PLANNING COMMISSION MEETING MUNICIPAL CENTER COUNCIL CHAMBERS Tuesday, September 7, 2010

The regular meeting of the Planning Commission was scheduled and held in the Council Chambers of the Municipal Center on September 7, 2010. Chairman Klevan welcomed everyone and asked the Commission members as well as the audience to please speak into the microphone so they could be heard. Chairman Klevan then called the meeting to order at 6:00 p.m. asking the secretary for the roll.

Ms. Rush called the roll of the Board to establish a quorum:

<u>Commissioners Present:</u> Alderman John Drinnon, David Klevan, Lisa Parker, Forrest Owens, Dike Bacon, Mike Harless.

Commissioners Absent: Susan Burrow, Rick Bennett

Staff Present: Wade Morgan, David Harris, Jerry Cook, Andy Pouncey, Tim Gwaltney, and Pam Rush.

A quorum for tonight's Planning Commission meeting was established.

1. Approval of Minutes for August 3, 2010

Chairman Klevan stated for those people who just arrived, tonight's agenda is on the front table. The first order of business is the approval of the minutes for August 3, 2010. If there were no additions, corrections or deletions to the minutes of the August 3, 2010, meeting of the Planning Commission, he would entertain a motion for approval.

Mr. Harless moved to approve the Planning Commission minutes of August 3, 2010, as submitted, seconded by Mr. Bacon.

Chairman Klevan asked for a roll call.

Roll Call: Bennett – absent; Burrow – absent; Drinnon – yes; Parker – yes; Bacon – yes; Harless – yes; Owens - yes; Klevan – yes. **The motion was passed**

2. Adoption of the Street and Infrastructure Conversion Policy

BACKGROUND: On April 7, 2009, the Planning Commission recommended approval of a text amendment to the Subdivision Regulations that would set out in detail the process by which an existing private street subdivision may convert its streets and/or its utilities to public ownership, and vice versa. After further consideration, the ECD staff has revised the proposed ordinance into a policy document for adoption by the Planning Commission. Also, enclosed with this document is an updated list of all private street developments in Germantown.

<u>DISCUSSION:</u> The attached *Street and Infrastructure Conversion Policy* describes in detail the process, criteria, information required and approvals required in order for streets, water lines, sanitary sewer lines, and storm drainage facilities to be transferred from private to public responsibility, and vice versa. Both types of ownership transfer require preliminary approval from the Planning Commission, followed by final approval from the Planning Commission and then a final approval from the Board of Mayor and Aldermen (BMA). The PC considers basic street network and cost issues with the preliminary application. The PC final review considers a detailed technical assessment of the conditions of the streets, water lines, storm drainage system, streetlights and sanitary sewers that are to be transferred to City ownership, and the ability of a homeowners association to own/maintain the infrastructure, which it wants to acquire from the City. As a final level of review, the BMA will consider the proposed transfer in its

entirety, including, but not limited to, the cost and the fiscal impact on the City of the transfer and may approve a contract that describes all work that will be done to effectuate the conversion.

The ECD staff has revised the attached policy document in the following ways to address recommendations made by the Planning Commission subcommittee on August 18, 2010:

- 1. Require the Planning Commission, rather than the Board of Mayor and Aldermen, to give preliminary approval of requests for street and infrastructure conversions;
- 2. Change the analysis period for expected expenses from 20 to 10 years;
- 3. Provide more details on the analysis of street lights in the diagnostic review;
- 4. Provide more details on the analysis of water and sewer systems in the diagnostic review;

The proposed motion also includes language to rescind the PC's April 7, 2009 recommendation of approval of the amendment to the Subdivision Regulations. If the PC recommends approval, the policy will be forwarded to the Board of Mayor and Aldermen for approval by resolution.

STAFF RECOMMENDATION: APPROVAL

Mr. Owens stated there are some subdivisions with non-standard curbs that function. How will the City deal with repairs to non-standard curbs?

