

**OFFICIAL MINUTES  
PLANNING AND ZONING BOARD  
August 10, 2005**

Members Present: Clay Breaud, Melvin Adams, Bert Boquet, Sheard Ber and Marguerite Erwin

Members Absent: None

Also Present: Honorable Charles Caillouet, Mayor, Kermit Kraemer, Jr., Public Works Director, Errol Price, Zoning Administrator, Councilmen Dee Richard and Chad Mire and Ruby Maggio, Secretary

Chairman Breaud stated we have been provided a copy of the minutes for the special meeting of June 27, 2005, what is your wishes, does anybody want to hold this off until the next meeting. Ms. Erwin stated she would defer to the next meeting. Chairman Breaud replied ok, it's been moved that we defer to the next meeting; the motion was seconded by Mr. Adams, all members were in favor. Mr. Breaud replied by the next meeting we'll hopefully have this special meeting minutes and the minutes of the last meeting and I don't know about the minutes of this meeting but at least we'll have two out of three.

**Item four on the agenda was to consider a request by Acadia Land Surveying, LLC on behalf of J. B. Levert Land Company for sketch plat approval of Rienzi Place Subdivision, Addendum No. 1 located on the North side of Ashton Dr. approximately 125' North of intersection of Ashton Dr. and Rosedown Dr. in Section 44, T14S – R16E, City of Thibodaux, Lafourche Parish, Louisiana.** Mr. Jules Toups with Acadia Land Surveying, LLC came forward and stated that what this is an extension of existing phase of Rienzi Place Subdivision, they are planning on extending the road out and bringing it back to Rosedown. Also in the future phases we're showing where we are planning on an existing little road that comes off of Canal Boulevard, they're proposing to extend that through to Rosedown also. We're submitting the sketch plat and we're asking for approval. Mr. Breaud stated like you said sketch plat approval so we're looking at basically the layout of what he is proposing. Mr. Toups stated what they were asking is that you look at they layout of what we are proposing here and further if you have any questions on the future phase to go ahead and get approval on that also, if possible. Mr. Breaud stated one question he had was this proposed lake, how are we going to handle this lake, who is going to own the lake? He knew the City of Thibodaux probably don't want to reserve this lake. Mr. Toups replied no, the lake would be, what would happen is the lots would be extended out to the center of lot to the lake and it would be owned by the residents. Mr. Boquet replied ok.. Mr. Breaud stated and something maybe in the restrictive covenants to say that the lakes cannot be altered or changed to defeat the purpose of having the lake. He guessed he would also recommend as far as maintenance, it won't be the maintenance of the city but we ought to get the pond to dug to probably at least a -2 elevation so the pond would hold water all the time and we wouldn't have vegetation growing through the pond. Mr. Andy Andolsek with J.B. Levert Land Company came forward and stated that they would have restrictions on the lake and also we plan to use it as a retention and also have a water control structure on it to maintain the water level in it so they plans are to either have an aerator or a well that will keep it at the proper level. We are familiar with lake developments, we already done some in St. Charles Parish, we plan on using similar restrictions in this instance. Mr. Breaud stated and the way it is laid out there's no type of public access. Mr. Andolsek replied there's not type, it would belong to the owner of the lot, those lots that front the lake would belong to an association which have restrictions on those lots guiding the lake being that you can't fence the rear and so on and so forth. Again, my intentions are to come back next time with both phases designed and he may not build them both it will depend on demand. Mr. Breaud stated both phases meaning the North side. Mr. Andolsek replied that was correct, so when we come back for the next approval. Mr. Breaud stated I see you've got a proposed 10' sewer servitude for the projection of the sewer force main along Rosedown Dr., that would be part of this phase, the installation of that and the construction of the sewer lift station? Mr. Andolsek replied that's correct, we met with public works at some time with the City and Kermit and Errol agreed to that location; that station should take care of a large part of Rienzi and that station is going to pump into the St. John station based on their approvals and we shouldn't have to build another station probably in his lifetime on the residential side. Mr. Breaud stated and that force main would be constructed in the future right of way of Rosedown. Mr. Andolsek replied no, the force main is going to be actually constructed in the right of way of the drainage servitudes that encumber on Rienzi already so they'll be in the right of way, the utility servitude will be put inside of a drainage servitude which they have ample room to do because it's the part of the ditches that they use to excavate the canals. Mr. Breaud replied that would need to be changed because right now we're showing the projection inside the 60' right of way. Mr. Toups replied right now this is just a proposed sewer servitude to get the sewer to it, that's the gravity portion; the sewer will leave from the lift station, run down the East/West canal and then across the property. Mr. Andolsek stated yes, it would take another plat which I didn't bring with me tonight but Kermit and Errol have been provided with a detailed survey and plats with elevation making sure we can gravity flow into that station and then from there it would pump into the St. John Station which has adequate capacity. Mr. Breaud stated and basically this proposed development is the same as the development before it, the same subsurface drainage. Mr. Andolsek replied yes, this was pretty much envisioned when we did the last development. Mr. Breaud then asked if there were any other comments from the commissioners, Mr. Adams. Mr. Adams stated he had a question, it doesn't show any connection between that canal and the lake, is that going to be connected in case it rises over, the canal by the front? Mr. Andolsek replied there will be an outflow into that canal but this preliminary sketch, no it doesn't show a servitude of such but it would be a private. Mr. Breaud stated maybe we ought to bring the servitudes at least to the lake so if the City ever has to maintain up to the lake they've got the right of ways to do that, do you follow me? Mr. Toups stated you're talking about a servitude over the control structure. Mr. Breaud replied up to it, at least, yes, in case they have to get to the structure for some reason. Mr. Andolsek replied that was fine, no problem. Mr. Kermit Kraemer stated in addition to

that Andy, we'd like to see the profiles and the cross sections of the lake too so that we can be assured that it would be continually aerobic and not go anaerobic at various times of the year. Mr. Breaud asked if there was any proposal to put any kind of aeration devices in there. Mr. Andolsek stated initially I think we can do it with just a well with a continuous flow on one side and letting it overflow through the other, that should provide enough aeration and water movement to keep it stagnated. Mr. Breaud stated you design the side slopes to some minimum slope where the water... Mr. Andolsek replied that's why we hire engineers, I'm not qualified to do that but he thought Duplantis is and all of those will be provided you prior to us starting construction so you'll have detailed plans on the lake and utilities hopefully at our next meeting or the one after. Mr. Breaud then asked if there were any other comments, if not Mr. Kermit, any other comments by administration? Mr. Kraemer replied no, that was his only comment with respect to the profile and cross sections of the lake so that we can be assured that the design will be aerobic throughout the entire year whether there's aeration or otherwise. **Mr. Breaud then asked if there were any public comments, if not, he would entertain a motion for sketch plat approval for Rienzi Place Subdivision, Addendum No. 1, it was moved by Mr. Boquet and seconded by Mr. Adams, all members were in favor, motion carries.**

**The second item on the agenda was to consider a request by Leonard Chauvin, P.E., P.L.S. on behalf of Norman Loeske, Jr. for re-division of Lot 1, Block 1 South Peltier Subdivision into Lots 1-A (municipal address of 103 Diplomat Way Road) and 1-B located in Section 61, T15S-R16E, City of Thibodaux, Lafourche Parish, Louisiana.** Mr. Breaud stated it has been brought to my attention that this will be pulled off the agenda, we've got some servitude requirements or relocation of force mains to address before we do the division of land, is that correct? Mr. Price replied that was correct. **Mr. Breaud replied ok, we don't need a motion to defer action; we'll just carry it over to next month's meeting. Mr. Boquet replied ok.**

**The third item on the agenda was to consider a request by David A. Waitz Engineering & Surveying, Inc. on behalf of Allen Cortez for re-division of Lot 3 into Lots 3-A and 3-B of Audubon Properties, division of Lots A-2-B, A-2-C and B-1-A located on the Northwest side of Alice Court approximately 116' East from intersection of Alice Dr. and Alice Court in Sections 32, 167 and 168, T15S-R16E, City of Thibodaux, Lafourche Parish, Louisiana.** Mr. David Waitz came forward and stated he was representing Allen Cortez. This particular piece of property has two structures on it now, they're apartment complexes and the owner wishes to subdivide them into two lots for mortgage purposes and what he had here is for final approval tonight. He had a discussion before the meeting with Mr. Ber about the line between the two buildings, there's two feet between the two buildings, I could shift that line over so we're five feet off of each building as per code but then I'd be short on my square footage on Lot 3-A so with that discussion earlier, if I could get approval contingent on a variance from the Board of Adjustments, I'd like to do such. Mr. Breaud stated we're not authorized to give variances on side lot lines so in order for him to meet the regulations he would have to get a variance for either the side lot line clearance or for the minimum lot size. His personal preference would be to get in the middle of the buildings and not get all the way off to one side but then you would need a variance from the Board of Adjustments for the minimum square footage on the lot. Mr. Waitz replied sure. Mr. Breaud stated that was one variance, the second variance would be there's a 15' lane, it's an "L" shaped lot that abuts the public roadway, the normal requirement is a 50' frontage on that, so it would require a variance also from the Board of Adjustments for the front footage alignment on it. Mr. Waitz replied well what we have done in the past also too is that since this is all parking area and entrance area to the two buildings, is show it as a common area with a servitude on it even though it's not part of the lot, would that make a difference? Mr. Breaud replied well the regulations really don't address "L" shaped lots, you lot does have, if you look at it from the front, the building does have over 50' the only thing is the access to the public roadway. Mr. Waitz replied sure. Mr. Breaud stated so it would be the preference he guessed of the commission, we've been furnished a picture so you all can see what the alignment is, it's two apartment complexes on one lot and they want to subdivide the two he guessed to sell off to different people or whatever. Mr. Waitz replied it would be for the same person but it was strictly for mortgage purposes, one person is going to own both lots but you always have that threat of in the future it could be two different owners but the plan is not to, we're planning on doing it as a total sell. Mr. Adams stated that third area is going to be maintained as a parking area. Mr. Waitz replied yes sir. Mr. Adams stated you don't plan on putting any other building. Mr. Waitz replied no sir. Mr. Adams asked if there was ten foot between the two buildings. Mr. Waitz replied there's ten foot between the two buildings; he believed there was. Mr. Breaud replied yes, we could give conditional approval based on the Board of Adjustment giving a variance, if the Board of Adjustments does not grant the variance well then the condition is not met. Mr. Waitz replied but I would have the leeway to go whatever way they'd like to go, whether it's to the middle of the two buildings or the 5,000 sq. ft. Mr. Breaud replied he guessed they could leave that open rather than us make a decision, we'll let the Board of Adjustments... Mr. Boquet replied handle the whole thing, sure. Mr. Waitz replied ok. Mr. Breaud then asked if there were any other comments. Mr. Adams replied they could make an approval pending conditional approval. Ms. Erwin replied she assumed that there was no common structure, there's nothing common between the two buildings, they are completely separate. Mr. Waitz replied yes. Mr. Breaud then asked if there were any comments from the public, any comments from administration, Mr. Kermit, I guess everything is in place, the development is there and existing, I assume all the utilities are there so I don't see where it would have any impact. Mr. Kraemer replied both structures on the property are fully occupied at this particular time, there's very little except as you commented earlier, there's a variance problem as well as the flag lot type scenario that is not addressed in the city subdivision regulations and that would need to be addressed by the Board of Adjustments. Mr. Breaud stated I don't know if you can answer this question Mr. Kermit but how did the City ever grant a 30' right of way for Alice Court, I know that was before your time but... Mr. Kraemer replied he had no comment at this particular time. Mr. Breaud replied hopefully we don't see that no more. Mr. Kraemer replied we don't do that anymore thanks to our planning commission. **Mr. Breaud then asked if there were any comments by the public, if not, he would entertain a motion for conditional approval for final plat approval on Cortez Subdivision with the condition that the Board of Adjustments grant a variance for either side lot line or the minimum lot coverage together with the front footage areas, it was moved by Mr. Adams and seconded by Mr. Ber, all members were in favor, motion carries.**

**The fourth item on the agenda was to have a public hearing on the zoning district designation of "M-2" for Cameco / John Deere property under consideration for annexation to City of Thibodaux.** Mr. Breaud stated who is addressing this, Mr. Kermit, is anybody with Cameco, or...? Mr. Kermit Kraemer, Director of Public Works, replied probably not, Cameco, a division of John Deere has petitioned the City for annexation into the City. They are presently on City utilities and they are adjacent to the corporate limits of the City of Thibodaux at the present time.

