees objection and opposition to rezoning property located along Homestead Boulevard from R-1 (low density single-family residential) to R-E (Residential Estate), especially and specifically with respect to his (Dees') property. Without waiving any objection(s), Mr. Dees seeks an opportunity to address the Mayor and City Council to speak against the applicant's proposed rezoning request. Mr. Dees objects to his property being rezoned and asserts the rezoning is improper, beyond legal authority, not supported by substantial (or any) evidence, and/or made in an attempt to deprive Mr. Dees of his rights. Mr. Dees respectfully requests that the Mayor and City Council deny the rezoning request, as follows:

## I. BACKGROUND:

On 15 November 2013, Mr. Wilbur Dees, as Trustee for the Dora Virginia Dees Irrevocable Trust, filed an Application for Subdivision Preliminary Plat & Final Plat Approval (GPC Case #13-28-SD) seeking to develop a portion of the property on Homestead Boulevard.

In response to Mr. Dees' application, Mr. William R. Finnicum, as applicant, filed a "*Public Hearing Application*" (GPC Case #14-01-RZ) on 2 January 2014, to request a "Change in Zoning District" for all properties adjacent to Homestead Boulevard to be rezoned from R-1 (Low Density Single-Family Residential) to R-E (Residential Estate).

On 18 March 2014, the City of Gautier, Mississippi, (hereinafter the "City"), by and through its Mayor and City Council, approved Mr. Dees' application and request for Dees Landing Subdivision preliminary plat approval for development of land in R-1 Homestead Boulevard. Mr. Dees request for Dees Landing Subdivision was previously approved by the Gautier Planning Commission on 6 March 2014.

On 1 May 2014, the Gautier Planning Commission held a public hearing for "Consideration of a Citizen-initiated Comprehensive Rezoning of Properties Comprising ±443.13 Acres to R-E Residential Estate." No notification letters were mailed to adjacent property owners or to Mr. Dees. Over our objection and without permission of Mr. Dees, the Gautier Planning Commission found that there was a probability of a mistake in the original zoning and recommended approval of Mr. Finnicum's rezoning request for rezoning of properties adjacent to Homestead Boulevard to R-E (Residential Estate).

### A. Gautier Code of Ordinances (1988)

Section 1 of the *Code of Ordinances, City of Gautier, Mississippi,* adopted the 7th of June, 1988, established an official zoning map and districts, which included R-1 (Single-Unit Residential District), but did not adopt by reference or declare R-E to be part of this ordinance. Additionally, there is no property and has never been any property zoned R-E in the City of Gautier, as shown on the Official Zoning District Map. In fact, all property adjacent to Homestead Boulevard, including Dee's Property, has been and is currently zoned R-1, as evidenced by the City of Gautier **Official Zoning Map** (as also shown on **2030 Comprehensive Plan: Map 10: Existing Zoning**).

### B. Gautier Comprehensive Plan 2030

The Gautier Comprehensive Plan 2030, by its own admission, is "advisory only" and does not guarantee any zoning changes; this document is not law or binding. *Gautier Comprehensive Plan 2030*, City of Gautier Planning Commission (2009), cover page. That notwithstanding, the finding and recommendation of the Planning Commission is not consistent with the Comprehensive Plan, which requires permission of property owners to create estate zoning district, because there is no permission by Mr. Dees to re-zone his lots. See *Table No. 27: Implementation and Action Steps Land Use and Community Character*, at page 128 (courtesy copy attached hereto).

## II. ARGUMENT: THE CITY OF GAUTIER SHOULD DENY THE APPLICANT'S REQUEST FOR REZONING BECAUSE THE REQUEST AND FINDING OF THE GAUTIER PLANNING COMMISSION IS BEYOND LEGAL AUTHORITY, NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, AND OTHERWISE UNREASONABLE.

The City of Gautier, by and through its Mayor and City Council, should deny the applicant's request for rezoning from zoning district/classification R-1 to RE, for certain property adjacent to Homestead Boulevard. Moreover, Mr. Dees, as Trustee for the Dora Virginia Dees Irrevocable Trust (aka Dees Limited Partnership) and property owner, specifically objects to any rezoning with respect to the Dees' property of approximately eighty acres located adjacent to Homestead Boulevard at 701 Homestead Boulevard, being currently assessed as Tax Parcel Numbers 81807045.000, 81807045.025, and 81807045.030.