Mr. Cook stated the Planning Commission at its discretion could approve a request for a private street conversion in the following:

- A. Curb and gutter type that does not meet city standards, provided sufficient base exists;
- B. Street width that does not meet city standards, provided adequate emergency access exists:
- C. Intersection radii that does not meet city standards, provided adequate emergency access exists;
- D. The absence of sidewalks on both sides of the street;
- E. Streetlight type. If the streetlights do not meet city standards for the level of illumination, and type of light fixture and/or pole, they shall remain under the ownership and maintenance of the adjacent property owners or the homeowners association.
- F. Storm drainage that does not meet current city standards, but is adequate for the demands placed on it.
- G. Water and sewer systems that do not meet current city standards, but were built to standards in effect at the time of construction and are adequate to meet the demands placed upon them, unless there is a safety issue (for example, the existence of asbestos pipe).

Mr. Jim Schmiedicke 3085 Poplar Grove Lane stated he would like to encourage this group to pass the policy and submit it to the Board of Mayor and Alderman for approval.

SUBDIVISION & SITE PLAN REVIEW SUBCOMMITTEE REPORT: (Forrest Owens, Chairman) - The subcommittee met on August 18, 2010 and withheld a recommendation.

PROPOSED MOTION: To rescind the April 7, 2009 recommendation of approval of an amendment to the Subdivision Regulations and recommend approval of the *Street and Infrastructure Conversion Policy*.

Mr. Owens moved to rescind the April 7, 2009 recommendation of approval of an amendment to the Subdivision Regulations and recommend approval of the *Street and Infrastructure Conversion Policy*, seconded by Mr. Harless.

Chairman Klevan asked for a roll call.

Bennett – absent; Burrow – absent; Drinnon – yes; Parker – yes; Bacon – yes; Harless – **Roll Call:**

yes; Owens - yes; Klevan – yes. **The motion passed**.

CITY OF GERMANTOWN Proposed Residential Street and Infrastructure Conversion Policy (as approved by the Planning Commission on September 7, 2010)

Any application by residential property owners requesting re-designation of a private street to a public street or public street to private street shall be subject to review and approval by the Planning Commission and the Board of Mayor and Aldermen as described in this policy and any other considerations as may be deemed appropriate with respect to the particular application.

GENERAL PROVISIONS.

(A) What is Covered

Within this policy document, the terms street and infrastructure refer to public or private residential streets, and water lines, sanitary sewer lines, stormwater drain lines, and related apparatus as to all of the same, that are within public rights-of-way or easements. Water and sewer lines serving individual lots, parking spaces, and parking lots are not addressed.

(B) Planning Commission authorization

The Planning Commission has authority to approve the conversion of private streets and the installation of gates, barricades or other barriers that limit the free movement of traffic. All private streets shall meet or exceed the city standards as outlined in the Private Street Standards Policy. The referenced city standards are deemed necessary to protect the health, safety and general welfare of the residents of the city and to assure that private streets are designed, built and maintained to acceptable standards. All subdivisions with private streets shall be developed and maintained in compliance with these city standards.

(C) Board of Mayor and Alderman Final Approval

The Board of Mayor and Aldermen has authority for final approval of any proposal to convert streets and infrastructure from either public to private, or private to public, ownership.

(D) City maintenance of private streets

The city shall have no obligation to maintain any private street or related improvements; however, if the city has infrastructure under a private street and maintenance work is required on said infrastructure, the city shall repair the private street in a workmanlike manner, so as to meet the standard of workmanlike quality then prevailing at the time and place of construction. The city shall warrant its work for one calendar year.

(E) Disaster response

The city reserves the right to limit its disaster response within a private street subdivision, such as collection of brush and debris, street clearing and similar measures, based on the availability of state or federal disaster relief funding and the availability of City work forces.

