

'FEAB MEETING MINUTES

July 9, 2021

3:00 p.m.

Fairhope Public Library Board Room, Fairhope, AL

Member Attendees: Gary Gover, Jim Horner, Michelle Melton, Jennifer Foutch, Amy Paulson, Mike Shelton

Members not in attendance:

Nigel Temple (warranted absence); Ben Frater (warranted absence); Jeanine Normand (warranted absence)

City of Fairhope: Kim Burmeister, Christina LeJeune -Planning and Zoning Department.

City Council: None

Honored Guests: None

Minutes taken by Kim Burmeister

Gary called the meeting to order at 3:00 p.m.

Summary of meeting:

1. *Dyas Triangle Deed and mission suggested language*
2. *Colony Park upgrade considerations for drainage*
3. *Parking Authority upcoming interactions with FEAB*
4. *Stormwater infrastructure inventory for Fairhope*

FEAB Minutes:

Jennifer made a motion to approve the FEAB Special Meeting Minutes from 6/25/21, as written. Unanimously approved.

Dyas Triangle Park Deed Draft

Amy handed out the draft of suggested deed language and draft mission:

Mission: To preserve and protect the property known as the Dyas Triangle to be used as public parkland for the enjoyment of the community in a natural state and with the protection of the environment, natural resources, and animal habitat being the first priority.

Comment from Jennifer: Change "first priority" to "the priority"

In accordance with the mission, we suggest the following be prohibited:

1. Any commercial or industrial use of the property

Comment from Gary: Should we define commercial? Michelle: No, keep it vague, better for legalities.

2. The placement or construction of any buildings other than restroom facilities
Comment from Jennifer: Building is a roof and 4 walls. Pavilions should not be excluded.
3. Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required for 1) fire breaks, 2) maintenance of designated trails and habitat, or 3) prevention or treatment of disease.
4. Disposal or dumping of waste, refuse, or debris on property
5. The above-ground installation of communication towers, antennas, and related facilities unless constructed in a manner to preserve the environmental aesthetic
6. The exploration for, or development and extraction of, any minerals and hydrocarbons by any mining or extraction method.
7. Any alteration of the surface of the land including excavation or removal of soil, sand, gravel, rock, etc. unless directly tied to habitat or watershed restoration and management.

Comment from Gary: Prohibitions shall not inhibit connectivity of the two triangle park pieces (via wildlife corridor, tunnel or walkway over road).

8. Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters.
9. Any maintenance of the property that is inconsistent with the environmental management plan established for the property

Comment from Gary: City of Fairhope will be in charge of park maintenance

10. Use of any motorized vehicle or battery powered vehicle on the property other than motorized wheelchairs for handicapped individuals, with the exception of maintenance vehicles and designated parking areas

Comment from Amy: Sign at trail head parking area should state prohibited vehicles (anything motorized or electrical, with the exception of maintenance vehicles) and also should state that park closes at dark.

Comment from Mike: Use the term "mobility devices" instead of "handicapped".

Comment from Michelle: Remove "designated parking areas" reference. She will work on politically correct language.

11. The placement of any above ground utility infrastructure larger than a total of 0.25 acres. Minor utility infrastructure less than 0.25 acres must be located adjacent to exterior boundaries and must be obscured and constructed in a manner to preserve the environmental aesthetic.
12. The introduction of any non-native vegetation to the property

Comment from Jennifer: Will the city want to introduce flower beds?

Comment from Gary: City may want an attractive border or entrance

Comment from Amy: if city introduces flower beds or plantings on the property, all plantings should be native.

13. Manipulating, impounding, or altering of the natural watercourse of Fly Creek.

Comment from Mike: Unless associated with watershed restoration

14. The permanent installation of artificial lighting anywhere on the property

Comment from Jennifer: Artificial lighting should be allowed in parking areas

Comment from Amy: Artificial lighting should be allowed in restroom areas

Comment from Michelle: City may want lighting through the park for liability reasons.

Comment from Kim: There are other city parks with no artificial lighting, such as North Mobile Street park (“Volanta Park”) and “Knollwood Park”.

Other discussions on Dyas Triangle Park:

Amy: Deed should not be overly prescriptive. Specific items can be written into the management plan. Management plan should not be referred to as “forestry management” since this has a different implication.

Michelle: park property can revert back to Fairhope Single Tax ownership if park use is not according to deed.

Gary: City will have to follow any buffer requirements on park development, such as stream buffers.

