

**CITY OF BILOXI  
AGENDA ITEM  
FACT SHEET**

Item No.: 3A

Council Meeting Date: June 2, 2026

**ITEM TITLE:** PUBLIC HEARING

**INTRODUCED BY:**

**CONTACT PERSON:**

**SUMMARY EXPLANATION:**

Public Hearing to consider an appeal filed by Chris Shortt, Lori Hodge and Barbara Glass requesting the reversal of the Planning Commission's decision to approve a requested Tree Removal Application for the removal of thirty-nine (39) protected trees, upon a parcel of land identified as Lot 23 of Hawk Creek Subdivision.

Resolution \_\_\_\_\_ Ordinance \_\_\_\_\_ Public Hearing  Routine Agenda \_\_\_\_\_

Exhibits for Review

Contract \_\_\_\_\_ Minutes \_\_\_\_\_ Plans/Maps \_\_\_\_\_ Deed \_\_\_\_\_ Lease \_\_\_\_\_

Other (Specify):

Submittal Authorization: Council President  Mayor \_\_\_\_\_

**STAFF RECOMMENDATION:**

**COUNCIL ACTION:** Motion By: \_\_\_\_\_ Second By: \_\_\_\_\_

Vote:	Councilmember	Yes	No	AFR	ABST	Councilmember	Yes	No	AFR	ABST
	Gray	_____	_____	_____	_____	Tisdale	_____	_____	_____	_____
	Marshall	_____	_____	_____	_____	Glavan	_____	_____	_____	_____
	Nail	_____	_____	_____	_____	Shoemaker	_____	_____	_____	_____
	Creel	_____	_____	_____	_____					

**ACTION TAKEN:**

060226ph



## Community Development Department

Planning Division  
Post Office Box 508  
Biloxi, MS 39533-0508

Felicia Serpas, Senior Planner  
Telephone: 228-435-6266  
Facsimile: 228-435-6188

May 15, 2026

Re: Planning Commission Appeal Case No. TR-26-002

To Whom It May Concern:

This letter informs you that an Appeal has been filed to the Biloxi City Council concerning Tree Case No. **TR-26-002**, which requested the removal of thirty-nine (39) protected trees (29 Live Oaks, 7 Magnolias, 2 Black Tupelo larger than 16" & 1 Sweet Gum larger than 16"), to authorize the construction of a new Single-Family Subdivision (Hawk Creek Ph II), containing 49 lots, for a parcel of land identified as lot 23 of Hawk Creek Subdivision located on W. Oaklawn Rd (Tax Parcel No. 1108M-01-003.023), which was approved by the Planning Commission on May 7, 2026. This appeal will be heard at 6:00 p.m., City Hall, 2<sup>nd</sup> floor, on June 2, 2026. You may find the City Council Agenda online at [www.biloxi.ms.us](http://www.biloxi.ms.us).

No permits will be issued until this appeal is settled.

Should you have any further questions, please feel free to contact our office at 435-6266.

Sincerely,

*Felicia Serpas*

Felicia Serpas  
Senior Planner

**BILOXI CITY COUNCIL  
PUBLIC HEARING NOTICE  
TREE APPEAL**



**Biloxi**  
established 1699

CASE NO. TR-26-002

HAWK CREEK PH 2

TREE PERMIT

HEARING TO BE HELD IN THE BILOXI CITY COUNCIL CHAMBERS,  
2nd FLOOR OF CITY HALL

140 LAMEUSE STREET, BILOXI, MS 39530  
AT 6:00pm ON June 2, 2026

ANY QUESTIONS, PLEASE CALL 228-435-6257  
OR EMAIL [citycouncil@biloxi.ms.us](mailto:citycouncil@biloxi.ms.us)  
<http://biloxi.ms.us>



13 May 2026

MEMORANDUM FOR THE CITY OF BILOXI'S CLERK OF COUNCIL

FROM: Chris Shortt  
104~~7~~2 Riviere Vue Dr.  
Biloxi, MS 39532

SUBJECT: Appeal Against Issuance of Tree Permit for Case No. TR-26-002 (Tax Parcel No. 1108M-01-003.023)

References: (a) Biloxi Ordinance 23-2-4, I, 9 (Land Development Ordinance, Administration, Application-Specific Review Procedures and Standards, Tree Permit, Appeals)  
(b) Biloxi Ordinance Table 23-2-1 (Land Development Ordinance, Administrative, Summary and Organization, Summary of Development Review Responsibilities Table)

I. Pursuant to *Section 23-2-4(I)(9)* of the City of Biloxi's Code of Ordinances (hereinafter, the "Ordinance"), I hereby appeal the approval of the tree permit to the City of Biloxi's City Council (hereinafter, the "Council") within the ten-day period as an aggrieved person.

II. This permit approval is premature and unripe because the permit improperly authorizes removal of protected trees for a subdivision that has received only preliminary plat approval and has **not yet satisfied the legal requirements for final plat approval**. Some of the trees at issue do not interfere with any public works construction, such as roads or sewer installation, authorized and permitted under the preliminary plat. Under *Section 23-7-6(A)(3)* of the Ordinance, the Council may approve a final plat only after confirming that lots are "arranged in relation to...tree protection requirements." By approving tree removal now, the Commission has effectively pre-approved a final subdivision lot configuration that has not yet been reviewed or approved by the Council. If the final plat is later denied or altered for noncompliance, removal of these trees may be unnecessary and unlawful. Furthermore, approving removal of protected trees before final plat approval creates a *fait accompli* and irreversible act that improperly pressures the Council to approve the subdivision as proposed simply because the trees will already have been destroyed.

III. The Hawk Creek subdivision is designed and approved to proceed in phases pursuant to Section 23-7-8 of the Ordinance. That section expressly provides that "the numbering of phases shall be sequential and coincide with the order in which the different development phases are proposed to be constructed." **The operative words here are "in order."** Phase 1 remains incomplete because it has not satisfied all requirements of Section 23-7-4(A), titled "Developer Responsibility." Under that section, the developer is required to "provide...street improvements necessary to bring the street into compliance with the standards of this section applicable to the type of street." Accordingly, Phase 1 cannot be considered complete until both West Oaklawn Road and Shorecrest Road are brought into compliance, including pavement widening, curb and gutter installation, streetlights, and street trees. **Until those required improvements are completed, this tree permit should be tabled until Phase 1 is complete, because approval would effectively allow the developer to proceed out of sequence and circumvent the Ordinance's phasing requirements.**

IV. The permit was approved in contravention of *Section 23-2-4(I)(5)* of the Ordinance, which requires compliance with *Tree Permit Review Standards*. The applicant submitted no statement of necessity for the removal of each specific protected tree in alignment with at least one of the tree permit review standards, forcing decision-makers to rely on conjecture rather than the findings required by law. The *Tree Permit Review Standards* state that **at least 1 of 5 criteria must be met:**

1. A tree of any species is in danger of falling or damaging structures, or the where the tree's roots pose a significant threat of damaging utilities or structures; or


2. A tree of any species that either encroaches into established easements, is a detriment to access, or obstructs required sight distances, as determined by the Director of Community Development; or
3. The City Arborist provides written verification and photographic documentation that the tree is dead or dying; or
4. The removal is necessary to comply with storm water regulations, or to maintain public health and safety around utilities and infrastructure; or
5. The removal is necessary to address extraordinary circumstances such as weather-related emergencies and natural disasters, as determined by the Mayor.

V. The City of Biloxi does not currently have a City Arborist that meets the requirement of being a City Employee. *Appendix A [City of Biloxi Compensation Schedule]* of the Code of Ordinances reflects that the position of City Arborist is, indeed, a position of a City Employee, as opposed to a contractor. A contractor cannot legally fulfill the duties that are required to be accomplished by a City Employee. You can no more contract out the duties of the City Arborist than you can contract out the duties of the Mayor of Biloxi. Additionally, nothing in the ordinances authorizes the Community Development Director or any other City Employee to act as City Arborist; especially since there is a conflict of interest between a position that, at least partially, is responsible for tree preservation while the other is responsible for development that often results in tree removal. Furthermore, a contractor hired directly by the Community Development Director to perform the duties of City Arborist is even more so inclined to provide whatever answer that keeps him employed.

VI. *Section 23-2-4(P)* of the Ordinance expressly authorizes variances where a deviation from dimensional standards "would not be contrary to the public interest." In this matter, no variances were explored or considered for minimum setback, lot width, or lot depth requirements, despite such variances being the appropriate mechanism to preserve protected trees in compliance with the Ordinance. Instead, the applicant is being permitted to pursue mass tree removal as a matter of convenience rather than necessity. The failure to evaluate feasible variance alternatives renders the approval contrary to the public interest and injurious to the public welfare, in violation of *Section 23-1-3* of the Ordinance, *General Purpose and Intent*, which states that the purpose of the Land Development Ordinance is to "promote the public health, safety, and general welfare of the citizens and landowners of Biloxi."

VII. True and correct copies of ordinances relevant to, cited in, or governing this appeal are attached hereto and incorporated by reference as identified in the attachments list beneath the signature block.

VIII. I await a date for the appeal hearing to be heard by the Council. Please e-mail future correspondence to [LOVEN944@YAHOO.COM](mailto:LOVEN944@YAHOO.COM) and confirm receipt of all emails by calling (228) 596-1943.



Chris Shortt

**Attachments:**

- Attachment "A": Section 23-2-4 (I), Tree Permit, Biloxi Land Development Ordinance
- Attachment "B": Section 23-6-4, Tree Protection, Biloxi Land Development Ordinance
- Attachment "C": Section 23-2-2 (G), Tree Committee, Biloxi Land Development Ordinance
- Attachment "D": Section 23-7-6, Subdivision Lot Standards, Biloxi Land Development Ordinance
- Attachment "E": Section 23-2-4 (P), Variance, Biloxi Land Development Ordinance
- Attachment "F": Section 23-1-3, General Purpose and Intent, Biloxi Land Development Ordinance

## **Attachment “A”**

### **Section 23-2-4 (I), Tree Permit, Biloxi Land Development Ordinance**

#### **(1) Purpose**

The purpose of a Tree Permit is to support the preservation and replenishment of the native stock of trees, specifically those described as protected trees, to ensure compliance with the standards in Section 23-6-4, Tree Protection, and to ensure that existing trees on vacant or underdeveloped lands are not removed without an approved application in order to:

- a. Preserve the cultural heritage and aesthetic qualities of the city;
- b. Encourage site design techniques that preserve the natural environment and enhance the developed environment;
- c. Provide for a separation of uses and establish a sense of privacy;
- d. Minimize the impact of incompatible land uses;
- e. Reduce glare, dust, heat, and noise;
- f. Preserve and enhance air and water quality;
- g. Increase slope stability, and control erosion and sediment run-off into streams and waterways;
- h. Conserve energy by reducing heating and cooling costs; and
- i. Maintain and enhance the quality of life in the City.
- j. Provide incentive for sustainable development/landscape bonuses are available in Section 23-6-12(C)

#### **(2) Applicability**

##### **a. Activities Subject to Permitting Process**

A Tree Permit is required for the removal, relocation or alteration in any of the following conditions, within any zoning district and on any size lot:

1. Any tree of a protected species (Live Oak, Bald Cypress, and Southern Magnolia) that are at least eight inches diameter at DBH (diameter at breast height — 54 inches above the ground); or
2. Any tree of a non-protected species with a DBH of sixteen or more inches.

##### **b. Activities Exempt from Permitting Process**

A Tree Permit is not required for the removal, relocation or alteration in any of the following conditions:

1. Any Pecan (*Carya illinoensis*), Chinese tallow or Popcorn (*Sapium sebiferum*), Water Oak (*Quercus Nigra*), or member of the Pine genus (*Pinus spp.*); or
2. Any protected species (Live Oak, Bald Cypress, and Southern Magnolia) that are less than eight inches diameter at DBH; or
3. Any tree of non-protected species with a DBH of less than sixteen inches.

#### **(3) Application Requirements**

##### **a. Coordination with Site Plan**

Where the application for a Tree Permit relates to a development proposal for a site, the application for Tree Permit shall be submitted simultaneously with an application for Site Plan Review and the material required below shall, to the maximum extent practicable, be integrated with the site plan application.

##### **b. Contents**

An application for a Tree Permit shall be filed with the Department of Community Development and shall include the following:

1. A completed application form for Tree Permit signed by the applicant.
2. A drawing showing the following information at an adequate scale to make a determination.
  - a. The shape and dimensions of the lot of record, together with the existing and proposed locations of all structures and improvements, if any;
  - b. Location, species, and DBH of all existing trees including those proposed for removal and those proposed to remain.
  - c. Groups of trees in close proximity to one another (five feet or less) may be designated as a cluster of trees with the predominant species, estimated number, average DBH, and overall canopy shown. Within a cluster however, trees of protected species with a DBH of eight inches or greater, and trees of any non-protected species with a DBH of 16 inches or greater, must be identified by location, species, whether proposed to remain, be removed or relocated.
  - d. A statement showing how trees not proposed for removal are to be protected during land clearing and construction with protective barriers to disallow excavation, stockpiling or vehicular traffic encroaching upon the root zone, as stipulated in Section 23-6-4(F), Tree Protection during Construction.
  - e. A drawing as to grade changes, if proposed, for the lot or parcel and how such changes will affect matters of this Chapter, as stipulated in Section 23-6-4, Tree Protection. Grade changes may not occur beneath more than ten percent of the canopy of a protected tree.
  - f. A statement identifying the reason for removal of each protected tree.
  - g. A replacement/mitigation plan, as stipulated in Section (23-6-4(E)(4), Replacement/Mitigation of a Protected Tree.

**(4) Review Procedure**

**a. Basic Procedures**

Except as modified by Sections 23-2-4(I)(4)b. below, review of an application for a Tree Permit shall be subject to the common review procedures and requirements established in Section 23-2-3, Standard Review Procedures.

**b. Authority and Review Process**

1. All applications for Tree Permits shall be submitted to the Department of Community Development and reviewed for completeness by the Director of Community Development and City Arborist who will then forward the application to the Biloxi Tree Committee in accordance with the procedure set out in Section 23-2-2(G), Tree Committee. Written or verbal recommendations of the Tree Committee regarding protected trees will be presented verbatim before the Planning Commission.
2. For Tree Permits involving the removal, relocation, or alteration of one to four protected trees, and not otherwise requiring Planning Commission approval, the review and approval authority shall rest with the Director of Community Development or City Arborist. The final determination will be sent in writing from the Director of Community Development to the applicant and to the Tree Committee. The Director of Community Development may delegate this task to City Arborist.
3. For Tree Permits involving removal, relocation, or alteration of five or more protected trees the Tree Committee shall review and make recommendation to the Planning Commission and approval rests with the Planning Commission and requires a Public Tree Hearing to be posted by the Director of Community Development in accordance with Section 23-2-3(F)(4), Public Hearing Notice. The final determination on cases heard before the Planning

Commission are written into the public record. This section will apply to any multi-phased developments.

4. In the event of a conflict between the recommendations of the Tree Committee, the decision of the Director of Community Development and/or the Planning Commission, the Director of Community Development shall report the conflict to the Mayor within two days and submit the entire application, including all photographs of the site, the Tree Committee recommendation, and the Director of Community Development and/or Planning Commission's recommendation to the Mayor for review. The Mayor may either accept the Tree Committee recommendation, the decision of the Director of Community Development, The Planning Commission, or modify the decision and the permit, or deny the permit. The City Arborist and Tree Committee are to be copied on all reports of conflict and final decisions.

**c. Expiration**

A Tree Permit shall automatically expire at the end of six months following the date of approval. An extension may be granted in accordance with Section 23-2-3(K)(2)b., Extension, that extension may be for a time period of up to six months.

**(5) Tree Permit Review Standards**

A Tree Permit shall be approved only upon receipt of a complete permit application and finding that all the standards in Section 23-6-4, Tree Protection, are met. The Review Criteria used by City Arborist and Director of Community Development that allows for the issuance of a Tree Permit is as follows:

- a. A tree of any species is in danger of falling or damaging structures, or the where the tree's roots pose a significant threat of damaging utilities or structures; or
- b. A tree of any species that either encroaches into established easements, is a detriment to access, or obstructs required sight distances, as determined by the Director of Community Development; or
- c. The City Arborist provides written verification and photographic documentation that the tree is dead or dying; or
- d. The removal is necessary to comply with storm water regulations, or to maintain public health and safety around utilities and infrastructure; or
- e. The removal is necessary to address extraordinary circumstances such as weather-related emergencies and natural disasters, as determined by the Mayor.

**(6) Amendments**

Modifications to an approved Tree Permit shall require review by the Tree Committee and Community Development Department and an amended Tree Permit be issued.

**(7) Tree Damage or Removal**

The unauthorized removal or accidental damage or removal of existing protected trees shall be subject to the replacement/mitigation standards of Section 23-6-4(G)(4)a., Replacement/Mitigation of Protected Trees, and Penalties, according to Section 23-2-4(1)(10) Penalties.

**(8) Credit for Retaining Existing Trees**

Qualifying trees located onsite shall be credited towards the landscaping requirements in accordance with Section 23-6-4(G)(1), Tree Preservation Incentives, if the site or parcel of land becomes the subject of a development application in accordance with this Ordinance.

**(9) Appeals**

Any aggrieved person may appeal a determination by the Director of Community Development to the City Council by providing written notice to the Clerk of Council of such appeal within ten days of the receipt by the applicant.

**(10) Penalties**

The provisions of Chapter 23 of this Code of Ordinances relating to the protection of trees and Tree Permits are hereby incorporated herein by reference, and violation of the terms of any of those provisions relating to the protection of trees or the terms of any Tree Permit is a general offense. Any one so convicted shall be subject to the provisions of Section 1-1-8 of the Code of Ordinances. Each day a violation continues to exist constitutes a separate offense.

**Attachment “B”**  
**Section 23-6-4, Tree Protection, Biloxi Land Development Ordinance**  
***(A) Purpose and Intent***

The purpose and intent of this section is to:

- (1) Preserve the cultural heritage and aesthetic qualities of the city;
- (2) Encourage site design techniques that preserve the natural environment and enhance the developed environment;
- (3) Provide for a separation of uses and establish a sense of privacy;
- (4) Minimize the impact of incompatible land uses;
- (5) Reduce glare, dust, heat, and noise;
- (6) Preserve and enhance air and water quality;
- (7) Increase slope stability, and control erosion and sediment run-off into streams and waterways;
- (8) Conserve energy by reducing heating and cooling costs;
- (9) Maintain and enhance the quality of life in the city; and
- (10) Provide incentives for Sustainable Development/Landscape Credits. (See Section 23-6-4(6).)

***(B) Applicability***

(1) **General**

Unless exempted in accordance with Section 23-6-4(B)(2), Exemptions, the standards in this section shall apply to all lands and development in the city.

(2) **Exemptions**

The following tree removal activities are exempt from the standards of this section:

- a. The removal of dead or naturally fallen trees;
- b. The removal of diseased trees posing a threat to adjacent trees;
- c. The removal of Any Pecan (*Carya illinoensis*), Chinese tallow or Popcorn (*Sapium sebiferum*), Water Oak (*Quercus Nigra*), or member of the Pine genus (*Pinus spp.*);
- d. The selective and limited removal of trees or vegetation necessary to obtain clear visibility at driveways or intersections;
- e. Removal of trees by the public utilities, local, state or federal government as necessary to maintain safe operations;
- f. Silvicultural activities undertaken in accordance with best management practices for forestry in Mississippi established by the Mississippi Forestry Commission; and
- g. Agricultural activities undertaken in accordance with agricultural best management practices for Mississippi established by the Mississippi Department of Environmental Quality.

***(C) Tree Permit Required***

No removal of existing trees on a parcel of land or a development site shall occur before approval of a Tree Permit (Section 23-2-4(I)) unless in accordance with the unexpired approval of a Site Plan (Section 23-2-4(E)), Preliminary Plat (Section 23-2-4(F)), Certificate of Appropriateness (Section 23-2-4(G)), Public Works Permit (Section 23-2-4(H)), or Certificate of Zoning Compliance (Section 23-2-4(L)), as appropriate.

## ***(D) Responsibility for Compliance***

Failure to comply with the standards of this section is a violation of this Ordinance subject to the remedies and penalties in this section and Article 23-9, Enforcement.

## ***(E) Protection of Trees***

### **(1) Applicability**

- a. General All development in the city shall be required to support the preservation and replenishment of the native stock of trees, specifically those described as protected trees, as defined in Section 23-10-2, Terms and Uses Defined, in accordance with this subsection.

### **(2) General Requirement**

No protected tree may be removed, except in accordance with Section 23-6-4(E)(3), Removal of a Protected Tree. In addition, all protected trees shall have the following protections, whether located on public or private land:

- a. Cutting, Removal, or Harm Prohibited. Protected trees shall not be cut, removed, pushed over, killed, or otherwise harmed.
- b. Paving or Soil Compaction Prohibited. The area within the drip line of any protected tree shall not be subject to paving or soil compaction greater than ten percent of the total area within the drip line, if at all possible. (See Figure 23-6-4(E)(2)b., Paving or Soil Compaction Prohibited.)