They have petitioned to have their property included into the City jurisdiction. Basically it's a straight forward thing, I did not know that they were in fact petitioning at this point in time for an "M-2" classification as a result of their annexation. As you well know that all properties annexed into the City of Thibodaux come in as an "R-1" designation unless otherwise zoned prior to the, or at the action of the City of Council during the annexation procedure. As we have just recently gone through that with the T.N.D. type situation and so there are some restrictive requirements with respect to "M-2" there are some fencing requirements and that type of thing because of outside storage of materials relative to that "M-2" zone. At this particular time they do have the entire site fenced but it is not fenced in accordance with an "M-2" zoning classification and certainly it is incumbent upon you if you so desire to require them to do that at least on that portion of the land which fronts residential development, which would be North Thibodaux area, from North 10<sup>th</sup> I think approximately to North 13<sup>th</sup>. Mr. Breaud replied well he didn't know if it was incumbent upon us, I think incumbent upon the City administration, it is a regulation that any time a commercial, industrial abuts a residential that we have an 8' fence or it would be incumbent upon the City to enforce these regulations when they do come in. Mr. Boquet stated we have to decide whether we can bring them in as an "M-2". Mr. Breaud replied yes, when does this come in front of the City Council for annexation, is that any time soon that you know of? Mr. Kraemer replied next meeting, it will be introduced, oh, it was introduced, I apologize, it will get voted upon. Mr. Breaud replied all right so what we'd have to do is give you conditional approval based upon the City Council annexing it into the City. Mr. Kraemer replied correct. Mr. Breaud stated the highlighted maps that we have here is I guess some approximate boundaries of the land owned by Cameco. Mr. Kraemer replied that was correct and those were furnished by the Council Administrator. Mr. Breaud stated he didn't like acting upon something on a highlighted map without definite boundaries without some kind of written description of the boundaries, so another condition is that we be provided and before the City Council votes on this, he don't see how we can annex property unless we've got some kind of legal description. Madam attorney I wish we would get that in, we can probably get a conditional approval but that definitely needs to be furnished so we know what the boundaries are when they are brought into us. Are there any other comments? Mr. Adams stated he was in agreement with you there, we don't have a preliminary plat so we can approve this. Mr. Boquet stated we can give conditional approval until such time as they furnish the... Mr. Breaud asked if he had a questions about the "M-2" District? Mr. Boquet replied no, not really, not for where it is located, the purpose that it is being used for now he thought it was perfectly acceptable. Mr. Breaud stated Mr. Kraemer what is the advantage I guess of Cameco wanting to come into the City, do we know that or why is all this...? Mr. Kraemer replied everybody wants to come into to the City of Thibodaux. Mr. Breaud stated and they want to pay extra taxes. Mr. Kraemer replied actually it would be pretty much a wash as far as taxation is concerned, they will pay additional sales tax but they will save on property taxes within the City and being in the City they will be exempt from some parish taxes that they are presently not exempt from that are within the parish. So he assumed that it was somewhere close to an even swap. They do receive all of their utilities, police protection, etc. as well as some fire protection from the City of Thibodaux. We have worked continually with them, we had thought that the remainder of the plantations surrounding them would also be annexed at or about the same time. That has not come into fruition at this particular juncture; which would be the remainder of the Coulon Plantation, Caldwell Plantation. Mr. Breaud replied ok, are there any comments from the public on this issue, if not, I would entertain a motion for conditional approval to... Mr. Adams replied all the utilities, is sewerage already hooked up to the pump station on 13<sup>th</sup> Street, it's already going into that area? Mr. Kraemer replied yes sir, well yes all of it goes to 9<sup>th</sup> Street station. Mr. Adams replied ok. Mr. Breaud stated is that all Mr. Adams? Mr. Adams replied yes. **Mr. Breaud then asked if there were any other comments, if not he would entertain a motion for zoning the Cameco property to an "M-2" conditioned upon the annexation by City Council and the Council Administration be provided a written description and a map of the property to be annexed in. Mr. Kraemer replied he would see that this is re-put on the agenda to re-certify the exact descriptions of the property once that is made known to me. Mr. Breaud replied ok, he appreciated that, ok, it was moved by Mr. Boquet and seconded by Mr. Ber, all members were in favor, motion carries.**

**The fifth item on the agenda was to consider a request by Woody Falgoust on behalf of East First Street, L.L.C. to rezone 711 East 1<sup>st</sup> Street as follows:** Mr. Breaud stated we've got Items numbers 8, Items number 9 are basically options for rezoning, but we'll let Mr. Falgoust make his proposal on and we'll see I guess, we'll let him go ahead and explain all twelve I guess at one time rather than us acting on one at a time, I think we may be able to save some time like that. Chairman Breaud, thank you, my name is Woody Falgoust and I represent East First Street, L.L.C., my address is 301 College Lane, Thibodaux. I take it Chairman Breaud that it be appropriate at first to go through item one, the proposed rezoning and then invite public comment before we go to Item 2, is that what you'd like to do? Mr. Breaud replied that was fine. Mr. Falgoust stated ok, I think that might be a little easier. I want to thank the Board first of all for letting us come here a month ago with our witnesses and having the ability to put on evidence and make our presentation. I'm not going to do that again tonight, you have all heard me talk for long enough on that issue, you got to hear my clients talk, you got to hear Mr. Savoie, counsel for the Martin family talk, you got to hear them speak, so tonight we just want to present additional options to the Board. Now the reason these options came about were based on comments we had both from the neighborhood, I should say the different neighborhoods, I think you have a neighborhood on either side of the cemetery and from some of the Board members, both at the meeting, on the record and some comments just after the meeting. We're trying to do what we can to accommodate the community, to accommodate the Board, to give everyone more options but by the same token being able to do something, something marketable with our properties. As far as the specific items go I can restate them or I can just leave it up for public discussion, I mean we go everywhere from treating each individual tract as an individual tract, for instance if you wanted to give us an "R-4" and the Martins a "C-1" or vice-versa this allows you to do that. If you wanted to only rezone the Martin property and the East First Street, L.L.C. property and rezone nothing in between you can do that. If you wanted to go ahead and rezone the entire strip like we'd ask for before, either "R-4" or "C-1" but then place restrictions, you can do that and we list those restrictions, no bars and lounges, no on premises alcohol consumption, no video poker, no mobile homes, no washaterias and no outdoor advertising rental. Of course, anything that is not allowed in an "R-4" or a "C-1" would also be restricted by operation of law. We also have one that again takes into consideration the whole area but leaves the green areas, the tracts of property with no structures on them, it leaves them only the opportunity to build something in conformity with the current structures that way it would be more likely to preserve the green space. We had one comment from a resident that said, look whatever you all want to do with your business is ok with me, I want the green space protected. You know we had some people that had some problems with the Martins project but not with our project and then vice-versa, so these are just more options to present to the community to present to the Board. Outside of any questions, he would like to call on Mr. Savoie if he has anything to say on this issue. Chairman and Members of the Board, Rusty Savoie, my