Further, Mr. Dees protests against such proposed rezoning change. The request for rezoning was improperly recommended and/or approved by the Gautier Planning Commission on 1 May 2014 (by a note of 3 to 1), which Planning Commission claims to have found by "clear and convincing evidence that a mapping error occurred." Transcript Excepts of the proceedings before the Gautier Planning Commission[1], including oral testimony and argument of Acting Chairperson Mr. Larry Daily, and the statements of the City Attorney and City Manager regarding the rezoning, are attached hereto as **Exhibit "A".** Mr. Dees asserts that the Planning Commission's finding and advisory recommendation are arbitrary, capricious, beyond legal authority, otherwise not supported by substantial evidence, and unreasonable.

### A. The rezoning is not supported by substantial evidence as the applicant has not proven by clear and convincing evidence that there was a mistake in the original zoning, or a change and public need.

Mississippi Code Annotated Sections 17-1-15 and -17 provide the statutory authority for establishing and amending zoning ordinances. *Mississippi Code Annotated § 17-1-17*(1972). Pursuant to **Section 4.15.13 Criteria for Rezoning of Property** of the *Unified Development Ordinance of the City of Gautier, Mississippi (2013)* (hereinafter "UDO"):

> The Planning Commission shall not recommend approval of a rezoning and the City Council shall not rezone the property unless the applicant has proven by clear and convincing evidence that either (emphasis added):
>
> A. There was a mistake in the original zoning, **or**
>
> B. The character of the surrounding area has changed to such an extent as to justify rezoning **AND** there is a public need for additional property to be zoned in accordance with the request.

[1] Commission members present included: Larry Daily, Greg Spanier, Sandra Walters, and Jimmy Green. Gautier staff present included: City Manager Samantha Abel, City Attorney Josh Danos, Director of Economic Development Chandra Nicholson, and City Clerk Tricia Thigpen.

The **Criteria for Rezoning** outlined in the *UDO* is consistent with well-settled law in Mississippi (as previously presented and argued by Mr. Dees' counsel) in that rezoning is only proper if: (A) there is a mistake in original zoning; **or** (B) change in the character of the neighborhood **AND** a public need for rezoning. *Cloverleaf Mall, Ltd. v. Conerly,* 387 SO. 2d 736 (Miss. 1980); See also, *Burdine v. City of Greenville,* 755 So. 2d 1154, 1156 (Miss. App. 1999) (citing *Board of Aldermen v. Conerly*, 509 So.2d 877, 883 (Miss.1987). What is meant by **"clear and convincing"** is whether the reason for rezoning may be fairly characterized as **substantial**. *Woodland v. Jackson,* 443 So. 2d 1173, 1182 (Miss. 1983).

In this case, there are insufficient grounds or basis for rezoning as the applicant has presented no credible, substantial evidence to the Gautier Planning Commission to support such a change. The applicant, Mr. Finnicum, has failed to meet his burden by "**clear and convincing**" evidence that: (A) there was a mistake in the original zoning, **or** (B) a substantial change in the land use character of the surrounding area that justifies the change in zoning **AND** an established public (community) need existed for the proposed zoning change.

Additionally, the City of Gautier, in its Staff Report and recommendation, provided findings that the request did not meet the requirements of applicable law and that the requisite review criteria had not been met. The City was required to conduct a study that demonstrates whether or not each criteria for rezoning is met and provided recommended findings to the Gautier Planning Commission. In the Staff Report, as presented by, Ms. Chandra Nicholson, Economic Development & Planning Director, the staff found that there was no evidence to support that there was a mistake in the original zoning and that "*no mapping error exists*". Additionally, the staff found that there has not been a substantial change in the land use character of the area and there is no need for additional R-E designated land at this time; specifically, that there was "*no analysis that the current designation does not provide an adequate transitional zone for suburban lots.*" Based on the Staff Report and pursuant to the *UDO*, the data and analysis do not support a Comprehensive Rezoning at this time and based on this recommendation, rezoning should have been denied.