II. POLICIES AND PROCEDURES FOR PRIVATE TO PUBLIC CONVERSION.

(A) Preliminary approval of the Planning Commission

i. If an applicant seeks to convert a private street, and related infrastructure, to a public street and public ownership, the applicant shall file an application with the Department of Economic And Community Development seeking the preliminary approval of the Planning Commission. Such an application shall not be required to contain all of the detail that would be required with respect to the final application to the Planning Commission as set out hereinafter but same shall contain at least the following, plus such other information as the Director of the Department of Economic and Community Development shall require:

- a. a plat or plan of the subdivision or planned unit development; and
- b. a map showing adjacent properties which would, or might be, affected if the application were approved.
- ii. An analysis of the expected cost of conversion and the expense that the city would incur over the next ten (10) years in maintaining the private street(s) and related improvements if same were converted to public property (i.e. water lines, sanitary sewer lines, drainage lines, paving, curb and gutter, sidewalks, street lights and similar infrastructure) shall be submitted by the applicant for review by the City.
- iii. The Planning Commission shall consider said application. If it gives its preliminary approval, the applicant may request final approval from the Planning Commission in compliance with the process set forth herein. If the Planning Commission denies preliminary approval, the applicant may appeal that action to the Board of Mayor and Aldermen by submitting to the Director of Economic and Community Development a letter stating the appeal and giving the reasons/justification for it. The applicant has 30 calendar days from the date of the Planning Commission denial to make the appeal. Otherwise, no further action shall be taken by the Planning Commission with respect to an application to convert such private street(s) to public streets. Notwithstanding the grant of preliminary approval by the Planning Commission, nothing hereinabove shall be construed to diminish in any way the authority of the Board of Mayor and Aldermen to grant or withhold preliminary or final approval to accept a private street for perpetual maintenance by the city. No reapplication for the same request shall be accepted within one year of the Planning Commission's and/or the Board of Mayor and Aldermen's final decision.

(B) General Requirements.

A private street may be converted to a public street if all provisions of this policy are met. The following infrastructure may also be converted to public use and ownership with the conversion of the private street: street pavement and subsurface, curbs and gutters and stormwater, sanitary sewer and water infrastructure and all related apparatus. Sidewalks shall be open for public use either in the public right-of-way or within a pedestrian easement, but all maintenance of sidewalks shall remain the responsibility of either the abutting property owners or the homeowners association. Parking spaces, parking lots and alleys are not eligible for designation as public right-of-way.

(C) Planning Commission final approval process.

If preliminary approval is granted by the Planning Commission, the applicant making the request for conversion shall provide the following information:

- i. *Homeowner's association application:* Following preliminary approval, and before a private street conversion application is placed on the Planning Commission agenda, the following shall be submitted to the Department of Economic and Community Development in accordance with the standard filing deadlines:
 - A. A formal request to convert the private street or streets from private to public by the Board of Directors of the homeowners association that owns the street or streets.
 - B. A petition indicating the approval from the required percentage of members of the homeowners association, pursuant to the governance documents of the homeowners association, to convert the street or streets from private to public;

- C. A copy of the current homeowners association bylaws or master deed where the required percentage to amend the plat or plan or otherwise authorize the conversion is enumerated:
- D. A diagnostic review of all infrastructure associated with the private street or streets (see subparagraph ii, below);
- E. An implementation plan by which the homeowners association will address any infrastructure improvements (see subparagraph iii, below).
- F. A list, in a format acceptable to the Department of Economic And Community Development, of the names and addresses of all property owners within 300 feet of a street that is proposed to be converted.

ii. Diagnostic review:

The diagnostic review submitted to the Department of Economic And Community Development with the homeowners association's application shall be accompanied by all maintenance records regarding all infrastructures associated with the private street or streets. The diagnostic review shall be performed by a professional engineer licensed in the State of Tennessee. The homeowners association shall bear the sole financial responsibility for its preparation. The city engineer may require the homeowners association to submit core samples of the street subsurface and surface if he/she finds the age of the subdivision or other considerations warrants such a submittal. The diagnostic review shall analyze and graphically locate all infrastructures associated with the private street, included but not limited to the following:

- A. Water;
- B. Sanitary sewer, including a video inspection;
- C. Stormwater, with the exception of detention and retention ponds;
- D. Street subsurface;
- E. Curb and gutter;
- F. Curb and gutter subsurface;
- G. Location and condition of sidewalks;
- H. Type of streetlights (pole and light fixture) and information on the amount of illumination provided and
- I. Other items, which the City considers necessary.

iii. Implementation plan.