address is 4500 One Shell Square, that's in New Orleans, 70139. As you know we spoke extensively and I appreciate the opportunity last month and this month, you know my client situation, this is a property that has been in the Martin/Graham family since the early '20s and '30s, basically they're left with a piece of property that is commercial, always has been commercial and they can have no use. They've been to the variance board numerous times, denied each time and they're looking for some resolution from this Board, I think we originally proposed to you to adopt a more broad and aggressive approach of rezoning the entire area. If you want to do it in pieces among the numerous alternatives that I think Mr. Falgoust has set out, we're open to any suggestions, we just want to put the property to use. My client's intent if they could is to have a dance studio or possibly a coffee shop. They have no problem with the restrictions placed in the proposal but again we do appreciate your time. Mr. Falgoust came forward and stated Chairman Breaud if you don't have any questions, I'd like to pass on the podium to the public for any comment. Mr. Breaud stated let me just ask you, basically you went over I guess the first twelve items, descriptions on the first item, would you not agree I guess that Items 1 through 9 is basically rezoning individual lots, I mean that's your wording, you know each individual property, you're looking at trying to rezone your particular lot, you would not consider that to be spot zoning, I mean isn't that defeating the purpose of zoning when we start taking an individual lot and making it a different zone? Mr. Falgoust replied Mr. Breaud I addressed that at the last meeting, the way the law defines spot zoning, spot zoning is when you rezone an individual property different from the surrounding properties either for the benefit of the property owner to the detriment of the neighbors or for the benefit of the neighbors to the detriment of the property owner when no rational basis exists for that distinction. You'll see many cases in the Louisiana Juris Prudence that do rezone a lot, a spot, they rezone it to another site. I mentioned some of them at the last meeting, another one that comes to mind is across the river in Lutcher, you had a lot that had a bank but the property changed hands, a funeral home wanted to move into the building but it was not zoned to be a funeral home so they rezoned it. You have this situation in Marksville and they rezoned an "R-1" residential lot in the middle of a giant "R-1" tract to "R-2" because the basis for it was you had a public housing shortage in Marksville and they wanted to create more housing. So in this case the rational basis like I explained before, it's spot zoning in reverse, I mean, you look on the batture, it's a commercial batture here in Thibodaux, the LA 1 batture, you can't find one residential house on that structure. Now I won't go through that again, but there's never been one. So this is spot zoned, it's being spot zoned right now and of course I went through this at the last meeting too, if you take the original tract that \_\_\_\_\_ Menard owned way back when that goes from the bayou all the way back to the City limits, that entire area right there, there's not an "R-1" house in it, so if anything this spot zoning exists right now. As far as rezoning those lots and not doing anything with the space in between, again, that was a way to accommodate people who wanted to keep those spaces green or at least more likely to be green. Mr. Breaud replied ok, well I'm not going to argue with you over the definition of a spot zoning when everybody is going to have their own opinion. When the zoning ordinance was created back in the early '70's you can see the zoning map, it was divided into blocks of property and each one was assigned a zone. There are no individual lots basically; I mean everything is a fairly massive area but they took a block and made it a certain zone. Surely they had some areas or some structures in that particular zone that was non-conforming and that's why we've got rules on non-conforming structures, you know at the time they're non-conforming but they're legal, they were grandfathered in but there was never a, when the ordinance or the zoning was put together in the early '70's there was no place that we took one lot or two lots and made a zone for it itself. You know the whole deal with the zoning was to create districts of a fair size to do it, but you have your opinion on spot zoning and that's fine, everybody has got their opinion. So other than that we'll open it up to... the commissioners have any comments, if not, we'll open it up to public comments. Mr. Andrew Hoffman came forward and stated he lived at 602 East 1<sup>st</sup> St. When I purchased my property in 2003 it was because of the residential nature of the neighborhood and I consider the batture to be part of this neighborhood as opposed to a separate commercial strip. I oppose any attempt to changing the zoning status of this batture. Any such change would permanently alter the status of this property and would open it up to all sorts of future uses which are different from what is now being proposed. This future use would not only apply to the current owners but to any future owners that may come in future years. In short I bought into a residential neighborhood; that is what I expected when I bought my property and that is what I would expect to see it to continue to be in the future. Mr. Breaud replied thank you sir. My name is Chester Boudreaux and I live at 200 Ormonde Dr., thank you for allowing me to speak before you about the rezoning issues tonight. Once again on behalf of my wife and four children I ask you to oppose the rezoning request before you. For nearly 30 years my neighborhood has been wisely protected by strict zoning rules and again has subsequently retained its beauty and prosperity. At various times over the past several months the owners of 711 East First Street and 609 East First Street have challenged the current zoning laws in order to accommodate their business aspirations. I've watched as request, after request, after request went before the variance Board, the City of Thibodaux and the Zoning Board, I've seen all of their requests fail. We have heard how the owners and their families have been assets to the community for generations. Personally knowing several members of the family I wholeheartedly agree, but the issue goes beyond character, this is an issue about zoning. Once it is changed there's no going back. As you are aware, the decision to rezone an area should take into account the health, safety, morals and general welfare of the public. Rezoning these properties will not improve my family's health, it will not improve my children's safety and it will not add to the general welfare of my neighbors. The packed house tonight and the petition of over 100 residents should attest to this. The modern convenience store plan today could become the eyesore of the future for our historic residential neighborhood. A new owner could choose a business even worse than what the current owners are planning. The possibilities are endless and the future impact on my children could be devastating. The zoning laws are clear, residential zoning means residential zoning. I was fully aware of the zoning laws when I decided to purchase property in the City of Thibodaux. I was fully aware of the zoning laws when I decided that 200 Ormonde Dr. would be my permanent home to raise my children. I was fully aware of the grandfathered filling station, not convenience store at 711 East First Street when I purchased my home 8 years ago. I was fully aware of the zoning laws when I began a beautification of my property so my wife and I could enjoy our home well into retirement. And I was fully aware of my obligation to my neighbors and family to fight any attempt at commercializing this neighborhood. If I was fully aware of all these things, shouldn't a business who deals in real estate be aware of the zoning laws prior to investing a large sum of money in property? My point is simple, we all make mistakes, I've made decisions in life and regretted that I didn't do my homework. I've paid the price. The owners of 711 East First Street made a decision, they purchased property and didn't do their homework. The well being of our neighborhood shouldn't suffer for their poor judgment. With sincere respect for the Board I ask you to deny these requests for rezoning and keep our neighborhood residential. Thank you. Mr. Breaud replied thank you sir. My name is Francine Kearn Middleton, my husband, David Edward Middleton and I live at 100 Ormonde Dr. in Acadia Subdivision, in an R-1 District. On behalf of many of our neighbors, ourselves and residents of Blake Court, Menard and Palm Place,

Highway 1, Elder, Foret and Tetreau Streets, I ask that you deny agenda Item 1 and 2 as requested by Woody Falgoust on behalf of East First L.L.C., the Lafaso family and Cornel and Cynthia Graham Martin because granting these requests would permanently and dramatically change an approximately fourth to third mile stretch of the batture from R-1 and R-2 to either R-4 or C-1 and substantially alter a section of the zoning ordinance. Mr. Falgoust bears the burden of proof in convincing you that either, and or both of these items will ensure and I quote, "the health, safety, morals and general welfare of the public in accordance with the purposes and intent of the zoning ordinance." You have already received copies of two petitions signed by affected residents stating their preference that their neighborhoods character remain unchanged. One petition had approximately 50 signatures, the other approximately 100. This is the fourth time since late March, 2005 that residents have filled this same room to protest the attempts by the Lafaso's to enlarge the use of recently acquired property with a non-conforming R-3 use in an R-1 District. There is much overlap in the 24 requests at 711 and 609 East First St. and they require several careful readings which reveal the following some involve only one individual property, some involve the ¼ to 1/3 mile stretch of batture beginning at the Western boundary of 609 East First St. and ending at 711 East First Street's Eastern boundary; some ask to only to rezone both properties, excluding the batture; some restrict either property and/or batture from having a) bars and lounges, b) on premises alcohol consumption, c) video poker, d) mobile homes, e) washaterias and f) outdoor advertising billboards. Some request a C-1 rezoning, come request an R-4 rezoning. I may have missed some other combinations and permutations of the above requests. Much is being asked for in Item 1 and so the burden of proof is great. Because requests 11 and 12 ask for the greatest change to the greatest area and because their first sentences are identical, I will begin with Item 12 which asks to rezone this area to R-4. This request should be denied for the following reasons, bearing in mind that the requestor must bear the burden of proof and explain how the immediate residents and other townfolk would derive some benefit not available elsewhere in this relatively small city. Number 12 is an example of partial or piece meal zoning which Black's Law Dictionary defines as and I quote, "zoning that affects only a partial of a municipalities territory and that is usually invalid because it contradicts the comprehensive zoning plan." This primarily residential area in the towns Southeast corner has not changed its character, quite the contrary, the residential areas here are re-affirming their residential identities. Homes are being sold to young families many of whom make already desirable homes more desirable. Currently two homes are under construction in Acadia Subdivision and several are being renovated and/or have just completed upgrades. The first sentence of the request ends with the phrase, "current zoning designation" in referring to the undeveloped land containing no structures. If these are R-1 and/or R-2 islands in this proposed R-4 Zone, Mr. Falgoust's request is illegal because he is limiting the use of properties in front of the cemetery, the state school and Dr. Ray's office. By allowing R-4 uses at 609 and 711 East First Street and prohibiting them on the intervening stretch, Number 12 could be a request for spot zoning. Black's Law Dictionary defines spot zoning as and I quote, "zoning of a particular piece of land without regard for the zoning of the larger area surrounding the land." Spot zoning in this instance involves a small piece of land, a fourth to a third mile narrow stretch of a batture which is approximately a mile long. Spot zoning also connects that the spot will have a more intensive rather than less intensive use which is the case here; R-4 is considerably more intense than R-1 and R-2. Request 12 also violates the pre-amble to Article III, page 3 on the online version of the regulations which reads, and I quote, "the regulations set by this ordinance within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land." They also violate Article X, Section 1003.1(d) on page 19 because granting this request would confer on the Lafaso's and Martin's and their property and I quote again, "special privileges denied by this ordinance to other lands, structures or buildings in the same district." Furthermore, it is unclear how the elimination of bars, lounges, on premise drinking, video poker, mobile homes, washaterias and bill boards meshes with the uses permitted in an R-4 District, especially or for that matter, C-1. These uses are already prohibited in the current R-1 and R-2 Districts thus it is easy to argue that there is no need to rezone and proves that the residents and towns health, safety and moral needs are being met by the currently zoning district and ordinance. However, all 24 of the somewhat overlapping requests would guarantee that the Lafaso's or anyone else would be able to sell alcohol and a convenience store at either address which they are on record as wanting at 711 East First Street. Please remember that the residents of the affected area are on record in two petitions protesting the existence of a convenience store and an R-4 zone along the batture. Also remember that within a block down narrow St. Joseph Street there exists Lots of Tots Nursery, University Baptist Church and Saint Joseph Elementary with E.D. White High School, East Thibodaux Middle School and the Thibodaux State School nearby. There are too many under age children in this already congested area to be near a business which sells alcohol. A convenience store with an alcohol license will not generate significant employment, sales taxes nor provide unique services and/or products. Nor do we agree that the Lafaso's will be owner/operators like Lauren and Pat Delaune. Should they succeed in rezoning this area and in altering Section 404, the Lafaso's will either sell or lease 711 East First Street to a convenience store chain. No one can predict what future owners and/or tenants will be able to do with 711 or 609 East First Street and/or the area between them. Denial of Number 12 and 11 because they are identical makes passage of the other requests mute; however for the sake of thoroughness I will explain how they run counter to the quality of life, legal philosophy which is the bedrock of zoning, requests 3, 4, 7 and 8 are identical in that they are limited specifically to the properties at 711 and 609 East First Street and request rezoning from R-1 or R-2 District to an R-4. They meet the criteria for spot zoning with regard to size, more intensive use and incompatibility with the immediate area. Now only the requests for C-1 remain, these are requests numbered 1, 2, 5, 6, 9 and 10 at both addresses. In addition to being examples of spot zoning with regards to the specific properties, the properties in question do not meet the definition or purpose of the C-1 Commercial District which is and I quote, "this district is designed to accommodate and encourage further expansion and renewal of the historic central business district area of the community." This area is not an old fashioned downtown. There are also safety issues if this classification is granted, C-1 Districts have no front yard requirements, zero lot lines aren't the norm, there are very few if any businesses and/or homes along the batture within the city limits which do not front on Highway 1 or East 1<sup>st</sup> Street. Businesses almost invariably front on the most traveled thoroughfare, Highway 1 with it's 7,400 cars a day is no place for zero lot lines. Therefore creating a C-1 District could not possibly succeed in "lessening congestion in the streets, to secure safety from fire, panic and other dangers and to promote health and the general welfare and to facilitate the adequate provision of transportation." Perhaps this is why this bayou side stretch zoned "C" in the 1969 ordinance was rezoned R-1 and R-1 in 1979. The b categories of "R" for residential "C" for commercial and "M" for manufacturing designate the primary purpose of a given area thus making it difficult for requests like Mr. Falgoust's which must bear the burden of proving how such a dramatic change as reclassifying a primarily residential district which has retained and is continuing to maintain it's character as evidenced by recent construction and the expressed wishes of its inhabitants can succeed. Furthermore, the Martin's and the Lafaso's, neither of whom are full time residents in the affected areas are the only parties who would benefit and then only financially from this change.