Mr. Dees further asserts that Gautier Planning Commission member, Mr. Larry Dailey, who made the motion to approve applicant's request, did so not based on **clear and convincing evidence** as required, but rather for some other reason, based on a mistaken impression that it "appear[ed]" or "occur[ed]" to him "that a mapping error *is possible,*" although the evidence did not show the same. *See attached **Exhibit "A"** Transcript Excerpts and Testimony of Larry Dailey,* at pages 2-5. As such, the Planning Commission's recommendation is not supported by credible, substantial evidence, but rather based upon "possibilities" and speculation, which is not the proper legal standard to which the City should hold itself. Therefore, the Planning Commission did not follow the proper procedures for rezoning, decided to disregard the Staff Report and findings, ignored the "caution" and advice of the City Attorney, and failed to make the necessary findings to recommend approval. For these reasons, the Planning Commission should not have recommended approval of rezoning. In accordance with applicable state and local zoning law, the City Council shall not rezone the subject property. However, should the City Council agree with the recommendation of the Planning Commission, over our objection, Mr. Dees contends that any rezoning change from R-1 to R-E should not apply to Mr. Dees' property (especially with respect to the previously approved Dees Landing Subdivision).

**B. The finding of the Gautier Planning Commission is beyond legal authority as, pursuant to the Supreme Court of Mississippi, there is a presumption in favor of the validity of the original zoning ordinance and there is insufficient evidence to rebut this presumption.**

Mr. Dees contends that the original zoning district R-1 is presumed valid. The "change or mistake" rule of municipal zoning, is based on the presumption that the original zoning is well planned and designed to be permanent. *Fondren North Renaissance v. Mayor and City Council of Jackson,* 749 So. 2d 974 (Miss. 1999). There is a presumption that the original and existing zoning R-1 is well planned, reasonable and for the public good. *Board,* at page 883. The applicant presented no evidence to rebut this presumption. Furthermore, the statements of the City Manager at the hearing support the finding that there was no mistake or "error" particularly when she stated that it is "normal and proper planning when a city incorporates an area that it applies the zoning district that is most like the existing activity." *See attached* ***Exhibit "A"*** *Transcript Excerpts and Testimony of Samantha Abell,* at pages 7-13.

Moreover, there is insufficient evidence or proof that all properties and homes adjacent to Homestead Boulevard, and in the area, currently qualify for or would be consistent with an R-E Residential Estate zoning classification.

## III. CONCLUSION

The recommendation and finding of the Gautier Planning Commission, and specifically Acting Chairperson Mr. Larry Dailey, was improper, beyond legal authority, and/or made in an attempt to deprive Mr. Dees of his rights. This action was further conducted in a manner which was intended to and/or functional to deprive Mr. Dees of his vested property rights and were in violation of the law and the Constitution of the United States of America and the State of Mississippi, and if allowed to stand will potentially constitute a taking of Mr. Dees' property, which will give rise to legal action (inverse condemnation) being taken against the City.

Additionally, based on the factors delineated in Mississippi case law and under the *UDO* for rezoning change and classification of property and the evidence presented (or lack thereof) to the Planning Commission, the Planning Commission inappropriately granted the applicant's request for rezoning because the request and finding is not supported by substantial (or any) evidence.

Furthermore, Mr. Dees hereby objects to rezoning of his property without proper, timely, and due notice after publication, a fair hearing, full opportunity to be heard and due process of law, as provided in the Mississippi Annotated Code of 1972, *As Amended*, and in accordance with all applicable Federal, State and Local laws. *Mississippi Code Annotated* § *17-1-17*(1972). Mr. Dees reserves the right to raise any other errors.

Mr. Dees respectfully prays that the City Council disapprove Mr. Finnicum's application as it is factually, procedurally and legally insufficient. Additionally, Mr. Finnicum has not met his burden by clear and convincing evidence. As you know, the Planning Commission and City Council cannot arbitrarily change zoning from R-1 to R-E. The burden is on the City to justify rezoning, and the City must meet certain statutory requirements. The existing zoning classification in the subject area, and land use of the subject property, is consistent with the City's Official Zoning Map established back in 1988, and the Comprehensive Plan, and does not support rezoning at this time. Therefore, the City should not rezone the subject property, particularly with respect to Mr. Dees' property. Moreover, any zoning change from R-1 to RE should not apply to Mr. Dees' property.

