

**Vestavia Hills
City Council Agenda
July 9, 2012
5:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – Ron Hige, Birmingham International Church
4. Pledge of Allegiance
5. Candidates, Announcements and Guest Recognition
6. Employee of the Month Recognition – Randy Robertson, City Manager
7. Citizen Appreciation – Randy Robertson, City Manager
8. Mayor's Report
9. Councilors' Reports
10. Approval Of Minutes – June 18, 2012 (Special Meeting), June 21, 2012 (Special Meeting) and June 25, 2012 (Regular Meeting)

Old Business

11. Resolution Number 4313 - A Resolution Accepting A Bid For A Pipe Inspection Camera And Crawler System
12. Ordinance Number 2411 – An Ordinance To Repeal Ordinance 2209, Adopted June 6, 2005, And Adopt In Full Ordinance 2411 “City Of Vestavia Hills Smoke-Free Ordinance Of 2012”
13. Ordinance Number 2413 – Annexation – 90-Day Final – 0.56 Acres, Cahaba River Road Known As The Anglin Property; City Of Vestavia Hills, Owner
14. Ordinance Number 2414 – An Ordinance Authorizing And Directing The Purchasing And Closing Of The Sale Of Real Estate

New Business

15. Resolution Number 4320 – A Resolution Approving An Alcohol License To R And A Services, Inc., D/B/A Leon La Taverna For An 020 – Restaurant Retail Liquor License At 8000 Liberty Parkway, Suites 102 And 104; Gabriela Gallegos, Executive
16. Resolution Number 4321 – A Resolution Approving An Alcohol License To Sullivan Pizza Inc., D/B/A Donatos Pizza Store 132 For An 040 – Retail Beer (On Or Off

Premises) And An 060 – Retail Table Wine (On And Off Premises) License At 629 Montgomery Highway; Robert Sullivan, Executive

17. Executive Session
18. Resolution Number 4318 - A Resolution To Require Publication In *The Birmingham News* Providing Notice Of A Public Hearing To Be Held By The City Council Of The City Of Vestavia Hills, Alabama On August 13, 2012 At 5:00 P.M. For The Purposes Of Determining Whether Or Not A Parcel Of Land Situated At 1112 Montgomery Highway In The City Of Vestavia Hills, Alabama Sometimes Referred To As “The Old Library Property” (“The Property”) Owned By The City Of Vestavia Hills Is Needed For Municipal Or Public Purposes; To Determine Whether Or Not To Sell The Property Which Has An Appraised Value Of \$1,500,000.00 To HES Investments, LLC For A Total Sales Price In The Amount Of \$750,000.00; To Determine Whether Or Not The Closing Of The Sale Of The Property Pursuant To The Terms, Provisions And Conditions Of A Written Real Estate Purchase And Sale Agreement And The First Addendum And Second Addendum Thereto Will Serve As A Valid And Sufficient Public Purpose Notwithstanding Any Incidental Benefit Accruing To Any Private Entity Or Entities; To Thoroughly Discuss The Public Benefits Sought To Be Achieved By The Closing Of The Sale Of Said Property; To Identify The Name Of The Party That Has Offered To Purchase Said Property; To Receive Public Comments And Input Regarding The Sale Of Said Property; To Decide Whether Or Not To Sell Said Property; And To Decide Any Other Issue Relative To This Matter
19. Resolution Number 4319 - A Resolution Appointing An Election Manager For The City Of Vestavia Hills Municipal Election

New Business (Requesting Unanimous Consent)

20. Resolution Number 4324 - A Resolution Authorizing The Mayor To Relocate Utility Poles And Utility Services For The Construction Of Healthy Way

First Reading (No Action To Be Taken At This Meeting)

21. Resolution Number 4322 - A Resolution Ordering The Demolition Of A Building Or Structure Located At 1459 Montgomery Highway, Vestavia Hills, Alabama, Parcel ID# 39-01-1-001-002.000-RR2 And 29-36-4-007-005.000-RR6, In Compliance With Sections 11-40-30 Through 11-40-36, Sections 11-53b-1 Through 11-53b-16, Inclusive, Of The *Code Of Alabama*, And In Compliance With Ordinance Number 2382 Of The City Of Vestavia Hills, Alabama; And Calling For Said Demolition To Be Performed By

The City Of Vestavia Hills And Directing The City Attorney And The City Clerk To Cause The Cost Of Such Demolition To Be Charged Against The Land On Which The Building Or Structure Exists As A Municipal Lien Or Cause Such Cost To Be Recovered In A Suit At Law Against The Owner Or Owners

22. Resolution Number 4323 – A Resolution Authorizing The City To Bid Out The Cost Of Demolition Of The Property Described In Resolution Number 4322
23. Ordinance Number 2416 – Rezoning – 2665 Alta Glen Drive; Rezone From Jefferson County E-1 To Vestavia Hills E-2; Compatible Zoning For Annexation (Property Was Annexed In The 90’s But Never Compatibly Rezoned); Susan Henry, Owner
24. Ordinance Number 2415 – Rezoning – 4240 Oakview Lane; Rezone From Vestavia Hills R-4 To Vestavia Hills B-1, With Conditions For An Artist Studio; Maude Powell, Owner
25. Citizens Comments
26. Motion For Adjournment

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

JUNE 18, 2012

The City Council of Vestavia Hills met in special session on this date at 8:00 AM. The Council President called the meeting to order and the City Clerk called the roll with the following:

MEMBERS PRESENT:

Mary Lee Rice, Council President
Steve Ammons, President Pro-Tem
George Pierce
Linda Allison
Jim Sharp

OTHER OFFICIALS PRESENT:

Mayor Alberto C. Zaragoza, Jr.
Rebecca Leavings, City Clerk
Melvin Turner, III, Finance Director
George Sawaya, Dep. Treasurer

UNANIMOUS CONSENT OF THE AGENDA

Ms. Rice opened the floor for a motion for unanimous consent for the immediate consideration and action on Resolution Number 4309 and Ordinance Number 2412.

MOTION Motion for unanimous consent for the immediate consideration and action on Resolution Number 4309 and Ordinance Number 2412 was by Mr. Pierce. Second was by Ms. Allison. Roll call vote, as follows:

Mr. Pierce – yes	Ms. Allison – yes
Mr. Ammons – yes	Mr. Sharp – yes
Ms. Rice – yes	Motion carried.

RESOLUTION NUMBER 4309

Resolution Number 4309 – A Resolution To Adopt, Approve And Authorize A Policy And Procedure For Compliance Of Tax-Exempt Bonds With The Internal Revenue Code

MOTION Motion for approval of Resolution Number 4309 was by Mr. Ammons and second was by Mr. Sharp.

Barry Staples of Maynard, Cooper and Jason Grubbs, Frazier Lanier, were present to explain the proposed Resolution.

Mr. Staples indicated that the policy is required under federal regulations and explained the reasoning and provisions of the Resolution.

Discussion ensued concerning the need and use of the policy.

There being no further questions, Ms. Rice called for the question.

MOTION Question called on a roll call vote:
Mr. Pierce – yes Ms. Allison – yes
Mr. Ammons – yes Mr. Sharp – yes
Ms. Rice – yes Motion carried.

ORDINANCE NUMBER 2412

Ordinance Number 2412 – 2012 Warrant Issue

MOTION Motion for approval of Ordinance Number 2412 was by Mr. Pierce and second was by Ms. Allison.

Barry Staples of Maynard, Cooper and Jason Grubbs, Frazier Lanier were present to explain the proposed Ordinance.

Mr. Staples indicated that this warrant issue refinances the 2001 warrant issue and a portion of the 2002-A and 2002-B warrant issues for a savings of over \$1 million in the coming years without adding time or principal to the outstanding balance.

Ms. Rice opened the floor for a public hearing. There being no one to address the Council, Ms. Rice closed the public hearing and called for the question.

MOTION Question called on a roll call vote:
Mr. Pierce – yes Ms. Allison – yes
Mr. Ammons – yes Mr. Sharp – yes
Ms. Rice – yes Motion carried.

CITIZEN COMMENTS

David Harwell, 1357 Willoughby Road, asked about the progress of the sidewalk construction in certain areas of the City.

The Mayor explained the problems associated with the sidewalk construction and the steps being taken to mediate them.

There being no further business, Mr. Pierce made the motion to adjourn. Mr. Ammons seconded the motion which, when put to a voice vote, passed unanimously and the meeting adjourned at 8:12 AM.

Mary Lee Rice
Council President

ATTESTED BY:

Rebecca Leavings
City Clerk

APPROVED BY:

Alberto C. Zaragoza, Jr.
Mayor

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

JUNE 21, 2012

The City Council of Vestavia Hills met in special session on this date at 4:30 PM. The Council President called the meeting to order and the City Clerk called the roll with the following:

MEMBERS PRESENT:

Mary Lee Rice, Council President
Steve Ammons, President Pro-Tem
George Pierce
Linda Allison
Jim Sharp

OTHER OFFICIALS PRESENT:

Mayor Alberto C. Zaragoza, Jr.
Patrick H. Boone, City Attorney
Randy Robertson, City Manager
Wendy Appling, Deputy City Clerk

EXECUTIVE SESSION

Ms. Rice stated that the Council needed to move into Executive Session in order to discuss the purchase/sale of property. She explained that the Session is estimated to last approximately 60 minutes and asked Mr. Boone to verify that is a legal reason for an Executive Session.

Mr. Boone concurred and Ms. Rice opened the floor for a motion.

MOTION Motion for the Council to move into Executive Session for the discussion of purchase/sale for an estimated 60 minutes was by Mr. Pierce and second was by Ms. Allison. On a roll call vote:

Mr. Pierce – yes	Ms. Allison – yes
Mr. Ammons – yes	Mr. Sharp – yes
Ms. Rice – yes	Motion carried.

The Council exited the Chamber at 4:32 PM and entered into Executive Session. At 5:40 PM, they re-entered the Chamber and Ms. Rice called the meeting back to order.

MOTION Motion to adjourn the meeting at 5:41 PM was by Mr. Ammons. Mr. Pierce seconded the motion, voice vote as follows:

Mr. Pierce – yes
Mr. Ammons – yes
Ms. Rice – yes

Ms. Allison – yes
Mr. Sharp – yes
Motion carried.

Mary Lee Rice
Council President

ATTESTED BY:

Wendy Appling
Deputy City Clerk

APPROVED BY:

Alberto C. Zaragoza, Jr.
Mayor

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

JUNE 25, 2012

The City Council of Vestavia Hills met in regular session on this date at 5:00 PM. The Council President called the meeting to order and the City Clerk called the roll with the following:

MEMBERS PRESENT:

Mary Lee Rice, Council President
Steve Ammons, President Pro-Tem
George Pierce
Linda Allison
Jim Sharp

OTHER OFFICIALS PRESENT:

Mayor Alberto C. Zaragoza, Jr.
Randy Robertson, City Manager
Patrick H. Boone, City Attorney
Rebecca Leavings, City Clerk
Melvin Turner, III, Finance Director
George Sawaya, Deputy Treasurer
Christopher Brady, City Engineer
Jim St. John, Fire Chief
Greg Gilchrist, Fire Marshal
Dan Rary, Police Chief
Lt. Jason Hardin
Battalion Chief Lonnie West
Captain Dewayne Greene
Firefighter/Paramedic Kevin Ware
Firefighter/Paramedic Adrian Millican
Apparatus Operator Lynn Acton

Invocation was given by Ms. Rice followed by the Pledge of Allegiance.