### **(3) Removal of a Protected Tree**

Protected trees may be removed if the landowner demonstrates to the Director of Community Development one of the following conditions:

- a. Removal of a Healthy Protected Tree. A protected tree is in healthy condition, and all of the following standards are met:
  1. The landowner is otherwise in compliance with this section;
  2. The protected tree prevents development of a lot in a way that limits building area to less than otherwise allowed, or hinders compliance with the standards in Article 23-3: Zoning Districts, Article 23-5: Intensity and Dimensional Standards, Article 23-6: Development Standards, or Article 23-7: Subdivision Standards; and
  3. Mitigation is provided in accordance with Section 23-6-4-E(4), Replacement/Mitigation of Protected Trees.
- b. Removal of a Diseased, High Risk, or Dying Protected Tree. A protected tree is certified by an arborist or other qualified professional as diseased, high risk, or dying. Removal of a diseased, high risk, or dying protected tree shall not require mitigation in accordance with Section 23-6-4(E)(4), Replacement/Mitigation of Protected Trees.

### **(4) Replacement/Mitigation of Protected Trees**

Those causing the destruction or removal of a healthy protected tree, unless exempted, shall be responsible for the following mitigation:

#### **a. Replacement Trees Required**

All healthy protected trees removed or destroyed shall be mitigated on a two for one basis with a tree minimum two-inch caliper tree with a minimum height of six feet tall at planting. The replacement trees shall be replanted within six months of the removal or destruction of the protected tree.

- b. Mitigation Species shall be a protected tree species (Live Oak, Bald Cypress and Southern Magnolia)

#### **c. Location of Replacement Trees**

Replacement trees shall be either planted on the parcel of land from which the protected tree was removed, if sufficient space is available, or placed on nearby lands in accordance with Section 23-6-3(I), Alternative Landscape Plan. The Director of Community Development may allow replacement trees to be planted to provide street trees in accordance with the standards in Section 23-6-3(F), Street Trees.

**d. Mitigation Trust, in lieu of mitigation plantings**

If the developer does not have the space to plant the mitigation trees onsite, they may elect to donate to the Mitigation Trust in lieu of planting mitigation trees. The donation amount will be based on the number of mitigation trees required by the cost of the purchase, planting and maintenance (Purchase Price  $\times$  2 = Cost of Mitigation Purchase, Planting, Irrigation and Maintenance).

1. The City will establish a Mitigation Trust account to receive funds from developer in lieu of off-site mitigation.
2. All mitigation trust planting projects shall be planted on city-owned property with protected species, or from approved City of Biloxi tree species list as defined herein, and recommended by Planning Commission and approved by City Council prior to disbursing any funds from the Mitigation Trust account and will be used exclusively for mitigation trees in accordance with the Biloxi Comprehensive Beautification Plan.
3. All mitigation trust planting sites will be documented in the Biloxi Comprehensive Beautification Plan.

**e. Establishment Period**

Replacement trees shall be maintained through an establishment period of at least three years. The applicant shall guarantee the survival and health of all replacement trees during the establishment period and guarantee any associated replacement costs (See Section 23-7-9, Performance and Maintenance Guarantees.). If the replacement trees do not survive the establishment period, the applicant shall purchase and install new replacement trees.

f. Trees removed on residential home sites are exempt from the requirements of this section.

***(F) Tree Protection During Construction***

**(1) Owner's Responsibility**

During development, the owner or developer shall be responsible for the erection of any and all barriers necessary to protect any existing or installed vegetation from damage both during and after construction.

**(2) Tree Protection Fencing**

**a. Where Required**

Protected trees, existing tree canopy, and other existing trees being used for credit towards landscaping requirements shall be fenced with a sturdy and visible fence before grading or other development activity begins. Fencing shall be erected to protect the tree's drip line. The Director of Community Development shall consider the existing site conditions in determining the exact location of tree protection fencing. Areas located inside of tree protection fencing are considered as tree protection areas.

**b. Type of Fencing**

All fencing required by this section shall be a minimum four feet high and of durable construction (i.e., plastic snow fencing or chain link). Chain link or wire fencing utilized as tree protection fencing shall not be required to be vinyl coated. Passive forms of tree protection may be utilized to delineate tree protection zones that are remote from areas of land disturbance. These must be surrounded by fencing, continuous rope, or other forms of clear delineation.

**c. Signage**

Signs shall be installed on the tree protection fence visible on all sides of the fenced-in area delineating the tree protection zone.

**d. Inspection**

All tree protection measures shall be inspected and approved by the Director of Community Development before start of any land disturbing activities. Failure to have tree protection measures prior to the commencement of construction is a violation of this Ordinance.

**e. When Required**

No construction, grading, equipment or material storage, or any other activity shall be allowed within the fenced tree protection area. Fencing shall be maintained until after the final site inspection.

**(3) Encroachments into Tree Protection Areas**

Encroachments into tree protection areas shall occur only when no other alternative exists. If such an encroachment is anticipated, the following preventive measures shall be employed:

**a. Soil Compaction**

Where compaction might occur due to construction traffic or materials delivery through a tree protection area, the area must first be mulched with a minimum four-inch layer of wood chips. Equipment or materials storage shall not be allowed within a tree protection area.

**b. Fill**

No fill shall be placed within a tree protection area without adequate venting to allow air and water to reach the roots.

**c. Chemical Contamination**

Trees located within a tree protection area shall be protected from chemical contamination from liquids or other materials, including but not limited to paint, chemical solvents, gasoline, oil, diesel fuel, hydraulic fluid, concrete spoils, or rinse water from vehicle cleaning, including rinsing of concrete truck tanks and chutes.

**d. Paving Limitations**

Except for driveway access points, sidewalks, curb, and gutter, no paving shall occur within of a tree protection area unless authorized through an alternative landscape plan. (See Section 23-6-3(I), Alternative Landscape Plan.)

***(G) Tree Preservation Incentives***

**(1) Tree Preservation Credits**

To encourage the preservation of as many trees as practical on a development site, credit towards the minimum landscaping requirements shall be applied to all existing trees retained on a site that are not protected trees. Credits are offered only for trees that are not required to be retained by other sections of this Ordinance. Credits shall be designated on the landscape plan for the development, and shall be granted in accordance with the following standards:

- a. A credit for trees that are not protected trees shall be credited and applied towards the vehicular use landscaping standards in Section 23-6-3(D) and the perimeter buffer standards in Section 23-6-3(E) when the trees that are saved are:
  - 1. Deciduous or evergreen canopy trees of four inches in caliper or greater, measured at DBH (54 inches) above ground level; or
  - 2. Deciduous or evergreen understory or ornamental trees of three inches in caliper or greater, measured at DBH (54 inches) above ground level.
- b. In no case shall credits substitute for more than 75 percent of the required site or vehicular use area landscaping material.

**(2) Reduction in the Minimum Number of Required Parking Spaces**

Up to a ten percent reduction in the number of off-street parking spaces required on a development site shall be allowed if the reduction in the amount of required pavement will preserve the root zones of existing healthy trees with a DBH of eight inches or greater. The amount of reduction can be determined only after taking into consideration any unique site conditions and the impact of the reduction on parking needs for the use, and must be agreed upon by both the applicant and the Director of Community Development. Alternative paving materials (see Section 23-6-2(C)(4), Alternative Materials) may be allowed by the Director of Community Development in cases where required parking areas encroach upon root zones.

## **Attachment "C"**

### **Section 23-2-2 (G), Tree Committee, Biloxi Land Development Ordinance**

The Tree Committee is hereby established.

**(1) Tree Committee; Purpose and Intent.**

The purpose and intent of this article is to establish a body to assist the City in promoting the preservation and replenishment of the native stock of trees, conservation, ground water recharge, storm water runoff retardation, oxygen regeneration, and noise abatement, and to make the City a healthier, more beautiful, and safer place to live. This committee is to be known as the Biloxi Tree Committee, referred to in this article as the "committee." In making its recommendations the committee is charged with using its best efforts to balance those public goals with the public need for economic development while respecting the rights of individuals to develop their property in a meaningful yet responsible way within the confines of the law.

**(2) Membership; Term of Office; No Compensation of Committee.**

The Biloxi Tree Committee shall be composed of seven members, one individual from each of the City's seven Wards, all of whom shall be resident citizens of the City and qualified electors therein. The members will be selected by the Mayor and ratified by the City council. Each member shall be appointed for a period of three years and shall continue to serve until a successor is appointed and ratified. Vacancies shall be filled in accordance with this section, and appointments to fill vacancies shall be for the unexpired terms only. Each member shall be eligible for reappointment, and all members of the committee shall serve without pay.

**(3) Officers; Rules of Procedure.**

The Biloxi Tree Committee shall elect from among its members its own chairman, vice chairman, and secretary, and provide from time to time such rules and regulations, not inconsistent with the ordinances of the City, for its own organization and procedure, as it may deem appropriate. Meetings may be held by telephonic or other electronic means, and any official action shall only require a majority of the members participating in the meeting. A quorum shall consist of a majority of the members appointed and ratified, and vacancies shall not be considered in the determination of a quorum.

**(4) Powers and Duties**

The Biloxi Tree Committee shall advise City officials with regard to the development of a comprehensive city beautification plan, Tree Protection, and when undertaking those tasks shall work under the direction of the City Arborist. With the assistance of the Director of Community Development or his designee the Committee shall serve in an advisory capacity to perform the following functions:

**a. Tree Permits**

To review applications for permits involving the proposed removal of protected trees from a property site as outlined in 23-2-4(I), Tree Permit; the City Arborist shall notify all Committee members by email of the content of all applications for Tree Permits.

**b. DRC and Planning Commission Participation**

The Committee may serve as a non-voting member to the Development Review Committee in order to be aware of all projects with potential for removal or alteration of protected trees. A designated individual from the Tree Committee may serve as the Committee's representative at DRC and Planning Commission Meetings, and may be a different designee by the Committee for each permit. The Designee shall have the authority to inquire and comment on projects in regards to tree protection, and to modify any recommendations of the Committee.

For Permits requiring a Tree Hearing before the Planning Commission, The City Arborist shall notify the Committee by email of each Tree Hearing and include documents required by the Developer in order to facilitate evaluation of the impact of tree removal. The Committee shall review and make a written recommendation of such applications (by email or other writing) to the City Arborist, The Community Development Director, and the Mayor within ten days of receipt of such permits. The Committee's failure to make a written recommendation on Tree Hearing cases within said ten days will result in the City Arborist making a determination without the Committee's input.

**c. Review of Prior Approved Permits**

Review previously issued Tree Permits periodically in order to determine compliance with replacement/mitigation and establishment provisions during the terms of those permits, and to provide resulting reports to the Mayor, the Director of Community Development and the City Council when requested, but at least annually. The Committee shall report any perceived violation to the Mayor, and Director of Community Development for follow up and enforcement. The City Arborist shall provide the Committee with the information and data necessary to carry out these follow-up tasks including but not limited to:

1. All permits issued in a given period;
2. Quantity, caliper size and species of trees required for replacement/mitigation;
3. Date, general location when on-site, and GPS coordinates when off-site of replacement/mitigation;
4. Annual inspection findings for each year to three years from the date of mitigation;
5. Incurrence of all notices of non-compliance and associated actions and/or penalties.

**d. Mitigation Site Recommendation**

To identify and suggest potential suitable sites to help promote the appropriate replenishment of trees throughout the City and provide mitigation sites for developers where such mitigation is required and not suitable for the developed site; and,

**e. Majestic Trees**

The Committee receives and reviews applications by property owners for a designation of an individual tree on their property to be designated a "Majestic Tree." If approved by the Committee, such designation will be submitted to the Mayor and City Council for their consideration. If that designation is also approved by the Mayor and City Council, or if the City Council otherwise designates a tree a Majestic Tree, then any tree permit involving such Majestic Tree shall require assessment of the Tree Committee, and determination of risk by an ISA-certified arborists, who should be a TRAQ (Tree Risk Assessment Qualification) certified professional if available, and who must be contracted at the expense of the applicant.

**Attachment “D”**  
**Section 23-7-6, Subdivision Lot Standards, Biloxi Land Development Ordinance**

***(A) General***

- (1) Every lot within a subdivision shall be buildable in accordance with this Ordinance.
- (2) To the maximum extent practicable, side lot lines shall be perpendicular or radial to fronting street right-of-way lines.
- (3) Lots shall be arranged in relationship to topography, flood hazards, tree protection requirements, or other site conditions, to minimize difficulties in providing a reasonable building site and yard area in accordance with requirement of this Ordinance.
- (4) Each lot shall be situated so that stormwater may be easily directed away from buildings in subsequent site-specific development. Lots shall be configured so that buildings and general flood sensitive site facilities are not located in drainage ways.
- (5) Flag lots are prohibited in nonresidential zoning districts and highly discouraged in residential districts.
- (6) Creation of through lots (street abutment front and rear) shall be avoided except where necessary to provide access to residential development from other than arterial streets, or to overcome specific disadvantages of topography and orientation. Through lots shall meet front yard setbacks on both streets. Where a lot has frontage on two streets, the plat shall establish building lines for each street and shall clearly designate the front yard.
- (7) Dimensions of the corner lots shall be large enough to allow for the minimum required street intersection radii and for erection of buildings in accordance with the corner side setback standards in Article 23-5, Intensity and Dimensional Standards.

***(B) Lot Frontage and Access***

- (1) Each lot shall be designed to be accessible to and abut a dedicated public street right-of-way. The minimum public street frontage for a lot shall be at least 35 feet, except that a lot designed for a single-family detached dwelling and fronting a cul-de-sac shall have a minimum street frontage of 25 feet.
- (2) Residential lots shall not front on arterial streets, to the maximum extent practicable. If frontage on or driveway access to and from an arterial is necessary, such access shall comply with the standards in Section 23-6-1(F)(3), Vehicular Access Management.

***(C) Lot Area***

- (1) Lot area shall comply with the minimum standards in Article 23-5, Intensity and Dimensional Standards.
- (2) Residential lots not served by a public centralized sanitary sewage service collection system shall be sized in accordance with the requirements of the Mississippi Department of Health (MDH). The applicant for a subdivision containing such lots shall provide the city a letter from MDH approving the lots as meeting its requirements before approval of a Minor Subdivision Plat or a Major Subdivision Preliminary Plat for the subdivision.
- (3) Commercial lots not served by a public centralized sanitary sewage service collection system shall be sized in accordance with the requirements of MDH and the Mississippi Department of Environmental Quality (MDEQ) based on their anticipated use, but in no case shall they have an area less than one and one-half acres. If the exact use of each lot is not known at the time of the subdivision of land, the lots shall be sized with regard to the anticipated future business use, the surrounding businesses, and the zoning classification of the subdivision site. The applicant for a subdivision containing such lots shall

provide the city a letter from MDH and MDEQ approving the lots as meeting their requirements before approval of a Minor Subdivision Plat or a Major Subdivision Preliminary Plat for the subdivision.

- (4) Except in the A, RE, and RER zoning districts, proposed lot sizes shall not exceed three times the minimum lot size required by Article 23-5: Intensity and Dimensional Standards, for the district within which the proposed subdivision is located. Exceptions may be made when land proposed for division contains floodplain, wetlands, or terrain otherwise unsuitable for development.

### ***(D) Lot Depth***

Lots greater than two acres in area and located in a residential zoning district shall not have a lot depth greater than three and one-half times the lot width. Exceptions may be made for lots lying partially within the floodplain.

### ***(E) Waterfront Lots***

#### **(1) Not Public Trust Tidelands**

If a proposed subdivision contains a water body that is not public trust tidelands subject to the jurisdiction and stewardship of the State of Mississippi or other cognizant agencies, the following shall apply:

- a. Lot lines shall be so drawn as to distribute the entire ownership and costs associated with maintenance of the water body among the adjacent lots. An alternative plan may be approved as part of a subdivision Preliminary Plat approval whereby the ownership of and responsibility for safe maintenance of the water body is placed so it will not become a public responsibility. If the water body is indicated as "open space" on the Final Plat, maintenance of the water body shall be borne by the property owners of the subdivision through covenants so that maintenance of the water body shall not be or become a public responsibility.
- b. Where a watercourse separates a buildable area of a lot from the street by which it has access, provisions shall be made by the subdivision developer for installation of a culvert or other drainage device of a design approved by the City Engineer, and no Building Permit shall be issued for a structure on separated portion of the lot until such culvert or other drainage device is installed.

#### **(2) Public Trust Tidelands**

If a proposed subdivided contains a water body, or portion thereof, which is public trust tidelands subject to the jurisdiction and stewardship of the State of Mississippi, the developer shall submit written documentation from the Mississippi Secretary of State verifying compliance with all applicable state requirements.

#### **(3) Right of Waterfront Access**

The subdivision covenants and Final Plat for a subdivision shall include provisions ensuring that all waterfront lot owners enjoy the right to waterfront access. If access to the water body is provided to all lot owners in a subdivision, the Final Plat shall identify public access easement(s), open space(s), or other approved methods of providing waterfront access, and subdivision covenants shall include provisions ensuring such access. Subdivision covenants shall also address responsibilities for maintenance of the water body.

### ***(F) Easements***

Existing and proposed easements shall be located along lot lines except where not practicable due to unusual topography.

## Attachment "E"

### Section 23-2-4(P), Variance, Biloxi Land Development Ordinance

**(1) Purpose**

The purpose of a Variance is to allow certain deviations from the dimensional standards of this Ordinance (such as height, yard setback, lot coverage, or similar numeric standards) when the landowner demonstrates that, owing to special circumstances or conditions beyond the landowner's control (such as exceptional topographical conditions or the narrowness, shallowness, or shape of a specific parcel of land), the literal application of the standards would result in undue and unique hardship to the landowner and the deviation would not be contrary to the public interest. Variances are to be sparingly exercised and only in rare instances and under exceptional circumstances to relieve undue and unique hardships to the landowner. No change in permitted uses may be authorized by a Variance.

**(2) Authority**

The Board of Zoning Adjustments shall review and decide any applications for Variances from the requirements of this Ordinance in accordance with this subsection.

**(3) Applicability**

The following standards may be varied through the Variance procedure:

- a. The maximum height standards, maximum impervious surface coverage standards, minimum setback standards, minimum lot width standards, and minimum lot depth standards for each zoning district in Article 23-3: Zoning Districts;
- b. The standards in:
  - 1. Section 23-6-2, Off-Street Parking and Loading;
  - 2. Section 23-6-3, Landscaping;
  - 3. Section 23-6-7, Fences and Walls;
  - 4. Section 23-6-8, Exterior Lighting; and
  - 5. Section 23-6-13, Signage.

**(4) Procedure**

**a. Basic Procedures**

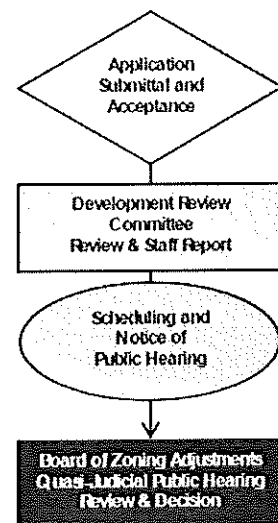
Except as modified by Section 23-2-4(P)(4)b. below, review of an application for a Variance shall be subject to the common review procedures and requirements established in Section 23-2-3, Standard Review Procedures.

**b. Expiration**

A Variance granted for development activity authorized by a Site Plan, subdivision approval, Certificate of Zoning Compliance, Public Works Permit, Tree Permit, or Temporary Use Permit shall automatically expire upon expiration of such permit or approval.

**(5) Variance Review Standards**

- a. A Variance application shall be approved only upon a finding that all of the following standards are met:
  - 1. Strict application of the Ordinance requirements to the land or structure for which a Variance is sought results in practical difficulties and unnecessary hardships that would deprive the property owner of a reasonable use of the land or structure; and



2. The practical difficulties or unnecessary hardships result from circumstances or conditions peculiar to the land or structure, and not to conditions that are widespread in the neighborhood or the city; and
  3. The special circumstances or conditions causing the hardship are not the result of the actions of the property owner; and
  4. The extent of the Variance is the minimum necessary to allow a reasonable use of the land or structure; and
  5. The Variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit; and
  6. The Variance would not adversely affect the health or safety of persons residing or working in the neighborhood, be injurious to property or improvements in the neighborhood, or otherwise be detrimental to the public welfare; and
  7. The Variance would not confer on the applicant any special privilege denied by this Ordinance to other lands or structures without a demonstration of hardship.
- b. The following factors do not constitute sufficient grounds for approval of a Variance:
1. A request for a particular use that is expressly, or by inference, prohibited in the zoning district; or
  2. Hardships resulting from factors other than application of requirements of this Ordinance; or
  3. The fact that property may be utilized more profitably or be more marketable with a Variance; or
  4. The citing of other nonconforming or conforming uses of land or structures in the same or other zoning districts.

**(6) Subsequent Development**

Development authorized by the Variance shall not be carried out until the applicant has secured all other permits required by this Ordinance or any other applicable provisions of the city. A Variance shall not ensure that the development receiving a Variance receives subsequent approval for other applications for development unless the relevant and applicable portions of this Ordinance or any other applicable provisions are met.

**(7) Effect of Variance Approval**

Approval of a Variance shall authorize only the particular type and extent of deviation of standards that is approved. Unless it expires in accordance with Section 23-2-4(P)(4)b., Expiration, or is revoked in accordance with Section 23-9-6(A)(2), Revocation of Permit or Approval, an approved and recorded Variance, including any conditions of approval, shall run with the land and shall not be affected by a change in ownership.

**(8) Amendments**

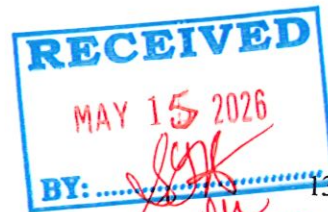
Any modifications of development subject to an approved Variance shall require amendment of the Variance approval in accordance with the procedures and standards for the full review of an application for approval of a Variance.