Very Respectfully,
RUSSELL S. GILL, P.L.L.C.

Russell S. Gill

RSG/amb

Cc: Mr. John Paul Barber, Attorney for Applicant William R. Finnicum
Mr. Wilbur Dees

Enclosures: **Exhibit "A".** Transcript Excepts of the Proceedings before the GPC

## Table No. 27: Implementation and Action Steps
## Land Use and Community Character

| Strategy | Short | Med | Long | On-Going | Comments |
|---|---|---|---|---|---|
| **Zoning** | X | | | X | **By Ordinance and policy** |

- Adopt new Unified Development Ordinance to help implement the community's vision.
- Define zoning boundaries for the new mixed use districts and the regional centers.
- Guide appropriate development to each of the above named districts.
- Identify residential development styles which are suitable, practical and achievable in Gautier and incorporate these into the regulatory ordinances.
- Create estate zoning district and rezone large lot development areas in select areas and with permission of property owners.
- Re-zone lots as appropriate to R-1A with permission of property owners.
- Create overlay districts for main corridors using enhanced sign, landscaping, architectural and streetscape requirements if these elements are not a part of the base zoning district.
- Add language to the Zoning Ordinance that would allow the creation of local Historic Districts.
- Consider using architectural design overlays and/or Smart Code in more urbanized areas.
- Eliminate back-door rezoning and variances that tend to sabotage the intention of the base zoning district.
- Discourage development that does not reflect good design or is not in compliance with the district requirements.
- Create neighborhood overlay districts in the Zoning Ordinance for those areas which lack sufficient restrictive covenants.
- Make appropriate incremental changes to Development Ordinances as needed.

| | | | | | |
|---|---|---|---|---|---|
| **Subdivision Ordinance** | X | | | X | **By Ordinance and private development choices** |

- Revise the requirements for new subdivisions to not only bring engineering standards up to current requirements and to allow Conservation Subdivisions, Traditional Neighborhood Districts, clustering and lot averaging.

| | | | | | |
|---|---|---|---|---|---|
| **Landscaping** | X | | | X | **By Ordinance and strict enforcement.** |

- Revise the Tree Ordinance to require more robust landscaping of commercial sites and parking lots and to protect existing trees.
- Prepare and implement a Streetscape Plan that includes species, number and sizes of street trees.
- Incorporate pedestrian connections, natural landscaping and hardscaping in all new projects.

***Recommended timelines for implementation are given as being either short (immediate to 3 years); medium (3—6 years) and long (6+ years). Some strategies will require on-going or staged implementation.***

*Table No. 27 continued on following page . .*

**********

GAUTIER PLANNING COMMISSION

MAY 1, 2014

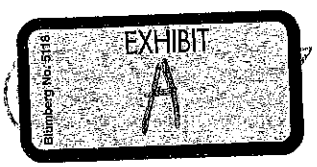
**********

COMMISSION MEMBERS PRESENT:

Larry Daily, Acting Chairperson
Greg Spainer
Sandra Walters
Jimmy Green

STAFF PRESENT:

Samantha Abell, City Manager
Josh Danos, City Attorney
Chandra Nicholson,
Director of Economic Development
Tricia Thigpen, City Clerk



PROCEEDINGS

* * *

LARRY DAILEY: I have a question. Under your Item D, you talk about your finding is that a mapping error did not occur. We have in the past recognized that when our City was incorporated, the RE zoning did not exist, and that lands that were brought into our city just brought the existing R -- in this case, R-1 zoning.

Even though the lands were being developed with large estate lots, it would appear to me that a mapping error is possible since the lots are being developed as large lots, the RE zoning did not exist, and it was zoned the only available zoning that was available to them.

It would occur to me that there is an error, and that if the RE zoning existed at the time that the City incorporated that property, that it would have been zoned RE. Is that a valid argument?