According to 33:4721 thru 4729 of the Louisiana Revised Statutes financial benefits are only one of many mitigating factors to be considered in enforcing zones at both the municipal and court levels. A zoning decision is not illegal if it denies a property owner the maximum return on his property investment. The misters Lafasos' as owners and operators of M & B Rentals of America, L.L.C. and East First Street are very knowledgeable about renting, leasing and purchasing properties and the risks entailed. They must have know that 711 East First Street was a non conforming site and appeared to have knowledge that others with an interest in convenience stores had not purchased the station because it could not be easily expanded into a convenience store and sensed the neighborhood would object to a broader use. The Lafaso's need to accept the legal restrictions imposed on their property, why they exist and respect the wishes of the residents because thus far they have not proved how Thibodaux will benefit from the existence of a convenience store selling alcohol in this neighborhood especially since near the subdivision and Nicholls State there are three other convenience stores less than a mile East, West and South of this site. I would now like to mention a case which I think has some bearing on this situation; it is the case of Lemon versus Speed which centers around a non-conforming service station in a residential area. Mr. Speed, the owner, wished to expand his station into a convenience store, though the zoning board granted David Speed permission to open a convenience store, the neighborhood sued and the court ruled in favor of Lemon and the other residents. I will quote a few passages from this decision; "Plaintiffs (this is Lemon and the other homeowners) contend it was not their burden as opponents of the variance to show damages to themselves, rather it was Speeds burden. His argument was that the acknowledged trend is to combine service stations with convenience stores. Instead he said he needed to expand to keep up with his competition. The purpose of zoning ordinances is to confine certain classes of buildings and uses to certain localities. Because a non-conforming use in inconsistent with this objective it's shared consistently with the property rights of the individuals affected and substantial justice be viewed narrowly and have all doubts resolved against continuation or expansion of the non-conformity. The primary purpose for which Speed sought the enlargement of his building, a convenience store, is not an accessory use because it is not incidental to the operation of a service station. It cannot pass muster under the requirement that continuance of a non-conforming use must be continuance of the same rather than a different use; it is an expansion of the non-conforming use. The chief positive effect of the convenience store would be to increase the income of the station... Mr. Breaud then asked Ms. Middleton if she was almost finished, he wanted to give everybody a chance to speak. Ms. Middleton replied yes, sir, I ask that you deny all twenty four requests some of which overlap because they are spot zoning, partial or piece meal zoning violate Article III which requires uniform application of the ordinance and definition of districts, requests an inappropriate zoning district, i.e., a C-1 where one is inappropriate and confer special privileges on the applicant while denying them to other parties in the district as specified in Article X, Section 1003 (d) (1). Furthermore, Mr. Falgoust's application does not fulfill the burden of proof why the rezoning request must be granted nor does he demonstrate how or why the welfare of the area residents who have expressed their objections on two petitions could benefit from a convenience store with or without an alcohol license. Furthermore, the financial motive of the requestors is only one factor among many as to why a variance or zoning request should be granted. Other factors to be considered are the legality and appropriateness of the area; it's fit within the development of municipality, the health, welfare and morals of the town and its people and the wishes of the residents most effected by the change. I would like to thank all of you who have attended any and all meetings supporting my viewpoints and for signing petitions. Board members, thank you for granting me a hearing, I'm sorry I took so long. Mr. Breaud replied thank you ma'am for coming. Mr. Boquet stated Mr. Chairman I would like to make a motion that we now limit the discussion to three minutes per individual. Mr. Breaud stated we've got a motion by Mr. Boquet for three minutes, the motion was seconded by Mr. Adams, motion failed go ahead public. Mr. Gilbert Fauchaux came forward and stated that he owned property on St. Joseph Street, me and my wife raised our family there, we've been there for 45 years and I am against any rezoning. Tomorrow morning I would like to offer you all to come to my house and sit down and I'll have donuts and coffee for you all, they're going to have 21 buses and 74 to 75 cars that are going to pass down St. Joseph Street coming from E.D. White and all over and I think it's not fair, the more we have rezoning the more that we are going to have traffic down that street. I'm going to leave you all with one other little tidbit from Mr. Gibbens, I don't know if you all knew Mr. Gibbens Robichaux he said I was going through my favorite research book, historical scenes of Thibodaux and found these interesting tidbits I often walk down St. Joseph Street, it brings back memory, this famous street used to be the last of the town of Thibodaux back in the 1800's. And I'm going to leave you with one little thing that he says, "success is when you get what you want, happiness is when you want what you get." Thank you all. Mr. Breaud replied thank you, sir. Mr. Guy Debold came forward and stated he lived at 714 E. 1<sup>st</sup> Street. A lot of what I have to say has been touched on already so I will try to be as brief as possible, I live at 711 E. 1<sup>st</sup> Street and my wife and I and my little girl live there. We own property that is across from, sort of diagonal to some of the property in question and we also own property on the batture adjacent to it so we're very concerned about rezoning that area and obviously we're against it. If I could echo you know what Dr. Chester Boudreaux said so eloquently and Drew Hoffman as well, those are basically our sentiments exactly. What I would point out as far as the details of this particular rezoning request, it's very similar to what I believe came before you last month, everything there in my view is more restrictive with the exception of a handful of additional restrictions and I just want to point out that those restrictions in no way ensure that all subsequent use of the properties would be suitable for the residential neighborhoods in which the properties are located. So, it's still a very open question and I think the intent East First Street, L.L.C. is to open a convenience store that has been there stated intent and as such I've given some thought to that to consider how that as a concrete example will affect the neighborhood, specifically the health, safety, morals and general welfare. A lot of these things have been touched on, Mr. Fauchaux just mentioned traffic, the proposed convenience store would change the traffic patterns in and around the neighborhood and add to existing congestion and contribute to the use of alternate routes through the neighborhood to cut lights and avoid traffic and as preferred routes of access from the surrounding areas. It will also contribute to neighborhood crime and affect our safety, I believe that the proposed convenience store will rely on patronage from outside the neighborhood and thereby increase the numbers of strangers who stop, travel through or other wise become familiar with our neighborhood. This in turn will likely contribute to crimes of opportunity, several residents live by themselves and therefore are especially concerned about strangers regularly frequenting the neighborhood and becoming familiar with their daily routine. The sense of security enjoyed by our neighborhood should not be compromised. Convenience stores are also often the targets of armed robbery and a point of attraction for other types of conflict, disturbances and other criminal activity. Again, this will impair the sense of security presently enjoyed in our neighborhood. The proposed convenience store will not enrich the health, morals or public welfare. The principal items sold in the convenience store are gasoline, alcohol, tobacco, lottery tickets, soft drinks, snacks and junk food. Alcohol, tobacco and lottery tickets are morally offense to some people. Soft drinks, snacks and junk food contribute to obesity and compromise the health of many in our community.

The sale of these and other such items commonly available in convenience stores is objectionable to some members of our neighborhood. The proposed convenience store will add to the existing litter problem along East First Street and will likely extend this problem well into the surrounding neighborhoods. Last, the issue of property values, I think everyone will agree the combined impact of these and possibly other factors would be detrimental to property values in our neighborhood. Several people have pointed out already that our neighborhood and Thibodaux probably on a larger scale, is at a precarious point between gentrification and regeneration and renewal. Current residents in our neighborhood have lived here for more than 50 years, others, like myself are newer additions and we were basically attracted by all that the area has to offer. Many newer residents have increased their investment in the neighborhood by undertaking significant renovations of their older homes; this is a vital process for the regeneration and renewal of one of the oldest and well established neighborhoods in Thibodaux. This is good for the neighborhood and good for Thibodaux and the presence of the proposed convenience store jeopardizes this process of regeneration and renewal by making the neighborhood less attractive to outside families that might otherwise move here and this in turn depresses property values. Let me just point out that any easement of restrictions will also facilitate future variance requests for more severe non-conforming use in the requested area and it's a major step down a slippery slope towards expanded non-conforming use that would be detrimental. I think extensive arguments have been made against rezoning at this meeting and the past meeting. At the past meeting my understanding is you unanimously voted to deny the request. I believe these arguments are equally valid in opposition to the current rezoning request and I urge the commission to again carefully consider those arguments and their decision regarding the present requests and ask that you deny the present request as well. Thank you very much. Mr. Breaud stated one question, you own property on the bature between Nicholls and Ron's Texaco? Mr. Debold replied yes. Mr. Breaud replied thank you sir, public comments? As my wife states, make it short, so I'll follow that principle, first of all my name is Stephen Landry, I reside at 304 Bayou Lane and along with my wife, Becky and our three sons. I'm here tonight representing my family as well as my good neighbors on Bayou Lane both North as well as South of Menard Street for whom I believe are nearly 100% opposed to any "R-1" zone change. We feel strongly about this, we feel that it would be deterioration in our neighborhood quality and specifically the issue of safety is at stake. Our concerns are based on the belief that the following four possible scenarios would occur with the zone change to "C-1" or "R-4" status, these include 1) decreased safety by creating a new traffic pattern with increased vehicle volume both in the day and now late night hours, 2) decreased safety by the increased probability of high speeds and accidents on our curvy road of Bayou Lane secondary to alcohol use in vehicles while traveling through our neighborhood to reach the certain "C-1" or "R-4" businesses, 3) decreased neighborhood quality – with a greater degree of yard littering debris thrown from vehicles, bikes and people walking by traveling to and from these "C-1" and "R-4" establishments we feel that would occur and lastly 4) decreased neighborhood quality – again from the excessive noise levels out of vehicles traveling to and from the "C-4" or "R-4" businesses, especially during night time hours. It is for these concerns that we, the residents of Bayou Lane and others in our area, once again respectfully request this zoning board to uphold the existing ordinances for which we had faith in when we moved in or built in this area. Thank you. Mr. Breaud replied thank you sir, public comments. Mr. Gerald Block came forward and stated I live at 502 East First Street in Thibodaux. First of all I would like to mention that this is the second time this has come up, the second basic issue here about the change in zoning. Nobody knows that better than this board but what I would like to do is, I'd like to offer as part of the record in these proceedings, the petition, the March petition that was passed around by the residents which basically says the petition to oppose the zoning change for a convenience store at the site of Ron's Texaco in the 700 block of East First Street. In the July petition which basically says the same thing, the opposing of the rezoning of the property and basically that has about 110 signatures, 70 households, 14 different streets are involved and so I would like to offer that, Mr. Chairman, to the Board and make it part of the proceedings, if that is ok. Mr. Breaud replied if you don't mind, give it to our commission secretary. Mr. Block replied I gave both the March petition and the July petition. The next thing I would like to address would be this, when I came here and I don't remember when it was now, you know I'm getting older and lose tract of time here, but when I was here before I didn't know something that I know now and that I think the Board needs to know too, and that is what took place here is that there was a discussion in front of the Board of Adjustments, some issues that were raised in front of the Board of Adjustments, then what happened is there was the last zoning board meeting and now there's zoning board meeting, well, East First Street, L.L.C. has file suit against the Board of Adjustments as a result of the actions taken by the Board of Adjustment. That hearing is scheduled in front of Judge Lanier on Monday of this coming week, so some of the issues here, some of the issues of what East First Street, L.L.C. and I don't think the Martin's are a part of this, but I know that East First Street, L.L.C. is certainly the ones that brought this lawsuit against the City and I think they brought the lawsuit against the City to basically force the action that the Board of Adjustment was not willing to take. I didn't really look through this whole thing because I just basically found out about this and when I did find out about this I went and got the record which needs to be brought back to the court but I didn't want there to be any question that this is the original suit record that was filed against the City of Thibodaux and the Board of Adjustments as a result of what took place. Now what they want today is to come in and say, look you know, we weren't successful in the rezoning of this broader area, now we just want to more narrowly tailor this so that we can have some compromise on this. I think all of the people that signed a petition, many of the people that are here today in abundance, oppose the rezoning that they propose. It is as Ms. Middleton indicated their burden, they have the burden of proof, they have the burden of proving that this is a good thing, a better thing. In 1969, my understanding is, this area had a C-1 classification but then in 1979 it was rezoned and when it was rezoned it went from a "C-1" to an "R" classification and apparently the Delaunes didn't oppose that, you know, they apparently were fine with that because they were grandfathered into this as a result of what they had. So now we have an attempt to try to say look, let's change what the Delaunes were obviously willing to accept and I think that this Board ought to be in a position to reject that. The thing that bothers me the most about this is that a zoning change like this would be permanent. There's a huge difference and this Board knows it better than most Boards, there's a huge difference between the "R-1", "R-2" classifications than "R-3" or "R-4", it's probably, I mean its dramatic and he was not sure why it's so dramatic but it is and so now they want to say well we either want a "C-1" as Ms. Middleton said, that's problematic because there's no lot line, there's no front lot line requirements but the "R-4" is equally as problematic because if the Board changes this classification then it would be permanent. It would mean that they could come in then and let's say a convenience store didn't work but a barroom might or something to that effect and I think that their complaint is justifiable in front of the Board of Adjustments, I think they are over reaching with now what has taken place here in attempting to have this Board make a change which is a permanent change in the zoning of that area in the small sizes, as you brought up, Mr. Breaud with regard to a small area. Regardless of what anybody says about what the law is I believe, I believe until a judge rules contrary to this that this Board has the discretion to decide and as long as that discretion is