## **Attachment “F”**

### **Section 23-1-3, General Purpose and Intent, Biloxi Land Development Ordinance**

The purpose of this Ordinance is to promote the public health, safety, and general welfare of the citizens and landowners of Biloxi, and to implement the goals, objectives, and policies of the Biloxi Comprehensive Plan and other city-adopted plans addressing the city's growth and development. The intent of this Ordinance is more specifically to promote an orderly pattern of land uses and development that will:

1. Maintain and stabilize the value of buildings and land;
2. Reduce the vulnerability of development and residents to storms, flooding, and other natural hazards;
3. Ensure the provision of adequate open space between uses for light, air, and fire safety;
4. Better manage or lessen traffic congestion and its accompanying hazards;
5. Prevent the overcrowding of land and avoid undue concentrations of population;
6. Support the efficient, orderly, and cost-effective provision of needed transportation, water supply, sewerage, schools, parks, public utilities, and other public facilities and services;
7. Foster convenient, compatible, and efficient relationships among land uses;
8. Preserve the character and quality of residential neighborhoods while providing increased housing choices;
9. Maintain and enhance the unique character and identify of "Old Biloxi" and other areas within the city through an emphasis on design quality;
10. Maintain and enhance high quality aesthetic standards for development;
11. Protect and conserve water resources (e.g., Mississippi Sound, estuaries, rivers, streams, wetlands) and their functions (e.g., flood control, fisheries, recreation);
12. Protect and conserve Biloxi's tree canopy and other natural resources contributing to the environmental and aesthetic quality of the city and its environs;
13. Recognize, preserve, and encourage the restoration and adaptive reuse of Biloxi's historic resources and other resources reflecting the city's cultural heritage;
14. Promote a healthy, diversified, and sustainable economy that meets the needs of Biloxi's residents and visitors; and
15. Support retention of the commercial seafood industry as a vital part of Biloxi's economy.



13 May 2026

MEMORANDUM FOR THE CITY OF BILOXI'S CLERK OF COUNCIL

FROM: Lori Hodge  
11077 Leisure Lane  
Biloxi, MS 39532

SUBJECT: Appeal Against Issuance of Tree Permit for Case No. TR-26-002 (Tax Parcel No. 1108M-01-003.023)

- References: (a) Biloxi Ordinance 23-2-4, I, 9 (Land Development Ordinance, Administration, Application-Specific Review Procedures and Standards, Tree Permit, Appeals)  
(b) Biloxi Ordinance Table 23-2-1 (Land Development Ordinance, Administrative, Summary and Organization, Summary of Development Review Responsibilities Table)

I. Pursuant to *Section 23-2-4(I)(9)* of the City of Biloxi's Code of Ordinances (hereinafter, the "Ordinance"), I hereby appeal the approval of the tree permit to the City of Biloxi's City Council (hereinafter, the "Council") within the ten-day period as an aggrieved person.

II. This permit approval is premature and unripe because the permit improperly authorizes removal of protected trees for a subdivision that has received only preliminary plat approval and has **not yet satisfied the legal requirements for final plat approval**. Some of the trees at issue do not interfere with any public works construction, such as roads or sewer installation, authorized and permitted under the preliminary plat. Under *Section 23-7-6(A)(3)* of the Ordinance, the Council may approve a final plat only after confirming that lots are "arranged in relation to...tree protection requirements." By approving tree removal now, the Commission has effectively pre-approved a final subdivision lot configuration that has not yet been reviewed or approved by the Council. If the final plat is later denied or altered for noncompliance, removal of these trees may be unnecessary and unlawful. Furthermore, approving removal of protected trees before final plat approval creates a *fait accompli* and irreversible act that improperly pressures the Council to approve the subdivision as proposed simply because the trees will already have been destroyed.

III. The Hawk Creek subdivision is designed and approved to proceed in phases pursuant to Section 23-7-8 of the Ordinance. That section expressly provides that "the numbering of phases shall be sequential and coincide with the order in which the different development phases are proposed to be constructed." **The operative words here are "in order."** Phase 1 remains incomplete because it has not satisfied all requirements of Section 23-7-4(A), titled "Developer Responsibility." Under that section, the developer is required to "provide...street improvements necessary to bring the street into compliance with the standards of this section applicable to the type of street." Accordingly, Phase 1 cannot be considered complete until both West Oaklawn Road and Shorecrest Road are brought into compliance, including pavement widening, curb and gutter installation, streetlights, and street trees. **Until those required improvements are completed, this tree permit should be tabled until Phase 1 is complete, because approval would effectively allow the developer to proceed out of sequence and circumvent the Ordinance's phasing requirements.**

IV. The permit was approved in contravention of *Section 23-2-4(I)(5)* of the Ordinance, which requires compliance with *Tree Permit Review Standards*. The applicant submitted no statement of necessity for the removal of each specific protected tree in alignment with at least one of the tree permit review standards, forcing decision-makers to rely on conjecture rather than the findings required by law. The *Tree Permit Review Standards* state that **at least 1 of 5 criteria must be met:**

1. A tree of any species is in danger of falling or damaging structures, or the where the tree's roots pose a significant threat of damaging utilities or structures; or

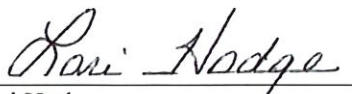
2. A tree of any species that either encroaches into **established** easements, is a detriment to access, or obstructs required sight distances, as **determined by the Director of Community Development**; or
3. The **City Arborist** provides written verification and photographic documentation that the tree is dead or dying; or
4. The removal is necessary to comply with storm water regulations, or to maintain public health and safety around utilities and infrastructure; or
5. The removal is necessary to address extraordinary circumstances such as weather-related emergencies and natural disasters, as **determined by the Mayor**.

V. The City of Biloxi does not currently have a City Arborist that meets the requirement of being a City Employee. *Appendix A [City of Biloxi Compensation Schedule]* of the Code of Ordinances reflects that the position of City Arborist is, indeed, a position of a City Employee, as opposed to a contractor. A contractor cannot legally fulfill the duties that are required to be accomplished by a City Employee. You can no more contract out the duties of the City Arborist than you can contract out the duties of the Mayor of Biloxi. Additionally, nothing in the ordinances authorizes the Community Development Director or any other City Employee to act as City Arborist; especially since there is a conflict of interest between a position that, at least partially, is responsible for tree preservation while the other is responsible for development that often results in tree removal. Furthermore, a contractor hired directly by the Community Development Director to perform the duties of City Arborist is even more so inclined to provide whatever answer that keeps him employed.

VI. *Section 23-2-4(P)* of the Ordinance expressly authorizes variances where a deviation from dimensional standards “would not be contrary to the public interest.” In this matter, no variances were explored or considered for minimum setback, lot width, or lot depth requirements, despite such variances being the appropriate mechanism to preserve protected trees in compliance with the Ordinance. Instead, the applicant is being permitted to pursue mass tree removal as a matter of convenience rather than necessity. The failure to evaluate feasible variance alternatives renders the approval contrary to the public interest and injurious to the public welfare, in violation of *Section 23-1-3* of the Ordinance, *General Purpose and Intent*, which states that the purpose of the Land Development Ordinance is to “promote the public health, safety, and general welfare of the citizens and landowners of Biloxi.”

VII. True and correct copies of ordinances relevant to, cited in, or governing this appeal are attached hereto and incorporated by reference as identified in the attachments list beneath the signature block.

VIII. I await a date for the appeal hearing to be heard by the Council. Please e-mail future correspondence to **LOVEN944@YAHOO.COM** and confirm receipt of all emails by calling **(228) 596-1943**.

  
Lori Hodge

**Attachments:**

1. Attachment “A”: Section 23-2-4 (I), Tree Permit, Biloxi Land Development Ordinance
2. Attachment “B”: Section 23-6-4, Tree Protection, Biloxi Land Development Ordinance
3. Attachment “C”: Section 23-2-2 (G), Tree Committee, Biloxi Land Development Ordinance
4. Attachment “D”: Section 23-7-6, Subdivision Lot Standards, Biloxi Land Development Ordinance
5. Attachment “E”: Section 23-2-4 (P), Variance, Biloxi Land Development Ordinance
6. Attachment “F”: Section 23-1-3, General Purpose and Intent, Biloxi Land Development Ordinance

## **Attachment “A”**

### **Section 23-2-4 (I), Tree Permit, Biloxi Land Development Ordinance**

#### **(1) Purpose**

The purpose of a Tree Permit is to support the preservation and replenishment of the native stock of trees, specifically those described as protected trees, to ensure compliance with the standards in Section 23-6-4, Tree Protection, and to ensure that existing trees on vacant or underdeveloped lands are not removed without an approved application in order to:

- a. Preserve the cultural heritage and aesthetic qualities of the city;
- b. Encourage site design techniques that preserve the natural environment and enhance the developed environment;
- c. Provide for a separation of uses and establish a sense of privacy;
- d. Minimize the impact of incompatible land uses;
- e. Reduce glare, dust, heat, and noise;
- f. Preserve and enhance air and water quality;
- g. Increase slope stability, and control erosion and sediment run-off into streams and waterways;
- h. Conserve energy by reducing heating and cooling costs; and
- i. Maintain and enhance the quality of life in the City.
- j. Provide incentive for sustainable development/landscape bonuses are available in Section 23-6-12(C)

#### **(2) Applicability**

##### **a. Activities Subject to Permitting Process**

A Tree Permit is required for the removal, relocation or alteration in any of the following conditions, within any zoning district and on any size lot:

1. Any tree of a protected species (Live Oak, Bald Cypress, and Southern Magnolia) that are at least eight inches diameter at DBH (diameter at breast height — 54 inches above the ground); or
2. Any tree of a non-protected species with a DBH of sixteen or more inches.

##### **b. Activities Exempt from Permitting Process**

A Tree Permit is not required for the removal, relocation or alteration in any of the following conditions:

1. Any Pecan (*Carya illinoensis*), Chinese tallow or Popcorn (*Sapitum sebiferum*), Water Oak (*Quercus Nigra*), or member of the Pine genus (*Pinus spp.*); or
2. Any protected species (Live Oak, Bald Cypress, and Southern Magnolia) that are less than eight inches diameter at DBH; or
3. Any tree of non-protected species with a DBH of less than sixteen inches.

#### **(3) Application Requirements**

##### **a. Coordination with Site Plan**

Where the application for a Tree Permit relates to a development proposal for a site, the application for Tree Permit shall be submitted simultaneously with an application for Site Plan Review and the material required below shall, to the maximum extent practicable, be integrated with the site plan application.

##### **b. Contents**

An application for a Tree Permit shall be filed with the Department of Community Development and shall include the following:

1. A completed application form for Tree Permit signed by the applicant.
2. A drawing showing the following information at an adequate scale to make a determination.
  - a. The shape and dimensions of the lot of record, together with the existing and proposed locations of all structures and improvements, if any;
  - b. Location, species, and DBH of all existing trees including those proposed for removal and those proposed to remain.
  - c. Groups of trees in close proximity to one another (five feet or less) may be designated as a cluster of trees with the predominant species, estimated number, average DBH, and overall canopy shown. Within a cluster however, trees of protected species with a DBH of eight inches or greater, and trees of any non-protected species with a DBH of 16 inches or greater, must be identified by location, species, whether proposed to remain, be removed or relocated.
  - d. A statement showing how trees not proposed for removal are to be protected during land clearing and construction with protective barriers to disallow excavation, stockpiling or vehicular traffic encroaching upon the root zone, as stipulated in Section 23-6-4(F), Tree Protection during Construction.
  - e. A drawing as to grade changes, if proposed, for the lot or parcel and how such changes will affect matters of this Chapter, as stipulated in Section 23-6-4, Tree Protection. Grade changes may not occur beneath more than ten percent of the canopy of a protected tree.
  - f. A statement identifying the reason for removal of each protected tree.
  - g. A replacement/mitigation plan, as stipulated in Section (23-6-4(E)(4), Replacement/Mitigation of a Protected Tree.

#### **(4) Review Procedure**

##### **a. Basic Procedures**

Except as modified by Sections 23-2-4(1)(4)b. below, review of an application for a Tree Permit shall be subject to the common review procedures and requirements established in Section 23-2-3, Standard Review Procedures.

##### **b. Authority and Review Process**

1. All applications for Tree Permits shall be submitted to the Department of Community Development and reviewed for completeness by the Director of Community Development and City Arborist who will then forward the application to the Biloxi Tree Committee in accordance with the procedure set out in Section 23-2-2(G), Tree Committee. Written or verbal recommendations of the Tree Committee regarding protected trees will be presented verbatim before the Planning Commission.
2. For Tree Permits involving the removal, relocation, or alteration of one to four protected trees, and not otherwise requiring Planning Commission approval, the review and approval authority shall rest with the Director of Community Development or City Arborist. The final determination will be sent in writing from the Director of Community Development to the applicant and to the Tree Committee. The Director of Community Development may delegate this task to City Arborist.
3. For Tree Permits involving removal, relocation, or alteration of five or more protected trees the Tree Committee shall review and make recommendation to the Planning Commission and approval rests with the Planning Commission and requires a Public Tree Hearing to be posted by the Director of Community Development in accordance with Section 23-2-3(F)(4), Public Hearing Notice. The final determination on cases heard before the Planning

Commission are written into the public record. This section will apply to any multi-phased developments.

4. In the event of a conflict between the recommendations of the Tree Committee, the decision of the Director of Community Development and/or the Planning Commission, the Director of Community Development shall report the conflict to the Mayor within two days and submit the entire application, including all photographs of the site, the Tree Committee recommendation, and the Director of Community Development and/or Planning Commission's recommendation to the Mayor for review. The Mayor may either accept the Tree Committee recommendation, the decision of the Director of Community Development, The Planning Commission, or modify the decision and the permit, or deny the permit. The City Arborist and Tree Committee are to be copied on all reports of conflict and final decisions.

**c. Expiration**

A Tree Permit shall automatically expire at the end of six months following the date of approval. An extension may be granted in accordance with Section 23-2-3(K)(2)b., Extension, that extension may be for a time period of up to six months.

**(5) Tree Permit Review Standards**

A Tree Permit shall be approved only upon receipt of a complete permit application and finding that all the standards in Section 23-6-4, Tree Protection, are met. The Review Criteria used by City Arborist and Director of Community Development that allows for the issuance of a Tree Permit is as follows:

- a. A tree of any species is in danger of falling or damaging structures, or the where the tree's roots pose a significant threat of damaging utilities or structures; or
- b. A tree of any species that either encroaches into established easements, is a detriment to access, or obstructs required sight distances, as determined by the Director of Community Development; or
- c. The City Arborist provides written verification and photographic documentation that the tree is dead or dying; or
- d. The removal is necessary to comply with storm water regulations, or to maintain public health and safety around utilities and infrastructure; or
- e. The removal is necessary to address extraordinary circumstances such as weather-related emergencies and natural disasters, as determined by the Mayor.

**(6) Amendments**

Modifications to an approved Tree Permit shall require review by the Tree Committee and Community Development Department and an amended Tree Permit be issued.

**(7) Tree Damage or Removal**

The unauthorized removal or accidental damage or removal of existing protected trees shall be subject to the replacement/mitigation standards of Section 23-6-4(G)(4)a., Replacement/Mitigation of Protected Trees, and Penalties, according to Section 23-2-4(1)(10) Penalties.

**(8) Credit for Retaining Existing Trees**

Qualifying trees located onsite shall be credited towards the landscaping requirements in accordance with Section 23-6-4(G)(1), Tree Preservation Incentives, if the site or parcel of land becomes the subject of a development application in accordance with this Ordinance.

**(9) Appeals**

Any aggrieved person may appeal a determination by the Director of Community Development to the City Council by providing written notice to the Clerk of Council of such appeal within ten days of the receipt by the applicant.

**(10) Penalties**

The provisions of Chapter 23 of this Code of Ordinances relating to the protection of trees and Tree Permits are hereby incorporated herein by reference, and violation of the terms of any of those provisions relating to the protection of trees or the terms of any Tree Permit is a general offense. Any one so convicted shall be subject to the provisions of Section 1-1-8 of the Code of Ordinances. Each day a violation continues to exist constitutes a separate offense.

## **Attachment “B”**

### **Section 23-6-4, Tree Protection, Biloxi Land Development Ordinance**

#### ***(A) Purpose and Intent***

The purpose and intent of this section is to:

- (1) Preserve the cultural heritage and aesthetic qualities of the city;
- (2) Encourage site design techniques that preserve the natural environment and enhance the developed environment;
- (3) Provide for a separation of uses and establish a sense of privacy;
- (4) Minimize the impact of incompatible land uses;
- (5) Reduce glare, dust, heat, and noise;
- (6) Preserve and enhance air and water quality;
- (7) Increase slope stability, and control erosion and sediment run-off into streams and waterways;
- (8) Conserve energy by reducing heating and cooling costs;
- (9) Maintain and enhance the quality of life in the city; and
- (10) Provide incentives for Sustainable Development/Landscape Credits. (See Section 23-6-4(6).)

#### ***(B) Applicability***

##### **(1) General**

Unless exempted in accordance with Section 23-6-4(B)(2), Exemptions, the standards in this section shall apply to all lands and development in the city.

##### **(2) Exemptions**

The following tree removal activities are exempt from the standards of this section:

- a. The removal of dead or naturally fallen trees;
- b. The removal of diseased trees posing a threat to adjacent trees;
- c. The removal of Any Pecan (*Carya illinoensis*), Chinese tallow or Popcorn (*Sapium sebiferum*), Water Oak (*Quercus Nigra*), or member of the Pine genus (*Pinus spp.*);
- d. The selective and limited removal of trees or vegetation necessary to obtain clear visibility at driveways or intersections;
- e. Removal of trees by the public utilities, local, state or federal government as necessary to maintain safe operations;
- f. Silvicultural activities undertaken in accordance with best management practices for forestry in Mississippi established by the Mississippi Forestry Commission; and
- g. Agricultural activities undertaken in accordance with agricultural best management practices for Mississippi established by the Mississippi Department of Environmental Quality.

#### ***(C) Tree Permit Required***

No removal of existing trees on a parcel of land or a development site shall occur before approval of a Tree Permit (Section 23-2-4(I)) unless in accordance with the unexpired approval of a Site Plan (Section 23-2-4(E)), Preliminary Plat (Section 23-2-4(F)), Certificate of Appropriateness (Section 23-2-4(G)), Public Works Permit (Section 23-2-4(H)), or Certificate of Zoning Compliance (Section 23-2-4(L)), as appropriate.

## ***(D) Responsibility for Compliance***

Failure to comply with the standards of this section is a violation of this Ordinance subject to the remedies and penalties in this section and Article 23-9, Enforcement.

## ***(E) Protection of Trees***

### **(1) Applicability**

- a. General All development in the city shall be required to support the preservation and replenishment of the native stock of trees, specifically those described as protected trees, as defined in Section 23-10-2, Terms and Uses Defined, in accordance with this subsection.

### **(2) General Requirement**

No protected tree may be removed, except in accordance with Section 23-6-4(E)(3), Removal of a Protected Tree. In addition, all protected trees shall have the following protections, whether located on public or private land:

- a. Cutting, Removal, or Harm Prohibited. Protected trees shall not be cut, removed, pushed over, killed, or otherwise harmed.
- b. Paving or Soil Compaction Prohibited. The area within the drip line of any protected tree shall not be subject to paving or soil compaction greater than ten percent of the total area within the drip line, if at all possible. (See Figure 23-6-4(E)(2)b., Paving or Soil Compaction Prohibited.)

### **(3) Removal of a Protected Tree**

Protected trees may be removed if the landowner demonstrates to the Director of Community Development one of the following conditions:

- a. Removal of a Healthy Protected Tree. A protected tree is in healthy condition, and all of the following standards are met:
  1. The landowner is otherwise in compliance with this section;
  2. The protected tree prevents development of a lot in a way that limits building area to less than otherwise allowed, or hinders compliance with the standards in Article 23-3: Zoning Districts, Article 23-5: Intensity and Dimensional Standards, Article 23-6: Development Standards, or Article 23-7: Subdivision Standards; and
  3. Mitigation is provided in accordance with Section 23-6-4-E(4), Replacement/Mitigation of Protected Trees.
- b. Removal of a Diseased, High Risk, or Dying Protected Tree. A protected tree is certified by an arborist or other qualified professional as diseased, high risk, or dying. Removal of a diseased, high risk, or dying protected tree shall not require mitigation in accordance with Section 23-6-4(E)(4), Replacement/Mitigation of Protected Trees.

### **(4) Replacement/Mitigation of Protected Trees**

Those causing the destruction or removal of a healthy protected tree, unless exempted, shall be responsible for the following mitigation:

#### **a. Replacement Trees Required**

All healthy protected trees removed or destroyed shall be mitigated on a two for one basis with a tree minimum two-inch caliper tree with a minimum height of six feet tall at planting. The replacement trees shall be replanted within six months of the removal or destruction of the protected tree.

- b. Mitigation Species shall be a protected tree species (Live Oak, Bald Cypress and Southern Magnolia)

#### **c. Location of Replacement Trees**

Replacement trees shall be either planted on the parcel of land from which the protected tree was removed, if sufficient space is available, or placed on nearby lands in accordance with Section 23-6-3(I), Alternative Landscape Plan. The Director of Community Development may allow replacement trees to be planted to provide street trees in accordance with the standards in Section 23-6-3(F), Street Trees.