CHANDRA NICHOLSON: Would you like to

address that?

CITY ATTORNEY: The only thing I would say is that if you're basing your opinion on this issue on potential mistake that you would have to find the clear and convincing evidence of that mistake and that there is a strong presumption pursuant to the Supreme Court of Mississippi that any adopted ordinance is not made a mistake, all these zoning ordinances were not made a mistake at the time they were originally entered, so I would just caution the Commission.

LARRY DAILEY: Then I'm -- based on my comment, it would occur -- it would appear to me that it is -- it was clearly an error, because the City did not have available to it the opportunity to zone it RE because the zoning didn't exist, even though it was clear that that land was being developed as estate lots and there is an error that occurred because of that. Is that appropriate?

CITY ATTORNEY: I don't know that I'm in a position to say whether that's

inappropriate or not. If that's your position to base on a motion, then I would say that you would need to put that in the record, which you have.

LARRY DAILEY: Okay. Well, I guess what I'm really talking about is the difference between my view of a mapping error as staff's view, I'm trying to get some support or agreement as to --

CHANDRA NICHOLSON: I would think --

LARRY DAILEY: There are clearly opinions, and is there any movement there?

CHANDRA NICHOLSON: I would think that an error would have to occur if there were at that time Residential Estate and R-1, and it was designated as R-1 and you came to find that it was a mistake. You know, just because there wasn't an RE at the time, there's no reason that they couldn't have created one if it was needed. So that's the way I look at it.

LARRY DAILEY: Okay. I disagree with that. I feel that -- and this group has had similar discussions in the past, and I think consistently we've said that if the

zoning didn't exist at the time, even though the land was clearly being developed in accordance with an RE zoning, that an error occurred by not supporting the zoning or putting a zoning on it that supports the development. So my argument is that an error in zoning did occur. Okay.

GREG SPANIER: That they didn't take the steps needed, it's an error on their part.

LARRY DAILEY: All right. Any other questions of staff?

JIMMY GREEN: I have one. Was the Comprehensive Plan just overlooked when we were zoning it? Was it taken into consideration?

LARRY DAILEY: It did not exist at that time.

CHANDRA NICHOLSON: The Comprehensive Plan was adopted in 2009. The UDO was adopted in 2010.

JIMMY GREEN: '10?

CHANDRA NICHOLSON: Uh-huh.

LARRY DAILEY: And neither of these

existed when the land was incorporated.

* * *

LARRY DAILEY: Thank you, Mr. Gill.

CITY MANAGER: If I may, our City Clerk has that duty and it's prior to the effective date.

Also, Chairman, it occurs to me that I might be the only one in the room this evening that can address your question regarding whether a mapping error has occurred, since it was my responsibility as City Planner at the time of the adoption of the Comprehensive Plan. I've not stood, nor was I sworn in, but just something for you to consider if you'd like me to speak on that.

LARRY DAILEY: Please.

CITY MANAGER: Are you sure?

LARRY DAILEY: I'm comfortable with you speaking, because we've talked about this before and I'm hoping you're not going to change your tune.

CITY MANAGER: Change my tune, I never do that.

(City Manager sworn.)

CITY MANAGER: Well, you can ask any questions, or I'll just start, I suppose, by talking about the difference between planning and then a technical error occurring. This area was obviously annexed in 2002. There was an official zoning map in place and you had a Unified Development Ordinance. That Unified Development Ordinance and the official zoning map were adopted by the City Council after recommendation for approval by the Planning Commission.

In 2009, the Comprehensive Plan was adopted by the City Council after approval by the Planning Commission. That 2009 Comprehensive Plan created Residential Estate seven years after this area had been R-1. The Comprehensive Plan talked about the need for a mixed use districts, an overlay district, and also Residential Estate. Your Unified Development Ordinance did not actually describe what those districts would look like.

For my hire, we actually went back to the Planning Commission and City Council

and created those districts at that time. We started with the mixed use districts first. You had areas along your waterfront that were mixed use at the time that they were annexed in 2002. Those districts were not changed until there was a change in the character of the land. Some of those triggers were large residential houses that were built along the waterfront where there was also working waterfront activities, such as the railroad. Also, the expansion of Singing River Electric, that triggered the adoption of the Mary Walker Mixed Use District.