exercised in a fair, appropriate process that gives consideration to due process then I think this Board's decision is going to be upheld by a court. Now, I don't know whether their plan is the Board of Adjustments is first and you're next, I have no idea about that but it doesn't matter, I mean, far be it from me to criticize people that bring law suits. So, I'm not going to do that, you know, but I do want to say that I think that this is a situation in which the issue would be have they carried their burden of proof; have they carried their burden of proof in proving to you that the safety, the morals, the welfare is going to be best served by having this zoning change and I think they have not and I think this Board has the discretion to make that decision and that it should make the decision and reject the proposals that they are making. Mr. Boquet stated Mr. Block since there is a suit filed against the Adjustment Board isn't this a rather moot issue that we're discussing tonight? Mr. Block replied well you know, look I'm not going to give legal advice to the Board, but Mr. Boquet my answer to that would be no, not really because and again I'm not trying to offer advice here but no not really because I think that really is a, Ms. Jackson is looking at me there and smiling, because it really is a different issue and what they have coming up on Monday really pertains to the variance issues as opposed to a re-classification of the property. Mr. Boquet replied yes. Mr. Block stated so I don't really think that it is the same thing but I think this Board understand the rational for the request and I think it should be rejected. Thank you very much. Mr. Breaud then thanked Mr. Block, are there any further public comments, if not, Mr. Falgoust, do you want to wrap it up? Mr. Rusty Savoie stated he didn't know if Mr. Falgoust has any comments, the only thing I'd like to point out, I believe my client's property is listed as 609, it's 629, but I don't believe there's any confusion among the audience or the panel. Again, one of the alternatives before you is to address the properties individually and with regard to my client's property, all they are asking to be able to do is take property that has been commercial for almost 100 years now since it was first developed and just continue to use it as commercial property. I would ask that you take up the alternatives individually so that the record will reflect that you've given them individual consideration, and again, we thank you for your time. Mr. Breaud then stated thank you, sir. Mr. Woody Falgoust came forward and stated like I said in the beginning, Chairman Breaud, ladies and gentlemen of the Board, you all heard me talk enough the last time we submitted a lengthy brief, obviously we believe we have carried our burden of proof but I won't go into any further detail. My request would only be to echo what Mr. Savoie said and that is to vote please on each request, thank you. Mr. Breaud stated Mr. Falgoust, last meeting you had asked us if we'd be open to different options and we told you yes, you know, none of us want to see that structure or those structures become vacant and abandoned on a site, that's the worst thing that could probably happen to the site but my personal feelings is you haven't presented an option to us that is in the best interest of the health, safety and welfare of the people in that neighborhood and that's my personal feelings. You know, like I mentioned earlier, we've got it looks like a different opinion on spot zoning, the first nine issues that you referred to in both of those are issues of rezoning one lot and as long as I have been on this Board we have never rezoned one lot and I can't see starting a precedent now on that kind of stuff. You know the bottom line here is still alcohol, you all put some conditions in here on a few of the things about alcohol consumption, but we still are allowing alcohol sales and I think that's a big problem in this neighborhood here which has been zoned "R-1". I realize there's not too many residential homes on the batture itself but across from LA 1 and the area is zoned "R-1" so in my personal interest I don't think it fits in well with the area. Once I'll tell you we are open for options but I don't believe you've presented an option that this Board or this Commission can go with, I'm speaking for myself and we'll get comments from the rest of the commissioners on here but you know last month was the dance studio and he thought the dance studio would probably fit in well with the surrounding areas but an alcohol, even the gas station, the gas station is there, it's non-conforming but it was grandfathered in. What we're trying to do and the reason and a little bit later on in the agenda we've got some issued on conforming and non-conforming stuff, I mean the whole idea of zoning is to set some regulations for the different districts and we realize that we're going to have some non-conforming structures, land uses in those zones but it's set up so that maybe one day that everything will be conforming and we're kind of working to that direction and by eliminating that we're kind of defeating the purpose of zoning in my opinion. So, that's my comments on it, do you want to respond to that or any of the commissioners? Mr. Falgoust replied well Mr. Breaud, you've heard me talk, again you've heard what I have to say and obviously I disagree with everything that you've said. In order to make a filling station viable in this day and age on Highway 1 and Highway 308 in Thibodaux unfortunately for some people, some people, it has to sell alcohol. The big filling station operators will not open a filling station / convenience store, whatever you want to call it unless they have an alcohol license. That's the reality, that's what we have to contend with and I don't remember everything that you brought up but I can't compromise that for my client, I'm not going to compromise that for my client, I don't agree that the non-conforming use law always creates a situation that is good for the community, that's why I proposed amendments. I have a problem with that law, we'll talk about that later, we'll talk about that when we address the law but I don't know what to tell you other than we can't compromise that. I'll entertain any other questions from the Board. Mr. Breaud then asked if there were any other comments by the commission. Mr. Bert Boquet stated the only thing he would say is that we always look to up rather than lower your zoning conditions because you always hope that you can what I call improve an area, that's not to say that you exclude it because there's times when naturally a particular area lends itself more to a particular zoning than the other but in this instance I don't think that is the case. Mr. Falgoust replied well sir this has never been residential, it's never had a residence, I think it was a mistake, Mr. Adams acknowledged it was probably a mistake the first time they rezoned; I can't agree with you. Now, any other questions from the Board? Mr. Breaud stated ok, Mr. Adams you've got a comment? Mr. Adams replied yes, I want to say that I was on the Board when we created this thing and voted for it and it was acknowledged that we had these two businesses in that area and we opened it up, made it an "R-1" it was acceptable to these people to maintain and grandfather in to operate as they were, they had no objection to it. If they had, it never was voiced to the Board and like I said, I would rather maintain this as an "R-1" I just refuse to vote for a change in this area here. Mr. Falgoust replied well I believe your comments in the last meeting were we probably made a boo boo when we zoned that "R-1", that's what you said in the last meeting, is that something you still stand by. Mr. Adams replied well in a lot of areas we thought we had made a boo boo but we corrected some of them but this area here I think it should be maintained to an "R-1" area. Mr. Boquet stated perhaps a boo boo was made at the time but conditions have changed, you heard several of these people who have upgraded their properties and did several things like that which makes the present zoning, actually if it was a boo boo at the time, less of a boo boo now. Mr. Falgoust replied well again, I disagree with you and it's really pointless for me to argue about this, you know my position, I respect your opinions but I can't agree with them, so, the only thing we'd request is that you all vote on each one. **Mr. Breaud replied ok, it's been requested that we act on each one individually so if the commissioners have read all the items, we'll go through them fairly quick,**

- 1) Item 1 is to rezone from R-1 to C-1, **what they're requesting is that we change, so a motion to deny would be, if someone wants to make it, if you don't want to make the change, we would need a motion to deny their request. It was moved by Mr. Adams and seconded by Mr. Boquet, all members were in favor.**
- 2) Rezone 711 East First Street from R-1 to C-1 with the following restrictions: there shall be no: a) bars and lounges; b) on-premises alcohol consumption; c) video poker; d) mobile homes; e) washaterias; and f) outdoor advertising rental, i.e. billboards. **Motion to deny request was made by Mr. Boquet and seconded by Mr. Ber, all members were in favor.**
- 3) Rezone 711 East First Street from R-1 to R-4. **Motion to deny request was made by Mr. Boquet and seconded by Mr. Ber, all members were in favor.**
- 4) Rezone 711 East First Street from R-1 to R-4 with the following restrictions: there shall be no a) bars and lounges; b) on-premises alcohol consumption; c) video poker; d) mobile homes; e) washaterias; and f) outdoor advertising rental, i.e. billboards. **Motion to deny request was made by Mr. Boquet and seconded by Mr. Ber, all members were in favor.**
- 5) Rezone only the individual properties of 609 East First Street and 711 East First Street from R-1 to C-1. **Motion by Mr. Boquet to deny, seconded by Mr. Ber, all members were in favor.**
- 6) Rezone only the individual properties of 609 East First Street and 711 East First Street from R-1 to C-1 with the following restrictions: there shall be no a) bars and lounges; b) on-premises alcohol consumption; c) video poker; d) mobile homes; e) washaterias; and f) outdoor advertising rental, i.e. billboards. **Motion to deny by Mr. Boquet, seconded by Mr. Ber, all members were in favor.**
- 7) Rezone only the individual properties of 609 East First Street and 711 East First Street from R-1 to R-4. **Motion by Mr. Boquet, seconded by Mr. Ber, all member were in favor.**
- 8) Rezone only the individual properties of 609 East First Street and 711 East First Street from R-1 to R-4 with the following restrictions: there shall be no a) bars and lounges; b) on-premises alcohol consumption; c) video poker; d) mobile homes; e) washaterias; and f) outdoor advertising rental, i.e. billboards. **Motion to deny made by Mr. Boquet seconded by Mr. Ber, all members were in favor, motion carries**
- 9) Rezone a certain tract of batture land with its western border being the western boundary of 609 East First Street and its eastern border being the eastern boundary of 711 East First Street from R-1 and R-2 to C-1; however, the tracts of undeveloped land containing no structures shall only be able to build a structure in conformity with their current zoning designation. **Motion by Mr. Boquet to deny, seconded by Mr. Ber, all members in favor.**
- 10) Rezone a certain tract of batture land with its western border being the western boundary of 609 East First Street and its eastern border being the eastern boundary of 711 East First Street from R-1 and R-2 to C-1; however, the tracts of undeveloped land containing no structures shall only be able to build a structure in conformity with their current zoning designation. The new rezoned area shall have following restrictions: there shall be no a) bars and lounges; b) on-premises alcohol consumption; c) video poker; d) mobile homes; e) washaterias; and f) outdoor advertising rental, i.e. billboards. **Motion to deny by Mr. Boquet, seconded by Mr. Ber, all members were in favor.**
- 11) Rezone a certain tract of batture land with its western border being the western boundary of 609 East First Street and its eastern border being the eastern boundary of 711 East First Street from R-1 and R-2 to R-4; however, the tracts of undeveloped land containing no structures shall only be able to build a structure in conformity with their current zoning designation. **Motion to deny by Mr. Boquet, seconded by Mr. Ber, all members were in favor, motion carries.**
- 12) Rezone a certain tract of batture land with its western border being the western boundary of 609 East First Street and its eastern border being the eastern boundary of 711 East First Street from R-1 and R-2 to a R-4; however, the tracts of undeveloped land containing no structures shall only be able to build a structure in conformity with their current zoning designation. The new rezoned area shall have following restrictions: there shall be no a) bars and lounges; b) on-premises alcohol consumption; c) video poker; d) mobile homes; e) washaterias; and f) outdoor advertising rental, i.e. billboards. **Motion to deny by Mr. Boquet, seconded by Mr. Ber, all members were in favor, motion carries.**

Mr. Breaud stated Items 1 through 12 have been denied.