**d. Mitigation Trust, in lieu of mitigation plantings**

If the developer does not have the space to plant the mitigation trees onsite, they may elect to donate to the Mitigation Trust in lieu of planting mitigation trees. The donation amount will be based on the number of mitigation trees required by the cost of the purchase, planting and maintenance (Purchase Price × 2 = Cost of Mitigation Purchase, Planting, Irrigation and Maintenance).

1. The City will establish a Mitigation Trust account to receive funds from developer in lieu of off-site mitigation.
2. All mitigation trust planting projects shall be planted on city-owned property with protected species, or from approved City of Biloxi tree species list as defined herein, and recommended by Planning Commission and approved by City Council prior to disbursing any funds from the Mitigation Trust account and will be used exclusively for mitigation trees in accordance with the Biloxi Comprehensive Beautification Plan.
3. All mitigation trust planting sites will be documented in the Biloxi Comprehensive Beautification Plan.

**e. Establishment Period**

Replacement trees shall be maintained through an establishment period of at least three years. The applicant shall guarantee the survival and health of all replacement trees during the establishment period and guarantee any associated replacement costs (See Section 23-7-9, Performance and Maintenance Guarantees.). If the replacement trees do not survive the establishment period, the applicant shall purchase and install new replacement trees.

- f. Trees removed on residential home sites are exempt from the requirements of this section.

***(F) Tree Protection During Construction***

**(1) Owner's Responsibility**

During development, the owner or developer shall be responsible for the erection of any and all barriers necessary to protect any existing or installed vegetation from damage both during and after construction.

**(2) Tree Protection Fencing**

**a. Where Required**

Protected trees, existing tree canopy, and other existing trees being used for credit towards landscaping requirements shall be fenced with a sturdy and visible fence before grading or other development activity begins. Fencing shall be erected to protect the tree's drip line. The Director of Community Development shall consider the existing site conditions in determining the exact location of tree protection fencing. Areas located inside of tree protection fencing are considered as tree protection areas.

**b. Type of Fencing**

All fencing required by this section shall be a minimum four feet high and of durable construction (i.e., plastic snow fencing or chain link). Chain link or wire fencing utilized as tree protection fencing shall not be required to be vinyl coated. Passive forms of tree protection may be utilized to delineate tree protection zones that are remote from areas of land disturbance. These must be surrounded by fencing, continuous rope, or other forms of clear delineation.

**c. Signage**

Signs shall be installed on the tree protection fence visible on all sides of the fenced-in area delineating the tree protection zone.

**d. Inspection**

All tree protection measures shall be inspected and approved by the Director of Community Development before start of any land disturbing activities. Failure to have tree protection measures prior to the commencement of construction is a violation of this Ordinance.

**e. When Required**

No construction, grading, equipment or material storage, or any other activity shall be allowed within the fenced tree protection area. Fencing shall be maintained until after the final site inspection.

**(3) Encroachments into Tree Protection Areas**

Encroachments into tree protection areas shall occur only when no other alternative exists. If such an encroachment is anticipated, the following preventive measures shall be employed:

**a. Soil Compaction**

Where compaction might occur due to construction traffic or materials delivery through a tree protection area, the area must first be mulched with a minimum four-inch layer of wood chips. Equipment or materials storage shall not be allowed within a tree protection area.

**b. Fill**

No fill shall be placed within a tree protection area without adequate venting to allow air and water to reach the roots.

**c. Chemical Contamination**

Trees located within a tree protection area shall be protected from chemical contamination from liquids or other materials, including but not limited to paint, chemical solvents, gasoline, oil, diesel fuel, hydraulic fluid, concrete spoils, or rinse water from vehicle cleaning, including rinsing of concrete truck tanks and chutes.

**d. Paving Limitations**

Except for driveway access points, sidewalks, curb, and gutter, no paving shall occur within of a tree protection area unless authorized through an alternative landscape plan. (See Section 23-6-3(I), Alternative Landscape Plan.)

***(G) Tree Preservation Incentives***

**(1) Tree Preservation Credits**

To encourage the preservation of as many trees as practical on a development site, credit towards the minimum landscaping requirements shall be applied to all existing trees retained on a site that are not protected trees. Credits are offered only for trees that are not required to be retained by other sections of this Ordinance. Credits shall be designated on the landscape plan for the development, and shall be granted in accordance with the following standards:

- a. A credit for trees that are not protected trees shall be credited and applied towards the vehicular use landscaping standards in Section 23-6-3(D) and the perimeter buffer standards in Section 23-6-3(E) when the trees that are saved are:
  1. Deciduous or evergreen canopy trees of four inches in caliper or greater, measured at DBH (54 inches) above ground level; or
  2. Deciduous or evergreen understory or ornamental trees of three inches in caliper or greater, measured at DBH (54 inches) above ground level.
- b. In no case shall credits substitute for more than 75 percent of the required site or vehicular use area landscaping material.

**(2) Reduction in the Minimum Number of Required Parking Spaces**

Up to a ten percent reduction in the number of off-street parking spaces required on a development site shall be allowed if the reduction in the amount of required pavement will preserve the root zones of existing healthy trees with a DBH of eight inches or greater. The amount of reduction can be determined only after taking into consideration any unique site conditions and the impact of the reduction on parking needs for the use, and must be agreed upon by both the applicant and the Director of Community Development. Alternative paving materials (see Section 23-6-2(C)(4), Alternative Materials) may be allowed by the Director of Community Development in cases where required parking areas encroach upon root zones.

## Attachment "C"

### Section 23-2-2 (G), Tree Committee, Biloxi Land Development Ordinance

The Tree Committee is hereby established.

**(1) Tree Committee; Purpose and Intent.**

The purpose and intent of this article is to establish a body to assist the City in promoting the preservation and replenishment of the native stock of trees, conservation, ground water recharge, storm water runoff retardation, oxygen regeneration, and noise abatement, and to make the City a healthier, more beautiful, and safer place to live. This committee is to be known as the Biloxi Tree Committee, referred to in this article as the "committee." In making its recommendations the committee is charged with using its best efforts to balance those public goals with the public need for economic development while respecting the rights of individuals to develop their property in a meaningful yet responsible way within the confines of the law.

**(2) Membership; Term of Office; No Compensation of Committee.**

The Biloxi Tree Committee shall be composed of seven members, one individual from each of the City's seven Wards, all of whom shall be resident citizens of the City and qualified electors therein. The members will be selected by the Mayor and ratified by the City council. Each member shall be appointed for a period of three years and shall continue to serve until a successor is appointed and ratified. Vacancies shall be filled in accordance with this section, and appointments to fill vacancies shall be for the unexpired terms only. Each member shall be eligible for reappointment, and all members of the committee shall serve without pay.

**(3) Officers; Rules of Procedure.**

The Biloxi Tree Committee shall elect from among its members its own chairman, vice chairman, and secretary, and provide from time to time such rules and regulations, not inconsistent with the ordinances of the City, for its own organization and procedure, as it may deem appropriate. Meetings may be held by telephonic or other electronic means, and any official action shall only require a majority of the members participating in the meeting. A quorum shall consist of a majority of the members appointed and ratified, and vacancies shall not be considered in the determination of a quorum.

**(4) Powers and Duties**

The Biloxi Tree Committee shall advise City officials with regard to the development of a comprehensive city beautification plan, Tree Protection, and when undertaking those tasks shall work under the direction of the City Arborist. With the assistance of the Director of Community Development or his designee the Committee shall serve in an advisory capacity to perform the following functions:

**a. Tree Permits**

To review applications for permits involving the proposed removal of protected trees from a property site as outlined in 23-2-4(I), Tree Permit; the City Arborist shall notify all Committee members by email of the content of all applications for Tree Permits.

**b. DRC and Planning Commission Participation**

The Committee may serve as a non-voting member to the Development Review Committee in order to be aware of all projects with potential for removal or alteration of protected trees. A designated individual from the Tree Committee may serve as the Committee's representative at DRC and Planning Commission Meetings, and may be a different designee by the Committee for each permit. The Designee shall have the authority to inquire and comment on projects in regards to tree protection, and to modify any recommendations of the Committee.

For Permits requiring a Tree Hearing before the Planning Commission, The City Arborist shall notify the Committee by email of each Tree Hearing and include documents required by the Developer in order to facilitate evaluation of the impact of tree removal. The Committee shall review and make a written recommendation of such applications (by email or other writing) to the City Arborist, The Community Development Director, and the Mayor within ten days of receipt of such permits. The Committee's failure to make a written recommendation on Tree Hearing cases within said ten days will result in the City Arborist making a determination without the Committee's input.

**c. Review of Prior Approved Permits**

Review previously issued Tree Permits periodically in order to determine compliance with replacement/mitigation and establishment provisions during the terms of those permits, and to provide resulting reports to the Mayor, the Director of Community Development and the City Council when requested, but at least annually. The Committee shall report any perceived violation to the Mayor, and Director of Community Development for follow up and enforcement. The City Arborist shall provide the Committee with the information and data necessary to carry out these follow-up tasks including but not limited to:

1. All permits issued in a given period;
2. Quantity, caliper size and species of trees required for replacement/mitigation;
3. Date, general location when on-site, and GPS coordinates when off-site of replacement/mitigation;
4. Annual inspection findings for each year to three years from the date of mitigation;
5. Incurrence of all notices of non-compliance and associated actions and/or penalties.

**d. Mitigation Site Recommendation**

To identify and suggest potential suitable sites to help promote the appropriate replenishment of trees throughout the City and provide mitigation sites for developers where such mitigation is required and not suitable for the developed site; and,

**e. Majestic Trees**

*The Committee receives and reviews applications by property owners for a designation of an individual tree on their property to be designated a "Majestic Tree." If approved by the Committee, such designation will be submitted to the Mayor and City Council for their consideration. If that designation is also approved by the Mayor and City Council, or if the City Council otherwise designates a tree a Majestic Tree, then any tree permit involving such Majestic Tree shall require assessment of the Tree Committee, and determination of risk by an ISA-certified arborists, who should be a TRAQ (Tree Risk Assessment Qualification) certified professional if available, and who must be contracted at the expense of the applicant.*

**Attachment "D"**  
**Section 23-7-6, Subdivision Lot Standards, Biloxi Land Development Ordinance**

***(A) General***

- (1) Every lot within a subdivision shall be buildable in accordance with this Ordinance.
- (2) To the maximum extent practicable, side lot lines shall be perpendicular or radial to fronting street right-of-way lines.
- (3) Lots shall be arranged in relationship to topography, flood hazards, tree protection requirements, or other site conditions, to minimize difficulties in providing a reasonable building site and yard area in accordance with requirement of this Ordinance.
- (4) Each lot shall be situated so that stormwater may be easily directed away from buildings in subsequent site-specific development. Lots shall be configured so that buildings and general flood sensitive site facilities are not located in drainage ways.
- (5) Flag lots are prohibited in nonresidential zoning districts and highly discouraged in residential districts.
- (6) Creation of through lots (street abutment front and rear) shall be avoided except where necessary to provide access to residential development from other than arterial streets, or to overcome specific disadvantages of topography and orientation. Through lots shall meet front yard setbacks on both streets. Where a lot has frontage on two streets, the plat shall establish building lines for each street and shall clearly designate the front yard.
- (7) Dimensions of the corner lots shall be large enough to allow for the minimum required street intersection radii and for erection of buildings in accordance with the corner side setback standards in Article 23-5, Intensity and Dimensional Standards.

***(B) Lot Frontage and Access***

- (1) Each lot shall be designed to be accessible to and abut a dedicated public street right-of-way. The minimum public street frontage for a lot shall be at least 35 feet, except that a lot designed for a single-family detached dwelling and fronting a cul-de-sac shall have a minimum street frontage of 25 feet.
- (2) Residential lots shall not front on arterial streets, to the maximum extent practicable. If frontage on or driveway access to and from an arterial is necessary, such access shall comply with the standards in Section 23-6-1(F)(3), Vehicular Access Management.

***(C) Lot Area***

- (1) Lot area shall comply with the minimum standards in Article 23-5, Intensity and Dimensional Standards.
- (2) Residential lots not served by a public centralized sanitary sewage service collection system shall be sized in accordance with the requirements of the Mississippi Department of Health (MDH). The applicant for a subdivision containing such lots shall provide the city a letter from MDH approving the lots as meeting its requirements before approval of a Minor Subdivision Plat or a Major Subdivision Preliminary Plat for the subdivision.
- (3) Commercial lots not served by a public centralized sanitary sewage service collection system shall be sized in accordance with the requirements of MDH and the Mississippi Department of Environmental Quality (MDEQ) based on their anticipated use, but in no case shall they have an area less than one and one-half acres. If the exact use of each lot is not known at the time of the subdivision of land, the lots shall be sized with regard to the anticipated future business use, the surrounding businesses, and the zoning classification of the subdivision site. The applicant for a subdivision containing such lots shall

provide the city a letter from MDH and MDEQ approving the lots as meeting their requirements before approval of a Minor Subdivision Plat or a Major Subdivision Preliminary Plat for the subdivision.

- (4) Except in the A, RE, and RER zoning districts, proposed lot sizes shall not exceed three times the minimum lot size required by Article 23-5: Intensity and Dimensional Standards, for the district within which the proposed subdivision is located. Exceptions may be made when land proposed for division contains floodplain, wetlands, or terrain otherwise unsuitable for development.

### ***(D) Lot Depth***

Lots greater than two acres in area and located in a residential zoning district shall not have a lot depth greater than three and one-half times the lot width. Exceptions may be made for lots lying partially within the floodplain.

### ***(E) Waterfront Lots***

#### **(1) Not Public Trust Tidelands**

If a proposed subdivision contains a water body that is not public trust tidelands subject to the jurisdiction and stewardship of the State of Mississippi or other cognizant agencies, the following shall apply:

- a. Lot lines shall be so drawn as to distribute the entire ownership and costs associated with maintenance of the water body among the adjacent lots. An alternative plan may be approved as part of a subdivision Preliminary Plat approval whereby the ownership of and responsibility for safe maintenance of the water body is placed so it will not become a public responsibility. If the water body is indicated as "open space" on the Final Plat, maintenance of the water body shall be borne by the property owners of the subdivision through covenants so that maintenance of the water body shall not be or become a public responsibility.
- b. Where a watercourse separates a buildable area of a lot from the street by which it has access, provisions shall be made by the subdivision developer for installation of a culvert or other drainage device of a design approved by the City Engineer, and no Building Permit shall be issued for a structure on separated portion of the lot until such culvert or other drainage device is installed.

#### **(2) Public Trust Tidelands**

If a proposed subdivided contains a water body, or portion thereof, which is public trust tidelands subject to the jurisdiction and stewardship of the State of Mississippi, the developer shall submit written documentation from the Mississippi Secretary of State verifying compliance with all applicable state requirements.

#### **(3) Right of Waterfront Access**

The subdivision covenants and Final Plat for a subdivision shall include provisions ensuring that all waterfront lot owners enjoy the right to waterfront access. If access to the water body is provided to all lot owners in a subdivision, the Final Plat shall identify public access easement(s), open space(s), or other approved methods of providing waterfront access, and subdivision covenants shall include provisions ensuring such access. Subdivision covenants shall also address responsibilities for maintenance of the water body.

### ***(F) Easements***

Existing and proposed easements shall be located along lot lines except where not practicable due to unusual topography.

## Attachment "E"

### Section 23-2-4(P), Variance, Biloxi Land Development Ordinance

#### (1) Purpose

The purpose of a Variance is to allow certain deviations from the dimensional standards of this Ordinance (such as height, yard setback, lot coverage, or similar numeric standards) when the landowner demonstrates that, owing to special circumstances or conditions beyond the landowner's control (such as exceptional topographical conditions or the narrowness, shallowness, or shape of a specific parcel of land), the literal application of the standards would result in undue and unique hardship to the landowner and the deviation would not be contrary to the public interest. Variances are to be sparingly exercised and only in rare instances and under exceptional circumstances to relieve undue and unique hardships to the landowner. No change in permitted uses may be authorized by a Variance.

#### (2) Authority

The Board of Zoning Adjustments shall review and decide any applications for Variances from the requirements of this Ordinance in accordance with this subsection.

#### (3) Applicability

The following standards may be varied through the Variance procedure:

- a. The maximum height standards, maximum impervious surface coverage standards, minimum setback standards, minimum lot width standards, and minimum lot depth standards for each zoning district in Article 23-3: Zoning Districts;
- b. The standards in:
  1. Section 23-6-2, Off-Street Parking and Loading;
  2. Section 23-6-3, Landscaping;
  3. Section 23-6-7, Fences and Walls;
  4. Section 23-6-8, Exterior Lighting; and
  5. Section 23-6-13, Signage.

#### (4) Procedure

##### a. Basic Procedures

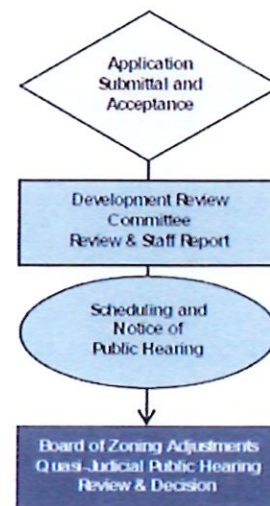
Except as modified by Section 23-2-4(P)(4)b. below, review of an application for a Variance shall be subject to the common review procedures and requirements established in Section 23-2-3, Standard Review Procedures.

##### b. Expiration

A Variance granted for development activity authorized by a Site Plan, subdivision approval, Certificate of Zoning Compliance, Public Works Permit, Tree Permit, or Temporary Use Permit shall automatically expire upon expiration of such permit or approval.

#### (5) Variance Review Standards

- a. A Variance application shall be approved only upon a finding that all of the following standards are met:
  1. Strict application of the Ordinance requirements to the land or structure for which a Variance is sought results in practical difficulties and unnecessary hardships that would deprive the property owner of a reasonable use of the land or structure; and



2. The practical difficulties or unnecessary hardships result from circumstances or conditions peculiar to the land or structure, and not to conditions that are widespread in the neighborhood or the city; and
  3. The special circumstances or conditions causing the hardship are not the result of the actions of the property owner; and
  4. The extent of the Variance is the minimum necessary to allow a reasonable use of the land or structure; and
  5. The Variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit; and
  6. The Variance would not adversely affect the health or safety of persons residing or working in the neighborhood, be injurious to property or improvements in the neighborhood, or otherwise be detrimental to the public welfare; and
  7. The Variance would not confer on the applicant any special privilege denied by this Ordinance to other lands or structures without a demonstration of hardship.
- b. The following factors do not constitute sufficient grounds for approval of a Variance:
1. A request for a particular use that is expressly, or by inference, prohibited in the zoning district; or
  2. Hardships resulting from factors other than application of requirements of this Ordinance; or
  3. The fact that property may be utilized more profitably or be more marketable with a Variance; or
  4. The citing of other nonconforming or conforming uses of land or structures in the same or other zoning districts.

**(6) Subsequent Development**

Development authorized by the Variance shall not be carried out until the applicant has secured all other permits required by this Ordinance or any other applicable provisions of the city. A Variance shall not ensure that the development receiving a Variance receives subsequent approval for other applications for development unless the relevant and applicable portions of this Ordinance or any other applicable provisions are met.

**(7) Effect of Variance Approval**

Approval of a Variance shall authorize only the particular type and extent of deviation of standards that is approved. Unless it expires in accordance with Section 23-2-4(P)(4)b., Expiration, or is revoked in accordance with Section 23-9-6(A)(2), Revocation of Permit or Approval, an approved and recorded Variance, including any conditions of approval, shall run with the land and shall not be affected by a change in ownership.

**(8) Amendments**

Any modifications of development subject to an approved Variance shall require amendment of the Variance approval in accordance with the procedures and standards for the full review of an application for approval of a Variance.

**Attachment “F”**  
**Section 23-1-3, General Purpose and Intent, Biloxi Land Development Ordinance**

The purpose of this Ordinance is to promote the public health, safety, and general welfare of the citizens and landowners of Biloxi, and to implement the goals, objectives, and policies of the Biloxi Comprehensive Plan and other city-adopted plans addressing the city's growth and development. The intent of this Ordinance is more specifically to promote an orderly pattern of land uses and development that will:

1. Maintain and stabilize the value of buildings and land;
2. Reduce the vulnerability of development and residents to storms, flooding, and other natural hazards;
3. Ensure the provision of adequate open space between uses for light, air, and fire safety;
4. Better manage or lessen traffic congestion and its accompanying hazards;
5. Prevent the overcrowding of land and avoid undue concentrations of population;
6. Support the efficient, orderly, and cost-effective provision of needed transportation, water supply, sewerage, schools, parks, public utilities, and other public facilities and services;
7. Foster convenient, compatible, and efficient relationships among land uses;
8. Preserve the character and quality of residential neighborhoods while providing increased housing choices;
9. Maintain and enhance the unique character and identify of "Old Biloxi" and other areas within the city through an emphasis on design quality;
10. Maintain and enhance high quality aesthetic standards for development;
11. Protect and conserve water resources (e.g., Mississippi Sound, estuaries, rivers, streams, wetlands) and their functions (e.g., flood control, fisheries, recreation);
12. Protect and conserve Biloxi's tree canopy and other natural resources contributing to the environmental and aesthetic quality of the city and its environs;
13. Recognize, preserve, and encourage the restoration and adaptive reuse of Biloxi's historic resources and other resources reflecting the city's cultural heritage;
14. Promote a healthy, diversified, and sustainable economy that meets the needs of Biloxi's residents and visitors; and
15. Support retention of the commercial seafood industry as a vital part of Biloxi's economy.