ANNOUNCEMENTS, CANDIDATES, GUESTS

- Suzanne Childers, candidate for Circuit Judge, Place #15, introduced herself and asked for support in the upcoming election.
- Ms. Rice welcomed Alex Whitacre to the meeting. She explained that Mr. Whitacre was voted President of the Jeffrey City Council, a City created by the High School and named after a past Vestavia School Board Administrator Jim

Jeffrey. Alex helped develop a plan to restructure his city in the event of a bankruptcy. He is the recipient of the \$12,000 Charles B. Hayes Leadership Scholarship to the University of Alabama.

- Mr. Pierce reminded everyone that the Chamber's "I Love America Day" celebration was going to be held on July 3rd at Wald Park.
- Mr. Ammons welcomed several members of the Park Board who were in attendance including the Park Board President Steve Bendall.
- Ms. Rice announced that when she took office in 2004, she had run on a platform that indicated she would not seek a third term. She stated that she and her husband were planning to move to another state and anticipated the sale of their home to take several weeks. Since the sale took place early, she explained that her last meeting on the City Council would be the first meeting in July. Ms. Rice stated that the City Council has decided that since it is so near the elections, there'll be no actions to replace her seat on the Council.

MAYOR'S REPORTS

- The Mayor indicated that Chief St. John has some presentations.
 - Chief St. John gave details of a run that was completed by Battalion Chief Lonnie West, Captain Dewayne Green, Firefighter/Paramedic Kevin Ware, Firefighter/Paramedic Adrian Millican, Apparatus Operator Lynn Acton, Apparatus Operator Nathaniel Threats, and Firefighter/Paramedic Kevin Allred. He explained that when the responders were on the scene, they found an elderly man hanging by his fingertips from an attic rafter and responded quickly into the attic to pull him to safety. Had it not been for their quick reactions, the man would have probably suffered serious injuries from the fall. Chief St. John read and presented Certificates of Commendation to each of the responders.
- The Mayor indicated that Mr. Davis has a presentation.
 - Mr. Davis and Steve Bendall stated that the City was awarded the 2011 Multi-Field Facility of the Year – Fields Division by the American Sports Builders Association which is a nationwide award. The City was nominated by Covington Flooring Company, Inc. Mr. Davis presented the award to the City Council and Mr. Bendall thanked the Council for their on-going support of the Park and Recreation programs.

COUNCILOR REPORTS

- None.

FINANCIAL REPORTS

Mr. Turner presented the financial reports from the month ending May, 2012. He read and explained the balances.

**PRESENTATION – JEFFERSON - BLOUNT-ST. CLAIR
MENTAL HEALTH AUTHORITY**

Jim Crego, Executive Director, thanked the Council for their support of the Authority and asked for continued support in the same amount as last year. He indicated the Authority has supplied the Council with information of the services to Vestavia Hills residents and thanked the City for the representation on its Board.

The Mayor indicated that the City needs to appoint a new member to the Board.

APPROVAL OF MINUTES

The minutes of June 11, 2012 (Regular Meeting) were presented for approval.

MOTION Motion to dispense with the reading of the minutes and approve them as presented was by Mr. Pierce and second by Ms. Allison. Voice vote as follows:

Mr. Pierce – yes	Ms. Allison – yes
Mr. Sharp – yes	Mr. Ammons – yes
Ms. Rice – yes	Motion carried.

NEW BUSINESS

Ms. Rice explained that they are deviating slightly from the printed agenda because the auditors need to be at another meeting in just a few minutes. She opened the floor for a motion on Resolution Number 4314.

RESOLUTION NUMBER 4314

Resolution Number 4314 - A Resolution Accepting The Audit for the FYE 2011 for the City Of Vestavia Hills

MOTION Motion to adopt Resolution Number 4314 was by Ms. Allison and second was by Mr. Pierce.

Jason Harpe, Carr, Riggs and Ingram, was present in regard to the financial audit. He highlighted various parts of the audit and presented graphs showing the City's financial position.

MOTION Question called on a roll call vote:

Mr. Pierce – yes

Ms. Allison – yes

Mr. Sharp – yes

Mr. Ammons – yes

Ms. Rice – yes

Motion carried.

OLD BUSINESS

ORDINANCE NUMBER 2411

Ordinance Number 2411 – An Ordinance To Repeal Ordinance 2209, Adopted June 6, 2005, And Adopt In Full Ordinance 2411 “City Of Vestavia Hills Smoke-Free Ordinance Of 2012”

MOTION Motion to adopt Ordinance Number 2411 was by Mr. Sharp and second was by Mr. Ammons.

Ms. Rice explained that this item needed to be postponed because the City Attorney had requested information that was just delivered late Friday and he hasn't had a chance to review it. She opened the floor for an amended motion.

MOTION Motion to postpone consideration of Ordinance Number 2411 until July 9, 2012 was by Mr. Ammons and second was by Mr. Sharp. Roll call vote, as follows:

Mr. Pierce – yes

Ms. Allison – yes

Mr. Sharp – yes

Mr. Ammons – yes

Ms. Rice – yes

Motion carried.

RESOLUTION NUMBER 4308

Resolution Number 4308 – A Resolution Amending Resolution Number 4233 To Amend The General Fund Budget For Fiscal Year 2012-2013 To Allocate A Planner Position

MOTION Motion to adopt Resolution Number 4308 was by Mr. Pierce and second was by Mr. Ammons.

Mr. Robertson explained that within his analysis of the personnel of the City and following the off-site presentation by department heads, he has recommended the creation of a planner to serve in the City's Planning and Zoning Department. This Resolution will help to create the position in the current fiscal year.

Ms. Rice opened the floor for a public hearing. There being no one present to address the Council, Ms. Rice closed the public hearing and called for the question.

Mr. Ammons asked if this would be a classified employee.

Mr. Robertson stated that it would.

MOTION Question called on a roll call vote:

Mr. Pierce – yes	Ms. Allison – yes
Mr. Sharp – yes	Mr. Ammons – yes
Ms. Rice – yes	Motion carried.

NEW BUSINESS

RESOLUTION NUMBER 4310

Resolution Number 4310 - A Resolution Initiating The Rezoning Of 0.56 +/- Acres On Cahaba River Road Known As “The Anglin Property” From Jefferson County A-1 To Vestavia Hills B-2

MOTION Motion to adopt Resolution Number 4310 was by Mr. Pierce and second was by Ms. Allison.

The Mayor explained that this one-half acre parcel was purchased to use as the entranceway to the Patchwork Farms development. However, since only the tip of the property was utilized, the request is to rezone the remainder of the property to commercial. This Resolution will initiate that request.

Ms. Rice opened the floor for a public hearing. There being no one present to address the Council, Ms. Rice closed the public hearing and called for the question.

MOTION Question called on a roll call vote:

Mr. Pierce – yes	Ms. Allison – yes
Mr. Sharp – yes	Mr. Ammons – yes
Ms. Rice – yes	Motion carried.

RESOLUTION NUMBER 4311

Resolution Number 4311 - A Resolution Authorizing The Mayor To File A Petition For A “Minor Change” In The Patchwork Farms PUD

MOTION Motion to adopt Resolution Number 4311 was by Mr. Sharp and second was by Mr. Pierce.

The Mayor stated that the original nature park within the Patchwork Farms development was measured at 11.09 acres which included retention/detention for the surrounding properties. However, as the properties have sold, the owners have contracted to handle their own retention/detention and the Lifetime parcel ended up larger than originally thought. Therefore, this request will go to the Commission to reduce the park from the original 11.09 acres to 9 acres through a “minor change” in the PUD. This Resolution begins that process.

Ms. Rice opened the floor for a public hearing. There being no one present to address the Council, Ms. Rice closed the public hearing and called for the question.

MOTION Question called on a roll call vote:

Mr. Pierce – yes	Ms. Allison – yes
Mr. Sharp – yes	Mr. Ammons – yes
Ms. Rice – yes	Motion carried.

RESOLUTION NUMBER 4312

Resolution Number 4312 A Resolution Authorizing The Mayor To Enter Into An Agreement With ALEX, Inc., For Parking Lot Expansion At Sicard Hollow Fields

MOTION Motion for unanimous consent for the immediate consideration and action on Resolution Number 4312 was by Mr. Ammons and second was by Ms. Allison. Roll call vote, as follows:

Mr. Pierce – yes	Ms. Allison – yes
Mr. Sharp – yes	Mr. Ammons – yes
Ms. Rice – yes	Motion carried.

MOTION Motion to adopt Resolution Number 4312 was by Mr. Ammons and second was by Mr. Pierce.

The Mayor stated that RFPs were obtained to expand the parking lot for parking accommodations for approximately 60 additional vehicles. He explained that the tournaments and events held at the Sicard Hollow park have shown that more parking is needed. This request would allow parking expansion for the playing season.

Mr. Boone stated that this qualifies as a public works project; therefore, it didn't have to be competitively bid.

Ms. Rice opened the floor for a public hearing. There being no one present to address the Council, Ms. Rice closed the public hearing and called for the question.

MOTION Question called on a roll call vote:

Mr. Pierce – yes	Ms. Allison – yes
Mr. Sharp – yes	Mr. Ammons – yes
Ms. Rice – yes	Motion carried.

FIRST READING (NO ACTION TO BE TAKEN AT THIS MEETING)

Ms. Rice stated that the following Resolutions and/or Ordinances will be presented at a public hearing at the Council's next regularly scheduled meeting of July 9, 2012 at 5 PM.

- Resolution Number 4313 - A Resolution Accepting A Bid For A Pipe Inspection Camera And Crawler System
- Ordinance Number 2413 – Annexation – 90-Day Final – 0.56 Acres, Cahaba River Road Known As The Anglin Property; City Of Vestavia Hills, Owner
- Ordinance Number 2414 – An Ordinance Authorizing And Directing The Purchase And Closing Of The Sale Of Real Estate

CITIZENS COMMENTS

None.

EXECUTIVE SESSION

Ms. Rice stated that the Council needed to move into Executive Session in order to discuss the purchase/sale of property. She explained that the Session is estimated to last approximately 30 minutes and asked Mr. Boone to verify that is a legal reason for an Executive Session.

Mr. Boone concurred and Ms. Rice opened the floor for a motion.

MOTION Motion for the Council to move into Executive Session for the discussion of purchase/sale for an estimated 60 minutes was by Mr. Pierce and second was by Ms. Allison. On a roll call vote:

Mr. Pierce – yes	Ms. Allison – yes
Mr. Ammons – yes	Mr. Sharp – yes
Ms. Rice – yes	Motion carried.

The Council exited the Chamber at 5:49 PM and entered into Executive Session. At 7:07 PM, they re-entered the Chamber and Ms. Rice called the meeting back to order.

MOTION Motion to adjourn the meeting at 7:08 PM was by Mr. Pierce. Ms. Allison seconded the motion, voice vote as follows:

Mr. Pierce – yes

Ms. Allison – yes

Mr. Ammons – yes

Mr. Sharp – yes

Ms. Rice – yes

Motion carried.

Mary Lee Rice
Council President

ATTESTED BY:

Rebecca Leavings
City Clerk

APPROVED BY:

Alberto C. Zaragoza, Jr.
Mayor

RESOLUTION NUMBER 4313

A RESOLUTION ACCEPTING A BID FOR THE CITY OF VESTAVIA HILLS FOR A PIPE INSPECTION AND CRAWLER SYSTEM

WHEREAS, the City of Vestavia Hills received and opened bids for a pipe inspection and crawler system on June 14, 2012; and

WHEREAS, five bids were received; and

WHEREAS, a detail of the bid results is attached hereto and marked as “Exhibit A”. The City Engineer, in an email dated June 20, 2012, recommended the acceptance of Sansom Equipment Co. in an amount of \$87,568.25; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

1. The bid package submitted by Sansom Equipment Co. is hereby accepted in an amount of \$87,568.25; and
2. This Resolution Number 4313 shall become effective immediately upon adoption and approval.