**Item No. 9 on the agenda is to consider a request by Woody Falgoust on behalf of Cornel Martin and Cynthia Graham Martin to rezone 629 East 1<sup>st</sup> Street as follows:** Mr. Breaud stated we'll go through each separate item as follows:

- 1) Rezone 629 East First Street from R-1 to C-1. **Motion by Mr. Boquet to deny, seconded by Mr. Adams, all members were in favor.**
- 2) Rezone 609 East First Street from R-1 to C-1 with the following restrictions: there shall be no a) bars and lounges; b) on-premises alcohol consumption; c) video poker; d) mobile homes; e) washaterias; and f) outdoor advertising rental, i.e. billboards. **Motion by Mr. Boquet to deny, seconded by Adams, all members were in favor.**
- 3) Rezone 609 East First Street from R-1 to R-4. **Motion by Mr. Boquet to deny, seconded by Mr. Adams, all members were in favor.**
- 4) Rezone 609 East First Street from R-1 to R-4 with the following restrictions: there shall be no a) bars and lounges; b) on-premises alcohol consumption; c) video poker; d) mobile homes; e) washaterias; and f) outdoor advertising rental, i.e. billboards. **Motion by Mr. Boquet to deny, seconded by Mr. Adams, all members were in favor.**
- 5) Rezone only the individual properties of 609 East First Street and 711 East First Street from R-1 to C-1. **Motion by Mr. Boquet to deny, seconded by Mr. Adams, all members were in favor.**
- 6) Rezone only the individual properties of 609 East First Street and 711 East First Street from R-1 zone to C-1 with the following restrictions: there shall be no a) bars and lounges; b) on-premises alcohol consumption; c) video poker; d) mobile homes; e) washaterias; and f) outdoor advertising rental, i.e. billboards **Motion by Mr. Boquet to deny, seconded by Mr. Adams, all members were in favor.**
- 7) Rezone only the individual properties of 609 East First Street and 711 East First Street from R-1 to R-4. **Motion by Mr. Boquet to deny, seconded by Mr. Adams, all members were in favor.**
- 8) Rezone only the individual properties of 609 East First Street and 711 East First Street from R-1 to R-4 with the following restrictions: there shall be no a) bars and lounges; b) on-premises alcohol consumption; c)

video poker; d) mobile homes; e) washaterias; and f) outdoor advertising rental, i.e. billboards. **Motion by Mr. Boquet to deny, seconded by Mr. Adams, all members were in favor.**

- 9) Rezone a certain tract of batture land with its western border being the western boundary of 609 East First Street and its eastern border being the eastern boundary of 711 East First Street from R-1 and R-2 to a C-1; however, the tracts of undeveloped land containing no structures shall only be able to build a structure in conformity with their current zoning designation. **Motion by Mr. Boquet to deny, seconded by Mr. Adams, all members were in favor.**
- 10) Rezone a certain tract of batture land with its western border being the western boundary of 609 East First Street and its eastern border being the eastern boundary of 711 East First Street from R-1 and R-2 to a C-1; however, the tracts of undeveloped land containing no structures shall only be able to build a structure in conformity with their current zoning designation. The new rezoned area shall have following restrictions: there shall be no a) bars and lounges; b) on-premises alcohol consumption; c) video poker; d) mobile homes; e) washaterias; and f) outdoor advertising rental, i.e. billboards. **Motion by Mr. Boquet to deny, seconded by Mr. Adams, all members were in favor.**
- 11) Rezone a certain tract of batture land with its western border being the western boundary of 609 East First Street and its eastern border being the eastern boundary of 711 East First Street from R-1 and R-2 to R-4; however, the tracts of undeveloped land containing no structures shall only be able to build a structure in conformity with their current zoning designation. **Motion by Mr. Boquet to deny, seconded by Mr. Adams, all members were in favor.**
- 12) Rezone a certain tract of batture land with its western border being the western boundary of 609 East First Street and its eastern border being the eastern boundary of 711 East First Street from R-1 and R-2 to a R-4; however, the tracts of undeveloped land containing no structures shall only be able to build a structure in conformity with their current zoning designation. The new rezoned area shall have following restrictions: there shall be no a) bars and lounges; b) on-premises alcohol consumption; c) video poker; d) mobile homes; e) washaterias; and f) outdoor advertising rental, i.e. billboards. **Motion by Mr. Boquet to deny, seconded by Mr. Adams, all members were in favor.**

**10. To consider a request by Woody Falgoust on behalf of East First Street, L.L.C. and Cornel Martin and Cynthia Graham Martin to amend the City of Thibodaux's zoning ordinance as follows:**

**Item II.**

- 1) **Amend Article IV, Section 401 of the Zoning Ordinance to read as follows (blocked highlights note additions and strikethroughs note deletions):**

**Section 401. Intent.**

Within the districts established by this ordinance or amendments that may later be adopted there exist:

- (a) Lots;
- (b) Structures;
- (c) Uses of land and structures; and

(d) Characteristics of use; which were lawful before this ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this ordinance or future amendment. It is the intent of this ordinance to permit these nonconformities to continue **within the guidelines of this Article.** ~~–until they are removed but not to encourage their survival. It is further the intent of this ordinance that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district. Nonconforming uses are declared by this ordinance to be incompatible with permitted uses in the districts involved. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of structure and land in combination shall not be extended or enlarged after passage of this ordinance by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses, of a nature which would be prohibited generally in the district involved.~~

**To avoid undue hardship, nothing in this ordinance shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this ordinance and upon which actual building construction has been carried on diligently. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.**

Mr. Breaud stated he would let Mr. Falgoust go ahead and explain his requests for amendments. Mr. Woody Falgoust came forward and stated first of all again, I've got a voting request, if we could vote on each of these separately, Item #2 I think has six sub-parts, if that's ok, if we could vote on those individually because some you may agree with, some you may not, some you may want to change, I don't know. I will say that this is the second time I've been before this Board and in watching the different groups come up here, particularly with subdivisions and what not, I was very impressed with the back and forth between the Board and the presenter and some of the people who came and had concerns and wanted to know about this and that and how it would affect this and that so I guess what I'm saying is I encourage your back and forth on each of these if that is possible. If there's something that you know, I don't purport to have all the answers here, if there is something that should be added or subtracted please tell me, I'm very interested in what you all have to say about this since you face zoning issues every month. Now Section 401 of course if the section labeled intent and it is, it expresses the intent behind the zoning ordinance's non-conforming use law. I am all for zoning and beautification in large part in general, we all love that Thibodaux is so nice, such a nice place to live in. I guess once I got involved with this particular case though, I realize though there was an injustice out there and that is when you have an existing building, an existing commercial building on a tract of land, it could be reversed, it could be existing residential flipped to commercial, we don't face much of that here but it happens in bigger cities, we have an existing building, yes your grandfathered but if you want to do anything with your property of significance, add a use to it like go from a filling station to

adding a convenience store component even though obviously I've made the argument before the Board of Adjustments that is one and the same, but if you want to add a use theoretically or if you want to expand your building so it does not look like an eyesore or because you need to adapt it to the market, you know Dr. Boudreaux talked about how it could turn into an eyesore what we have there on the batture and my argument is it's an eyesore right now. Those two properties aren't very attractive and there's no reason for that but this non-conforming use law. The whole intent of it says it is the intent of this ordinance to permit these non-conformities to continue until they are removed but not to encourage their survival. To me, that's a violation of due process from the beginning and it's a violation of my 4<sup>th</sup> Amendment right to property from the beginning. It's a taking from the get go that I actually have to depend on permission from the Board of Adjustments just to renovate my building to make it look better, much less adapt it to the market. So, my purpose on Section 2 here, or #1 Section 401 is to say right off the bat that what we need to do here is amend the entire law within the guidelines of the law, not to make the statement that we're going to permit non-conformities to continue but not to encourage their survival. I think you are diverse property owners, you know Mr. Boquet you talked about it getting better and better, well I can assure you for the property owners it gets worse and worse. You get a situation where Ron Delaune can no longer compete with their filling station and then he realizes well I don't want to adapt to a convenience store. I don't want to go through that permitting hassle, so I'm going to sell it but no one will buy it from him even though arguably speaking he's got one of the most prime locations in town. He can't get anyone to buy it; he can't do anything, what happens to him, he goes out of business and that's one example. This has happened before, I know ya'll know of other cases, it's going to happen in the future. So my point is, let's make this non-conforming use law, let's make it more sensible, more reasonable, we still want to encourage beautification and zoning, certainly when it comes to vacant land, zoning is the most appropriate because no one has actually done anything with their property yet. Sometimes that is unfair too, but that is few and far between those cases from what we face when there is an existing building on that structure so without going into the other sections yet, I'd like to ask for comments, questions on that particular section and that is Section 401. Mr. Breaud then asked if there were any comments by the commissioners. Mr. Boquet replied I think it has been well thought out basically by the zoning commission. When these things were drawn up there was a lot of consideration given to each one of these articles, in fact, Mr. Adams probably remembers better than I, but it seems like it took us over two years to really get this system down like it is. I see no reason to amend it now in spite of your argument that you have. What you pointed out, actually what you pointed out I got hit by that very thing when I tried to sell my home downtown and unfortunately I was in a, I had a very good offer from a fraternity to sell the property to, I was zoned R-2 and it wasn't permitted and basically that's the, as a result I didn't get the value that I would have gotten had I been able to sell it. So these things sometimes are say inequitable, we could almost inequitable but it's one of the things that you face with a good law, it really is and I think this is a good law just as it is written. Mr. Falgoust replied I don't think we need to deal with unfairness, Mr. Boquet, if it's not, if it's inequitable at times, there's no reason to deal with that, let's fix it. Mr. Boquet replied when it comes to legality I don't think fairness comes into it, I really don't, I think whether it's legal or not, this I think is a legal instrument that really takes into consideration these things. Mr. Falgoust replied well fairness comes into the law all the time, it's one of the foundations that the entire law was built on and just because you all wrote this up years ago and you put a lot of time into it doesn't mean that it's just, I'm sorry, that's not a valid argument. Mr. Boquet replied but we're not saying just, you're saying, you know, first you started saying fair, now you're saying just, I think it is both, I really do. Mr. Falgoust replied well you just said it was inequitable, I don't need to argue with you, sir, are there any other questions or comments. Mr. Breaud stated one comment Mr. Falgoust is the proposed deletions to me are a vital part of this ordinance and by removing this would defeat the purpose and the meaning of this whole section. You know the purpose is that one day that all structures will conform to the zoning requirements. We realize when the zones were created there were many structures that didn't fit, didn't conform but in order to have zoning you know we decided back in the early '70's that the city needed zoning so that we could have regulations for certain districts. This is what zoning is all about, it's setting the guidelines and development for each district and if we eliminate this section we're defeating the purpose of what zoning is. My personal feelings is that this is an important part of that (portion of taping was lost due to switching) non-conforming and make it less conforming that it was at the time it was zoned, so my personal feelings is that we need to leave this section in there on this 401 Intent, so with that being said, I'm not going to argue with you, that's my opinion, you've got your opinions, we'll open it up to the public again unless the commissioners have got any further comments. Mr. Falgoust replied well I was just going to make one comment that actually there is an article in here that says they can exceed their previous zone, they have to conform within the use, within the, they have to conform within the zoning designation that was in place when the structure went up, there is a comment, addition that says that. Mr. Breaud stated any modifications, there's another section any modifications to the existing structures has got to be more conforming, it's covered in the next section and we'll discuss those individually to. Any comments from the public on this particular matter, this is a proposal to change the existing ordinance that is in place right now. Mr. Adams replied I can say part of this ordinance we have here, we don't encourage or discourage the people that were grandfathered into this business, I wish they would just continue their business, we have no problems with having them continue what they were doing before when they were grandfathered in. We don't encourage survival of the business or discourage them and it was set in there for that purpose. Mr. Falgoust stated but it says not to encourage their survival, it says that. Mr. Adams replied it couldn't make any difference to most of the board members I'm sure whether they survive or not, that's not our problem, we would like to see them continue, they were grandfathered in for that purpose and if they can continue operating the business they were grandfathered in, that's fine but when it comes to changes that's a different story. Mr. Breaud replied it's not our goal or anybody's goal to put anybody out of business, that's not what we are trying to do, we're just trying to set some guidelines and rules and if you're going to be established in this district, you're going to comply by these rules and if you're going to modify your business that you're going conform to the rules of that particular district. Mr. Falgoust replied but that's exactly what's happened, you put people out of business. Mr. Breaud replied we sympathize with that, that's not our goal and not our aim to do that, you know, we would, one thing we don't want to see is an abandoned structure. I've got some major concerns with the Wal Mart's and the Lowe's coming to town and we've seen Winn Dixie going out of business and we've got a bunch of little stores, we could be stuck with a bunch of abandoned buildings in here but that has nothing to do with zoning, I mean that happens but that is a concern that I have, is to see a bunch of abandoned buildings around the city of Thibodaux. Mr. Falgoust stated well in your preamble and the state law says that you zone with the idea that you are going to preserve the value of buildings, it says that, so it does say something to do with zoning. Mr. Breaud replied were not doing nothing to devalue the property, the property was there when it was zoned and it can stay, it's grandfathered in, it can stay in