13 May 2026

MEMORANDUM FOR THE CITY OF BILOXI'S CLERK OF COUNCIL

FROM: Barbara Glass  
10453 Pin Oak Drive  
Biloxi, MS 39532

SUBJECT: Appeal Against Issuance of Tree Permit for Case No. TR-26-002 (Tax Parcel No. 1108M-01-003.023)

References: (a) Biloxi Ordinance 23-2-4, I, 9 (Land Development Ordinance, Administration, Application-Specific Review Procedures and Standards, Tree Permit, Appeals)  
(b) Biloxi Ordinance Table 23-2-1 (Land Development Ordinance, Administrative, Summary and Organization, Summary of Development Review Responsibilities Table)

I. Pursuant to *Section 23-2-4(I)(9)* of the City of Biloxi's Code of Ordinances (hereinafter, the "Ordinance"), I hereby appeal the approval of the tree permit to the City of Biloxi's City Council (hereinafter, the "Council") within the ten-day period as an aggrieved person.

II. This permit approval is premature and unripe because the permit improperly authorizes removal of protected trees for a subdivision that has received only preliminary plat approval and has **not yet satisfied the legal requirements for final plat approval**. Some of the trees at issue do not interfere with any public works construction, such as roads or sewer installation, authorized and permitted under the preliminary plat. Under *Section 23-7-6(A)(3)* of the Ordinance, the Council may approve a final plat only after confirming that lots are "arranged in relation to...tree protection requirements." By approving tree removal now, the Commission has effectively pre-approved a final subdivision lot configuration that has not yet been reviewed or approved by the Council. If the final plat is later denied or altered for noncompliance, removal of these trees may be unnecessary and unlawful. Furthermore, approving removal of protected trees before final plat approval creates a *fait accompli* and irreversible act that improperly pressures the Council to approve the subdivision as proposed simply because the trees will already have been destroyed.

III. The Hawk Creek subdivision is designed and approved to proceed in phases pursuant to Section 23-7-8 of the Ordinance. That section expressly provides that "the numbering of phases shall be sequential and coincide with the order in which the different development phases are proposed to be constructed." **The operative words here are "in order."** Phase 1 remains incomplete because it has not satisfied all requirements of Section 23-7-4(A), titled "Developer Responsibility." Under that section, the developer is required to "provide...street improvements necessary to bring the street into compliance with the standards of this section applicable to the type of street." Accordingly, Phase 1 cannot be considered complete until both West Oaklawn Road and Shorecrest Road are brought into compliance, including pavement widening, curb and gutter installation, streetlights, and street trees. **Until those required improvements are completed, this tree permit should be tabled until Phase 1 is complete, because approval would effectively allow the developer to proceed out of sequence and circumvent the Ordinance's phasing requirements.**

IV. The permit was approved in contravention of *Section 23-2-4(I)(5)* of the Ordinance, which requires compliance with *Tree Permit Review Standards*. The applicant submitted no statement of necessity for the removal of each specific protected tree in alignment with at least one of the tree permit review standards, forcing decision-makers to rely on conjecture rather than the findings required by law. The *Tree Permit Review Standards* state that **at least 1 of 5 criteria must be met:**

1. A tree of any species is in danger of falling or damaging structures, or the where the tree's roots pose a significant threat of damaging utilities or structures; or

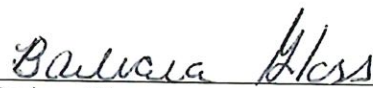
2. A tree of any species that either encroaches into **established** easements, is a detriment to access, or obstructs required sight distances, as **determined by the Director of Community Development**; or
3. The **City Arborist** provides written verification and photographic documentation that the tree is dead or dying; or
4. The removal is necessary to comply with storm water regulations, or to maintain public health and safety around utilities and infrastructure; or
5. The removal is necessary to address extraordinary circumstances such as weather-related emergencies and natural disasters, as **determined by the Mayor**.

V. The City of Biloxi does not currently have a City Arborist that meets the requirement of being a City Employee. *Appendix A [City of Biloxi Compensation Schedule]* of the Code of Ordinances reflects that the position of City Arborist is, indeed, a position of a City Employee, as opposed to a contractor. A contractor cannot legally fulfill the duties that are required to be accomplished by a City Employee. You can no more contract out the duties of the City Arborist than you can contract out the duties of the Mayor of Biloxi. Additionally, nothing in the ordinances authorizes the Community Development Director or any other City Employee to act as City Arborist; especially since there is a conflict of interest between a position that, at least partially, is responsible for tree preservation while the other is responsible for development that often results in tree removal. Furthermore, a contractor hired directly by the Community Development Director to perform the duties of City Arborist is even more so inclined to provide whatever answer that keeps him employed.

VI. *Section 23-2-4(P)* of the Ordinance expressly authorizes variances where a deviation from dimensional standards "would not be contrary to the public interest." In this matter, no variances were explored or considered for minimum setback, lot width, or lot depth requirements, despite such variances being the appropriate mechanism to preserve protected trees in compliance with the Ordinance. Instead, the applicant is being permitted to pursue mass tree removal as a matter of convenience rather than necessity. The failure to evaluate feasible variance alternatives renders the approval contrary to the public interest and injurious to the public welfare, in violation of *Section 23-1-3* of the Ordinance, *General Purpose and Intent*, which states that the purpose of the *Land Development Ordinance* is to "promote the public health, safety, and general welfare of the citizens and landowners of Biloxi."

VII. True and correct copies of ordinances relevant to, cited in, or governing this appeal are attached hereto and incorporated by reference as identified in the attachments list beneath the signature block.

VIII. I await a date for the appeal hearing to be heard by the Council. Please e-mail future correspondence to **LOVEN944@YAHOO.COM** and confirm receipt of all emails by calling **(228) 596-1943**.

  
Barbara Glass

**Attachments:**

1. Attachment "A": Section 23-2-4 (I), Tree Permit, Biloxi Land Development Ordinance
2. Attachment "B": Section 23-6-4, Tree Protection, Biloxi Land Development Ordinance
3. Attachment "C": Section 23-2-2 (G), Tree Committee, Biloxi Land Development Ordinance
4. Attachment "D": Section 23-7-6, Subdivision Lot Standards, Biloxi Land Development Ordinance
5. Attachment "E": Section 23-2-4 (P), Variance, Biloxi Land Development Ordinance
6. Attachment "F": Section 23-1-3, General Purpose and Intent, Biloxi Land Development Ordinance

## **Attachment "A"**

### **Section 23-2-4 (I), Tree Permit, Biloxi Land Development Ordinance**

#### **(1) Purpose**

The purpose of a Tree Permit is to support the preservation and replenishment of the native stock of trees, specifically those described as protected trees, to ensure compliance with the standards in Section 23-6-4, Tree Protection, and to ensure that existing trees on vacant or underdeveloped lands are not removed without an approved application in order to:

- a. Preserve the cultural heritage and aesthetic qualities of the city;
- b. Encourage site design techniques that preserve the natural environment and enhance the developed environment;
- c. Provide for a separation of uses and establish a sense of privacy;
- d. Minimize the impact of incompatible land uses;
- e. Reduce glare, dust, heat, and noise;
- f. Preserve and enhance air and water quality;
- g. Increase slope stability, and control erosion and sediment run-off into streams and waterways;
- h. Conserve energy by reducing heating and cooling costs; and
- i. Maintain and enhance the quality of life in the City.
- j. Provide incentive for sustainable development/landscape bonuses are available in Section 23-6-12(C)

#### **(2) Applicability**

##### **a. Activities Subject to Permitting Process**

A Tree Permit is required for the removal, relocation or alteration in any of the following conditions, within any zoning district and on any size lot:

1. Any tree of a protected species (Live Oak, Bald Cypress, and Southern Magnolia) that are at least eight inches diameter at DBH (diameter at breast height — 54 inches above the ground); or
2. Any tree of a non-protected species with a DBH of sixteen or more inches.

##### **b. Activities Exempt from Permitting Process**

A Tree Permit is not required for the removal, relocation or alteration in any of the following conditions:

1. Any Pecan (*Carya illinoensis*), Chinese tallow or Popcorn (*Sapium sebiferum*), Water Oak (*Quercus Nigra*), or member of the Pine genus (*Pinus spp.*); or
2. Any protected species (Live Oak, Bald Cypress, and Southern Magnolia) that are less than eight inches diameter at DBH; or
3. Any tree of non-protected species with a DBH of less than sixteen inches.

#### **(3) Application Requirements**

##### **a. Coordination with Site Plan**

Where the application for a Tree Permit relates to a development proposal for a site, the application for Tree Permit shall be submitted simultaneously with an application for Site Plan Review and the material required below shall, to the maximum extent practicable, be integrated with the site plan application.

##### **b. Contents**

An application for a Tree Permit shall be filed with the Department of Community Development and shall include the following:

1. A completed application form for Tree Permit signed by the applicant.
2. A drawing showing the following information at an adequate scale to make a determination.
  - a. The shape and dimensions of the lot of record, together with the existing and proposed locations of all structures and improvements, if any;
  - b. Location, species, and DBH of all existing trees including those proposed for removal and those proposed to remain.
  - c. Groups of trees in close proximity to one another (five feet or less) may be designated as a cluster of trees with the predominant species, estimated number, average DBH, and overall canopy shown. Within a cluster however, trees of protected species with a DBH of eight inches or greater, and trees of any non-protected species with a DBH of 16 inches or greater, must be identified by location, species, whether proposed to remain, be removed or relocated.
  - d. A statement showing how trees not proposed for removal are to be protected during land clearing and construction with protective barriers to disallow excavation, stockpiling or vehicular traffic encroaching upon the root zone, as stipulated in Section 23-6-4(F), Tree Protection during Construction.
  - e. A drawing as to grade changes, if proposed, for the lot or parcel and how such changes will affect matters of this Chapter, as stipulated in Section 23-6-4, Tree Protection. Grade changes may not occur beneath more than ten percent of the canopy of a protected tree.
  - f. A statement identifying the reason for removal of each protected tree.
  - g. A replacement/mitigation plan, as stipulated in Section (23-6-4(E)(4), Replacement/Mitigation of a Protected Tree.

**(4) Review Procedure**

**a. Basic Procedures**

Except as modified by Sections 23-2-4(1)(4)b. below, review of an application for a Tree Permit shall be subject to the common review procedures and requirements established in Section 23-2-3, Standard Review Procedures.

**b. Authority and Review Process**

1. All applications for Tree Permits shall be submitted to the Department of Community Development and reviewed for completeness by the Director of Community Development and City Arborist who will then forward the application to the Biloxi Tree Committee in accordance with the procedure set out in Section 23-2-2(G), Tree Committee. Written or verbal recommendations of the Tree Committee regarding protected trees will be presented verbatim before the Planning Commission.
2. For Tree Permits involving the removal, relocation, or alteration of one to four protected trees, and not otherwise requiring Planning Commission approval, the review and approval authority shall rest with the Director of Community Development or City Arborist. The final determination will be sent in writing from the Director of Community Development to the applicant and to the Tree Committee. The Director of Community Development may delegate this task to City Arborist.
3. For Tree Permits involving removal, relocation, or alteration of five or more protected trees the Tree Committee shall review and make recommendation to the Planning Commission and approval rests with the Planning Commission and requires a Public Tree Hearing to be posted by the Director of Community Development in accordance with Section 23-2-3(F)(4), Public Hearing Notice. The final determination on cases heard before the Planning

Commission are written into the public record. This section will apply to any multi-phased developments.

4. In the event of a conflict between the recommendations of the Tree Committee, the decision of the Director of Community Development and/or the Planning Commission, the Director of Community Development shall report the conflict to the Mayor within two days and submit the entire application, including all photographs of the site, the Tree Committee recommendation, and the Director of Community Development and/or Planning Commission's recommendation to the Mayor for review. The Mayor may either accept the Tree Committee recommendation, the decision of the Director of Community Development, The Planning Commission, or modify the decision and the permit, or deny the permit. The City Arborist and Tree Committee are to be copied on all reports of conflict and final decisions.

**c. Expiration**

A Tree Permit shall automatically expire at the end of six months following the date of approval. An extension may be granted in accordance with Section 23-2-3(K)(2)b., Extension, that extension may be for a time period of up to six months.

**(5) Tree Permit Review Standards**

A Tree Permit shall be approved only upon receipt of a complete permit application and finding that all the standards in Section 23-6-4, Tree Protection, are met. The Review Criteria used by City Arborist and Director of Community Development that allows for the issuance of a Tree Permit is as follows:

- a. A tree of any species is in danger of falling or damaging structures, or the where the tree's roots pose a significant threat of damaging utilities or structures; or
- b. A tree of any species that either encroaches into established easements, is a detriment to access, or obstructs required sight distances, as determined by the Director of Community Development; or
- c. The City Arborist provides written verification and photographic documentation that the tree is dead or dying; or
- d. The removal is necessary to comply with storm water regulations, or to maintain public health and safety around utilities and infrastructure; or
- e. The removal is necessary to address extraordinary circumstances such as weather-related emergencies and natural disasters, as determined by the Mayor.

**(6) Amendments**

Modifications to an approved Tree Permit shall require review by the Tree Committee and Community Development Department and an amended Tree Permit be issued.

**(7) Tree Damage or Removal**

The unauthorized removal or accidental damage or removal of existing protected trees shall be subject to the replacement/mitigation standards of Section 23-6-4(G)(4)a., Replacement/Mitigation of Protected Trees, and Penalties, according to Section 23-2-4(1)(10) Penalties.

**(8) Credit for Retaining Existing Trees**

Qualifying trees located onsite shall be credited towards the landscaping requirements in accordance with Section 23-6-4(G)(1), Tree Preservation Incentives, if the site or parcel of land becomes the subject of a development application in accordance with this Ordinance.

**(9) Appeals**

Any aggrieved person may appeal a determination by the Director of Community Development to the City Council by providing written notice to the Clerk of Council of such appeal within ten days of the receipt by the applicant.

**(10) Penalties**

The provisions of Chapter 23 of this Code of Ordinances relating to the protection of trees and Tree Permits are hereby incorporated herein by reference, and violation of the terms of any of those provisions relating to the protection of trees or the terms of any Tree Permit is a general offense. Any one so convicted shall be subject to the provisions of Section 1-1-8 of the Code of Ordinances. Each day a violation continues to exist constitutes a separate offense.

**Attachment “B”**  
**Section 23-6-4, Tree Protection, Biloxi Land Development Ordinance**

***(A) Purpose and Intent***

The purpose and intent of this section is to:

- (1) Preserve the cultural heritage and aesthetic qualities of the city;
- (2) Encourage site design techniques that preserve the natural environment and enhance the developed environment;
- (3) Provide for a separation of uses and establish a sense of privacy;
- (4) Minimize the impact of incompatible land uses;
- (5) Reduce glare, dust, heat, and noise;
- (6) Preserve and enhance air and water quality;
- (7) Increase slope stability, and control erosion and sediment run-off into streams and waterways;
- (8) Conserve energy by reducing heating and cooling costs;
- (9) Maintain and enhance the quality of life in the city; and
- (10) Provide incentives for Sustainable Development/Landscape Credits. (See Section 23-6-4(6).)

***(B) Applicability***

**(1) General**

Unless exempted in accordance with Section 23-6-4(B)(2), Exemptions, the standards in this section shall apply to all lands and development in the city.

**(2) Exemptions**

The following tree removal activities are exempt from the standards of this section:

- a. The removal of dead or naturally fallen trees;
- b. The removal of diseased trees posing a threat to adjacent trees;
- c. The removal of Any Pecan (*Carya illinoensis*), Chinese tallow or Popcorn (*Sapium sebiferum*), Water Oak (*Quercus Nigra*), or member of the Pine genus (*Pinus spp.*);
- d. The selective and limited removal of trees or vegetation necessary to obtain clear visibility at driveways or intersections;
- e. Removal of trees by the public utilities, local, state or federal government as necessary to maintain safe operations;
- f. Silvicultural activities undertaken in accordance with best management practices for forestry in Mississippi established by the Mississippi Forestry Commission; and
- g. Agricultural activities undertaken in accordance with agricultural best management practices for Mississippi established by the Mississippi Department of Environmental Quality.

***(C) Tree Permit Required***

No removal of existing trees on a parcel of land or a development site shall occur before approval of a Tree Permit (Section 23-2-4(I)) unless in accordance with the unexpired approval of a Site Plan (Section 23-2-4(E)), Preliminary Plat (Section 23-2-4(F)), Certificate of Appropriateness (Section 23-2-4(G)), Public Works Permit (Section 23-2-4(H)), or Certificate of Zoning Compliance (Section 23-2-4(L)), as appropriate.

## ***(D) Responsibility for Compliance***

Failure to comply with the standards of this section is a violation of this Ordinance subject to the remedies and penalties in this section and Article 23-9, Enforcement.

## ***(E) Protection of Trees***

### **(1) Applicability**

- a. General All development in the city shall be required to support the preservation and replenishment of the native stock of trees, specifically those described as protected trees, as defined in Section 23-10-2, Terms and Uses Defined, in accordance with this subsection.

### **(2) General Requirement**

No protected tree may be removed, except in accordance with Section 23-6-4(E)(3), Removal of a Protected Tree. In addition, all protected trees shall have the following protections, whether located on public or private land:

- a. Cutting, Removal, or Harm Prohibited. Protected trees shall not be cut, removed, pushed over, killed, or otherwise harmed.
- b. Paving or Soil Compaction Prohibited. The area within the drip line of any protected tree shall not be subject to paving or soil compaction greater than ten percent of the total area within the drip line, if at all possible. (See Figure 23-6-4(E)(2)b., Paving or Soil Compaction Prohibited.)

### **(3) Removal of a Protected Tree**

Protected trees may be removed if the landowner demonstrates to the Director of Community Development one of the following conditions:

- a. Removal of a Healthy Protected Tree. A protected tree is in healthy condition, and all of the following standards are met:
  1. The landowner is otherwise in compliance with this section;
  2. The protected tree prevents development of a lot in a way that limits building area to less than otherwise allowed, or hinders compliance with the standards in Article 23-3: Zoning Districts, Article 23-5: Intensity and Dimensional Standards, Article 23-6: Development Standards, or Article 23-7: Subdivision Standards; and
  3. Mitigation is provided in accordance with Section 23-6-4-E(4), Replacement/Mitigation of Protected Trees.
- b. Removal of a Diseased, High Risk, or Dying Protected Tree. A protected tree is certified by an arborist or other qualified professional as diseased, high risk, or dying. Removal of a diseased, high risk, or dying protected tree shall not require mitigation in accordance with Section 23-6-4(E)(4), Replacement/Mitigation of Protected Trees.

### **(4) Replacement/Mitigation of Protected Trees**

Those causing the destruction or removal of a healthy protected tree, unless exempted, shall be responsible for the following mitigation:

#### **a. Replacement Trees Required**

All healthy protected trees removed or destroyed shall be mitigated on a two for one basis with a tree minimum two-inch caliper tree with a minimum height of six feet tall at planting. The replacement trees shall be replanted within six months of the removal or destruction of the protected tree.

- b. Mitigation Species shall be a protected tree species (Live Oak, Bald Cypress and Southern Magnolia)

#### **c. Location of Replacement Trees**

Replacement trees shall be either planted on the parcel of land from which the protected tree was removed, if sufficient space is available, or placed on nearby lands in accordance with Section 23-6-3(I), Alternative Landscape Plan. The Director of Community Development may allow replacement trees to be planted to provide street trees in accordance with the standards in Section 23-6-3(F), Street Trees.

**d. Mitigation Trust, in lieu of mitigation plantings**

If the developer does not have the space to plant the mitigation trees onsite, they may elect to donate to the Mitigation Trust in lieu of planting mitigation trees. The donation amount will be based on the number of mitigation trees required by the cost of the purchase, planting and maintenance (Purchase Price  $\times$  2 = Cost of Mitigation Purchase, Planting, Irrigation and Maintenance).

1. The City will establish a Mitigation Trust account to receive funds from developer in lieu of off-site mitigation.
2. All mitigation trust planting projects shall be planted on city-owned property with protected species, or from approved City of Biloxi tree species list as defined herein, and recommended by Planning Commission and approved by City Council prior to disbursing any funds from the Mitigation Trust account and will be used exclusively for mitigation trees in accordance with the Biloxi Comprehensive Beautification Plan.
3. All mitigation trust planting sites will be documented in the Biloxi Comprehensive Beautification Plan.

**e. Establishment Period**

Replacement trees shall be maintained through an establishment period of at least three years. The applicant shall guarantee the survival and health of all replacement trees during the establishment period and guarantee any associated replacement costs (See Section 23-7-9, Performance and Maintenance Guarantees.). If the replacement trees do not survive the establishment period, the applicant shall purchase and install new replacement trees.

- f. Trees removed on residential home sites are exempt from the requirements of this section.

***(F) Tree Protection During Construction***

**(1) Owner's Responsibility**

During development, the owner or developer shall be responsible for the erection of any and all barriers necessary to protect any existing or installed vegetation from damage both during and after construction.

**(2) Tree Protection Fencing**

**a. Where Required**

Protected trees, existing tree canopy, and other existing trees being used for credit towards landscaping requirements shall be fenced with a sturdy and visible fence before grading or other development activity begins. Fencing shall be erected to protect the tree's drip line. The Director of Community Development shall consider the existing site conditions in determining the exact location of tree protection fencing. Areas located inside of tree protection fencing are considered as tree protection areas.