DONE, ORDERED, ADOPTED AND APPROVED this the 9th day of July, 2012.

Mary Lee Rice
Council President

ATTESTED BY:


Rebecca Leavings
City Clerk

APPROVED BY:

Alberto C. Zaragoza, Jr.
Mayor

From: Christopher Brady
To: Mayor; Randy Robertson; Rebecca Leavings
Cc: Brian Davis; Jeff Hughes
Subject: FW: crawler bid summary

Sent: Wed 6/20/2012 4:22 PM

Attachments:  BidSummary_PipeCrawler.doc (75 KB)

Attached is the bid summary for the Pipe Inspection Camera and Crawler System taken on 6/14/12. I am recommending award to Sansom Equipment as the lowest bid that meets all specifications.

This is a budgeted expense at \$70,000. I am proposing we potentially utilize "07" funding for the \$17,568 that exceeds this budgeted amount.

Please let me know if any questions.

Thanks,
Christopher

ORDINANCE NUMBER 2411

AN ORDINANCE TO REPEAL ORDINANCE 2209, ADOPTED JUNE 6, 2005, AND ADOPT IN FULL ORDINANCE NUMBER 2411 TITLED THE “CITY OF VESTAVIA HILLS SMOKE-FREE ORDINANCE OF 2012”

WHEREAS, the Council of the City of Vestavia Hills finds that numerous studies have shown that (1) exposure to secondhand smoke, a known carcinogen, causes disease and premature death in children and adults who do not smoke; (2) children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung growth in their children; (3) even occasional exposure of adults to secondhand smoke has adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (4) there is no risk-free level of exposure to secondhand smoke; (5) establishing smoke-free workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control exposure of nonsmokers to secondhand smoke; and (6) evidence from peer-reviewed studies shows that smoke-free policies and laws improve health and do not have an adverse economic impact on, and may positively impact, the hospitality industry.

WHEREAS, the Council finds that studies have shown that during periods of active smoking, peak and average outdoor tobacco smoke levels measured in outdoor cafés and restaurant and bar patios near smokers rival indoor tobacco smoke concentrations. Nonsmokers who spend six-hour periods in outdoor smoking sections of bars and restaurants experience a significant increase in levels of cotinine when compared to the cotinine levels in a smoke-free outdoor area.

WHEREAS, the Council finds that studies have shown that residual tobacco contamination, or “thirdhand smoke,” from cigarettes, cigars, and other tobacco products is left behind after smoking occurs and builds up on surfaces and furnishings. This sticky, highly toxic particulate matter, including nicotine, can linger in spaces long after smoking has ceased and cling to walls and ceilings and be absorbed into carpets, draperies, and other upholsteries, and then be reemitted (off-gassed) back into the air and recombine to form harmful compounds. Tobacco residue is noticeably present in dust throughout places where smoking has occurred.

This process represents an unappreciated health hazard through dermal exposure, dust inhalation, and ingestion.

WHEREAS, the Council finds that unregulated high-tech smoking devices, commonly referred to as electronic cigarettes, or “e-cigarettes,” closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid nicotine created by heat through an electronic ignition system. The Food and Drug Administration (FDA) determined that various samples tested contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic chemical used in antifreeze. The FDA’s testing also suggested that “quality control processes used to manufacture these products are inconsistent or non-existent. “E-cigarettes” produce a vapor of undetermined and potentially harmful substances, which may appear similar to the smoke emitted by traditional tobacco products. Their use in workplaces and public places where smoking of traditional tobacco products is prohibited creates concern and confusion and leads to difficulties in enforcing the smoking prohibitions.

WHEREAS, the Council finds that the Society of Actuaries has determined that secondhand smoke costs the U.S. economy approximately \$10 billion a year: \$5 billion in estimated medical costs associated with secondhand smoke exposure and \$4.6 billion in lost productivity.

WHEREAS, the Council finds that there is no legal or constitutional “right to smoke” and that business owners have no legal or constitutional right to expose their employees and customers to the toxic chemicals in secondhand smoke and instead have a common-law duty to provide their workers with a workplace that is not unreasonably dangerous.

WHEREAS, the Council finds that smoking is a potential cause of fires and cigarette and cigar burns and ash stains on merchandise and fixtures cause economic damage to businesses.

NOW, THEREFORE, the Council of the City of Vestavia Hills finds that secondhand smoke is a form of air pollution, a danger to health, and a material public nuisance, and deems it appropriate to enact the following ordinance to (1) protect the public health and welfare by prohibiting smoking in public places and places of employment, (2) guarantee the right of nonsmokers to breathe smoke-free air, and (3) recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

Section 1. BE IT HEREBY ORDAINED by the Council of the City of Vestavia Hills that Ordinance 2209, as amended is hereby repealed and the following Ordinance Number 2411 is hereby adopted to read in full as follows:

Section 2. Smoking In Public Places And Places Of Employment

- (a) **Definitions.** In this Section, the following definitions shall apply:
- (1) “*Bar*” means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to: taverns, nightclubs, cocktail lounges, and cabarets.
 - (2) “*Business*” means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.
 - (3) “*E-cigarette*” means any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use or inhalation which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an “e-cigarette”, “e-cigar”, “e-pipe”, or under any other product name or descriptor.
 - (4) “*Employee*” means a person who works for an employer, whether in consideration for direct or indirect monetary wages or profit, or as a volunteer.
 - (5) “*Employer*” means a person, association, trust, or a business, including a municipal corporation, with one or more employees.
 - (6) “*Enclosed Area*” means all space between a floor and a ceiling that is bounded on at least two sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent and whether or not containing openings of any kind.
 - (7) “*Health Care Facility*” means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical,

- physiological, or psychological conditions, including but not limited to: hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
- (8) “*Place of Employment*” means an area under the control of a public or private employer, including, but not limited to: work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, construction sites, temporary offices, and vehicles. A private residence is not a “place of employment” unless it is used as a child care, adult day care, or health care facility.
- (9) “*Private Club*” means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities, requires applications to be completed for membership, and maintains membership records that show the date of application, admission, name and address for each member, and serial number of the membership card issued. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.
- (10) “*Public Place*” means an area to which the public is permitted. A private residence is not a “public place” unless it is used as a child care, adult day care, or health care facility.
- (11) “*Restaurant*” means an eating establishment, including but not limited to: coffee shops, cafeterias, sandwich stands, and private and public school cafeterias,

which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term “restaurant” shall include a bar area within the restaurant.

(12) “*Service Line*” means an indoor or outdoor line in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money, including but not limited to: ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.

(13) “*Shopping Mall*” means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

(14) “*Smoke*” or “*Smoking*” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or other tobacco or plant product intended for inhalation, in any manner or in any form. “Smoking” also includes the use of an “e-cigarette” which creates a vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Section.

(15) “*Sports Arena*” means a place where people assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling alleys.

(b) ***Prohibition Of Smoking In Enclosed Public Places.*** Smoking shall be prohibited in all enclosed public places within the City of Vestavia Hills, including but not limited to, the following places:

- (1) Aquariums, galleries, libraries, and museums;
- (2) Banks;
- (3) Bar and lounges;
- (4) Bingo facilities;
- (5) Child care and adult day care facilities;
- (6) Convention facilities;
- (7) Educational facilities, both public and private;
- (8) Elevators;

- (9) Gaming facilities, including bingo facilities;
- (10) Health care facilities;
- (11) Hotels and motels;
- (12) Laundromats;
- (13) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;
- (14) Polling places;
- (15) Private clubs;
- (16) Professional offices;
- (17) Public transportation vehicles, including buses and taxicabs, under the authority of the City of Vestavia Hills, and ticket, boarding, and waiting areas of public transportation facilities, including bus, train, and airport facilities;
- (18) Restaurants and retail food production and marketing establishments;
- (19) Restrooms, lobbies, reception areas, waiting rooms, hallways, and other common-use areas;
- (20) Retail service establishments;
- (21) Retail stores;
- (22) Rooms, chambers, places of meeting or public assembly, and other enclosed areas and vehicles owned, leased, or operated by the City of Vestavia Hills, including areas under the control of an agency, board, commission, or committee of the City, to the extent the place is subject to the jurisdiction of the City;
- (23) Service lines;
- (24) Shopping malls;
- (25) Sports arenas, including enclosed places in outdoor arenas; and
- (26) Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

(c) ***Prohibition Of Smoking In Enclosed Places Of Employment.***

- (1) Smoking shall be prohibited in all enclosed areas of places of employment within the City of Vestavia Hills, including, but not limited to: common work areas,

auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles. This prohibition also applies to rooms, chambers, places of meeting or public assembly, and other enclosed areas and vehicles owned, leased, or operated by the City of Vestavia Hills, including areas under the control of an agency, board, commission, or committee of the City, to the extent the place is subject to the jurisdiction of the City.

- (2) This prohibition on smoking shall be communicated to all existing employees by the effective date of this Section and to all prospective employees upon their application for employment.

(d) ***Prohibition Of Smoking In Enclosed Residential Facilities.*** Smoking shall be prohibited in the following enclosed residential facilities:

- (1) All private and semiprivate rooms in nursing homes and
- (2) All hotel and motel rooms that are rented to guests.

(e) ***Prohibition Of Smoking In Outdoor Public Places.*** Smoking shall be prohibited in the following outdoor places:

- (1) Within a reasonable distance of 20 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to prevent tobacco smoke from entering those areas;
- (2) In, and within 20 feet of, outdoor seating or serving areas of restaurants and bars;
- (3) In all outdoor arenas, stadiums, and amphitheaters. Smoking shall also be prohibited in, and within 20 feet of, bleachers and grandstands for use by spectators at sporting and other public events;
- (4) In, and within 20 feet of, all outdoor public transportation stations, platforms, and shelters under the authority of the City of Vestavia Hills; and
- (5) In all outdoor service lines;

- (f) **Exemptions.** Notwithstanding any other provision of this Section to the contrary, smoking shall not be prohibited in private residences, unless used as a child care, adult day care, or health care facility.
- (g) **Declaration Of Establishment Or Outdoor Area As Nonsmoking.** Notwithstanding any other provision of this Section, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 2(h) is posted.
- (h) **Posting Of Signs And Removal Of Ashtrays.** The owner, operator, manager, or other person in control of a public place or place of employment where smoking is prohibited by this Section shall:
- (1) Clearly and conspicuously post “No Smoking” signs or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) in that place.
 - (2) Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited.
 - (3) Clearly and conspicuously post on every vehicle that constitutes a place of employment under this Section at least one sign, visible from the exterior of the vehicle, stating that smoking is prohibited.
 - (4) Remove all ashtrays from any area where smoking is prohibited by this Section, except for ashtrays displayed for sale and not for use on the premises.
- (i) **Nonretaliation; Nonwaiver Of Rights.**
- (1) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, customer, or resident of a multiple-unit residential facility because that employee, applicant, customer, or resident exercises any rights afforded by this Section or reports or attempts to prosecute a violation of this Section. Notwithstanding Section 2(k), violation of this provision

- (2) An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

(j) Enforcement.