existence, we'd like to see the value increase by making some improvements to it, you know. So, other than that, any comments from the public? Yes, ma'am, please keep it short. Ms. Francine Middleton came forward and stated ok, this is going to be brief, to the point, which is already redundant, I would like the comments that I'm going to make be applied to each section, ok, so kind of pretend I'm saying them again and again and again and you won't have to listen to them again and again and again. The revisions proposed to Section 404 involving non-conforming uses predating the institution of the 1979 ordinance also permanently and dramatically weaken this section of the ordinance, thus the proposers must also bear the burden of proof in convincing the Planning and Zoning Commission members that these changes will ensure and I quote, "the health, safety, morals and general welfare of the public in accordance with the purposes and intent of the zoning ordinance." I just have another case to quote from, this is a case called Dufoe versus Parish of Jefferson, it involves a case to rezone but also altering a zoning ordinance, so there's going to be some repetition and I'm sorry and I'm only going to read the conclusion, "this case concludes with the following quote, "the juristic prudence guidelines for zoning and zoning reclassification may be summarized as a homeowner has the right to rely on the rule of law that a classification made by ordinance will not be changed unless the change is required for the public good. The power to amend is not arbitrary, it cannot be exercised merely because the individuals want it done or think it ought to be done. Before a zoning board rezones property, there shall be proof either that there was some mistake in the original zoning or that the character of the neighborhood has changed to such an extent that the re-classification ought to be made." Thank you. Mr. Breaud replied thank you ma'am. Mr. Gerald Block of 502 East First Street came forward and stated it is true that on occasion Mr. Boquet may lose the enhanced value of his property because, because why; because it is truly for the greater good of the people in the area to have zoning and to have a zoning ordinance that is enforced. So, Mr. Falgoust argues and I respect his argument that you know, you might put some people out of business and you might put some people out of business but what is in the greater good is the issue. When you talk about that this ordinance is a good ordinance and it should stand as written, I agree, I'm not going to come up every time we go through each one of these, I know you're glad to hear that Mr. Breaud, but you know, in the law everybody knows, some people say you know you have a year and a day to file a law suit if you're damaged or injured. Well, it's not equitable is it that Mr. Breaud and I are in the same automobile and he waits you know a year and a month, he's hurt just as badly as I am but his lawsuit is thrown out and mine is enforced, that's not equitable because he is injured and I'm injured and I recover and he doesn't. I'm compensated, he's not, but the truth is that there has to be some predictability here, there has to be some Board, some group that looks over what's in the greater good, not just the individual good and so I think that it's true that on occasion this may occur and it may be inequitable but you have to look at the total picture and that is what the zoning ordinance is designed to do and I think it is fine as written. I would ask the Board not to make any changes. Mr. Breaud replied thank you sir, any other comments from the public on this issue? Mr. Guy Debold of 714 E. 1<sup>st</sup> St. came forward and stated these also more or less apply across the board to the requested revisions of the zoning ordinance, I just want to state that the requests being brought before you are due to the commercial interests of individuals who do not reside in the affected residential neighborhoods and have an existing commercial interest in the affected area that is the direct result of non-conforming use allowances granted when the zoning ordinance was adopted. These allowances and the limitations that go with them in effect from the basis of a compromise agreement between the residential interest of the neighborhood and the existing non-conforming uses at the time of the ordinance by which the non-conforming uses were allowed to continue but not change nor expand. The second issue being brought forth tonight, the revisions to the zoning ordinance entails a significant revision of those parts of the zoning ordinance that attempt to limit non-conforming use. As just previously mentioned, these parts of the zoning ordinance form the basis of the compromise established by the zoning ordinance between residents and existing non-conforming uses in residential neighborhoods. The requested changes significantly alter the nature of the compromise established between these parties. They are designed to specifically allow expansion of non-conforming use that would likely be detrimental to the residential interests of affected neighborhoods. These residential interests were knowingly established and validated under the neighborhoods "R-1" designation along with the restrictions in the zoning ordinance pertaining to existing non-conforming use allowances. Similarly the parties bringing forth these requests were fully aware of these limitations imposed by the zoning ordinance when their interest in the properties in question were acquired or when the zoning ordinance was passed. Their request to revise broad sections of the zoning ordinance that specifically limit their interests and non-conforming use appears to be designed to promote their own interest rather than the health, safety, morals and general public welfare. On this basis, please deny the requested revisions to the zoning ordinance. Thank you. Mr. Breaud replied thank you, are there any other comments from the public? Mr. Gene Richard of 516 Foret St. came forward and stated I speak as a resident and not as a Councilman, the only thing I can say is there must be a lot of money in alcohol and convenience stores for them to be fighting this hard. Just very briefly, they're asking you to spot zone and this Board has always been against spot zoning and when you look at the level of the Board for the City you look at the Board of Adjustments, you look at Planning & Zoning and of course you look at the Council making the ultimate decision, there's got to be some provision in there for the good of the residents and I always believe that the residents should have a say in what goes on in their neighborhood and their surroundings. This is what is happening here, we're, they're trying to make an exception for one particular business or may two particular businesses but I think the good of the residents in that area have to be considered. I think the Planning & Zoning laws and regulations that are in force now are quite adequate. I think the Board of Adjustments does an excellent job enforcing what they have, everything I think should remain status quo and I always believe that the residents should have a say so in what goes on in the neighborhood and that's what they're exhibiting and doing here. Thank you. Mr. Breaud replied thank you Mr. Richard, were there any further comments from the public? Mr. Woody Falgoust stated I'd like to ask for a vote on that section. Mr. Breaud replied all right, any further comments from the commission? **If not, there's been a request on the Item #2 Subparagraph A to amend Article IV, Section 401 of the zoning ordinance as outlined in that particular paragraphs following, do I have a motion? Motion by Mr. Boquet to deny the proposed changes, it was seconded by Mr. Adams, all members were in favor, motion carries**

Mr. Breaud stated the next item on the agenda is sub-paragraph 2 is to amend Article IV, Section 404 to consider amending

**2) Amend Article IV, Section 404 of the Zoning Ordinance to read as follows (blocked highlights note additions and strikethroughs note deletions):**

## Section 404. Nonconforming Structures.

Where a lawful structure exists at the effective date of adoption or amendment of this ordinance that could not be built under the terms of this ordinance by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

~~404.1 No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity. Nonconforming structures are subject to the restrictions of the ordinance in place at the time of their construction.~~

~~404.2 Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent of more than 50 percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this ordinance.~~

~~404.3 Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.~~

Mr. Breaud replied Mr. Falgoust. Mr. Woody Falgoust came forward and stated thank you Chairman Breaud and again if for some reason I have deleted something that is unacceptable to delete but perhaps added something that is acceptable I call for any comments even if we can't work it out this meeting I'd like to continue to work with these provisions because I think there's some problems. This particular problem, the one that jumps out at me right away is the 50% rule of 2003.4, it says, "should such non-conforming structure be destroyed by any means to an extent that more than 50% of it's replacement cost at time of construction, it shall not be reconstructed except in conformity with the zone." You know that is not very specific, if it's lighting striking it, if it's a hurricane, if a car runs off the road and eighteen wheeler runs off the road and barrels into it, if 50% of that structure is destroyed and it's a gas station you have to rebuild it as a house. That doesn't seem equitable so I guess that's the biggest thing that jumps out at me, 2003.3 back tracking a little bit, this is something we discussed, my suggested addition there would be that non-conforming structures are subject to the restrictions of the ordinance in place at the time of their construction. I think that is the only thing that is fair. When those people built that structure they built it under a certain zone and that ability to do the things that zone allowed and to renovate their property should not be taken from them. If you'll notice Section 2003.5, I've left that alone, certainly if the structure is moved and wherever it ends up it's got to deal with that zone, comments? Ms. Erwin replied go ahead, sorry Mr. Chairman. Mr. Breaud replied I'll be the first one to admit that we have no perfect ordinances, Woody, I would encourage you under a neutral situation to come before this Board any time and make proposed changes. You know we read these documents every time someone comes in front of us and I realize they're not perfect and we should do changes from time to time and times change and we need to change or ordinances when we see fit. So I'm not against change, I'm against the changes you are proposing tonight because I don't think they fit in with what we are trying to accomplish as far as zoning in these separate districts and like I mentioned my same comments that I made on Section 401 apply basically to the next sections that we are going to come across. You know it's the intent of these ordinances to set some regulations and realizing we've got structures that don't conform we want to try to upgrade them one day to make our city a more unique and nice place to live and that's what we are trying to accomplish and we're not trying to put anybody out of business. We took a lot of flack with the sign ordinance but I've got a lot of people from Terrebonne Parish telling me they sure love to ride through the City of Thibodaux and not see all these monument signs and all these other signs like you see going in Terrebonne. So we had to take a lot of flack but we stood our ground and we came up with some pretty stringent sign ordinances and we've had all these big companies that came into the City of Thibodaux that said they weren't going to come here if they couldn't put a monument sign but they're here, Lowe's is here, Wal Mart is here and they are all coming and they're complying with the rules we've set and I really think that we've got a nicer City because we have rules in effect. So that's my comments on that, Ms. Erwin. Ms. Erwin replied well it was just the one on your change on 404.1 on the non-conforming structures are subject to the restrictions of the ordinance in place at the time of their construction, with so many of our buildings constructed you know, I mean my house is 120 years old, I would assume that there were probably no ordinances in place and I think that was a very strong and I don't see how that could be. Mr. Falgoust replied honestly, Ms. Erwin, I thought about that, not when I wrote it but later and that's why I want to work with this Board in trying to come up with something better because that statement right there may not be enough. We may have to add something to that and but I'm trying to initiate the discussion, I'm trying to start things because like I said, I see a problem since I've gotten involved in this, a problem that needs to stop. What about the 50% rule, certainly that's not justifiable, 2003.4, certainly you can't justify that if some act of God destroys more than 50% of a building they should not be forced to rebuild as a house if they were once a building and it's an R-1 Zone. Mr. Breaud replied it's a matter of opinion again, you know we're trying to get everybody to conform in their district and if you've got half the building that is knocked down why not build it in conformity with that district. Mr. Boquet replied regardless of how it was destroyed. Mr. Falgoust replied well that's just not the way business works, business interruption, you know business relocation is not that easy, business is what built this community. Business is what put you in those seats, it's what put the clothes on our backs and we've got to start recognizing that business had needs too and I'm all for zoning and beautification. I'm very proud that Thibodaux looks a little differently than Houma does, I'm proud of that, the sign ordinance, we don't challenge that at all, we'd gladly put a monument sign out in front of our store. You know, for the most part I commend you on the sign ordinance but I'm talking about practical business property owner problems here they need to be re-dressed, that's all. Mr. Breaud replied and I'd be open and I think this Board would be open to discuss that at a separate issue, you know the percentages if we see we can discuss that but... Mr. Adams replied he would request that we go through this and appear the Board and we can go, like I told you before we made a bunch of boo-boos, we need to go over it and actually see where we can make some changes but all in all I think we have a good zoning ordinance set up. Mr. Falgoust replied yes and I'm not criticizing the entire zoning ordinance, I'm focusing obviously on once section of that ordinance, a small section in comparison with the rest of it. If there's no further comment, I'd like to... Mr. Breaud stated any comments from the public on this issue. Mr. Guy Debold replied just that there's insurance that you could purchase I'm sure as a business owner to reimburse you for loss in the event 50% of your business, that's all, so. **Mr. Breaud replied ok, any comments by the commission, if not, there's been a request to**