**b. Type of Fencing**

All fencing required by this section shall be a minimum four feet high and of durable construction (i.e., plastic snow fencing or chain link). Chain link or wire fencing utilized as tree protection fencing shall not be required to be vinyl coated. Passive forms of tree protection may be utilized to delineate tree protection zones that are remote from areas of land disturbance. These must be surrounded by fencing, continuous rope, or other forms of clear delineation.

**c. Signage**

Signs shall be installed on the tree protection fence visible on all sides of the fenced-in area delineating the tree protection zone.

**d. Inspection**

All tree protection measures shall be inspected and approved by the Director of Community Development before start of any land disturbing activities. Failure to have tree protection measures prior to the commencement of construction is a violation of this Ordinance.

**e. When Required**

No construction, grading, equipment or material storage, or any other activity shall be allowed within the fenced tree protection area. Fencing shall be maintained until after the final site inspection.

**(3) Encroachments into Tree Protection Areas**

Encroachments into tree protection areas shall occur only when no other alternative exists. If such an encroachment is anticipated, the following preventive measures shall be employed:

**a. Soil Compaction**

Where compaction might occur due to construction traffic or materials delivery through a tree protection area, the area must first be mulched with a minimum four-inch layer of wood chips. Equipment or materials storage shall not be allowed within a tree protection area.

**b. Fill**

No fill shall be placed within a tree protection area without adequate venting to allow air and water to reach the roots.

**c. Chemical Contamination**

Trees located within a tree protection area shall be protected from chemical contamination from liquids or other materials, including but not limited to paint, chemical solvents, gasoline, oil, diesel fuel, hydraulic fluid, concrete spoils, or rinse water from vehicle cleaning, including rinsing of concrete truck tanks and chutes.

**d. Paving Limitations**

Except for driveway access points, sidewalks, curb, and gutter, no paving shall occur within of a tree protection area unless authorized through an alternative landscape plan. (See Section 23-6-3(I), Alternative Landscape Plan.)

***(G) Tree Preservation Incentives***

**(1) Tree Preservation Credits**

To encourage the preservation of as many trees as practical on a development site, credit towards the minimum landscaping requirements shall be applied to all existing trees retained on a site that are not protected trees. Credits are offered only for trees that are not required to be retained by other sections of this Ordinance. Credits shall be designated on the landscape plan for the development, and shall be granted in accordance with the following standards:

- a. A credit for trees that are not protected trees shall be credited and applied towards the vehicular use landscaping standards in Section 23-6-3(D) and the perimeter buffer standards in Section 23-6-3(E) when the trees that are saved are:
  - 1. Deciduous or evergreen canopy trees of four inches in caliper or greater, measured at DBH (54 inches) above ground level; or
  - 2. Deciduous or evergreen understory or ornamental trees of three inches in caliper or greater, measured at DBH (54 inches) above ground level.
- b. In no case shall credits substitute for more than 75 percent of the required site or vehicular use area landscaping material.

**(2) Reduction in the Minimum Number of Required Parking Spaces**

Up to a ten percent reduction in the number of off-street parking spaces required on a development site shall be allowed if the reduction in the amount of required pavement will preserve the root zones of existing healthy trees with a DBH of eight inches or greater. The amount of reduction can be determined only after taking into consideration any unique site conditions and the impact of the reduction on parking needs for the use, and must be agreed upon by both the applicant and the Director of Community Development. Alternative paving materials (see Section 23-6-2(C)(4), Alternative Materials) may be allowed by the Director of Community Development in cases where required parking areas encroach upon root zones.

## **Attachment "C"**

### **Section 23-2-2 (G), Tree Committee, Biloxi Land Development Ordinance**

The Tree Committee is hereby established.

**(1) Tree Committee; Purpose and Intent.**

The purpose and intent of this article is to establish a body to assist the City in promoting the preservation and replenishment of the native stock of trees, conservation, ground water recharge, storm water runoff retardation, oxygen regeneration, and noise abatement, and to make the City a healthier, more beautiful, and safer place to live. This committee is to be known as the Biloxi Tree Committee, referred to in this article as the "committee." In making its recommendations the committee is charged with using its best efforts to balance those public goals with the public need for economic development while respecting the rights of individuals to develop their property in a meaningful yet responsible way within the confines of the law.

**(2) Membership; Term of Office; No Compensation of Committee.**

The Biloxi Tree Committee shall be composed of seven members, one individual from each of the City's seven Wards, all of whom shall be resident citizens of the City and qualified electors therein. The members will be selected by the Mayor and ratified by the City council. Each member shall be appointed for a period of three years and shall continue to serve until a successor is appointed and ratified. Vacancies shall be filled in accordance with this section, and appointments to fill vacancies shall be for the unexpired terms only. Each member shall be eligible for reappointment, and all members of the committee shall serve without pay.

**(3) Officers; Rules of Procedure.**

The Biloxi Tree Committee shall elect from among its members its own chairman, vice chairman, and secretary, and provide from time to time such rules and regulations, not inconsistent with the ordinances of the City, for its own organization and procedure, as it may deem appropriate. Meetings may be held by telephonic or other electronic means, and any official action shall only require a majority of the members participating in the meeting. A quorum shall consist of a majority of the members appointed and ratified, and vacancies shall not be considered in the determination of a quorum.

**(4) Powers and Duties**

The Biloxi Tree Committee shall advise City officials with regard to the development of a comprehensive city beautification plan, Tree Protection, and when undertaking those tasks shall work under the direction of the City Arborist. With the assistance of the Director of Community Development or his designee the Committee shall serve in an advisory capacity to perform the following functions:

**a. Tree Permits**

To review applications for permits involving the proposed removal of protected trees from a property site as outlined in 23-2-4(1), Tree Permit; the City Arborist shall notify all Committee members by email of the content of all applications for Tree Permits.

**b. DRC and Planning Commission Participation**

The Committee may serve as a non-voting member to the Development Review Committee in order to be aware of all projects with potential for removal or alteration of protected trees. A designated individual from the Tree Committee may serve as the Committee's representative at DRC and Planning Commission Meetings, and may be a different designee by the Committee for each permit. The Designee shall have the authority to inquire and comment on projects in regards to tree protection, and to modify any recommendations of the Committee.

For Permits requiring a Tree Hearing before the Planning Commission, The City Arborist shall notify the Committee by email of each Tree Hearing and include documents required by the Developer in order to facilitate evaluation of the impact of tree removal. The Committee shall review and make a written recommendation of such applications (by email or other writing) to the City Arborist, The Community Development Director, and the Mayor within ten days of receipt of such permits. The Committee's failure to make a written recommendation on Tree Hearing cases within said ten days will result in the City Arborist making a determination without the Committee's input.

**c. Review of Prior Approved Permits**

Review previously issued Tree Permits periodically in order to determine compliance with replacement/mitigation and establishment provisions during the terms of those permits, and to provide resulting reports to the Mayor, the Director of Community Development and the City Council when requested, but at least annually. The Committee shall report any perceived violation to the Mayor, and Director of Community Development for follow up and enforcement. The City Arborist shall provide the Committee with the information and data necessary to carry out these follow-up tasks including but not limited to:

1. All permits issued in a given period;
2. Quantity, caliper size and species of trees required for replacement/mitigation;
3. Date, general location when on-site, and GPS coordinates when off-site of replacement/mitigation;
4. Annual inspection findings for each year to three years from the date of mitigation;
5. Incurrence of all notices of non-compliance and associated actions and/or penalties.

**d. Mitigation Site Recommendation**

To identify and suggest potential suitable sites to help promote the appropriate replenishment of trees throughout the City and provide mitigation sites for developers where such mitigation is required and not suitable for the developed site; and,

**e. Majestic Trees**

*The Committee receives and reviews applications by property owners for a designation of an individual tree on their property to be designated a "Majestic Tree." If approved by the Committee, such designation will be submitted to the Mayor and City Council for their consideration. If that designation is also approved by the Mayor and City Council, or if the City Council otherwise designates a tree a Majestic Tree, then any tree permit involving such Majestic Tree shall require assessment of the Tree Committee, and determination of risk by an ISA-certified arborists, who should be a TRAQ (Tree Risk Assessment Qualification) certified professional if available, and who must be contracted at the expense of the applicant.*

**Attachment “D”**  
**Section 23-7-6, Subdivision Lot Standards, Biloxi Land Development Ordinance**

***(A) General***

- (1) Every lot within a subdivision shall be buildable in accordance with this Ordinance.
- (2) To the maximum extent practicable, side lot lines shall be perpendicular or radial to fronting street right-of-way lines.
- (3) Lots shall be arranged in relationship to topography, flood hazards, tree protection requirements, or other site conditions, to minimize difficulties in providing a reasonable building site and yard area in accordance with requirement of this Ordinance.
- (4) Each lot shall be situated so that stormwater may be easily directed away from buildings in subsequent site-specific development. Lots shall be configured so that buildings and general flood sensitive site facilities are not located in drainage ways.
- (5) Flag lots are prohibited in nonresidential zoning districts and highly discouraged in residential districts.
- (6) Creation of through lots (street abutment front and rear) shall be avoided except where necessary to provide access to residential development from other than arterial streets, or to overcome specific disadvantages of topography and orientation. Through lots shall meet front yard setbacks on both streets. Where a lot has frontage on two streets, the plat shall establish building lines for each street and shall clearly designate the front yard.
- (7) Dimensions of the corner lots shall be large enough to allow for the minimum required street intersection radii and for erection of buildings in accordance with the corner side setback standards in Article 23-5, Intensity and Dimensional Standards.

***(B) Lot Frontage and Access***

- (1) Each lot shall be designed to be accessible to and abut a dedicated public street right-of-way. The minimum public street frontage for a lot shall be at least 35 feet, except that a lot designed for a single-family detached dwelling and fronting a cul-de-sac shall have a minimum street frontage of 25 feet.
- (2) Residential lots shall not front on arterial streets, to the maximum extent practicable. If frontage on or driveway access to and from an arterial is necessary, such access shall comply with the standards in Section 23-6-1(F)(3), Vehicular Access Management.

***(C) Lot Area***

- (1) Lot area shall comply with the minimum standards in Article 23-5, Intensity and Dimensional Standards.
- (2) Residential lots not served by a public centralized sanitary sewage service collection system shall be sized in accordance with the requirements of the Mississippi Department of Health (MDH). The applicant for a subdivision containing such lots shall provide the city a letter from MDH approving the lots as meeting its requirements before approval of a Minor Subdivision Plat or a Major Subdivision Preliminary Plat for the subdivision.
- (3) Commercial lots not served by a public centralized sanitary sewage service collection system shall be sized in accordance with the requirements of MDH and the Mississippi Department of Environmental Quality (MDEQ) based on their anticipated use, but in no case shall they have an area less than one and one-half acres. If the exact use of each lot is not known at the time of the subdivision of land, the lots shall be sized with regard to the anticipated future business use, the surrounding businesses, and the zoning classification of the subdivision site. The applicant for a subdivision containing such lots shall

provide the city a letter from MDH and MDEQ approving the lots as meeting their requirements before approval of a Minor Subdivision Plat or a Major Subdivision Preliminary Plat for the subdivision.

- (4) Except in the A, RE, and RER zoning districts, proposed lot sizes shall not exceed three times the minimum lot size required by Article 23-5: Intensity and Dimensional Standards, for the district within which the proposed subdivision is located. Exceptions may be made when land proposed for division contains floodplain, wetlands, or terrain otherwise unsuitable for development.

### ***(D) Lot Depth***

Lots greater than two acres in area and located in a residential zoning district shall not have a lot depth greater than three and one-half times the lot width. Exceptions may be made for lots lying partially within the floodplain.

### ***(E) Waterfront Lots***

#### **(1) Not Public Trust Tidelands**

If a proposed subdivision contains a water body that is not public trust tidelands subject to the jurisdiction and stewardship of the State of Mississippi or other cognizant agencies, the following shall apply:

- a. Lot lines shall be so drawn as to distribute the entire ownership and costs associated with maintenance of the water body among the adjacent lots. An alternative plan may be approved as part of a subdivision Preliminary Plat approval whereby the ownership of and responsibility for safe maintenance of the water body is placed so it will not become a public responsibility. If the water body is indicated as "open space" on the Final Plat, maintenance of the water body shall be borne by the property owners of the subdivision through covenants so that maintenance of the water body shall not be or become a public responsibility.
- b. Where a watercourse separates a buildable area of a lot from the street by which it has access, provisions shall be made by the subdivision developer for installation of a culvert or other drainage device of a design approved by the City Engineer, and no Building Permit shall be issued for a structure on separated portion of the lot until such culvert or other drainage device is installed.

#### **(2) Public Trust Tidelands**

If a proposed subdivided contains a water body, or portion thereof, which is public trust tidelands subject to the jurisdiction and stewardship of the State of Mississippi, the developer shall submit written documentation from the Mississippi Secretary of State verifying compliance with all applicable state requirements.

#### **(3) Right of Waterfront Access**

The subdivision covenants and Final Plat for a subdivision shall include provisions ensuring that all waterfront lot owners enjoy the right to waterfront access. If access to the water body is provided to all lot owners in a subdivision, the Final Plat shall identify public access easement(s), open space(s), or other approved methods of providing waterfront access, and subdivision covenants shall include provisions ensuring such access. Subdivision covenants shall also address responsibilities for maintenance of the water body.

### ***(F) Easements***

Existing and proposed easements shall be located along lot lines except where not practicable due to unusual topography.

## Attachment "E"

### Section 23-2-4(P), Variance, Biloxi Land Development Ordinance

#### (1) Purpose

The purpose of a Variance is to allow certain deviations from the dimensional standards of this Ordinance (such as height, yard setback, lot coverage, or similar numeric standards) when the landowner demonstrates that, owing to special circumstances or conditions beyond the landowner's control (such as exceptional topographical conditions or the narrowness, shallowness, or shape of a specific parcel of land), the literal application of the standards would result in undue and unique hardship to the landowner and the deviation would not be contrary to the public interest. Variances are to be sparingly exercised and only in rare instances and under exceptional circumstances to relieve undue and unique hardships to the landowner. No change in permitted uses may be authorized by a Variance.

#### (2) Authority

The Board of Zoning Adjustments shall review and decide any applications for Variances from the requirements of this Ordinance in accordance with this subsection.

#### (3) Applicability

The following standards may be varied through the Variance procedure:

- a. The maximum height standards, maximum impervious surface coverage standards, minimum setback standards, minimum lot width standards, and minimum lot depth standards for each zoning district in Article 23-3: Zoning Districts;
- b. The standards in:
  1. Section 23-6-2, Off-Street Parking and Loading;
  2. Section 23-6-3, Landscaping;
  3. Section 23-6-7, Fences and Walls;
  4. Section 23-6-8, Exterior Lighting; and
  5. Section 23-6-13, Signage.

#### (4) Procedure

##### a. Basic Procedures

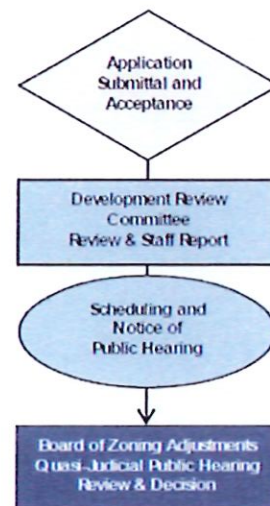
Except as modified by Section 23-2-4(P)(4)b. below, review of an application for a Variance shall be subject to the common review procedures and requirements established in Section 23-2-3, Standard Review Procedures.

##### b. Expiration

A Variance granted for development activity authorized by a Site Plan, subdivision approval, Certificate of Zoning Compliance, Public Works Permit, Tree Permit, or Temporary Use Permit shall automatically expire upon expiration of such permit or approval.

#### (5) Variance Review Standards

- a. A Variance application shall be approved only upon a finding that all of the following standards are met:
  1. Strict application of the Ordinance requirements to the land or structure for which a Variance is sought results in practical difficulties and unnecessary hardships that would deprive the property owner of a reasonable use of the land or structure; and



2. The practical difficulties or unnecessary hardships result from circumstances or conditions peculiar to the land or structure, and not to conditions that are widespread in the neighborhood or the city; and
  3. The special circumstances or conditions causing the hardship are not the result of the actions of the property owner; and
  4. The extent of the Variance is the minimum necessary to allow a reasonable use of the land or structure; and
  5. The Variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit; and
  6. The Variance would not adversely affect the health or safety of persons residing or working in the neighborhood, be injurious to property or improvements in the neighborhood, or otherwise be detrimental to the public welfare; and
  7. The Variance would not confer on the applicant any special privilege denied by this Ordinance to other lands or structures without a demonstration of hardship.
- b. The following factors do not constitute sufficient grounds for approval of a Variance:
1. A request for a particular use that is expressly, or by inference, prohibited in the zoning district; or
  2. Hardships resulting from factors other than application of requirements of this Ordinance; or
  3. The fact that property may be utilized more profitably or be more marketable with a Variance; or
  4. The citing of other nonconforming or conforming uses of land or structures in the same or other zoning districts.

**(6) Subsequent Development**

Development authorized by the Variance shall not be carried out until the applicant has secured all other permits required by this Ordinance or any other applicable provisions of the city. A Variance shall not ensure that the development receiving a Variance receives subsequent approval for other applications for development unless the relevant and applicable portions of this Ordinance or any other applicable provisions are met.

**(7) Effect of Variance Approval**

Approval of a Variance shall authorize only the particular type and extent of deviation of standards that is approved. Unless it expires in accordance with Section 23-2-4(P)(4)b., Expiration, or is revoked in accordance with Section 23-9-6(A)(2), Revocation of Permit or Approval, an approved and recorded Variance, including any conditions of approval, shall run with the land and shall not be affected by a change in ownership.

**(8) Amendments**

Any modifications of development subject to an approved Variance shall require amendment of the Variance approval in accordance with the procedures and standards for the full review of an application for approval of a Variance.

**Attachment "F"**  
**Section 23-1-3, General Purpose and Intent, Biloxi Land Development Ordinance**

The purpose of this Ordinance is to promote the public health, safety, and general welfare of the citizens and landowners of Biloxi, and to implement the goals, objectives, and policies of the Biloxi Comprehensive Plan and other city-adopted plans addressing the city's growth and development. The intent of this Ordinance is more specifically to promote an orderly pattern of land uses and development that will:

1. Maintain and stabilize the value of buildings and land;
2. Reduce the vulnerability of development and residents to storms, flooding, and other natural hazards;
3. Ensure the provision of adequate open space between uses for light, air, and fire safety;
4. Better manage or lessen traffic congestion and its accompanying hazards;
5. Prevent the overcrowding of land and avoid undue concentrations of population;
6. Support the efficient, orderly, and cost-effective provision of needed transportation, water supply, sewerage, schools, parks, public utilities, and other public facilities and services;
7. Foster convenient, compatible, and efficient relationships among land uses;
8. Preserve the character and quality of residential neighborhoods while providing increased housing choices;
9. Maintain and enhance the unique character and identify of "Old Biloxi" and other areas within the city through an emphasis on design quality;
10. Maintain and enhance high quality aesthetic standards for development;
11. Protect and conserve water resources (e.g., Mississippi Sound, estuaries, rivers, streams, wetlands) and their functions (e.g., flood control, fisheries, recreation);
12. Protect and conserve Biloxi's tree canopy and other natural resources contributing to the environmental and aesthetic quality of the city and its environs;
13. Recognize, preserve, and encourage the restoration and adaptive reuse of Biloxi's historic resources and other resources reflecting the city's cultural heritage;
14. Promote a healthy, diversified, and sustainable economy that meets the needs of Biloxi's residents and visitors; and
15. Support retention of the commercial seafood industry as a vital part of Biloxi's economy.