Colony Park at CR 13 on Twin Beech Road

Amy: Recent article on Colony Park (“Fairhope Times”) indicates upgrades may be considered to this park to include frisbee golf, which is no longer offered at Volanta Sports Park. She said this park / area serves as a floodway to Cowpen Creek and should not be altered without a professional flood study. It is a beautiful area to watch birds feeding in the mudflats after a rain event. There is a trampoline in a ditch here that needs to be removed.

Kim will refer trampoline to public works for removal.

Mike: this park was previously engineered to be a mud flat and a drainage area.

Parking Committee, Parking Study:

FEAB July 9, 2021 Minutes

Jennifer: Recent Planning and Zoning commission meeting mentioned upcoming discussions on parking regulation changes. FEAB was suggested as being involved in the work groups.

Gary: Asked Kim to check with Hunter to see how FEAB can be involved in these changes and/or work with the Parking Authority group. He would like to designate a FEAB member to attend the meetings.

Amy: Suggested Nigel as a good FEAB contact for the Parking Authority

Stormwater Infrastructure:

Jim: City of Mobile is conducting a stormwater infrastructure inventory with RESTORE funds. City of Fairhope should consider doing the same. He suggested inviting City of Mobile contact Jennifer Green to upcoming FEAB meeting to discuss how this will be done, if city leaders have interest in pursuing the same.

Mike: This has been brought up before. Currently City of Fairhope has partial inventory of stormwater infrastructure through the MS4 outfall inventory (stormwater basins and city outfalls).

Amy: Eastern Shore Watershed Management Plan study may encompass some mapping of infrastructure.

Kim: Richard Johnson is the appropriate person to initiate stormwater outfall inventory for the City of Fairhope.

Meeting adjourned: 4:00 p.m.

Next meeting is Friday, August 13th @ 3 p.m. Library Board Room

FEAB CONTACT INFORMATION:

Chairman:

Gary Gover govers@bellsouth.net (251) 990-8662

Members:

Jeanine Normand drjnormand@aol.com (251) 928-2284

Ben Frater ben.frater@gmail.com (404) 314-8815

Mike Shelton yaupon3@gmail.com (251) 270-9042

Jim Horner none (251) 928-9722

Amy Paulson amy.paulson@yahoo.com (251) 654-7401

Nigel Temple 757nigel@gmail.com (757) 803-3589

Michelle Melton michelleleemeltonlee@gmail.com (423) 504-8253

Jennifer Foutch Foutch.jennifer@gmail.com (618) 318-0354

CITY CONTACTS:

Corey Martin, City Council

corey.martin@fairhopeal.gov

Kim Burmeister, Planning and Zoning Department

kim.burmeister@fairhopeal.gov

Christina LeJeune, Planning and Zoning Department

christina.lejeune@fairhopeal.gov

**STATE OF ALABAMA
COUNTY OF BALDWIN**

QUITCLAIM DEED

KNOW MEN BY ALL THESE PRESENTS, that the CITY OF FAIRHOPE, an Alabama municipal corporation, herein referred to as "Grantor," for and in consideration of the sum of ONE DOLLAR (\$1.00) and other valuable consideration this day in cash in hand paid to Grantor by the FAIRHOPE SINGLE TAX CORPORATION, a corporation, chartered under the laws of the State of Alabama, herein referred to as "Grantee," the receipt of which is hereby acknowledged by these presents, the undersigned does hereby remise, release, quit claim, grant, sell and convey unto the said Grantee all its right, title, interest and claim in or to follow described real property situated in Baldwin County, Alabama, to wit:

PARCEL 1:

BEGINNING AT A POINT on the East right of way line of County Road 98, which is more particularly identified as Station No. 89 and 65 of the right of way map of Project No. S-635(3) as recorded in the Office of the Judge of Probate, Baldwin County, Alabama; thence North 47 degrees 29 minutes 52 seconds East along said right of way line a distance of 935 feet, more or less, to a point; thence turn an angle of 90 degrees to the right a distance of 10 feet; thence North 47 degrees 29 minutes 52 seconds East, a distance of 429 feet, more or less, to a point of curve; thence along a curve to the left having a radius of 1,145.92 feet, a distance of 569 feet, more or less, to a point; thence turn an angle to the East a distance of 60 feet, more or less, to a point on the West right of way line of U.S. Highway 98; thence South 20 degrees 8 minutes 38 seconds East, along said West right of way line, a distance 1,621 feet, more or less, to a point; thence South 34 degrees 45 minutes West distance of 57.49 feet; to a point on the North right of way line of Alabama Highway 104; thence South 89 degrees 40 minutes West along said right of way line of Alabama Highway 104, a distance of 1,665 feet, more or less to a point; thence turn an angle to the right of approximately 34 degrees, a distance of 190 feet more or less; thence turn an angle to the right of approximately 54 degrees, a distance of 50 feet, more or less, to the POINT OF BEGINNING;