- (1) This Section shall be enforced by the county health officer or his or her duly authorized representative, any duly sworn police officer employed by the City of Vestavia Hills, or as otherwise allowed by law.
- (2) Notice of the provisions of this Section shall be given to all applicants for a business license in the City of Vestavia Hills.
- (3) Any resident who desires to register a complaint under this Section may initiate enforcement with an entity responsible for enforcement, such as the Jefferson County Department of Health or Police Department.
- (4) The County Health Department, the Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Section.
- (5) Any owner, manager, operator, or employee of an area regulated by this Section shall direct a person who is smoking in violation of this Section to extinguish the product being smoked. If the person does not stop smoking, the owner, manager, operator, or employee shall refuse service and immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator, or employee shall contact a law enforcement agency.
- (6) Notwithstanding any other provision of this Section, an employee or private citizen may bring legal action to enforce this Section.
- (7) In addition to the remedies provided by the provisions of this Section, the City of Vestavia Hills, the county health officer, or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Section may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

(k) *Violations and Penalties.*

(1) A person who knowingly or intentionally smokes in an area where smoking is prohibited by the provisions of this Section commits an offense, punishable by a fine of fifty dollars (\$50) per offense. A charge of violation shall be treated in the same manner as a traffic violation.

(2) Except as otherwise provided in Section I (1), a person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Section shall be guilty of an offense, punishable by:

a. A fine of one hundred dollars (\$100) for a first violation. A charge of violation shall be treated in the same manner as a traffic violation.

b. A fine of two hundred dollars (\$200) for a second violation within one (1) year. A charge of violation shall be treated in the same manner as a traffic violation.

c. A fine of five hundred dollars (\$500) for each additional violation within one (1) year. A charge of violation shall be treated in the same manner as a traffic violation.

(3) In addition to the fines established by this Section, violation of this Section by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

(4) Violation of this Section is hereby declared to be a public nuisance, which may be abated by the City of Vestavia Hills, the county health officer, or a designee by restraining order, preliminary and permanent injunction, or other means provided for by law, and the entity or person seeking abatement may take action to recover the costs of the nuisance abatement.

(5) Each day on which a violation of this Section occurs shall be considered a separate and distinct violation.

(l) *Other Applicable Laws.* This Section shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

- (m) **Liberal Construction.** This Section shall be liberally construed so as to further its purposes.

Section 3. Public Education. The City of Vestavia Hills shall engage in a continuing program to explain and clarify the purposes and requirements of this Ordinance to residents affected by it, and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this Ordinance.

Section 4. Governmental Agency Cooperation. The City of Vestavia Hills shall annually request other governmental and educational agencies having facilities within Jefferson and Shelby Counties to establish local operating procedures in cooperation and compliance with this Ordinance. This includes urging all Federal, State, County, and School District agencies to update their existing smoking regulations to be consistent with the current health findings regarding secondhand smoke.

Section 5. Severability. If any word, provision, clause, sentence, paragraph, or subsection of this Ordinance or the application thereof to any person or circumstances shall be held invalid by a court of competent jurisdiction then the remaining provisions of this Ordinance shall be in full force and effect.

Section 6. Effective Date. This Ordinance shall be effective 30 days after approval by the Council of the City of Vestavia Hills and Mayor, and publication should be made as required by law, showing the effective date.

DONE, ORDERED, ADOPTED and APPROVED this the 25th day of June, 2012.

Mary Lee Rice
Council President

ATTESTED BY:

Rebecca Leavings
City Clerk

APPROVED BY:

Alberto C. Zaragoza, Jr.
Mayor

CERTIFICATION:

I, Rebecca Leavings, as Acting City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2411 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 25th day of June, 2012, as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, Vestavia Hills New Merkle House and Vestavia Hills Recreational Center this the _____ day of _____, 2012.

Rebecca Leavings
City Clerk

ORDINANCE NUMBER 2413

**ANNEXING CERTAIN TERRITORY TO THE
CORPORATE LIMITS OF THE CITY OF
VESTAVIA HILLS, ALABAMA.**

WHEREAS, on the 13th day of February, 2012, a petition was presented to the City Council of the City of Vestavia Hills, Alabama, proposing the annexation of certain property to the City of Vestavia Hills, Alabama, under the provisions of Act 32 of the Special Session on the Alabama Legislature of 1964; and

WHEREAS, the City Council of the City of Vestavia Hills, at the time and place of its regular meeting on said date, made a determination that the matters contained in the Petition were true and that it was in the public interest that said property be annexed to the City of Vestavia Hills, Alabama.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows:

1. That the following property which was described in said petition be annexed to the City of Vestavia Hills, Alabama:

0.56 +/- acres, Cahaba River Road
City of Vestavia Hills, Owner(s)

More Particularly Described as follows:

Legal Description:

Part of the SW ¼ of the SE ¼ of Section 27, Township 18 South, Range 2 West, Jefferson County, Alabama being more particularly described as follows:

Beginning at an existing 2 inch open top iron pipe being the locally accepted SW corner of said SW ¼ of SE ¼ of said Section 27; run in an Easterly direction along the South line of said ¼ - ¼ section for a distance of 262.37 feet to an existing iron rebar set by GSA and being on the Southwest right of way line of Cahaba River Road; thence turn an angle to the left of 144° 41' 06" and run in a Northwesterly direction along the

Southwest right of way line of Cahaba River Road for a distance of 323.71 feet to an existing iron rebar set by Weygand and being on the West line of said SW ¼ of SE ¼ of said Section 27; thence turn an angle to the left of 125° 51' 24" and run in a Southerly direction for a distance of 187.13 feet, more or less, to the point of beginning; Containing 0.56 acres, more or less; and

2. That this Annexation shall become effective upon the adoption and approval of this Ordinance in accordance with the provisions of law, after which the heretofore described property shall become a part of the City of Vestavia Hills, Alabama.

3. That the City Clerk be and is hereby directed to publish this Ordinance in accordance with the requirements of the law and to file a copy hereof, together with a duly certified copy of the petition, with the Probate Judge of Jefferson County, Alabama.

ADOPTING and APPROVED this the 9th day of July, 2012.

Mary Lee Rice
Council President

ATTESTED BY:

Rebecca Leavings
City Clerk

APPROVED BY:

Alberto C. Zaragoza, Jr.
Mayor

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2413 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 9th day of July, 2012, as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, Vestavia Hills New Merkle House and Vestavia Hills Recreational Center this the _____ day of _____, 2012.

Rebecca Leavings
City Clerk

ORDINANCE NUMBER 2414

**AN ORDINANCE AUTHORIZING AND DIRECTING THE
PURCHASING AND CLOSING OF THE SALE OF REAL ESTATE.**

THIS ORDINANCE NUMBER 2414 is considered, approved, enacted and adopted on this the 9th day of July, 2012.

WITNESSETH THESE RECITALS

WHEREAS, municipalities in Alabama have the legal authority to acquire real estate by purchase pursuant to Title 11-40-1, *Code of Alabama, 1975*; and

WHEREAS, the City Council (the “City Council”) of the City of Vestavia Hills, Alabama, a municipal corporation (the “City”) finds and determines that the purchase by the City of the hereinafter described real property (the “Property”) will promote the health, safety and general welfare of the City; and

WHEREAS, Title 11-47-5, *Code of Alabama, 1975*, reads as follows:

“Contracts entered into by a municipality shall be in writing, signed and executed in the name of the city or town by the officers authorized to make the same and by the party contracting. In cases not otherwise directed by law or ordinance, such contracts shall be entered into and executed by the mayor in the name of the city or town and all obligations for the payment of money by the municipality, except for bonds and interest coupons, shall be attested by the clerk. This section shall not be construed to cover purchases for the ordinary needs of the municipality;” and

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF
THE CITY OF VESTAVIA HILLS, ALABAMA AS FOLLOWS:**

1. PROMOTION OF PUBLIC WELFARE: The City Council (the “City Council”) of the City of Vestavia Hills, Alabama, a municipal corporation (the “City”) finds and determines that the purchase by the City of the hereinafter described real property and improvements (the “Property”) will promote the health, safety and general welfare of the City.

2. **CONTRACT FOR PURCHASE OF REAL ESTATE:** The purchasing and closing of the sale of the Property shall be completed all in accordance with the terms, provisions, conditions and limitations of a written Real Estate Sales Contract (the “Contract”) negotiated by the Mayor, City Manager and City Attorney and ultimately considered for acceptance and approval by the City Council at a regular or special public meeting of the City Council.

3. **TERMS OF CONTRACT:** The written Real Estate Sales Contract shall specifically include, but not be limited to, the following terms, provisions, conditions and limitations:

- A. **SELLER:** Southpace Properties, Inc.
- B. **PURCHASER:** The City of Vestavia Hills, Alabama, a municipal corporation.
- C. **PURCHASE PRICE:** One Million One Hundred Fifty Thousand and No/100 Dollars (\$1,150,000.00).
- D. **EARNEST MONEY:** None.
- E. **PAYMENT OF PURCHASE PRICE:** In cash at closing.
- F. **THE PROPERTY:**
 - 1. **Street Address:** In Vestavia Plaza on Montgomery Highway.
 - 2. **Located In:** Vestavia Hills Shopping Center.
 - 3. **Formerly Occupied By:** Food World Grocery Store.
 - 4. **Map of Property:** Attached hereto as Exhibit A.
 - 5. **Legal Description:** To be furnished by Seller upon completion of survey.
 - 6. **Curtilage:** The Property includes the present “Big Box” building and the real estate surrounding it as shown on the survey.
- G. **TITLE INSURANCE:** To be furnished by Seller at Seller’s expense.
- H. **SURVEY:** To be furnished by Seller at Seller’s expense.
- I. **USE OF PROPERTY:** Municipal Center, City Hall or other municipal purposes determined by the City. Seller shall warrant to City in writing that the Property can be used for said purposes.

J. **CONDITION OF PROPERTY:** “As is” condition with all faults.

K. **PARKING SPACES:** Seller shall provide perpetual cross parking easements to the extent that there shall be one parking space per 200 square feet in the building on the property.

L. **CONVEYANCE:** By Warranty Deed.

M. **BROKER COMMISSION:** None.

N. **ATTORNEY FEES:** Each party shall pay its own attorney fees for legal services rendered in connection with the sale, purchase and closing.

O. **RESURVEY:** To be completed by both Seller and Purchaser.

4. **FIRST READING OF ORDINANCE NUMBER 2414:** There will be a first reading of Ordinance Number 2414 at the regularly scheduled meeting of the City Council on Monday, June 25, 2012, at 5:00 p.m.

5. **PREPARATION OF CONTRACT:**

A. **DATE:** After June 25, 2012, but prior to July 9, 2012.

B. **SCRIVENER:** Attorney for Seller at Seller’s expense.

6. **CONSIDERATION FOR APPROVAL OF CONTRACT:** The City Council will consider approval of the Contract at its regularly scheduled meeting on July 9, 2012 at 5:00 p.m.

7. **AMENDMENT TO ORDINANCE NUMBER 2414:** If the City Council approves the Contract and it is executed and delivered by both Seller and Purchaser, then in such event Ordinance Number 2414 shall be amended by adding a copy of the duly executed Contract thereto.

8. **SECOND READING AND CONSIDERATION OF APPROVAL, ADOPTION AND ENACTMENT OF ORDINANCE NUMBER 2414:** The City Council shall have a second reading of Ordinance Number 2414, as amended, and consider its approval, adoption and enactment thereof at its regularly scheduled meeting on July 9, 2012 at 5:00 p.m. If approved, the City Council may adopt and enact Ordinance Number 2414 if unanimous consent of those present is given for immediate consideration as authorized by Title 11-45-2(b), *Code of Alabama 1975*.