**Tree Case Fact Sheet**

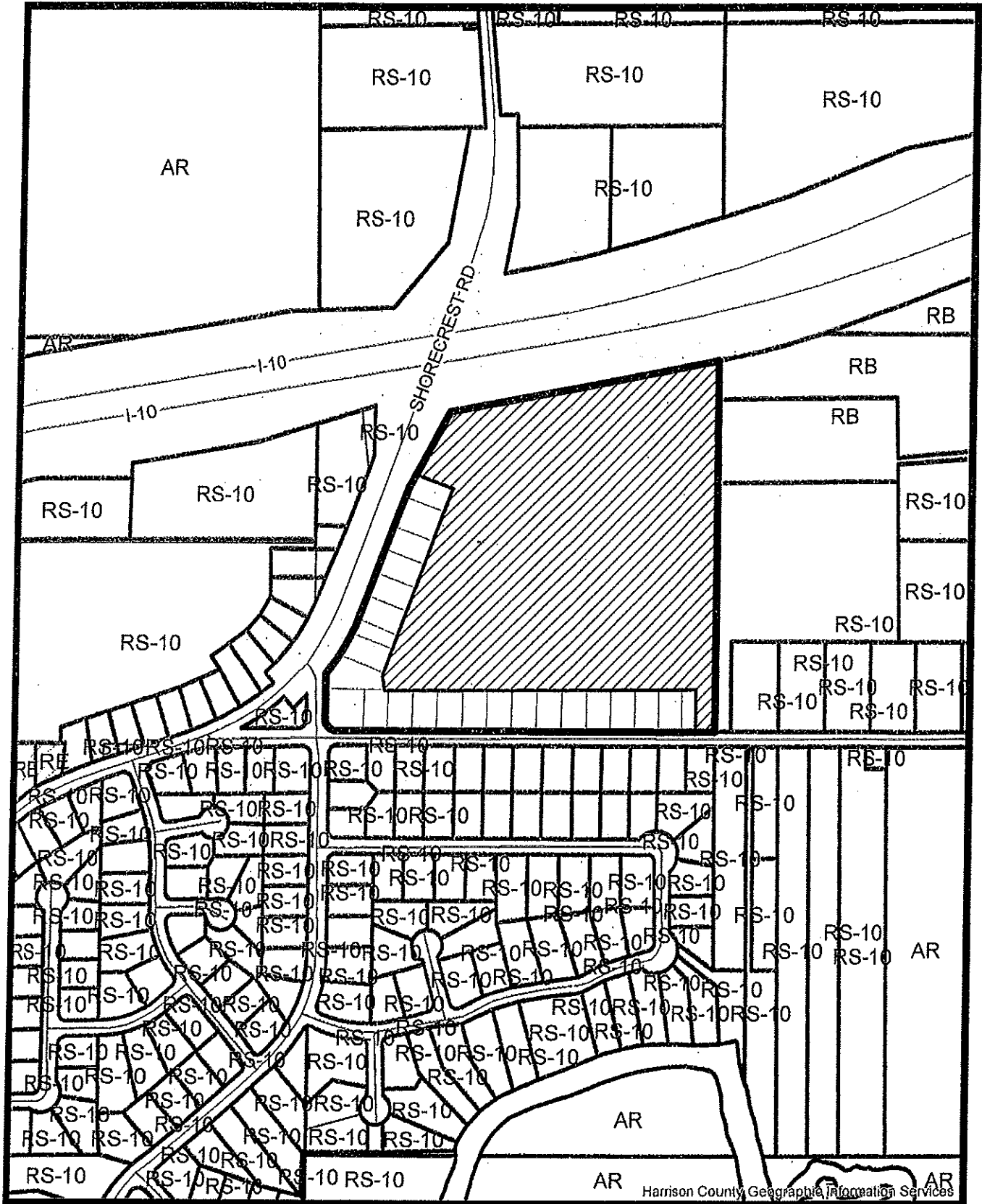
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<b>Case No.:</b>	TR-26-002
<b>Name of Owner:</b>	Jordan Bursch on behalf of Meritage Homes
<b>Property Address:</b>	Lot 23 of Hawk Creek Subdivision
<b>Tax Parcel/Ward:</b>	1108M-01-003.023/Ward 7

---

<b>Request:</b>	To remove thirty-nine (39) protected trees
<b>Purpose of Request:</b>	A request to remove thirty-nine (39) protected trees (29 Live Oaks, 7 Magnolias, 2 Black Tupelo larger than 16" & 1 Sweet Gum larger than 16"), to authorize the construction of a new Single-Family Subdivision (Hawk Creek Ph II), containing 49 lots, for a parcel of land identified as lot 23 of Hawk Creek Subdivision located on W. Oaklawn Rd (Tax Parcel No. 1108M-01-003.023).
<b>Size of Property:</b>	21.8 (more or less)
<b>Present Zoning:</b>	RS-10
<b>Flood Zones:</b>	X, SX, & AE-15
<b>Present Use:</b>	Vacant parcel
<b>Most Nearly Bounded By (streets):</b>	To the North of and fronting West Oaklawn Road; to the South of Interstate 10; to the East of and adjacent to Shorecrest Road; and West of West Oaklawn Road.
<b>Adverse Influences:</b>	Removing protected trees can lead to loss of environmental benefits, so care must be taken.
<b>Positive Influences:</b>	The removal of thirty-nine (39) protected trees will allow for the construction of a second phase of a New Single-Family Subdivision.
<b>Letters or Concerns stated:</b>	The City has not received any letters concerning this case as of April 30, 2026.
<b>Comments/ Recommendations:</b>	The Tree Committee recommendations will be handed out at the meeting.
<b>Options:</b>	1. Approve 2. Deny

Case No. TR-26-002  
Meritage Homes/Jordan Bursch  
lot 23 Hawk Creek Phase II  
Remove 39 total Trees





# Tree Permit Application

Community Development Department  
City of Biloxi, Mississippi

Application Date: 4-21-2026

FOR OFFICE USE ONLY	
DATE:	
PERMIT#	
FEE:	
PARCEL#	

- Single-Family Residential
- Multi-Family Residential, Commercial, or Industrial

Address and/or Project Name: Hawk Creek Subdivision Phase 2 / W. Oaklawn Rd & Shorecreek Dr

## PROPERTY OWNER INFORMATION

Owner's Name: Meritage Homes

Address: 1402 Pass Road Email: Jordan.bursch@meritagehomes.com

City: Gulfport State: MS Zip: 39501 Phone: 509-954-6518

## TREE CARE CONTRACTOR INFORMATION

Contractor: Fitzgerald Land and Lawn Services

State License # or ISA Certification #: ID: #1481547

Address: 9118 Cleo Smith Road Email: klandscaping@myyahoo.com

City: Pass Christian State: MS Zip: 39571 Phone: 813-853-6344

## PERMIT INFORMATION

Scope of Work  Removal  Substantial Trimming (over 8" in diameter and outside of the definition of 'routine')

Description of Work: (please identify specific tree species and quantities)

Removal of 28 Live Oak, 7 Southern Magnolia, 1 Sweet Gum (+16"), 2 Black Gum (+16"), & 1 Turkey Oak (+16"). Mitigation is proposed in accordance to attached plan per City Ordinance. A total of 39 trees that are identified as protected or greater than 16" will be removed & mitigated.

**Please attach a site plan and/or attach pictures showing the location of the trees to be permitted or sketch their locations on the back of this application.**

*I hereby make application for permit to perform the work as described herein and if the permit is granted, I agree to conform to all regulations and ordinances of the City of Biloxi pertaining thereto and by the plans submitted.*

Applicants Signature: <sup>Signed by:</sup> Jordan Bursch

- Denied
- Arborist's Approval: \_\_\_\_\_
- Arborist's Remarks: \_\_\_\_\_

**PROTECTED TREE**  
 CITY OF BELLEVILLE LAND DEVELOPMENT ORDINANCE  
 ARTICLE 23-0-0-02 TREE PROTECTION  
 ARTICLE 23-0-0-03 TREE REMOVAL

**PROTECTION OF TREES**  
 CITY OF BELLEVILLE LAND DEVELOPMENT ORDINANCE  
 ARTICLE 23-0-0-02 TREE PROTECTION

**REMOVAL OF A PROTECTED TREE**  
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 DETERMINATION OF NECESSITY FOR THE PROJECT, THE CITY SHALL BE REQUIRED TO SUPPORT  
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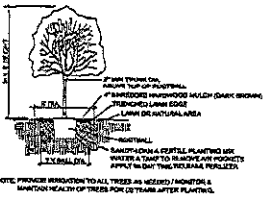
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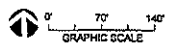
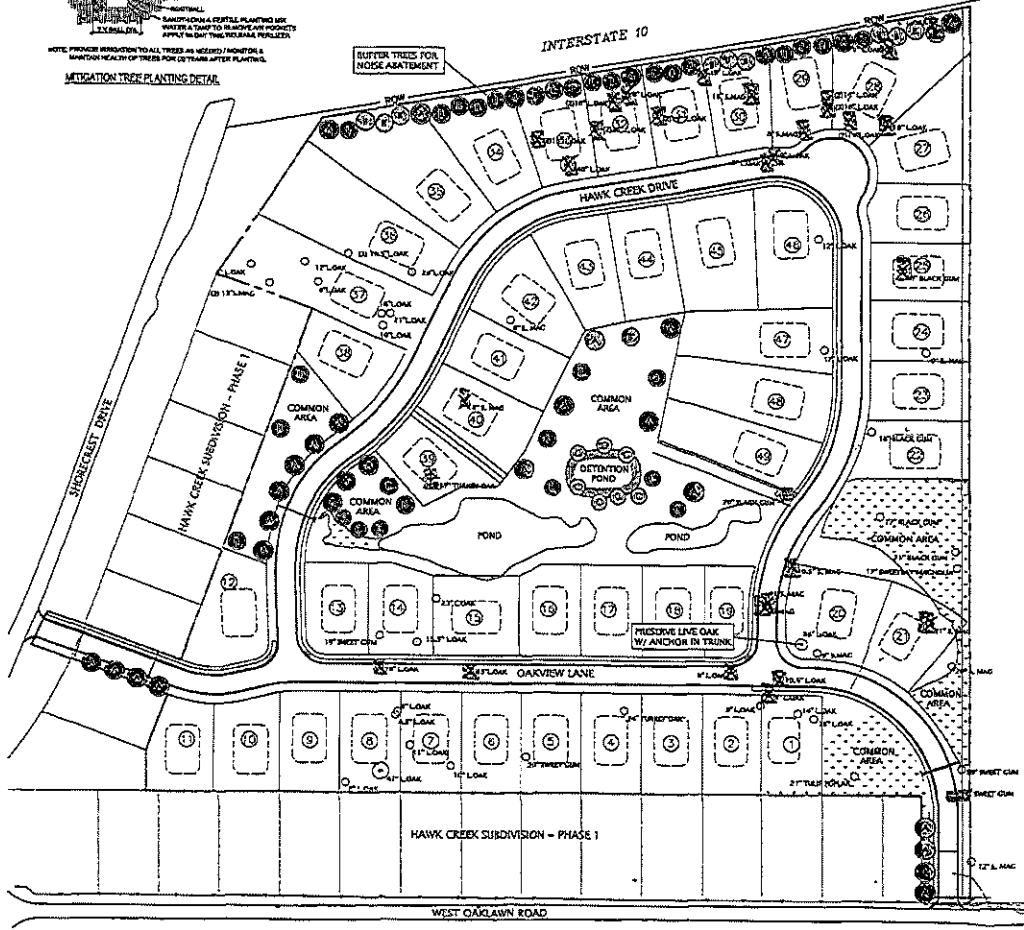
**LEGEND**  
 O 1" DIA. PROTECTED TREE TO REMAIN  
 X 1" DIA. PROTECTED TREE TO BE REMOVED  
 + 1" DIA. NON-PROTECTED TREE TO BE REMOVED

**PROPOSED PROTECTED TREE REMOVAL**

Common Name	Scientific Name	Qty
Live Oak	Quercus virginiana	28
Southern Magnolia	Magnolia grandiflora	7
Black Gum (1" DBH OR IN)	Liquidambar styraciflua	7
Black Gum (1" DBH OR IN)	Nyssa sylvatica	7
Turney Oak (1" DBH OR IN)	Quercus coccinea	1



**MITIGATION TREE PLANTING DETAIL**



**TREE MITIGATION PLAN**

**TREE PROTECTION DURING CONSTRUCTION**  
 CITY OF BELLEVILLE LAND DEVELOPMENT ORDINANCE  
 ARTICLE 23-0-0-03 TREE PROTECTION

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PLANNING  
 LAND USE  
 DEVELOPMENT

278.332.4010  
 218 Maple Park Drive  
 Belleville, MO 63401  
 www.bellevillemo.gov

**TREE MITIGATION PLAN**  
 CITY PERMITTING SUBMITTAL  
 APRIL 21, 2026

**HAWK CREEK SUBDIVISION - PHASE 2**  
 BELOW MS



Matthew A. Smith  
 No. 10000  
 State of Missouri

July 18, 2025  
 Matthew A. Smith  
 State of Missouri

**TREE MITIGATION PLAN**

Sheet Number

LI

1

BILOXI PLANNING COMMISSION MEETING  
MAY 7, 2026  
COMMUNITY DEVELOPMENT,  
DR. MARTIN LUTHER KING JR. MUNICIPAL BUILDING,  
676 DR. MARTIN LUTHER KING JR. BOULEVARD,  
BILOXI, MISSISSIPPI,  
BEGINNING AT 2:00 P.M.

---

**PLANNING COMMISSION MEMBERS PRESENT:**

Charlie Dellenger, Chairman  
Fonnie Bogard  
Kyle Carron  
Steve Delahousey  
Joe King  
Gary Lechner  
August Parker  
Jimmy Poulos  
Shante' Snow  
John Snow  
David Stancovich  
Michael Todaro

**ALSO PRESENT:**

Jerry Creel, Director of Community Development  
Felicia Serpas, Senior Planner  
Caryle Lena, Planner I  
Dr. Paul Tisdale, Councilman Ward 5

**REPORTED BY**

Melissa Burdine-Rodolfich  
Simpson Burdine & Miguez

Simpson Burdine & Miguez 228 388 3130

3

**CHAIRMAN DELLENGER:**

If we can, we'll call the Planning Commission meeting to order.

We can record the members present: Mr. Lechner, Mr. Parker, Mr. Todaro, Ms. Shaw, Mr. Starovich, Mr. Bogard, Mr. Delahousey, Mr. Carron, Mr. King, Mr. Snow, Mr. Poulos; and myself, Mr. Dellenger.

We have Felicia Serpas, Senior Planner; Jerry Creel, Director of Community Development; Caryle Lena, Planner; Melissa Rodolfich, Court Reporter; and Dr. Paul Tisdale, Councilman Ward 5.

Steve, if you will, please, lead us in a moment of prayer, please.

**MR. DELAHOUSEY:**

Sure. I'm going to change it up a little bit today. Today's prayer is going to focus more on issues closer to home.

(Moment of prayer.)

**CHAIRMAN DELLENGER:**

Please stand for the Pledge. Ms. Shaw, if you'd lead us in the Pledge.

(Pledge of Allegiance.)

**CHAIRMAN DELLENGER:**

I would like to welcome everybody here

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**C-O-N-T-E-N-T-S**

CONTINUED PUBLIC HEARING(S) :	PAGE:
(None)	
<b>NEW PUBLIC HEARING(S) :</b>	
26-027-FC	6
26-028-FC	19
<b>TREE HEARINGS:</b>	
TR-26-002	29

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to the Planning Commission meeting today. If you desire to speak for one of the hearings, if you can, please come up, state your name and address for the record, and let us know why you're here to speak and whether it's for or against the case.

And please, if you could, silence all your cell phones so we don't have those going off in the middle of the meeting as well.

If everyone has had a moment to review the Planning Commission minutes from the last meeting, if we could have a motion and a second to approve those.

**MR. DELAHOUSEY:**

Move to approve.

**MR. BOGARD:**

Second.

**CHAIRMAN DELLENGER:**

Move to approve by Mr. Delahousey; second by Mr. Bogard.

All those in favor, please state by saying "aye."

(Unanimous vote.)

**CHAIRMAN DELLENGER:**

Any opposed?

(None opposed.)

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1 MR. DELAHOUSEY:  
2 No.  
3 CHAIRMAN DELLENGER:  
4 Motion for the property, not --  
5 MR. TODARO:  
6 They should have the liberty to do that.  
7 MR. CARRON:  
8 So they could have three of them,  
9 correct?  
10 CHAIRMAN DELLENGER:  
11 Is Jason okay with this, Mr. Parker?  
12 MR. PARKER:  
13 Everything's fine.  
14 MR. TODARO:  
15 Are we raising our hands yet?  
16 CHAIRMAN DELLENGER:  
17 Is there any other discussion?  
18 Okay. There being no other discussion,  
19 please vote by raising your hands. Mr. Lechner,  
20 Mr. Parker, Mr. Todaro, Ms. Shaw, Mr. Stanovich,  
21 Mr. Bogard, Mr. Delahousey, Mr. Carron, Mr. King,  
22 Mr. Snow, Mr. Poulos; myself, Mr. Dellenger. Let  
23 the record show that's unanimous.  
24 The next case we'll hear is a tree  
25 hearing. Case Number TR-26-002, Jordan Bursch on

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1 the development of this new site plan here, so I  
2 will provide you with it.  
3 As you know, Phase 1 where -- the houses  
4 that you've seen that run along West Oaklawn Road  
5 and Shorecrest Drive, that's Phase 1 and there are  
6 22 houses that have been built along there.  
7 This is Phase 2 that's being proposed,  
8 and the subdivision plat, again, has already been  
9 approved. That part has gone through and gotten  
10 the necessary approval, so the issue now is the  
11 trees.  
12 As they came back, there was some  
13 confusing language in the tree ordinance and in  
14 the definitions. And what it is, is that in the  
15 main text of the tree ordinance what it says is  
16 that a protected tree is a live oak, a bald  
17 cypress or a southern magnolia that is  
18 eight inches or more in diameter. Anything less  
19 than that is not a protected tree.  
20 The non-protected trees -- in the text,  
21 it talks about a non-protected tree that is over  
22 16 inches, but it doesn't say that a non-protected  
23 is a protected tree.  
24 Basically, what it says is that you have  
25 to -- when you're talking about taking down five

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1 behalf of Meritage Homes, a request to remove 39  
2 protected trees: 29 live oaks, seven magnolias,  
3 two black Tupelos larger than 16 inches and one  
4 sweet gum larger than 16 inches to authorize the  
5 construction of a new single-family subdivision  
6 listed as Hawk Creek Phase 2 containing 49 lots  
7 for a parcel of land identified as Lot 23, Hawk  
8 Creek Subdivision, located on West Oaklawn Road,  
9 Tax Parcel Number 1108M-01-003.023. When was this  
10 advertised?  
11 MR. CREEL:  
12 This is different.  
13 CHAIRMAN DELLENGER:  
14 If we can please see the video.  
15 MS. SERPAS:  
16 (Video played.) Okay.  
17 CHAIRMAN DELLENGER:  
18 Thank you.  
19 MR. CREEL:  
20 I'm actually doing this one.  
21 CHAIRMAN DELLENGER:  
22 Is Mr. Bursch not here?  
23 MR. CREEL:  
24 Mr. Bursch had a conflict on his  
25 schedule and we've worked very closely with him on

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1 or more, you have to have a public hearing and  
2 then you have to show all of your protected trees  
3 and all of your non-protected trees that are  
4 16 inches or more on the site plan. And then you  
5 have to obtain a permit to remove the  
6 non-protected trees that are over 16 inches, but  
7 it doesn't make them a protected tree.  
8 But when you get over into the back of  
9 the book into the definitions and you look under  
10 protected trees, it lists both protected trees'  
11 definition that says any of those three species  
12 that are over eight inches in diameter and then  
13 it's got non-protected trees under there that are  
14 16 inches or more.  
15 So the argument that we have been  
16 dealing with is that if a non-protected tree grows  
17 to more than 16 inches in diameter, it becomes a  
18 protected tree, which was never the intent of the  
19 ordinance.  
20 Now, if we had gone through and met to  
21 correct these things -- and that's something  
22 that's going to be coming to the Planning  
23 Commission in the near future, a revised tree  
24 ordinance with these revisions in there where  
25 we've gone back and we've made corrections to a

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1 lot of these things that just don't make sense.

2 So what it is with this particular case  
3 is that we went back and we took every protected  
4 tree that meets the protected tree ordinance on  
5 here. We put it on here. We also took the  
6 non-protected trees that are 16 inches or more in  
7 diameter to show them on here.

8 If there was a tree that had a multiple  
9 trunk on it, we counted those as separate trees.  
10 That's the difference between what y'all reviewed  
11 before and what you're reviewing now, is we didn't  
12 want any questions to happen about how many trees  
13 were being removed, so we even took the trees that  
14 had multi-trunks on it and counted those as  
15 individual trees so that we can make sure that  
16 y'all had all the information that you needed.

17 What Heritage has agreed to do -- they  
18 submitted a tree survey. They're showing all the  
19 trees that are going to be removed. They're  
20 showing all the trees that are going to remain.  
21 They're showing all the trees that are going to be  
22 planted as a part of their mitigation, which  
23 they've agreed to mitigate for all of the trees.

24 We talked before, they're going to not  
25 only plant protected trees along the highway

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1 staff has no objection and would recommend  
2 approval.

3 MR. STANOVICH:

4 Jerry, these little yellow Xs, those are  
5 the trees to be removed, correct?

6 MR. CREEL:

7 Yes.

8 MR. STANOVICH:

9 I have counted about three or four  
10 times. It comes up to 30, so is that the  
11 difference between the 30 and 39?

12 MR. CREEL:

13 If you look to the side of some of those  
14 trees, in very small print, it will say two of  
15 this kind of species and two of that kind of  
16 species. That's where the difference came in.  
17 This one may be a little bit easier to understand,  
18 David. I went back and highlighted this with  
19 yellow to show the multi-trunk trees that --

20 CHAIRMAN DELLENGER:

21 So if the tree is really split out, you  
22 know, at the base, they counted that as two trees.

23 MS. LENA:

24 You see them, David? Some of them were  
25 two. Some of them were three.

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1 right-of-way, which was one of the sticking  
2 points, you know. It was recommended that there  
3 would be cedars back there and there was some  
4 people that objected to the cedars. Well, now,  
5 they've got a survey -- a legend on here that  
6 shows they'll be planting live oaks and southern  
7 magnolias along that right-of-way line.

8 They'll also be putting fences up along  
9 that right-of-way line. So between the houses  
10 that will be built, the fences that will be  
11 installed and the trees that they're going to  
12 plant there according to this tree survey and  
13 mitigation plan, they've complied with everything  
14 that the ordinance requires of them.

15 And so we have looked at this. We've  
16 had the consulting arborist go out and walk the  
17 property. The Tree Committee has gone out and  
18 walked the property. I think Caryle has some  
19 letters.