Said parcel of land lies in the William Patterson Grant Section 8 Township 6 South, Range 2 East, Baldwin County, Alabama, and is a part and parcel of that property conveyed by the deed recorded in Deed Book No. 422, Pages 70 and 71, identified therein as Parcel No. Six.

Said triangular shaped parcel is bounded on the South by Alabama Highway 104; is bounded on the Easterly side by U.S. Highway 98 (4 lane) and is bounded on its Westerly side by what is called Baldwin County Highway 98.

PARCEL 2:

Beginning at a concrete block being the Southwest corner of the Forbes Grant, Section 7, Township 6 South, Range 2 East, Baldwin County, Alabama; thence run S-76 degrees 03'22"-W along the South boundary of said Forbes Grant, a distance of 875.08 feet; thence run S-39 degrees 56'38"-E, a distance of 185 feet, more or less, to the center of Fly Creek, the Point of Beginning, thence run Easterly along the centerline of Fly Creek, a distance of 1,850 feet, more or less, to the West right of way line of U.S. Highway 98; thence run S-19 degrees 37'38"-E along the said West right of way line of U.S. Highway 98, a distance of 420 feet, more or less; thence run S-04 degrees 40'-E along said West right of way of U.S. Highway 98, a distance of 194.4 feet, more or less; thence continue along the West right of way line of U.S. Highway 98 along a curve to the right, concave Northwesterly, having a radius of 1,025.92 feet, a distance of 384.97 feet, more or less to a concrete right of way monument; thence run S-66 degrees 03'09"-E, a distance of 30 feet, more or less; thence continue along the West right of way line of U.S. Highway 98 (alternate route) along a curve to the right concave Northwesterly, having a radius of 1,055.92 feet, a distance of 434 feet, more or less; thence continue along said West right of way line of U.S. Highway 98 (alternate route) S-47 degrees 29'52"-W, a distance of 729 feet, more or less; thence run S-42 degrees 30'08"-E a distance of 30 feet, more or less; thence continue along said West right of way line of U.S. Highway 98 (alternate route) S-47 degrees 29'52"-W, a distance of 660 feet, more or less; thence run N-81 degrees 10'-W, a distance of 51 feet, more or less, to the East right of way line of Baldwin County Scenic Highway 98 (old U.S. Highway 98); thence run N-29 degrees 18'-W along said East right of way line of Baldwin County Scenic Highway 98, a distance of 190.26 feet, more or less; thence run S-75 degrees 44'-W, a distance of 10 feet, more or less; thence continue along the East right of way line of Baldwin County Scenic Highway 98, N-14 degrees 16'-W, a distance of 924.5 feet, more or less; thence continue along the East right of way line of Baldwin County Scenic Highway 98 along a curve to the left, concave Southwesterly, having a radius of 1,989.4 feet, a distance of 735.7 feet, more or less, to the intersection of the South property line of land owned by Arthur and Ellen Dyas; thence run S-87 degrees 49'-E, a distance of 225 feet, more or less; thence run N-17 degrees 11'-E, a distance of 170 feet, more or less, thence run N-64 degrees 49'-W, a distance of 275 feet, more or less, to the center of Fly Creek; thence run Northeasterly along the center of Fly Creek, a distance of 275 feet, more or less, to the Point of Beginning. Said parcel of land lies in Section 8, Township 6 South, Range 2 East, Baldwin County, Alabama, and includes a drainage easement located on the West right of way line of U.S. Highway 98, being more particularly described as:

Beginning at a point 145 feet West of U.S. Highway 98, Station 133+00; thence run N-49 degrees 22'22"-E, a distance of 65 feet, more or less, to the center of Fly Creek; thence run Southeasterly along the center of Fly Creek to a point on the West right of way line of U.S. Highway 98; thence run S-19 degrees 37'38"-E along the West right of way line of U.S. Highway 98, a distance of 75 feet, more or less, to the Point of Beginning.