If the diagnostic review demonstrates that either due to initial installation, lack of proper maintenance or other cause, any of the infrastructure to be converted to public ownership does not meet City standards, an implementation plan shall be submitted that indicates the cost and timeline with which such substandard infrastructure will be upgraded to city standards by the homeowners association. If the implementation plan does not address any of the following items of infrastructure that do not meet city standards, the request to convert the private street or streets shall not be placed on the Planning Commission agenda:

- A. Street pavement and subsurface;
- B. Curbs and gutters;
- C. Stormwater infrastructure, with the exception of detention and retention ponds and
- D. All sanitary sewer and water infrastructure, with the exception of private service connections.
- E. Sidewalk repairs.
- F. Streetlight repair and improvement.

iv. Planning Commission review.

Once the Department of Economic And Community Development has reviewed the diagnostic review and found the implementation plan to be satisfactory, the request to convert the private street or streets to public use and ownership may be placed on the next available Planning Commission agenda. The Planning Commission may deny a request if it finds the implementation plan impracticable or not in the best interests of the City in terms of health, safety or welfare. The Planning Commission may deny a request that it finds would involve the city taking ownership of the infrastructure listed in subparagraph iii (Implementation Plan) above that does not meet city standards. However, it has the discretion to approve a request for a private street conversion in the following situations:

- A. Curb and gutter type that does not meet city standards, provided sufficient base exists;
- B. Street width that does not meet city standards, provided adequate emergency access exists:
- C. Intersection radii that does not meet city standards, provided adequate emergency access exists:
- D. The absence of sidewalks on both sides of the street;
- E. Streetlight type. If the streetlights do not meet city standards for the level of illumination, and type of light fixture and/or pole, they shall remain under the ownership and maintenance of the adjacent property owners or the homeowners association.
- F. Storm drainage that does not meet current city standards, but is adequate for the demands placed on it.
- G. Water and sewer systems that do not meet current city standards, but were built to standards in effect at the time of construction and are adequate to meet the demands placed upon them, unless there is a safety issue (for example, the existence of asbestos pipe).

If the Planning Commission denies final approval, the applicant may appeal that action to the Board of Mayor and Aldermen by submitting to the Director of Economic and Community Development a letter stating the appeal and giving the reasons/justification for it. The applicant has 30 calendar days from the date of the Planning Commission denial to make the appeal.

(D) Revised plat or plan.

If conversion is given final approval, the revised subdivision plat or planned development plan shall include notes that the plat or plan is being re-recorded to convert the private street or streets to public right-of-way. Additional notes shall address the conversion of all water and sanitary sewer lines. Only stormwater infrastructure that is in and under the street shall be converted to public ownership; all detention and retention ponds shall remain in common area owned by the homeowners association. If streetlights are to remain private, a note should be placed onto the plat to that effect. The revised plat or plan shall be submitted prior to Board of Mayor and Aldermen approval. The revised plat or plan shall not be re-recorded until all construction is complete and accepted by the city as per the implementation plan. New as-built plans shall be submitted by the homeowners association to the city prior to the re-recording of the plat or plan.

(E) Board of Mayor and Aldermen approval.