9. POSTING OF ORDINANCE NUMBER 2414: If the City Council approves, enacts and adopts Ordinance Number 2414, as amended, then in such event, said Ordinance shall be posted in three (3) public places within the City as required by Title 11-45-8(b)(1), *Code of Alabama, 1975*.

10. EFFECTIVE DATE OF ORDINANCE NUMBER 2414: Ordinance Number 2414 shall become effective five (5) days after posting in accordance with Title 11-45-8(3), *Code of Alabama, 1975*.

11. CLOSING DATE: The Real Estate Sales Contract shall be closed after the effective date of Ordinance Number 2414 but prior to August 1, 2012 and on a date mutually agreed upon by Seller and Purchaser.

DONE, ORDERED, APPROVED and ADOPTED, this the 9th day of July, 2012.

Mary Lee Rice
Council President

ATTESTED BY:

Rebecca Leavings
City Clerk

APPROVED BY:

Alberto C. Zaragoza, Jr.
Mayor

RESOLUTION NUMBER 4320

**A RESOLUTION APPROVING ALCOHOL LICENSE
FOR R AND A SERVICES, INC D/B/A LEON LA
TAVERNA; GABRIELA GALLEGOS, EXECUTIVE**

WHEREAS, the City Council of the City of Vestavia Hills, Alabama, approves the alcohol license for R and A Services, Inc d/b/a Leon La Taverna, located at 8000 Liberty Parkway, Suites 102 & 104, Vestavia Hills, Alabama, for the on premise sale of 020 - Resturant Retail Liquor; Gabriela Gallegos, executive.

APPROVED and ADOPTED this the 9th day of July, 2012.

Mary Lee Rice
Council President

ATTESTED BY:

Rebecca Leavings
City Clerk

APPROVED BY:

Alberto C. Zaragoza, Jr.
Mayor

INTEROFFICE MEMORANDUM

DATE: July 6, 2012

TO: Dan Rary, Acting Police Chief

FROM: Rebecca Leavings, City Clerk 


RE: Alcohol License Request – 020 - Resturant Retail Liquor

Please find attached information submitted by Gabriela Gallegos who request an alcohol license to sell 020 - Resturant Retail Liquor at the R and A Services, Inc d/b/a Leon La Taverna, 8000 Liberty Parkway, Suites 102 & 104, Vestavia Hills, Alabama.

I am scheduling this case to be heard by the City Council on 9th day of July, 2012 at 5:00 PM (Monday). Please advise me of your recommendation for this license. If you have any questions, please contact me.

Reply

I have reviewed the available background information on the above referenced applicant and submit the following to the City Council:

	<i>Application cleared by P.D. This indicates that there are NO convictions for drug trafficking, convictions regarding arrest involving danger to children, weapon charges, violent felony crimes against persons, felony sexual offenses or habitual alcohol related arrests</i>
	<i>Needs further review. This indicates that the Police Chief has found records of some convictions of alcohol related arrests</i>
	<i>Does not recommend. This indicates that the Police Chief has found records of convictions for drug trafficking, convictions regarding arrest involving danger to children, weapon charges, violent felony crimes against persons, felony sexual offenses or habitual alcohol related arrests</i>

Reviewed: 



STATE OF ALABAMA
ALCOHOLIC BEVERAGE CONTROL BOARD
ALCOHOL LICENSE APPLICATION



Confirmation Number: 20120626102050724

Type License: 020 - RESTAURANT RETAIL LIQUOR **State:** \$300.00 **County:** \$300.00
Type License: **State:** **County:**
Trade Name: LEON LA TAVERNA **Filing Fee:** \$50.00
Applicant: R AND A SERVICES INC **Transfer Fee:**
Location Address: 8000 LIBERTY PARKWAY STE 102 AND104 VESTAVIA HILLS, AL 35242
Mailing Address: 8000 LIBERTY PARKWAY STE 102 AND104 VESTAVIA HILLS, AL 35242
County: JEFFERSON **Tobacco sales:** NO **Tobacco Vending Machines:**
Sale of Products Containing Ephedrine: NO **Type Ownership:** CORPORATION
Book, Page, or Document info: LR201213, 6669 **Do you sell Draft Beer:** Y
Date Incorporated: 05/03/2012 **State incorporated:** AL **County Incorporated:** JEFFERSON
Date of Authority: 05/03/2012 **Alabama State Sales Tax ID:** R008238550

Name: **Title:** **Date and Place of Birth:** **Residence Address:**

GABRIELA GALLEGOS 6377296 - AL	PRESIDENT	08/15/1969 HOUSTON, TEXAS	3544 BROOKWOOD RD MOUNTAIN BROOK, AL 35223

Has applicant complied with financial responsibility ABC RR 20-X-5-.14? YES
Does ABC have any actions pending against the current licensee? NO
Has anyone, including manager or applicant, had a Federal/State permit or license suspended or revoked? NO
Has a liquor, wine, malt or brewed license for these premises ever been denied, suspended, or revoked? NO
Are the applicant(s) named above, the only person(s), in any manner interested in the business sought to be licensed? YES
Are any of the applicants, whether individual, member of a partnership or association, or officers and directors of cooperation itself, in any manner monetarily interested, either directly or indirectly, in the profits of any other class of business regulated under authority of this act? NO
Does applicant own or control, directly or indirectly, hold lien against any real or personal property which is rented, leased or used in the conduct of business by the holder of any vinous, malt or brewed beverage, or distilled liquors permit or license issued under authority of this act? NO
Is applicant receiving, either directly or indirectly, any loan, credit, money, or the equivalent thereof from or through a subsidiary or affiliate or other licensee, or from any firm, association or corporation operating under or regulated by the authority of this act? NO

Contact Person: GABRIELA GALLEGOS **Home Phone:** 205-901-6637
Business Phone: 205-970-7295 **Cell Phone:** 205-901-6637
Fax: **E-mail:** GABRIELA4012@HOTMAIL.COM

PREVIOUS LICENSE INFORMATION: **Previous License Number(s)**
Trade Name: LA DAMA PIZZERIA **License 1:** 002068737
Applicant: PISANOS ITALIAN LLC **License 2:**



STATE OF ALABAMA
ALCOHOLIC BEVERAGE CONTROL BOARD
ALCOHOL LICENSE APPLICATION



Confirmation Number: 20120626102050724

If applicant is leasing the property, is a copy of the lease agreement attached? **YES**
 Name of Property owner/lessor and phone number: **FAIRWAY PROMINENCE LLC 205-402-9990**
 What is lessors primary business? **REAL ESTATE**
 Is lessor involved in any way with the alcoholic beverage business? **NO**
 Is there any further interest, or connection with, the licensee's business by the lessor? **NO**

Does the premise have a fully equipped kitchen? **YES**
 Is the business used to habitually and principally provide food to the public? **YES**
 Does the establishment have restroom facilities? **YES**
 Is the premise equipped with services and facilities for on premises consumption of alcoholic beverages? **YES**

Will the business be operated primarily as a package store? **NO**
 Building Dimensions Square Footage: **3500** Display Square Footage:
 Building seating capacity: **125** Does Licensed premises include a patio area? **NO**
 License Structure: **ONE STORY** License covers: **ENTIRE STRUCTURE**
 Number of licenses in the vicinity: **4** Nearest: **1**
 Nearest school: **2 miles** Nearest church: **6 blocks** Nearest residence: **8 blocks**
 Location is within: **CITY LIMITS** Police protection: **CITY**

Has any person(s) with any interest, including manager, whether as sole applicant, officer, member, or partner been charged (whether convicted or not) of any law violation(s)?

Name:	Violation & Date:	Arresting Agency:	Disposition:



STATE OF ALABAMA
ALCOHOLIC BEVERAGE CONTROL BOARD
ALCOHOL LICENSE APPLICATION



Confirmation Number: 20120626102050724

Initial each

Signature page

GG
GG

In reference to law violations, I attest to the truthfulness of the responses given within the application.

In reference to the Lease/property ownership, I attest to the truthfulness of the responses given within the application.

GG

In reference to ACT No. 80-529, I understand that if my application is denied or discontinued, I will not be refunded the filing fee required by this application.

NA

In reference to Special Retail or Special Events retail license, I agree to comply with all applicable laws and regulations concerning this class of license, and to observe the special terms and conditions as indicated within the application.

NA

In reference to the Club Application information, I attest to the truthfulness of the responses given within the application.

NA

In reference to the transfer of license/location, I attest to the truthfulness of the information listed on the attached transfer agreement.

GG

In accordance with Alabama Rules & Regulations 20-X-5-.01(4), any social security number disclosed under this regulation shall be used for the purpose of investigation or verification by the ABC Board and shall not be a matter of public record.

GG

The undersigned agree, if a license is issued as herein applied for, to comply at all times with and to fully observe all the provisions of the Alabama Alcoholic Beverage Control Act, as appears in Code of Alabama, Title 28, and all laws of the State of Alabama relative to the handling of alcoholic beverages.

The undersigned, if issued a license as herein requested, further agrees to obey all rules and regulations promulgated by the board relative to all alcoholic beverages received in this State. The undersigned, if issued a license as herein requested, also agrees to allow and hereby invites duly authorized agents of the Alabama Alcoholic Beverage Control Board and any duly commissioned law enforcement officer of the State, County or Municipality in which the license premises are located to enter and search without a warrant the licensed premises or any building owned or occupied by him or her in connection with said licensed premises. The undersigned hereby understands that he or she violate any provisions of the aforementioned laws his or her license shall be subject to revocation and no license can be again issued to said licensee for a period of one year. The undersigned further understands and agrees that no changes in the manner of operation and no deletion or discontinuance of any services or facilities as described in this application will be allowed without written approval of the proper governing body and the Alabama Alcoholic Beverage Control Board.

GG

I hereby swear and affirm that I have read the application and all statements therein and facts set forth are true and correct, and that the applicant is the only person interested in the business for which the license is required.

Applicant Name (print):

Gabriela Gallegos

Signature of Applicant:

Gabriela Gallegos

Notary Name (print):

Valencia Johnson

Notary Signature:

Valencia Johnson

Commission expires: *1-4-14*

Application Taken: *6-26-12* App. Inv. Completed:
 Submitted to Local Government:
 Received in District Office: Reviewed by Supervisor:

Forwarded to District Office:
 Received from Local Government:
 Forwarded to Central Office:

Receipt Confirmation Page

Receipt Confirmation Number: **20120626102050724**
Application Payment Confirmation Number: **3176504**

Payment Summary	
Payment Item	Fee
Application Fee for License 020	\$50.00
Total Amount to be Charged	\$50.00

License Payment Confirmation Number:

Payment Summary			
Payment Item	County Fee	State Fee	Total Fee
020 - RESTAURANT RETAIL LIQUOR	\$300.00	\$300.00	\$600.00
			\$0.00
Total Amount to be Charged	\$300.00	\$300.00	\$600.00

Application Type

Application Type: APPLICATION

Applicant Information

License Type 1: 020 - RESTAURANT RETAIL LIQUOR
License Type 2:
License County: JEFFERSON
Business Type: CORPORATION
Trade Name: **LEON LA TAVERNA**
Applicant Name: **R AND A SERVICES INC**
Location Address: 8000 LIBERTY PARKWAY STE 102 AND104
VESTAVIA HILLS, AL 35242
Mailing Address: 8000 LIBERTY PARKWAY STE 102 AND104
VESTAVIA HILLS, AL 35242
Contact Person: GABRIELA GALLEGOS
Contact Home Phone: 205-901-6637
Contact Business Phone: 205-970-7295
Contact Fax:
Contact Cell Phone: 205-901-6637
Contact Email Address:
Contact Web Address:

RESOLUTION NUMBER 4321

**A RESOLUTION APPROVING ALCOHOL LICENSE
FOR SULLIVAN PIZZA, INC., D/B/A DONATOS
PIZZA STORE 132; ROBERT SULLIVAN,
EXECUTIVES**

WHEREAS, the City Council of the City of Vestavia Hills, Alabama, approves the alcohol license for Sullivan Pizza, Inc., d/b/a Donatos Pizza Store 132, located at 629 Montgomery Highway, Vestavia Hills, Alabama, for the sale of 040 - Retail Beer (on or off premises) and 060 - Retail Table Wine (on or off premises); Robert Sullivan, executives.