Both parcels, collectively, are sometimes referred to as the "Dyas Triangle," and were previously deeded to the City of Fairhope by a warranty deed from Charles L. Dyas, Jr., a married man, Arthur C. Dyas, a married man, Pamela D. Vautier, an unmarried woman, Drew C. Dyas, a married man, and Eric J. Dyas, a married man recorded in Baldwin County Probate Court on December 30, 2013 (Instrument No. 1435575).

This conveyance is subject to the following:

1. Any and all liens, encumbrances, easements, right of way and all other matters recorded in the Office of the Judge of Probate, Baldwin County, Alabama.
2. Any and all defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date of recording this Deed.
3. Any prior reservation or conveyance of minerals, and any rights associated therewith.
4. Rights of the United States of America, the State of Alabama, or other parties, in and to the shore, littoral or riparian rights to the portion of the Property described in Parcel 2 lying adjacent to Fly Creek.
5. Rights of ways of U.S. Highway 98, U.S. Highway 98 Business; Alabama Highway 104 and County Highway 11, as they now exist along the margins of the Property.

Recording references are with respect to the records of the Probate Court of Baldwin County, Alabama.

TOGETHER WITH all and singular the rights, members, privileges, tenements, hereditaments, easements, appurtenances and improvements belonging or in anywise appertaining thereto.

TO HAVE AND TO HOLD unto the said Grantee, its successors or assigns, forever.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be executed by its duly authorized officer on this the _____ day of _____, 2021.

GRANTOR:

CITY OF FAIRHOPE, an Alabama
municipal corporation

By: _____
Sherry Sullivan
Its: Mayor

ATTEST: _____
City Clerk

Controlling Statutes

Alabama Code Section 35-4-410

Authorization to alienate public recreational facilities and housing projects.

The governing bodies of counties, cities, towns, and other subdivisions of the state shall have full power and authority to alienate public parks and playgrounds, other public recreational facilities and public housing projects on such terms as may be agreeable to them, provided such alienation is first approved by a majority of the qualified electors of the county, city, town, or subdivision affected thereby voting in a referendum election held for such purpose.

(Acts 1956, 2nd Ex. Sess., No. 103, p. 425, §1.)

Alabama Constitution of 1901, Art. IV, § 94.01

(a) The governing body of any county, and the governing body of any municipality located therein, for which a local constitutional amendment has not been adopted authorizing any of the following, shall have full and continuing power to do any of the following:

(1) Use public funds to purchase, lease, or otherwise acquire real property, buildings, plants, factories, facilities, machinery, and equipment of any kind, or to utilize the properties heretofore purchased or otherwise acquired, and improve and develop the properties for use as sites for industry of any kind or as industrial park projects, including, but not limited to, grading and the construction of roads, drainage, sewers, sewage and waste disposal systems, parking areas, and utilities to serve the sites or projects.

(2) Lease, sell, grant, exchange, or otherwise convey, on terms approved by the governing body of the county or the municipality, as applicable, all or any part of any real property, buildings, plants, factories, facilities, machinery, and equipment of any kind or industrial park project to any individual, firm, corporation, or other business entity, public or private, including any industrial development board or other public corporation or authority heretofore or hereafter created by the county or the municipality, for the purpose of constructing, developing, equipping, and operating industrial, commercial, research, or service facilities of any kind.

(3) Lend its credit to or grant public funds and things of value in aid of or to any individual, firm, corporation, or other business entity, public or private, for the purpose of promoting the economic and industrial development of the county or the municipality.

(4) Become indebted and issue bonds, warrants which may be payable from funds to be realized in future years, notes, or other obligations, or evidences of indebtedness to a principal amount not exceeding 50 percent of the assessed value of taxable property therein as determined for state taxation, in order to secure funds for the purchase, construction, lease, or acquisition of any of the property described in subdivision (1) or to be used in furtherance of any of the other powers or authorities granted in this amendment. The obligations or evidences of indebtedness may be issued upon the full faith and credit of the county or any municipality or may be limited as to the source of their payment.

The recital in any bonds, warrants, notes, or other obligations or evidences of indebtedness that they were issued pursuant to this amendment or that they were issued to provide funds to be used in furtherance of any power or authority herein authorized shall be conclusive, and no purchaser or holder thereof need inquire further. The bonds, warrants, notes, or other obligations or evidences of indebtedness issued hereunder shall not be considered an indebtedness of the county or any municipality for the purpose of determining the borrowing capacity of the county or municipality under this Constitution.