20 MS. LENA:

21 Yeah.

22 MR. CREEL:

23 A copy of the letter where the Tree  
24 Committee voted 4/0/1 to approve -- the  
25 recommendation that this be approved and so the

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1 MR. STANOVICH:

2 So the last time we looked at this, we  
3 were removing 30 trees, right?

4 MR. CREEL:

5 That's right. Twenty-seven.

6 CHAIRMAN DELLENGER:

7 Twenty-seven.

8 MR. DELAHOUSEY:

9 Mr. Chairman, I'm just wondering if --  
10 given the current state of affairs in Biloxi where  
11 everybody is under a microscope, I'm just  
12 wondering if -- questioning the appropriateness  
13 of -- if Mr. Creel is presenting the case  
14 basically on behalf of applicant and then is also  
15 making a recommendation, you might be setting --  
16 you don't need any more problems.

17 MR. CREEL:

18 Well, let me just tell you, y'all can  
19 agree with my recommendation or not. We don't go  
20 back with hurt feelings and cry over something.  
21 We've got plenty of stuff to work on that keeps us  
22 busy.

23 MR. DELAHOUSEY:

24 If we were to table this, would it --  
25 from what you know, would it cause any significant

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1 problem with the developer if we were to table it  
 2 until he could -- or someone could represent him?  
 3 MR. CREEL:  
 4 It's up to y'all if y'all want to do  
 5 that. It's not going to cause any grief for us,  
 6 no.  
 7 CHAIRMAN DELLENGER:  
 8 I mean -- well, let's stop for a second  
 9 and let's see if there is anybody in the audience  
 10 that agrees or disagrees with the case first.  
 11 Is there in the audience in favor of the  
 12 applicant's request? Anyone in favor?  
 13 (No response.)  
 14 CHAIRMAN DELLENGER:  
 15 Is there anyone against? Is there  
 16 anyone against this?  
 17 (No response.)  
 18 CHAIRMAN DELLENGER:  
 19 Okay. Then, we'll consider that hearing  
 20 closed.  
 21 Now, we can discuss that further.  
 22 MR. DELAHOUSEY:  
 23 Yeah.  
 24 CHAIRMAN DELLENGER:  
 25 I mean, honestly, we've heard this case

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1 Committee on these meetings. Like I say, they've  
 2 walked the property. They've discussed this.  
 3 They understood the reason that we are going back  
 4 just because, you know, in the environment we're  
 5 working in right now. We're -- everybody is  
 6 nitpicking and everybody is looking for anything.  
 7 And, you know, a lot of these comments  
 8 that we're having to deal with, they offer no  
 9 solutions. It's just no to everything, you know.  
 10 And so we have to make decisions in the department  
 11 based on common sense sometimes about these  
 12 things.  
 13 And so our question about this  
 14 particular site is, has this developer done  
 15 everything that the tree ordinance would require  
 16 of any developer in order to submit his  
 17 application to the Tree Committee and to the  
 18 Planning Commission and for them to render a  
 19 decision. I mean, if there was information left  
 20 off of here or something like that, then there  
 21 would be good grounds for an argument.  
 22 But we have doubled down to make  
 23 absolutely sure that everything that the ordinance  
 24 requires is on here. You have a tree survey. You  
 25 have a mitigation plan. You have plans showing

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1 three times and I think that we've gotten about as  
 2 in depth as you can get on it now. I mean, I  
 3 think by splitting it out that obviously makes it  
 4 more trees, but, you know, you can split hairs  
 5 there where they split the trunks.  
 6 But, I mean, I'm good if you want to  
 7 table it just to further keep this -- I mean,  
 8 because the developer has got the money and  
 9 everything. I mean, you know, to me, it doesn't  
 10 matter if the guy from Meritage comes up and says  
 11 the exact thing. We're still looking at --  
 12 nothing has changed, I guess, is my -- somebody  
 13 else may have --  
 14 MR. DELAHOUSEY:  
 15 Well, you're educating me. I didn't  
 16 realize that this is one of the cases that we've  
 17 heard before.  
 18 CHAIRMAN DELLENGER:  
 19 Yes.  
 20 MR. DELAHOUSEY:  
 21 Mr. Creel, would it be fair to say that  
 22 your department would approve of the  
 23 recommendation of the Tree Committee?  
 24 MR. CREEL:  
 25 Yes. I actually sit in with the Tree

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1 all the trees that are going to be removed. We've  
 2 added the multi-trunk trees on there. We have  
 3 done everything that we can to make sure that we  
 4 didn't leave any loopholes in here.  
 5 Now, will we still run into some  
 6 opposition? Probably. I fully expect that this  
 7 will be appealed to the City Council again like it  
 8 was last time. But from a staff standpoint, we  
 9 believe that we have everything that we're  
 10 supposed to have to open the door for y'all to  
 11 make a decision on this.  
 12 CHAIRMAN DELLENGER:  
 13 Jerry, I want to state for the record  
 14 that we -- in opposition, we did receive an e-mail  
 15 from Debra Balins, who is opposed to this, so -- I  
 16 mean, she is not in attendance, but she did send  
 17 an e-mail that she is opposed to this.  
 18 MR. DELAHOUSEY:  
 19 I would offer -- make a motion that we  
 20 approve of the applicant's request based -- also  
 21 based on the recommendations of the Tree  
 22 Committee.  
 23 MR. FOULOS:  
 24 I second it.  
 25 CHAIRMAN DELLENGER:

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1 Okay. We have a motion by  
2 Mr. Delahousey; second by Mr. Poulos.  
3 Is there any discussion?  
4 MR. CARRON:  
5 Just one short comment. Jerry kind of  
6 just mentioned it lightly. He said that they were  
7 going to mitigate trees, and in case you didn't  
8 read this close, we're talking about 78 trees that  
9 they're mitigating.  
10 MR. CREEL:  
11 Well, their mitigation said that they  
12 would mitigate either through planting or --  
13 through planting and by paying into the tree bank,  
14 so they're going to do both. I think that they've  
15 looked at the property and that everywhere that  
16 they can plant a tree, they intend to plant one.  
17 But, you know, you can oversaturate a park or  
18 whatever by planting too many trees.  
19 MR. CARRON:  
20 I'm just looking at the ones that  
21 they've got on here that they're showing. It is  
22 78 trees.  
23 MR. DELAHOUSEY:  
24 Is this the new mitigation number or we  
25 haven't even approved that yet?

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1 developer has gone above and beyond what's  
2 technically required by them. I mean, you know,  
3 they're not required to put a buffer in between  
4 the interstate and this neighborhood or these  
5 houses, you know, that -- they've done that by the  
6 request of all the people that live around that  
7 area, you know. They're even going to put a fence  
8 up there as well.  
9 I'm not sure what requires MDOT to put a  
10 wall up like they're doing around Diamondhead, you  
11 know, by the interstate, but, I mean, you know,  
12 maybe people could petition MDOT, if it's that big  
13 of a problem for noise, to put a wall up. I mean,  
14 you know, I don't know if anybody has been by  
15 Diamondhead lately --  
16 MR. CARRON:  
17 Yeah, I have.  
18 CHAIRMAN DELLENGER:  
19 -- but they've got a huge wall going up,  
20 you know, I guess, separating the interstates. You  
21 see it in Louisiana a lot as well where you have  
22 these big walls put up, you know. I think they've  
23 gone above and beyond to try to appease as many  
24 people as they can and still build.  
25 MR. DELAHOUSEY:

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1 MR. CREEL:  
2 No. The new ordinance has not gone into  
3 effect. Y'all will have to have a public hearing  
4 on that and vote on it and then Council will have  
5 to vote to approve it before we can start  
6 enforcing that number.  
7 MR. DELAHOUSEY:  
8 Based on what you know about the new  
9 ordinance, does the mitigation plan meet the  
10 requirements of --  
11 MR. CREEL:  
12 No.  
13 MR. DELAHOUSEY:  
14 No.  
15 MR. CREEL:  
16 No. Because in the new ordinance, we're  
17 basing it on the diameter of the tree.  
18 MR. DELAHOUSEY:  
19 I see.  
20 MR. CREEL:  
21 The bigger the diameter, the more trees  
22 you have to plant, so there would be more in the  
23 ordinance.  
24 CHAIRMAN DELLENGER:  
25 But, I mean, I personally feel that this

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1 And I think by putting the language in  
2 there "as recommended by the Tree Committee" for  
3 the optics, it makes it look better and so, you  
4 know, I think it's the right thing to do.  
5 MS. SHAW:  
6 I have a comment too. During this  
7 discussion, you said that these protected trees  
8 are being removed, but then they're planting more  
9 protected trees. So where are they removing  
10 protected to then plant more protected trees?  
11 MR. CREEL:  
12 It's been the Tree Committee's position  
13 and a lot of other people's position that if you  
14 take down a protected tree, you need to plant a  
15 protected tree because what was happening is  
16 people were planting crepe myrtles to replace a  
17 protected tree that was removed. They'd take down  
18 a live oak and replace it with a crepe myrtle or  
19 with a Bradford pear or something like that.  
20 So the position that everyone is taking  
21 is that if you take down a live oak, you need to  
22 replace it with a live oak or another protected  
23 tree.  
24 MR. DELAHOUSEY:  
25 I think maybe Ms. Shaw was also -- maybe

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1 I read it wrong -- but asking why don't we just --  
 2 instead of replacing them with a protected tree,  
 3 why don't they just leave the protected trees  
 4 there. They need it for location there.  
 5 MS. SHAW:  
 6 That's -- yeah.  
 7 MR. DELAHOUSEY:  
 8 They need it for location of the  
 9 building.  
 10 CHAIRMAN DELLENGER:  
 11 Infrastructure and all that.  
 12 MR. CREEL:  
 13 That's correct. Subdivisions are --  
 14 like we've said before, are different than other  
 15 types of development. You know, if you're  
 16 building a hotel, for example, the water is  
 17 already there. The sewer is already there in most  
 18 cases, so, basically, you build a structure and  
 19 you tie it into the existing utilities.  
 20 When you take a piece of raw land and  
 21 you're converting it over to a subdivision, you  
 22 have to go in there and shape all of that property  
 23 so that the drainage flows a certain way. Plus,  
 24 you've got to go in there and run underground  
 25 water, underground sewer, underground utilities

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1 an eight-inch oak and then replace it.  
 2 Did you notice that? I wondered why  
 3 they want to remove it and then go back and  
 4 replace it.  
 5 MR. CREEL:  
 6 I don't know.  
 7 MR. TODARO:  
 8 Unless it's like you said --  
 9 MR. CREEL:  
 10 Maybe it's in bad condition or something  
 11 like that.  
 12 CHAIRMAN DELLENGER:  
 13 Or they may have to shape the land  
 14 before --  
 15 MR. TODARO:  
 16 I was going to say it may be part of the  
 17 sculpture of the land.  
 18 CHAIRMAN DELLENGER:  
 19 The sculpture of the land to where the  
 20 tree wouldn't survive.  
 21 MR. TODARO:  
 22 The sculpture, the subterranean work.  
 23 Just looked interesting that they were going to  
 24 take it out and redo it.  
 25 CHAIRMAN DELLENGER:

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1 all the way through. Its difficult to save trees  
 2 when you're having to do all that reshaping to the  
 3 landscape out there.  
 4 I mean, it's not -- it's not impossible,  
 5 but these trees that they're removing, for the  
 6 most part, are in the footprints of where the  
 7 houses are going to be located.  
 8 Now, I will say this: The ordinance  
 9 does allow me, the administrative authority,  
 10 that -- if a house location can be shifted in  
 11 order to save a tree, it allows me to adjust the  
 12 setback requirements up to 20 percent if I can  
 13 show that it's going to save protected trees. And  
 14 they have agreed that if they get to a situation  
 15 out there, they may ask us to do that shifting.  
 16 MR. TODARO:  
 17 It looks like that may be the case in  
 18 some of these lots. It just needs, like you said,  
 19 an adjustment, just feet, and some of trees could  
 20 be saved.  
 21 You know, I have an interesting  
 22 question. They're going to redo or they're going  
 23 to put that buffer wall of magnolias and others,  
 24 which is the buffer. All the way to lot  
 25 Number 28, it looks like they're going to remove

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1 Right next to it.  
 2 MR. TODARO:  
 3 What?  
 4 CHAIRMAN DELLENGER:  
 5 Right next to it.  
 6 MR. TODARO:  
 7 Yeah. Right.  
 8 CHAIRMAN DELLENGER:  
 9 Okay. Is there any other discussion?  
 10 MR. CARRON:  
 11 What it is, that tree is right on the  
 12 property line between the two houses. This one  
 13 here?  
 14 MR. TODARO:  
 15 No. The far -- on the right, right  
 16 there. The last one on your right, Lot Number 28.  
 17 It looks like it's going to be replaced in the  
 18 same spot.  
 19 MR. CARRON:  
 20 It's an eight-inch oak. That's right at  
 21 the line.  
 22 CHAIRMAN DELLENGER:  
 23 All right. There being no further  
 24 discussion, if we could all vote to approve by  
 25 raising your hands, please. Mr. Lechner,

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1 Mr. Parker, Mr. Todaro, Mr. Stanovich, Mr. Bogard,  
2 Mr. Delahousey, Mr. Carron, Mr. King, Mr. Snow,  
3 Mr. Poulos; myself, Mr. Dellenger.

4 Any against? One against, Ms. Shaw.

5 Let the record show that all are in  
6 favor, except one. Motion passes.

7 Jerry, was there any City Council action  
8 for us to hear?

9 MR. CREEL:

10 There was, of course. Last Tuesday, we  
11 had the first reading for the change of zoning at  
12 2003 Lawrence Avenue -- this is the old Beauvoir  
13 school property -- changing it from RS-10 to the  
14 RS-5 for them to move forward with that  
15 subdivision. That's for Elliott Homes. That was  
16 just the first reading.

17 Also had a first reading to change  
18 zoning on Woolmarket Road from LB, NB and RB to  
19 RS-5 single-family residential. That's on the  
20 south side of Woolmarket Road just off the Old 67.

21 We also had the approval -- the Council  
22 voted unanimously to approve the new definition  
23 for a transitional living facility. If you'll  
24 remember, we had an approval for a halfway house.  
25 And that -- there was some council members that

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1 were turned down, at least they would have the  
2 ability to appeal it to court, you know, but you  
3 can't just leave it out there.

4 So, basically, what happened is that the  
5 Court ordered that the Council put it back on the  
6 agenda and make a decision voting it up or voting  
7 it down, one way or the other, so that they would  
8 have a direction to go and it passed four to  
9 three. So that short-term rental has been  
10 approved now. So we'll see what happens there.

11 MR. DELAHOUSEY:

12 Mr. Chairman, if I could make a comment.  
13 Mr. Creel mentioned the situation with the  
14 transitional living home at Debuys and Fernwood,  
15 and just a statement. I have been critical of  
16 Biloxi City Council many times with this and the  
17 fact that this has been on our agenda for six  
18 months, I guess.

19 I commend Mr. Creel and his staff for  
20 not giving up and continuing to fight. I think  
21 this is a good precedent-setting case, and I guess  
22 you can fight City Hall and win. You just have to  
23 be persistent.

24 Maybe you'll move a little bit faster in  
25 the future. I wasn't talking to you.

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1 didn't feel comfortable with some of the language  
2 that was there, and so they've been working with  
3 the city attorney to come up with some language  
4 that the City could live with and some of the  
5 neighbors that were concerned about it could too.  
6 And so actually, the person who was a voice of  
7 opposition about this was happy with the new  
8 definition of transitional living facility, so  
9 that was approved unanimously.

10 Also, the -- there was -- if you'll  
11 remember last year, maybe early last year, Pastor  
12 George came to us with a request for a short-term  
13 rental at 115 St. John. That's right off of Beach  
14 Boulevard and it was -- it failed for lack of a  
15 second, you know. It went to -- it came before  
16 this, the Planning Commission and it was approved.  
17 And then it went to Council and there was a motion  
18 to approve it, but it didn't get a second so it  
19 failed.

20 Well, Pastor George hired an attorney.  
21 It went to court, and the Court ruled that you  
22 can't leave somebody in limbo like that, you know.  
23 Essentially, this is a summary. This is my words.  
24 But you can't just leave somebody with no  
25 direction to go for a remedy, you know. If it

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1 DR. TISEALE:

2 You must have me confused with somebody  
3 else.

4 MR. DELAHOUSEY:

5 Somebody that sits near you. Thank  
6 y'all, Paul.

7 CHAIRMAN DELLENGER:

8 Okay. Is there any old business?

9 MR. CARRON:

10 I've got some old business.

11 CHAIRMAN DELLENGER:

12 All right.

13 MR. CARRON:

14 It goes back to that cottage that was  
15 approved, not just that one in particular, but I  
16 kind of have a question for Jerry about should we  
17 be calling all -- basically, they're building a  
18 new residences there, an accessory structure,  
19 because that allows them to put it, no matter what  
20 zoning we have, three feet away from the property  
21 lines. You know, that's a 700-square-foot  
22 residence that they're putting in there and we're  
23 calling that an accessory structure. I think it's  
24 more than what we, you know, in our minds, think  
25 an accessory structure is.

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1 MR. CREEL:  
 2 Well, the accessory structure that you  
 3 can build that is supposed to be lived in is a  
 4 guest cottage, and there are regulations about  
 5 guest cottages where -- y'all have heard these  
 6 cases before. First of all, you're supposed to  
 7 have at least 20,000 square feet in the lot.  
 8 Number 2, the guest cottage is not  
 9 supposed to have over 700 square feet --  
 10 MS. SERPAS:  
 11 750.  
 12 MR. CREEL:  
 13 -- 750 square feet. It's supposed to be  
 14 behind the residential structure in order to be  
 15 used as a guest cottage.  
 16 But one of the things that we deal with  
 17 from time to time is that people will take a shed  
 18 out in the backyard and try to turn it into a --  
 19 oh, and the other thing is that the guest cottage  
 20 utilities have to run off of the main house. You  
 21 can't have a separate service for it if it's on  
 22 the same piece of property.  
 23 MR. CARRON:  
 24 And it's the same address too.  
 25 MR. CREEL:

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1 every bit of zoning that we have --  
 2 MR. CREEL:  
 3 It does, yes, sir.  
 4 MR. CARRON:  
 5 -- that it's only -- it has to -- can  
 6 put a -- that structure three feet from the  
 7 property line.  
 8 MR. CREEL:  
 9 That's correct.  
 10 MR. CARRON:  
 11 And I'm saying maybe we need to change  
 12 the wording on that.  
 13 MR. CREEL:  
 14 Okay. I mean --  
 15 MR. CARRON:  
 16 I don't know how everybody else feels  
 17 about it, but --  
 18 MR. CREEL:  
 19 If y'all charge us with a text  
 20 amendment, we'll get the language together and  
 21 that's -- Planning Commission, City Council can  
 22 charge us.  
 23 MR. CARRON:  
 24 Like I say, I'm pointing it out. I  
 25 don't know how everybody else feels about it.

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1 Yes.  
 2 But we see these things all the time  
 3 where people will try to convert something over to  
 4 a living quarters or they'll build a big shed out  
 5 in the back and they will have rough-ins for  
 6 restrooms and things like that, and we just have  
 7 to tell them you can't do that, you know.  
 8 MR. CARRON:  
 9 Yeah. And, you know, my concern is that  
 10 if I live in the zoning and it's -- there's  
 11 supposed to be a 10-foot setback on the side, you  
 12 know. Here's my neighbor that's going to build  
 13 something three feet away from my fence, and, I  
 14 mean, again, we normally think of an accessory  
 15 structure as a shed or a workshop, not a residence  
 16 and that's basically what you have going in there.  
 17 MR. CREEL:  
 18 But let me say this: On our table, on  
 19 our list of accessory structures, guest cottage is  
 20 listed on there. So according to the code, that  
 21 guest cottage can meet that three-foot setback in  
 22 the rear.  
 23 MR. CARRON:  
 24 I'm not arguing with you on that. I  
 25 mean, that's what I said earlier. It applies to

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1 MR. CREEL:  
 2 Okay.  
 3 MR. CARRON:  
 4 Maybe that's something we need to  
 5 discuss at another time.  
 6 CHAIRMAN DELLENGER:  
 7 Is there any other old business?  
 8 (No response.)  
 9 CHAIRMAN DELLENGER:  
 10 Is there any new business? Any new  
 11 business?  
 12 (No response.)  
 13 CHAIRMAN DELLENGER:  
 14 Are there any citizens' comments?  
 15 Citizens' comments?  
 16 (No response.)  
 17 CHAIRMAN DELLENGER:  
 18 The next scheduled Planning Commission  
 19 meeting will be held May 21st here at 2:00 in the  
 20 same auditorium.  
 21 And if I can have a motion to adjourn.  
 22 MR. FOULOS:  
 23 So moved.  
 24 MR. DELAHOUSEY:  
 25 Second.

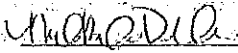

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CHAIRMAN DELLENGER:  
Moved by Mr. Poulos; second by  
Mr. Delahousey.  
(Adjourned at 2:57 p.m.)

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**CERTIFICATE OF COURT REPORTER**  
I, MELISSA BURDINE-RODOLFICH, Court Reporter  
and Notary Public, in and for the County of  
Harrison, State of Mississippi, hereby certify that  
the foregoing pages, and including this page,  
contain a true and correct copy of my stenotype  
notes and/or electronic tape recording of the  
public hearing(s), as taken by me at the time and  
place heretofore stated, to the best of my skill  
and ability.  
I further certify that I am not in the employ  
of, or related to, any counsel or party in this  
matter, and have no interest, monetary or  
otherwise, in the final outcome of the proceedings.  
Witness my signature and seal, this the  
14<sup>th</sup> day of May, 2026.  
  
  
Melissa Burdine-Rodolfich  
My Commission Expires 4/03/28

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