APPROVED and ADOPTED this the 9th day of July, 2012.

Mary Lee Rice
Council President


ATTESTED BY:

Rebecca Leavings
City Clerk

APPROVED BY:

Alberto C. Zaragoza, Jr.
Mayor

INTEROFFICE MEMORANDUM

DATE: July 6, 2012
TO: Dan Rary, Acting Police Chief
FROM: Rebecca Leavings, City Clerk 


RE: Alcohol License Request – 040 - Retail Beer (on or off premises) and 060 - Retail Table Wine (on or off premises)

Please find attached information submitted by Robert Sullivan who request an alcohol license to sell 040 - Retail Beer (on or off premises) and 060 - Retail Table Wine (on or off premises) at the Sullivan Pizza, Inc., d/b/a Donatos Pizza Store 132,629 Montgomery Highway, Vestavia Hills, Alabama.

I am scheduling this case to be heard by the City Council on 9th day of July, 2012 at 5:00 PM (Monday). Please advise me of your recommendation for this license. If you have any questions, please contact me.

Reply

I have reviewed the available background information on the above referenced applicant and submit the following to the City Council:

	<i>Application cleared by P.D. This indicates that there are NO convictions for drug trafficking, convictions regarding arrest involving danger to children, weapon charges, violent felony crimes against persons, felony sexual offenses or habitual alcohol related arrests</i>
	<i>Needs further review. This indicates that the Police Chief has found records of some convictions of alcohol related arrests</i>
	<i>Does not recommend. This indicates that the Police Chief has found records of convictions for drug trafficking, convictions regarding arrest involving danger to children, weapon charges, violent felony crimes against persons, felony sexual offenses or habitual alcohol related arrests</i>

Reviewed: 



STATE OF ALABAMA
ALCOHOLIC BEVERAGE CONTROL BOARD
ALCOHOL LICENSE APPLICATION



Confirmation Number: 20120703131418259

If applicant is leasing the property, is a copy of the lease agreement attached? **YES**
 Name of Property owner/lessor and phone number: **W B CROW INVESTMENT CO. 205-326-5372**
 What is lessors primary business? **REAL ESTATE**
 Is lessor involved in any way with the alcoholic beverage business? **NO**
 Is there any further interest, or connection with, the licensee's business by the lessor? **NO**

Does the premise have a fully equipped kitchen? **YES**
 Is the business used to habitually and principally provide food to the public? **YES**
 Does the establishment have restroom facilities? **YES**
 Is the premise equipped with services and facilities for on premises consumption of alcoholic beverages? **YES**

Will the business be operated primarily as a package store? **NO**
 Building Dimensions Square Footage: **2400** Display Square Footage:
 Building seating capacity: **60** Does Licensed premises include a patio area? **NO**
 License Structure: **ONE STORY** License covers: **ENTIRE STRUCTURE**
 Number of licenses in the vicinity: **10** Nearest: **1**
 Nearest school: **4 blocks** Nearest church: **3 blocks** Nearest residence: **3 blocks**
 Location is within: **CITY LIMITS** Police protection: **CITY**

Has any person(s) with any interest, including manager, whether as sole applicant, officer, member, or partner been charged (whether convicted or not) of any law violation(s)?

Name:	Violation & Date:	Arresting Agency:	Disposition:



STATE OF ALABAMA

ALCOHOLIC BEVERAGE CONTROL BOARD

ALCOHOL LICENSE APPLICATION



Confirmation Number: 20120703131418259

Initial each

Signature page

In reference to law violations, I attest to the truthfulness of the responses given within the application.

In reference to the Lease/property ownership, I attest to the truthfulness of the responses given within the application.

NA

In reference to ACT No. 80-529, I understand that if my application is denied or discontinued, I will not be refunded the filing fee required by this application.

NA

In reference to Special Retail or Special Events retail license, I agree to comply with all applicable laws and regulations concerning this class of license, and to observe the special terms and conditions as indicated within the application.

NA

In reference to the Club Application information, I attest to the truthfulness of the responses given within the application.

NA

In reference to the transfer of license/location, I attest to the truthfulness of the information listed on the attached transfer agreement.

In accordance with Alabama Rules & Regulations 20-X-5-.01(4), any social security number disclosed under this regulation shall be used for the purpose of investigation or verification by the ABC Board and shall not be a matter of public record.

The undersigned agree, if a license is issued as herein applied for, to comply at all times with and to fully observe all the provisions of the Alabama Alcoholic Beverage Control Act, as appears in Code of Alabama, Title 28, and all laws of the State of Alabama relative to the handling of alcoholic beverages.

The undersigned, if issued a license as herein requested, further agrees to obey all rules and regulations promulgated by the board relative to all alcoholic beverages received in this State. The undersigned, if issued a license as herein requested, also agrees to allow and hereby invites duly authorized agents of the Alabama Alcoholic Beverage Control Board and any duly commissioned law enforcement officer of the State, County or Municipality in which the license premises are located to enter and search without a warrant the licensed premises or any building owned or occupied by him or her in connection with said licensed premises. The undersigned hereby understands that he or she violate any provisions of the aforementioned laws his or her license shall be subject to revocation and no license can be again issued to said licensee for a period of one year. The undersigned further understands and agrees that no changes in the manner of operation and no deletion or discontinuance of any services or facilities as described in this application will be allowed without written approval of the proper governing body and the Alabama Alcoholic Beverage Control Board.

I hereby swear and affirm that I have read the application and all statements therein and facts set forth are true and correct, and that the applicant is the only person interested in the business for which the license is required.

Applicant Name (print): ROBERT E. SULLIVAN

Signature of Applicant:

Notary Name (print): B. Fuller

Notary Signature:

Commission expires: 08/12

Application Taken:	App. Inv. Completed:	Forwarded to District Office:
Submitted to Local Government:		Received from Local Government:
Received in District Office:	Reviewed by Supervisor:	Forwarded to Central Office:

Receipt Confirmation Page

Receipt Confirmation Number: **20120703131418259**
Application Payment Confirmation Number: **3230154**

Payment Summary	
Payment Item	Fee
Application Fee for License 040 and License 060	\$100.00
Total Amount to be Charged:	\$100.00

License Payment Confirmation Number:

Payment Summary			
Payment Item	County Fee	State Fee	Total Fee
040 - RETAIL BEER (ON OR OFF PREMISES)	\$75.00	\$150.00	\$225.00
060 - RETAIL TABLE WINE (ON OR OFF PREMISES)	\$75.00	\$150.00	\$225.00
Total Amount to be Charged:	\$150.00	\$300.00	\$450.00

Application Type

Application Type: APPLICATION

Applicant Information

License Type 1: 040 - RETAIL BEER (ON OR OFF PREMISES)
License Type 2: 060 - RETAIL TABLE WINE (ON OR OFF PREMISES)
License County: JEFFERSON
Business Type: CORPORATION
Trade Name: **DONATOS PIZZA STORE 132**
Applicant Name: **SULLIVAN PIZZA INC**
Location Address: 629 MONTGOMERY HWY
VESTAVIA HILLS, AL 35216

Mailing Address: 629 MONTGOMERY HWY
VESTAVIA HILLS, AL 35216

Contact Person: ROBERT SULLIVAN
Contact Home Phone: 205-979-3160
Contact Business Phone: 205-824-1112
Contact Fax: 205-824-2854
Contact Cell Phone: 205-601-7372
Contact Email Address:
Contact Web Address:

RESOLUTION NUMBER 4318

A RESOLUTION TO REQUIRE PUBLICATION IN *THE BIRMINGHAM NEWS* PROVIDING NOTICE OF A PUBLIC HEARING TO BE HELD BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA ON AUGUST 13, 2012 AT 5:00 P.M. FOR THE PURPOSES OF DETERMINING WHETHER OR NOT A PARCEL OF LAND SITUATED AT 1112 MONTGOMERY HIGHWAY IN THE CITY OF VESTAVIA HILLS, ALABAMA SOMETIMES REFERRED TO AS “THE OLD LIBRARY PROPERTY” (“THE PROPERTY”) OWNED BY THE CITY OF VESTAVIA HILLS IS NEEDED FOR MUNICIPAL OR PUBLIC PURPOSES; TO DETERMINE WHETHER OR NOT TO SELL THE PROPERTY WHICH HAS AN APPRAISED VALUE OF \$1,500,000.00 TO HES INVESTMENTS, LLC FOR A TOTAL SALES PRICE IN THE AMOUNT OF \$750,000.00; TO DETERMINE WHETHER OR NOT THE CLOSING OF THE SALE OF THE PROPERTY PURSUANT TO THE TERMS, PROVISIONS AND CONDITIONS OF A WRITTEN REAL ESTATE PURCHASE AND SALE AGREEMENT AND THE FIRST ADDENDUM AND SECOND ADDENDUM THERETO WILL SERVE AS A VALID AND SUFFICIENT PUBLIC PURPOSE NOTWITHSTANDING ANY INCIDENTAL BENEFIT ACCRUING TO ANY PRIVATE ENTITY OR ENTITIES; TO THOROUGHLY DISCUSS THE PUBLIC BENEFITS SOUGHT TO BE ACHIEVED BY THE CLOSING OF THE SALE OF SAID PROPERTY; TO IDENTIFY THE NAME OF THE PARTY THAT HAS OFFERED TO PURCHASE SAID PROPERTY; TO RECEIVE PUBLIC COMMENTS AND INPUT REGARDING THE SALE OF SAID PROPERTY; TO DECIDE WHETHER OR NOT TO SELL SAID PROPERTY; AND TO DECIDE ANY OTHER ISSUE RELATIVE TO THIS MATTER.

THIS RESOLUTION NUMBER 4318 is approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 13th day of August, 2012.

WITNESSETH THESE RECITALS:

WHEREAS, the City of Vestavia Hills, Alabama is the owner of a parcel of land situated at 1112 Montgomery Highway in the City of Vestavia Hills, Jefferson County, Alabama constituting of approximately 1.66± acres, sometimes referred to as the “old Library property,” which said property is more particularly described in Exhibit A and shall hereinafter be referred to as “the Property;” and

WHEREAS, the Property has an appraised value of \$1,500,000.00 as of June 23, 2009; and

WHEREAS, the City Council hereby acknowledges receipt of an offer of HES Investments, LLC to purchase the property represented by a written Real Estate Purchase and Sale Agreement and the First Addendum and Second Addendum thereto for a total sales price in the amount of \$750,000.00; and

WHEREAS, Title 11-47-20, *Code of Alabama, 1975*, reads as follows:

“The governing body of any city or town in this state may, by ordinance to be entered on its minutes, direct the disposal of any real property not needed for public or municipal purposes and direct the mayor to make title thereto, and a conveyance made by the mayor in accordance with such ordinance invests the grantee with the title of the municipality,” and

WHEREAS, Article IV §94.01 of the *Constitution of Alabama of 1901*, reads in pertinent part as follows:

“(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:

(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.