(b) In carrying out the purpose of this amendment, neither the county nor any municipality located therein shall be subject to [Section 93](#) or [94 of this Constitution](#) . Each public corporation heretofore created by the county or by any municipality located therein, including specifically any industrial development board incorporated under Article 4 of Chapter 54 of Title 11 of the Code of Alabama 1975, and any industrial development authority incorporated or reincorporated under Chapter 92A of Title 11 of the Code of Alabama 1975, and the Shoals Economic Development Authority enacted under Act No. 95-512, 1995 Regular Session, are validated and the powers granted to the board or authority under its respective enabling legislation are validated notwithstanding any other provision of law or of this Constitution. The powers granted by this amendment may be exercised as an alternative to, or cumulative with, and in no way restrictive of, powers otherwise granted by law to the county, or to any municipality, or to any agency, board, or authority created pursuant to the laws of this state.

(c) Neither the county nor any municipality located therein shall lend its credit to or grant any public funds or thing of value to or in aid of any private entity under the authority of this amendment unless prior thereto both of the following are satisfied:

(1) The action proposed to be taken by the county or municipality is approved at a public meeting of the governing body of the county or municipality, as the case may be, by a resolution containing a determination by the governing body that the expenditure of public funds for the purpose specified will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities.

(2) At least seven days prior to the public meeting, a notice is published in the newspaper having the largest circulation in the county or municipality, as the case may be, describing in reasonable detail the action proposed to be taken, a description of the

public benefits sought to be achieved by the action, and identifying each individual, firm, corporation, or other business entity to whom or for whose benefit the county or the municipality proposes to lend its credit or grant public funds or thing of value.

For purposes of the foregoing, any sale, lease, or other disposition of property for a price equal to the fair market value thereof shall not constitute the lending of credit or a grant of public funds or thing of value in aid of a private entity.

Nothing in this amendment shall authorize the county commission to own or operate a cable television system.

(d) This amendment shall have prospective application only. Any local constitutional amendments previously adopted and any local law enacted pursuant to such amendment shall remain in full force and effect.

Caselaw

In *Thomas vs. Bullock County Commission*, 474 So. 2d 1094 (Ala 1985) the Alabama Supreme Court reversed a lower Court and remanded a suit to enjoin a transfer of land by a county. The County accepted a deed with plans to build a park, began planning the park, then deeded the property back. The Court set out the standard for common law dedication of property for recreational purposes as requiring both the intent of the owner to dedicate and acceptance by the public or a body thereof. *Id.* at 1098 (emphasis added).

Thomas cited *O'Rorke v. City of Homewood* 286 Ala 99 (1970) as holding that the clear intent of the owner must be shown and be unequivocal in showing intent to create a public right. *Thomas* further cites *AmJur2d* as requiring language in the deed showing intent that the land be used for a public purpose. The *Thomas* court found in that case that the deed did so evidence intent by the grantor and remanded that case for further proceedings.

The *O'Rorke* case, cited above in *Thomas*, is a controlling Alabama Supreme Court case on this issue. The Court affirmed a lower court denial of injunctive relief to stop the transfer of property by the City of Homewood. *O'Rorke* favorably cites *McQuillian Municipal Corporations* as saying "where lands are conveyed to a municipality free from any trusts or conditions, and afterwards used for park purposes, the municipality may sell and convey lands to any grantee that it may choose, under its charter power to sell and dispose of property owned by it, or it may devote the property to other public uses." The *O'Rorke* Court noted that the deed to the City did not contain any limitation or dedication provisions, and the City did not dedicate the property as a park by ordinance. The land was used in a limited fashion as a park, but the Court held this did not rise to the level of a perpetual dedication.

O'Rorke was not only followed by the Alabama Supreme Court in *Thomas*, above, but also by the federal district court in *Harper v. Birmingham*, 661 F. Supp. 672 (N. D. Ala. 1986). In that case, a citizen claimed the failure of the City to hold a vote on the sale of land was a denial of his due process. The Court analyzed *O'Rorke* and other cases and said a dedication could occur by either the clear intent in a deed or a clear resolution or ordinance. The Court focused on the fact

that neither the deed transferring the property nor any resolution or ordinance of the city referenced the property's purpose to be used as a park. *Id.* at 676.

The Alabama Attorney General has given an opinion that cites *Harper*. The City of Florence asked if it could lease property used as a softball field. Following *Harper*, AG 2004-115 states that because the deed had no formal dedication and there was no formal ordinance or resolution, then no referendum vote was required.