The Planning Department has continued to have citizens come and talk about their concerns because, for instance, along Hastings you had commercial activities that operated during the County but after the City incorporated those areas were zoned to R-1 and they were being made to conform.

So to answer the question is it an error, it is normal and proper planning

when a city incorporates an area that it applies the zoning district that is most like the existing activity, and then it makes those areas conform to the description of those districts.

That zoning district of R-1 carried from 2002 until 2009 when a Residential Estate district was created. And then after 2009 and 2010, you adopted your Unified Development Ordinance and then you actually created those districts to implement the Comprehensive Plan.

So I think Chandra Nicholson was exactly right when she said it would impossible for staff in our report to quantify that an error had occurred, because in 2002 R-1 was the district that was adopted by the City Council, after recommendation by the Planning Commission, for this area and all low density residential areas in the City.

It wasn't until 2010 that a new district even existed in order for the City Council to consider a different policy. So there's a difference between

planning policy and then an error on the official zoning map. Do you have any questions?

LARRY DAILEY: Probably more than one.

UNIDENTIFIED SPEAKER: Mr. Daily, may I speak?

LARRY DAILEY: No. Let us finish with our City Manager.

CITY MANAGER: And my purpose is just to remind the Planning Commission, based on your precedent of when you have used the trigger to implement those zones that were annexed in the City, because I think that east side is a pretty good example along your waterfront. That area was also annexed. And it was mixed use and it incurred significant code enforcement problems because you had a mixed use waterfront area, actually there's someone who could attest to that this evening, and yet when that area was annexed the most similar zoning district was applied to it, and as a result, places like Tucci's received a lot of code violations and

1 summons to appear in court because it did
2 not fit the closest district that the City
3 had for it.
4 But it was not until 2010 that that
5 area was rezoned to a mixed use district.
6 The Planning Commission and Council did
7 not find that an error occurred. You
8 found that it was appropriate to recognize
9 what was there and to rezone it
10 accordingly.
11 LARRY DAILEY: What we've heard
12 tonight, though, doesn't allow us to take
13 that action. So are you saying that that
14 is, just like by that, it is an
15 appropriate action for us to take?
16 CITY MANAGER: I would simply remind
17 you that you would need to look at, has
18 there been a change that allows you to
19 flip that trigger and implement your
20 Comprehensive Plan, and that's what this
21 Planning Commission -- that's what you
22 were tasked --
23 LARRY DAILEY: How is the change in
24 the MURC that pulled that trigger?
25 CITY MANAGER: The expansion of

Singing River Electric, they doubled their land size. You had an increase of traffic, because after Katrina, which was after you had annexed that area, when you had new things build back. For instance, you have a marina with a restaurant. Well, you had single family homes build in that area that encroached on a commercial enterprise.

So you had a big diversity of uses and no one was getting along and it happened after the annexation. So clearly the commercial zone that you had did not recognize the residential uses that were being built there under a lot of special use permits.

LARRY DAILEY: We didn't have the discussion at the time that we were going through all that MURC change that we recognized that because the area, the zoning didn't exist at the time, that it was considered a mapping error and that we could pull the trigger because of that, as well. It seems, to my recollection, that we've talked in those terms, as well.

CITY MANAGER: No, sir. That was not one of your findings of facts, but you and I have spoken extensively about the Ward 5 area and the fact that we have had complaints that R-1 was not a one size fits all approach.

LARRY DAILEY: Right. Thank you. Any other public comments?

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LARRY DAILEY: Okay. Thank you. The motion has been withdrawn by Mr. Spainer. And I'd like to place into -- I'd like to make a motion to approve GPC Case Number 14-01-RZ, and that we find that we've heard evidence that this area was clearly being developed as residential estates, and as RE did not exist at the time of incorporation of the area, it was brought into Gautier at the highest zone available, which was R-1; we find that there is clear and convincing evidence that a mapping error occurred, and the Comprehensive Plan recognized the error by identifying it to be rezoned RE, which would protect the character and quality of