(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.

(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;" and

WHEREAS, Title 11-47-5, *Code of Alabama, 1975*, reads as follows:

"Contracts entered into by a municipality shall be in writing, signed and executed in the name of the city or town by the officers authorized to make the same and by the party contracting. In cases not otherwise directed by law or ordinance, such contracts shall be entered into and executed by the mayor in the name of the city or town and all obligations for the payment of money by the municipality, except for bonds and interest coupons, shall be attested by the clerk. This section shall not be construed to cover purchases for the ordinary needs of the municipality;" and

WHEREAS, the City Council of the City of Vestavia Hills, Alabama finds and determines that the property described in Exhibit A is not needed for municipal or public purposes; and

WHEREAS, the sale and closing of the Property will be considered at a public hearing to be held on Monday, August 13, 2012, at the Vestavia Hills Municipal Center located at 513 Montgomery Highway in the City of Vestavia Hills, Alabama beginning at 5:00 p.m.; and

WHEREAS, a copy of this Resolution shall be published in *The Birmingham News* at least seven (7) days prior to the public meeting on August 13, 2012 as required by Article IV §94.01 of the *Alabama Constitution*; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA AS FOLLOWS:

1. The City Council of the City of Vestavia Hills, Alabama finds and determines that the property more particularly described in Exhibit A is not needed for municipal or public purposes.

2. A public hearing will be held by the Vestavia Hills City Council on Monday, August 13, 2012, at the Vestavia Hills Municipal Center located at 513 Montgomery Highway in the City of Vestavia Hills, Alabama beginning at 5:00 p.m. as required by Article IV, §94.01 of the *Constitution of Alabama 1901*.

3. The issues to be considered by the Vestavia Hills City Council at the public hearing referred to in paragraph 2 above shall be the following:

A. To determine whether or not the parcel of land consisting of approximately 1.66± acres described in Exhibit A is needed for public or municipal purposes; and

B. To determine whether or not the closing of the sale of the Property pursuant to the terms, provisions and conditions of the written Real Estate Purchase and Sale Agreement and the First Addendum and Second Addendum thereto will serve a valid and sufficient public purpose notwithstanding any incidental benefit accruing to any private entity or entities; and

C. To thoroughly discuss the public benefits sought to be achieved by the closing of the sale as aforesaid; and

D. To identify each individual, firm, corporation or other business entity that the City of Vestavia Hills proposes to contract with; and

E. To receive public comments and input regarding the written Real Estate Purchase and Sale Agreement and the First Addendum and Second Addendum thereto; and

F. To decide whether or not the City of Vestavia Hills shall execute and deliver the written Real Estate Purchase and Sale Agreement and the First Addendum and Second Addendum thereto by and between the City of Vestavia Hills, Alabama, as “Seller,” and HES Investments, LLC, as “Buyer”; and

G. To consider all matters as required by Article IV, §94.01 of the *Constitution of Alabama 1901*; and

H. To receive public comments and input on any matter relative to the proposed sale of the Property as described herein; and

I. To find and determine that the sale of the property pursuant to the Contract will:

(a) Promote the economic development of the City of Vestavia Hills, Alabama; and

(b) Serve as a valid and sufficient public purpose notwithstanding any incidental benefit accruing to any private entity or entities; and

(c) Benefit the public and promote the public welfare of the City of Vestavia Hills, Alabama; and

(d) Promote commercial development and the stimulation of the local economy; and

(e) Increase employment opportunities and create jobs in the City; and

(f) Increase the City's tax base, which will result in additional tax revenues for the City; and

(g) Promote the location, relocation, expansion and retention of commercial enterprises in the City.

J. To find and determine that a nationally recognized company ("Company") will locate on the Property or another location within the City that will open and operate a commercial retail sales business that will generate annual municipal sales tax revenue in an amount between \$_____ and \$_____ annually.

K. To approve and adopt an ordinance authorizing and directing the Mayor to sign a Contract, First Addendum and Second Addendum thereto.

L. To decide any other issue relative to this matter; and

4. A copy of the Real Estate Purchase and Sale Agreement, the First Addendum and Second Addendum thereto (hereinafter referred to collectively as the "Contract") is attached hereto, marked as Exhibit B and is incorporated into this Resolution by reference as though set out fully herein.

5. Anything contained in this Resolution to the contrary notwithstanding, the sale of the Property pursuant to the Real Estate Purchase and Sale Agreement and the First Addendum and Second Addendum thereto shall not be closed unless and until the following have been satisfied, performed, completed and done:

(a) The closing of the sale must be approved and validated by a judgment rendered by a Jefferson County Circuit Court Judge after a hearing on the merits; and

(b) A nationally recognized company ("Company") shall have first agreed in writing with the City to open and operate a commercial retail sales business on the Property or another site in the City that will generate annual municipal sales tax revenue in an amount between \$_____ and \$_____ per year. The City shall have the sole, unfettered and absolute discretion to approve or disapprove the Company. If the City approves

the Company, then in such event the approval shall be done by the enactment of a resolution at a public meeting. If the City disapproves the Company, then in such event the City shall not close the sale of the Property and the Contract shall automatically terminate, be null and void and have no legal force and effect.

6. The City Clerk is hereby directed to take any and all steps necessary to publish notice of the public hearing on August 13, 2012, at 5:00 p.m. in *The Birmingham News* at least seven (7) days prior to the public meeting as aforesaid. The notice shall include all matters as required in Article IV, §94.01 of the *Constitution of Alabama 1901*.

7. If any part, section or subdivision of this Resolution shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this resolution, which shall continue in full force and effect notwithstanding such holding.

RESOLVED, APPROVED, ADOPTED, DONE and ORDERED, on this the 9th day of July, 2012.

Steve Ammons
Council President

ATTESTED BY:

Rebecca Leavings
City Clerk

APPROVED BY:

Alberto C. Zaragoza, Jr.
Mayor

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into on or as of this 13th day of August, 2012 by and between The City of Vestavia Hills, Alabama (the "Seller"), and HES Investments, LLC, an Alabama limited liability company or its assigns (the "Purchaser").

Recitals

A. Seller is the owner of that certain parcel of improved real property, being known as the old Vestavia hills library property comprised of 1.66 acres and an approximate 22,000 square foot, three story building, located at 1112 Montgomery Highway in Vestavia Hills, Alabama, as depicted on the attached Exhibit A and made a part hereof (the "Property").

B. Purchaser desires to purchase the Property, and Seller desires to sell the Property, pursuant to the terms and conditions of this Agreement.

Agreement

NOW, THEREFORE, in consideration of the above Recitals and other good and valuable consideration, including the mutual covenants and promises herein contained, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. Purchase Price; Closing Date. The purchase price for the Property shall be \$750,000.00 (the "Purchase Price"), to be paid as hereinafter provided. The closing of the sale and purchase of the Property (the "Closing") shall occur on the Closing Date, as defined in paragraph 5.

2. Earnest Money; Inspection Period. No later than three (3) business days after the Effective Date (defined in Section 24 hereof), Purchaser shall pay to Seller immediately available funds in the amount of \$10,000.00 (the "Earnest Money"), to be held and disbursed by the Seller in accordance with the terms of this Agreement. Commencing on the Effective Date, Purchaser shall have ninety (90) days (the "Inspection Period") to perform such inspections as Purchaser deems necessary to evaluate the Property, at Purchaser's sole expense. Purchaser shall indemnify and hold Seller harmless from any and all claims, damages and losses, including attorney fees, arising from such inspections. If Purchaser deems any inspection unsatisfactory, for any reason or no reason, Purchaser shall have the right to terminate this Agreement prior to the end of the Inspection Period, by written notice to Seller received prior to the end of the Inspection Period, and receive a full refund of the Earnest Money. If Purchaser does not terminate this Agreement prior to the end of the Inspection Period, all inspections shall be deemed satisfactory, and the parties shall proceed to Closing.

Anything to the contrary in this Agreement notwithstanding, Purchaser is obligated to submit to Seller a letter of intent from Seller's lead tenant within ninety (90) days from the Effective Date. If Seller does not approve of said lead-tenant, then Seller, at its

option, may terminate this Agreement by providing written notice to Purchaser within ten (10) days of having received said letter of intent from Purchaser. In that event, the Earnest Money shall be immediately refunded to Purchaser by Seller. In the event Seller fails to notify Purchaser of its intent to terminate pursuant to this paragraph, then Seller's right to terminate granted hereunder is null and void and the subject transaction shall continue under the terms and conditions of this Agreement.

3. Application of Earnest Money. Unless this Agreement is terminated prior to the end of the Inspection Period, the Earnest Money shall become non-refundable and shall be applied to the Purchase Price to be paid by Purchaser at Closing.

4. Possession. Seller shall deliver possession of the Property to Purchaser on the Closing Date.

5. Place and Date of Closing. The Closing shall be before the date which is ten (10) days after the sale has been validated by the Circuit Court of Jefferson County, Alabama and the approval of the Tenant by Seller. The actual date of Closing is referred to herein as the "Closing Date." Time shall be of the essence with respect to the Closing Date.

6. Conveyance. Seller shall convey to Purchaser good and marketable fee simple title to the Property by general warranty deed.

7. Costs and Fees. Purchaser shall pay all costs and fees related to owner title policy, title commitment, survey, the recording of the deed, . and all other costs and fees related to closing including any appraisal, environmental audits, mortgage tax, etc. Seller and Purchaser shall pay the fees of their own attorneys for services related to the preparation and negotiation of this Agreement and the sale and purchase of the Property. All taxes will be prorated as of the day of closing.

8. Title Insurance and Survey. Within fifteen (15) days of the Effective Date, Purchaser will deliver to Seller a copy of an owners title insurance commitment in the amount of the Purchase Price, as well as a current ALTA survey of the Property.

9. Representation and Warranty of Seller. To induce Purchaser to enter into this Agreement, Seller makes the following representations and warranties, all of which are true as of the date hereof (unless otherwise specified) and shall also be true as of the Closing Date:

(a) Seller has full power and authority to enter into this Agreement and to perform all of its obligations hereunder.

(b) The execution and delivery of this Agreement and the performance by Seller of its obligations hereunder have been duly authorized by all requisite action, except for validation of the sale by a court order rendered by a Judge in the Tenth Judicial

Circuit of Alabama after conducting a hearing for that purpose and the approval by the City of the Tenant submitted by Purchaser.

(c) That unless excepted herein, Seller has not received notification from any lawful authority regarding any assessments, pending public improvements, repairs, replacement, or alterations to the Property that have not been satisfactorily made. Seller warrants that there is no unpaid indebtedness on the Property except as described in this Agreement. Seller warrants it is the fee owner of the Property or is authorized to execute this document for the fee owner.

(d) Seller has no actual knowledge that the Property has in the past been used or is presently used for the handling, storage, manufacturing, refining, transportation or disposal of "toxic material", "hazardous substances" or "hazardous waste". The terms "hazardous wastes", "hazardous substances", and "toxic material" include, without limitation, any flammable explosives, radioactive materials, hazard materials, hazardous wastes, hazardous or toxic substances or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC §960, et seq.), the Hazardous Materials Transportation Act, as amended (42 USC §1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 USC §9601 et seq.), the regulations adopted and publications promulgated pursuant to the foregoing and any other federal, state or local environmental law, ordinance, rule or regulation. Furthermore, Seller has not received a summons, citation, directive, letter or other communication, written or oral, from any governmental authority as to any of the above environmental concerns.