The Board of Mayor and Aldermen shall have final authority to accept a private street for perpetual maintenance by the city. In the event upgrades are to be made based on the diagnostic review, the homeowners association shall enter into a contract with the city and post a letter of credit, cash or certificate of deposit in the amount equal to 100% of the cost of improvements made in order to cause the private street and all related improvements to meet city standards and to provide a one-year warranty period, commencing from the date of the re-recording of the plat or development plan. Such contract

shall provide that any deficiencies occurring within said one (1) year warranty period shall be repaired at the expense of the homeowners' association and that an additional one (1) year warranty period shall apply as to any work done during the initial warranty period and successively thereafter as to any work done during any phase of the warranty period as same may be extended due to work done on deficiencies occurring during the warranty period. The Board of Mayor and Aldermen may reject any request if, in its opinion, acceptance of the streets would create an undue financial burden or excessive liability risk for the city.

(F) Homeowners association obligations.

The homeowners association of the development requesting the conversion of private streets to public streets shall bear the full cost for the diagnostic review, video inspection of stormwater and sanitary sewer infrastructure, surveying, plat recording, redesign, redrafting of as-built plans, amendments to the association master deed and bylaws, inspections, testing, certification and construction modifications required to bring the streets into conformance with the technical standards and construction provisions for public streets and other improvements required in the city's subdivision regulations. In addition, the Board of Mayor and Aldermen may establish reasonable application fees to recover administrative and legal costs associated with the review and processing of the application for conversion.

(G) Removal of barriers, signs and traffic control devices

In the event a private street is converted to a public street by action of the Board of Mayor and Aldermen, the homeowners association shall remove any gates, barricades, speed bumps or other barriers that prevent the free movement of traffic, and install appropriate regulatory signs, street marking and street signs consistent with city standards prior to the subdivision plat or planned development plan being rerecorded. If a private street is converted to public, private guards shall no longer regulate ingress to and egress from the subdivision. These costs shall be paid by the homeowners association and not by the city. City maintenance of the infrastructure shall not commence until such items are removed and the plat is rerecorded.

(H) Effective date of conversion

The conversion of a private street to a public street will become effective upon the homeowners' association fulfillment of the requirements placed upon it by the City and/or Planning Commission as evidenced by the re-recording of the subdivision plat or planned development plan. If the HOA/applicant fails to complete the requirements within 3 years of the date of approval of the initial application the approval shall be automatically rescinded.

III. POLICIES AND PROCEDURES FOR PUBLIC TO PRIVATE CONVERSION

(A) Preliminary approval of the Planning Commission

- *i*. If an applicant seeks to convert a public street, and related infrastructure to a private street and private ownership, the applicant shall file an application with the Department of Economic And Community Development seeking the preliminary approval of the Planning Commission. Such an application shall not be required to contain all of the detail that would be required with respect to final applications to the Planning Commission as set out hereinafter but same shall contain at least the following, plus such other information as the Director of the Department of Economic And Community Development shall require:
 - a. a plat or plan of the subdivision or planned unit development; and
 - b. a map showing adjacent properties which would, or might be, affected if the application were approved.
- *ii.* The Planning Commission shall consider said application. If it gives its preliminary approval, the applicant may request final approval from the Planning Commission in compliance with the process set forth herein. If the Planning Commission denies preliminary

approval, the applicant may appeal that action to the Board of Mayor and Aldermen by submitting to the Director of Economic and Community Development a letter stating the appeal and giving the reasons/justification for it. The applicant has 30 calendar days from the date of the Planning Commission denial to make the appeal. Otherwise, no further action shall be taken by the Planning Commission with respect to an application to convert such public street(s) to private streets. Notwithstanding the grant of preliminary approval by the Planning Commission, nothing hereinabove shall be construed to diminish in any way the authority of the Board of Mayor and Aldermen to grant or withhold final approval of the conversion of a public street to a private street. No reapplication for the same request shall be accepted within one year of the Planning Commission's and/or the Board of Mayor and Aldermen's final decision.

(B) General Requirements

- i. Connectivity No existing subdivision or planned unit development may convert from public to private streets when the creation of private streets and/or gated communities would eliminate traffic movement between existing subdivisions or prevent reasonable vehicle access for development of future subdivisions on tracts adjacent to the site.
- ii. Homeowner's association obligations. An incorporated homeowners association shall be responsible for any and all costs to convert a public street to a private street, including, but not limited to, any voluntary diagnostic review that is performed of the infrastructure to be converted to private use and ownership, upgrades to said infrastructure if deficiencies are found, and costs associated with changing street identification signs, appropriate regulatory signs, or street markings. If gates or any other means to regulate ingress to and egress from the development are proposed, such improvements should be reviewed and acted upon by the Planning Commission prior to their installation.