amend Article IV Section 401 of the Zoning Ordinance as presented, do I have a motion, it was moved by Mr. Boquet to deny the proposed changes, it was seconded by Mr. Adams, all members were in favor, motion carries, excuse me, we've got three for and one abstention, motion carries. Let the record show that Ms. Erwin abstained on that particular issue.

Ok, next item, is number

- 3) **Amend Article IV, Section 405.1, 405.2, 405.3 and 405.4 of the Zoning Ordinance to read as follows** (blocked highlights note additions and strikethroughs note deletions):

#### **Section 405. Nonconforming Uses of Structures or of Structures & Premises in Combination.**

If lawful use involving individual structures with a replacement cost of \$1,000.00 or more, or of structure and premises in combination exists at the effective date of adoption or amendment of this ordinance, that would not be allowed in the district under the terms of this ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

~~405.1. No existing structure devoted to a use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or altered except in changing the use of the structure to a use permitted in the district in which it is located.~~

~~405.2. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this ordinance, but no such use shall be extended to occupy any land outside such building.~~

~~405.3. If no alterations are made, any nonconforming use of a structure, or structure and premises, may as a special exception be changed to another nonconforming use provided that the board of adjustment, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the board of adjustment may require appropriate conditions and safeguards in accord with the provisions of this ordinance.~~ Any nonconforming use of a structure, or structure and premises, may be changed to another nonconforming use provided that the use was allowed under the ordinance in place at the time of the building's construction.

405.4. Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the nonconforming use may not thereafter be resumed.

- 4) **Amend Article IV, Section 405.5 of the Zoning Ordinance to read as follows** (blocked highlights note additions and strikethroughs note deletions):

405.5 When a nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for 6 consecutive months or for 18 months during any 3-year period (except when government action impedes access to the premises), the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located. The following shall interrupt the prescription of the period of "discontinuance or abandonment": 1) operation of the nonconforming use, without regard to the amount hours of operation per day or per week; 2) good faith repair or renovation preventing the operation of the nonconforming use; 3) the pending application of a city, state or federal permit required for operation of the nonconforming use; 4) a valid city occupancy permit or city occupancy or professional license, as long as such permit or license has not expired; 5) a pending action before the Board of Adjustments or Board of Planning & Zoning or any other municipal, state or federal board; and 6) a pending lawsuit or legal action taken in furtherance of the nonconforming use.

- 5) **Amend Article IV, Section 405.6 of the Zoning Ordinance to read as follows** (blocked highlights note additions and strikethroughs note deletions)

405.6. Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure without an attempt to rebuild the structure within six months shall eliminate the nonconforming status of the land. An "attempt to rebuild" includes actual physical work on the premises, drafting of building plans, ordering of supplies, the submission of an insurance claim or the submission of a necessary permit application. Destruction for the purpose of this subsection is defined as damage to an extent of more than 50 per cent of the replacement cost at time of destruction.

- 6) **Amend Article IV, Section 406 of the Zoning Ordinance to read as follows** (blocked highlights note additions and strikethroughs note deletions)

#### **Section 406. Repairs and Maintenance.**

~~On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done in any period of 12 consecutive months on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring, or plumbing, to an extent not exceeding 10 per cent of the current replacement cost of the nonconforming structure or nonconforming portion of the structure as the case may be, provided that the cubic content existing when it became nonconforming shall not be increased.~~

~~If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located. Nothing in this ordinance shall be deemed to~~

~~prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.~~

Owners of nonconforming structures or structures containing nonconforming uses may perform the maintenance, renovation and expansion necessary to beautify, upgrade and strengthen their structures, to adapt their structures to the market and to enhance their structures' visual contribution to the city, subject to the provisions of this ordinance, including but not limited to the sign ordinance.

*Please note that petitioners do not seek to revise Section 402. Nonconforming Lots of Record, Section 403. Nonconforming Uses of Land (or Land with Minor Structures Only) or Section 407. Uses Under Special Exception Provisions Not Non-conforming Uses.*

Mr., Breaud replied Mr. Falgoust. Mr. Woody Falgoust came forward and stated thank you Chairman Breaud and again what I'm attacking on this is the problem with existing buildings being rezoned and subject to this non-conforming use law. If you'll see down towards the bottom of my proposed amendments, I don't seek to revise at all non-conforming lots of records, non-conforming uses of land or land with minor structure only, we don't get into those because they don't have significant buildings on them. This one I have a problem with for the reasons I've already stated you know and then of course I left Section 405.4 alone because if for some reason that the owner of the property if he returns to the permitted use, if he gives up his non-conforming use he returns to the permitted use well then he should not be allowed to go back to the non-conforming use I can see the legitimacy of that but everything else involves things I've already spoken to. **Mr. Breaud replied if the commission sees fit we can send this thing to a committee and review some of these things or... Mr. Boquet replied he would like to make that motion, Clay, that we form a committee to look into these things and table it further, Ms. Erwin replied she would second that.** Mr. Breaud stated would you be agreeable to that, Mr. Falgoust, to, for Section 406 too, where we wouldn't have to go through that one, we'd form a committee and study these proposed or not necessarily these but some proposed changes? Mr. Boquet replied and have to come back, it would come back to us no later than the October meeting. Mr. Falgoust replied well, let me just, I think that is a good suggestion Mr. Boquet, I really do, there's just to other comments about these laws I'd like to make on the record if I may and if you all wish to comment, that's fine, if you don't, you don't. Ms. Erwin stated question is on the floor, excuse me Mr. Chairman. Mr. Breaud replied we can deny it, then we can make another motion to go ahead and form a committee. Ms. Erwin replied I mean you had a motion and a second. Mr. Breaud replied on 404, 405. Ms. Erwin replied no, you had a motion and a second to defer it to a committee. Mr. Boquet replied a committee, yes. Mr. Falgoust replied please vote, I'm sorry, I'm sorry Ms. Erwin. Mr. Breaud replied well, there's been... Ms. Erwin stated I mean if you're requesting us to retract that, that's fine but. Mr. Breaud stated let's ask our legal attorney, is that proper. Ms. Germaine Jackson stated you need to wrap up your motion, yes. Mr. Breaud replied ok, there's no problem with us sending it to committee and act on it... Ms. Jackson replied no, no that is actually the procedure. Mr. Breaud replied ok, so we've got a motion by Mr. Boquet, seconded by Ms. Erwin, any further discussion, the motion is to send Item 405 to committee for review of the issue further and I guess we'd have to... Ms. Erwin replied that wasn't the, I don't believe that that was the complete motion. What was the motion, do you know Ruby, did you get the motion. Ms. Maggio replied Sections 405 and 406 I believe. Mr. Price replied yes, the next two sections. Mr. Breaud replied 405 and 406, is that what you're referring to Ms. Erwin. Ms. Erwin replied yes. Mr. Breaud stated we do have a court reporter, we can ask her. **Mr. Breaud replied ok the motion is to send Section 405 and 406 to committee for review and recommend proposed changes and come back no later than the October meeting, motion by Mr. Boquet and seconded by Ms. Erwin, any further discussion on that, if not... Ms. Erwin replied discussion, yes, Mr. Chairman, I mean I'd like to see the entire, if we're going to do just this section, this entire section on non-conforming be referred to a committee. Mr. Breaud replied you're talking about the whole section on non-conforming issues, do we have a problem with that Ms. legal attorney of making that motion under this particular section. Ms. Jackson replied no, but I mean your denials of the first sections have already vowed you will just be bringing the whole thing. Mr. Breaud replied right, Mr. Boquet are you ok with that? Mr. Bouquet replied that would be fine, sure. Mr. Breaud stated Ms. Erwin do you agree with that on your second? Ms. Erwin replied yes. Mr. Breaud replied ok, any further discussion on that? We need to I guess establish a committee to review this, I guess the committee could be this commission. Mr. Boquet replied could be. Mr. Breaud stated and we could discuss it, Mr. Falgoust you could bring those proposed changes or discuss them with public or other people and come to the, come back to this Board and we can act on them at that time rather than form a special committee, does that sound ok with the commission. Mr. Boquet replied that was fine. Mr. Breaud stated is that ok with you Mr. Falgoust. Mr. Falgoust replied he would love to be a part of that committee, Chairman Breaud. Mr. Breaud stated you want to be part of the committee or do you want to present the... Mr. Falgoust replied present my findings to the committee, I stand corrected. Mr. Breaud replied ok, we have a motion and a second, all in favor signify by saying aye, motion carries.** Mr. Breaud stated and further discussion, I mean Section 406 was handled on the other stuff, Mr. Falgoust so I don't see any need to make any further comments on that, huh? Mr. Falgoust replied well the record reflects that I have problems with those sections both for reasonableness and constitutionality but I look forward to discussing those with you all. Mr. Breaud replied thank you sir.

Mr. Breaud then asked if there were any further matters to be brought before the Commission, if not, I'll entertain a motion to adjourn, moved by Mr. Adams, seconded by Mr. Boquet, all members were in favor.