(C) Planning Commission review of final application

Any final application by property owners requesting re-designation of a public street as a private street shall be subject to review and recommendation by the Planning Commission. A gate installation plan may be filed in conjunction with an application to convert a public street to private use and ownership. The application shall include, at a minimum, the following information:

i. Homeowners association application.

- (a) An application for conversion of an existing public street to a private street shall be accompanied by a petition containing the signatures of one hundred (100) percent of the lot owners in the subdivision or planned development. The petition shall be accompanied by the subdivision plat or planned development plan. The text of the petition shall identify a contact person representing the subject property owners, including address and telephone. The petition shall include an acknowledgment that the proposed change in street designation, if approved by the city, may affect both routine municipal and other emergency service delivery, will result in the elimination of street maintenance and associated services by the city and will result in the assessment of maintenance fees by a legally incorporated homeowners association to meet ongoing and future street maintenance obligations.
- (b) Proof that a properly incorporated homeowners association exists, with authority to own and maintain the infrastructure, which they propose, and to assess fees for its maintenance.
- (c) A list, in a format acceptable to the Department of Economic And Community Development, of the names and addresses of all property owners within 300 feet of a street that is proposed to be converted.
- ii. Revised plat or plan. The conversion of a public street to a private street shall be processed through revisions to the existing subdivision plat or planned development plan. In addition, the lot owners shall be required to meet all of the general, technical, legal and financial requirements for private

street subdivisions as specified in this policy, the city's Subdivision Regulations, and the Private Streets Standards Policy. The water and sanitary sewer infrastructure located within the public right-of-way shall remain public and an easement shall be indicated on the plat prior to rerecording.

- iii. Streetlights. Prior to the re-recording of the plat or plan, the streetlights within the subdivision shall be removed from the city grid and an account shall be established with Memphis Light, Gas and Water Division in the name of the homeowners association for billing of streetlights. Upon the discretion of Memphis Light, Gas and Water Division, the homeowners association may be responsible to reimburse Memphis Light, Gas and Water Division for any capital costs it incurred with the installation and maintenance of the streetlights.
- vi. Homeowners association obligations. The incorporated homeowners association shall be responsible for any and all costs to convert a public street to a private street, including, but not limited to, any voluntary diagnostic review that is performed of the infrastructure to be converted to private use and ownership, upgrades to said infrastructure if deficiencies are found, and costs associated with changing street identification signs and appropriate regulatory signs and street markings.

(C) Board of Mayor and Aldermen approval.

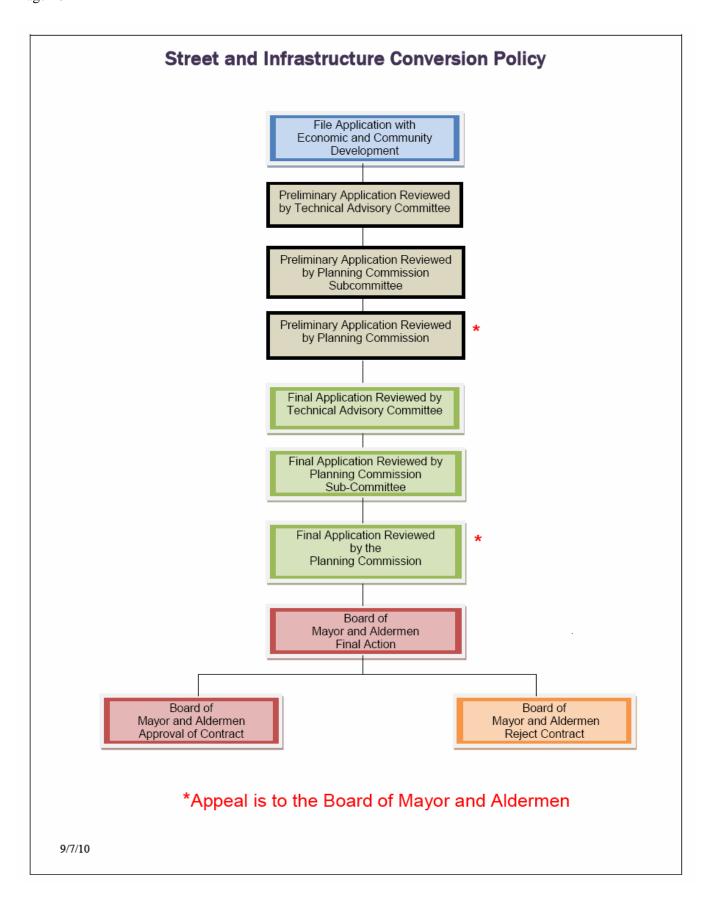
The Board of Mayor and Aldermen shall have final authority to approve or reject the conversion of a public street to a private street, and may approve such conversion subject to any additional conditions that the board deems necessary for the public health, safety and welfare of the petitioning property owners and the residents of the city. The Board of Mayor and Aldermen shall establish reasonable application fees to recover administrative and legal costs associated with the review and processing of the application for conversion of a public street subdivision to a private street subdivision.

(D) Effective date of conversion

The conversion of a public street to a private street will become effective upon the homeowners' association fulfillment of the requirements placed upon it by the Board of Mayor and Aldermen or Planning Commission and the re-recording of the plat or plan. If the HOA/applicant fails to complete the requirements within 3 years of the date of approval of the preliminary application by the Planning Commission or Board of Mayor and Aldermen the approval shall be automatically rescinded.

(E) Petitions for road closures

All homeowners' petitions for road closures shall be processed as public to private street conversions.



	Units/	Year	Gates/	Linear fee
1. Residential Private Streets	Lots	Developed	Guard?	of streets
1 Glenalden	128	1977	Guard	7,495
sub-total: prior to 1980	128			7,495.2
2 Wicklow Way Cluster Homes	72	1982	No	1,378
3 Nashoba Plantation	48	1984	No	2,181
4 Allenby Westfair	103	1985	No	4,521
5 Forest Hill Oaks	4	1986	Gates	1,249
6 Aintree Farms	180	1987	Guard	10,532
7 Galway Green	43	1987	No	660
8 Bridge Forest	6	1989	Gates	953
SUB-TOTAL: 1980 - 1990	456			21,478.
9 Forest Bend Acres	22	1994	Gates	2,711
10 Vineyards	60	1994	Gates	4,02
11 Waldon Woods	4	1994	No	488
12 Gardens of Oakleigh	46	1997	No	2,360
13 Rowan Oak	89	1998	No	6,318
SUB-TOTAL: 1990-2000	221			15,901
14 Devonshire Gardens	122	2001	No	7,498
15 Caylors Woods	6	2002	No	696
16 Orchard Hill	8	2002	Gates	1,330
7 Poplar Grove	60	2002	No	3,132
18 Nottoway	64	2003	Gates	4,209
19 Sanders Ridge	26	2003	No	1,680
20 Orleans Way	13	2005	No	695
21 The Pinnacle	16	2006	Gates	1,840
22 Gardens of Wood Creek	6	2006	no	327
23 Radford	17	2007	Gates	2,053
24 Saint James Place	12	2007	Gates	795
SUB-TOTAL: 2000 - 2010	350			24,259.
				69,134
Total housing units on private streets	1155			
Total housing units on gated, private streets	661			

- **3.** Chairman Klevan asked if there was any old business or new business to come before the Commission. **There was none.**
- 4. Chairman Klevan asked if there were any liaison reports. There was none.

ADJOURNMENT

The meeting adjourned at 6:20 P.M.