At Closing, Seller shall be deemed to have represented and warranted to Purchaser that Seller's representations and warranties as stated herein are true and correct as of the Closing. Purchaser shall have the right, at its expense, to have a Phase 1 ESA performed on the Property at Purchaser's expense.

THESE WARRANTIES SHALL SURVIVE THE DELIVERY OF THE DEED.

10. Documents for Closing.

(a) Seller, at Seller's sole cost and expense, shall deliver or cause to be delivered to Purchaser the following documents (the "Closing Documents):

(i) the Deed;

(ii) a certificate of non-foreign status to insure Seller's compliance with Foreign Investment in Real Property Tax Act ("FIRPTA") (Section 1445 of the Internal Revenue Code of 1986, as amended) in the form attached hereto as Exhibit C;

(iii) such additional documents and instruments as the title company may reasonably require to transfer Seller's interest in the Property pursuant to the terms of this Agreement, each of which shall be in form and substance reasonably satisfactory to Seller.

(b) At the Closing, Purchaser shall deliver, or cause to be delivered, to Seller in accordance with the terms of this Agreement, the Purchase Price less the Earnest Money and prorations.

11. Default; Remedies. If Purchaser fails to perform its obligations under this Agreement within the time specified, Seller shall have the right to retain the Earnest Money as liquidated damages as its sole and exclusive remedy. If Seller fails to perform any of the covenants of this Agreement, then the Earnest Money paid by Purchaser shall be returned to Purchaser and thereupon Seller shall be released from any and all liability under the terms of this Agreement, or, alternatively, Purchaser may seek the remedy of specific performance so long as such action is filed within thirty (30) days of the alleged breach and or pursue any other remedies afforded to it under the law. If either party fails to comply with all of the terms, covenants and conditions of this Agreement, the prevailing party in any lawsuit will be entitled to all expenses, including a reasonable attorney's fee, incurred as a result of such failure.

12. Condemnation and Destruction. If, on the Closing Date, all or any reasonably substantial portion of the Property is the subject of a pending or contemplated taking by eminent domain which has not been consummated or if the Property has been materially damaged or destroyed, Seller shall notify Purchaser of such fact and Purchaser shall have the option to terminate this Agreement and, in the event Purchaser shall elect to terminate this Agreement, Seller shall refund to Purchaser the Earnest Money. If this Agreement is terminated and the Earnest Money is returned, as aforesaid, neither party shall have any further rights or obligations hereunder. If, after receipt of Seller's notice, as aforesaid, Purchaser does not exercise its option to terminate this Agreement, the parties hereto shall remain bound hereunder and Seller shall assign and turn over, and Purchaser shall be entitled to receive and keep, all awards for the taking by eminent domain described in said notice or all insurance proceeds payable as a result of such destruction or damage.

13. Final Agreement. This Agreement represents the final agreement of the parties and no agreements or representations, unless incorporated in this Agreement, shall be binding on any of the parties, and no portion hereof shall be amended or modified unless such change shall be in writing and signed by both parties thereto.

14. Notice. Any notice required hereunder shall be in writing and sent by certified mail, return receipt requested. Notice shall be deemed to be given when deposited in the United States mail, postage prepaid. Personal delivery and delivery by recognized overnight delivery service may be substituted for certified mail. Notice shall be sent to the following individuals:

If to Purchaser: HES Investments, LLC
2644 Old Rocky Ridge Road
Birmingham, AL 35216

If to Seller: Mayor Alberto C. Zaragoza, Jr.
City of Vestavia Hills, Alabama
513 Montgomery Highway
Vestavia Hills, Alabama 35216

With a copy to:

Patrick H. Boone
705 New South Federal Savings Building
215 Richard Arrington, Jr. Boulevard North
Birmingham, Alabama 35203-3720

15. Number and Gender. Whenever the singular number is used herein and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and the word “person” shall include a corporation, firm, partnership, joint venture, trust or estate.

16. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Alabama.

17. Assignment. This Agreement may not be assigned by Purchaser without the prior written consent of Seller.

18. Survival. The representations, warranties and indemnities contained herein shall be deemed to have been made again by the parties as of the Closing Date, and shall survive the expiration or termination of this Agreement, the discharge of all other obligations owed by the parties to each other, and any transfer of title to the Property, and shall not be affected by any investigation by or on behalf of Purchaser, or by any information which Purchaser may have or obtain with respect thereto.

19. Severability. In the event that any condition or covenant herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or conditions herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

20. Waiver. No breach of any provision hereof can be waived unless in writing. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.

21. Captions and Interpretations. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provision hereof. No provision in this Agreement is to be interpreted for or against either party because that party or such party's legal representative drafted such provision.

22. Broker. Seller and Purchaser shall indemnify each other against any and all claims for broker's fees, costs or commissions which might arise in connection with the purchase and sale of the Property as a result of either's action. The provisions of this Paragraph shall survive closing. Each party hereby represents to the other that it has not utilized the services of any real estate agent or broker in connection with this Agreement.

23. Patriot Act Representations. Seller and Purchaser each represent and warrant to the other that they are not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by the United States Treasury Department as a Specifically Designated National and Blocked Person, or for or on behalf of any person, group, entity, or nation designated in Presidential Executive Order 13224 as a person who commits, threatens to commit, or supports terrorism; and that they are not engaged in this transaction directly or indirectly on behalf of, or facilitating this transaction directly or indirectly in behalf of, any such person, group, entity, or nation.

24. Effective Date: The Effective Date of this Agreement is the sixth (6th) day following the posting of an ordinance approved and enacted by the City Council of the City of Vestavia Hills, Alabama authorizing and directing the Mayor to execute this Agreement for and on behalf of the City of Vestavia Hills, Alabama.

25. **CONTINGENCIES AND CONDITIONS FOR CLOSING:** Anything contained in this Real Estate Purchase and Sale Agreement to the contrary notwithstanding, this Contract by and between the City of Vestavia Hills, Alabama, as "Seller," and HES Investments, as "Purchaser," is subject to and contingent upon the completion and satisfaction of the following on or before the Seller is required to close this sale, hereinafter referred to collectively as "Closing Conditions":

CLOSING CONDITION ONE: Title 11-47-20, *Code of Alabama, 1975*, reads as follows:

"The governing body of any city or town in this state may, by ordinance to be entered on its minutes, direct the disposal of any real property not needed for public or municipal purposes and direct the mayor to make title thereto, and a conveyance made by the mayor in

accordance with such ordinance invests the grantee with the title of the municipality.”

In order for the City to be required to close this sale pursuant to this Contract, the City Council shall first make a determination, on or before the scheduled Closing Date set forth in Paragraph 5 hereof, that the Property is no longer needed for public or municipal purposes. If the City Council fails or refuses to make a determination that the Property is no longer needed for public or municipal purposes as aforesaid, then in such event the City shall not be required to close this sale and this Agreement shall be automatically terminated, be null and void and of no legal force and effect.

CLOSING CONDITION TWO: Amendment No. 772 to the *Constitution of Alabama* (1901) (Section 94.01(a)(3) of the *Recompiled Constitution of Alabama* (hereinafter referred to as “Amendment No. 772”), authorizes the City to lend its credit to or grant public funds and things of value in aid of or to any corporation or other business entity for the purpose of promoting the economic development of the City. Article IV, §94.01 of the *Constitution of Alabama of 1901* Amendment No. 772” reads in pertinent part as follows:

“(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:

(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.

(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.

(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.”

In order for the City to be required to close this sale pursuant to this Contract, the City Council shall first publish the notice of a public meeting in strict compliance with the mandated requirements of Amendment No. 772. If the City Council fails or refuses to publish said notice as aforesaid, then in such event the City shall not be required to close this sale and this Agreement shall be automatically terminated, be null and void and have no legal force and effect.

CLOSING CONDITION THREE: In order for the City to be required to close this sale pursuant to this Contract, the City Council shall first:

(a) Hold and conduct the public meeting as required by Amendment No. 772; and

(b) Find and determine that the sale of the property pursuant to the Contract will:

(1) Promote the economic development of the City of Vestavia Hills, Alabama; and

(2) Serve as a valid and sufficient public purpose notwithstanding any incidental benefit accruing to any private entity or entities; and

(3) Benefit the public and promote the public welfare of the City of Vestavia Hills, Alabama; and

(4) Promote commercial development and the stimulation of the local economy; and

(5) Increase employment opportunities and create jobs in the City; and

(6) Increase the City's tax base, which will result in additional tax revenues for the City; and

(7) Promote the location, relocation, expansion and retention of commercial enterprises in the City.

(8) Find and determine that a nationally recognized company ("Company") will locate on the Property or another location within the City that will open and operate a commercial retail sales business that will generate annual municipal sales tax revenue in an amount sufficient to justify the sale of the Property for less than appraised value.

(c) Approve and adopt an ordinance authorizing and directing the Mayor to sign this Agreement.

If the City Council fails or refuses to hold and conduct the public hearing as mandated by Amendment No. 772 or fails and refuses to make any of the findings or determinations as set forth in paragraphs (1) through (8) above, and/or fails or refuses to approve and adopt the ordinance referred to above, then in such event the City shall not be required to close this sale and the Agreement shall be automatically terminated, be null and void and have no legal force and effect.

CLOSING CONDITION FOUR: The Purchaser shall, on or before the scheduled Closing Date as set forth in Paragraph 5 hereof, produce to the City a nationally recognized company ("Company") that will, prior to the said Closing Date:

(a) Provide written confirmation to the City that it will locate within the corporate boundaries of the City and open and operate a commercial retail sales business on the Property or other location within the City; and

(b) Which said Company shall be required to purchase from the City a business license the cost of which shall be based upon a fee and a percentage of gross retail sales; and

(c) Which said Company will be engaged in the commercial business of retail sales; and

(d) Which said Company shall make annual retail sales in an amount necessary to collect and pay over to the City annually municipal sales tax revenue,

(which is presently calculated at three percent (3%) of gross retail sales) sufficient to justify, in the sole opinion of Seller, selling the Property at less than appraised value.

In order for the City to be required to close this sale pursuant to this Contract, the City Council shall first accept, agree and approve the Company to locate and operate in the City as completion and satisfaction of this Closing Condition Four. The acceptance by the City shall be in writing and approved by the enactment of a resolution at a public hearing.

Purchaser and Seller agree that the City shall have the sole, unfettered and absolute discretion to approve or disapprove the Company offered by Purchaser in an effort to complete and satisfy this Closing Condition Four. If the City Council fails or refuses to accept the Company as completion and satisfaction of this Closing Condition Four, then in such event the City shall have no legal obligation to close this sale and this Agreement shall be automatically terminated, be null and void and of no legal force and effect.

CLOSING CONDITION FIVE: The City shall have no legal obligation to close this sale unless and until the Property is rezoned by the City so as to permit the contemplated use by the Purchaser or Company referred to in Closing Condition Four. If the Property is not rezoned as aforesaid, then in such event the City shall have no legal obligation to close the sale of the Property and this Agreement shall be automatically terminated, be null and void and of no force and effect.

CLOSING CONDITION SIX: In order for the City to be required to close this sale pursuant to this Contract, the Circuit Court of Jefferson County, Alabama shall have first entered a judgment validating and confirming this Agreement and the closing thereof, which judgment shall have become forever conclusive in accordance with and as provided in Section 6-6-755 of the *Code of Alabama, 1975*. If the Circuit Court of Jefferson County, Alabama fails or refuses to render a judgment validating and confirming this Contract and the closing thereof, then in such event the City shall not be required to close this sale and the Agreement shall be automatically terminated, be null and void and of no force and effect.

CLOSING CONDITION SEVEN: If the sale of the Property is not closed on or before the Closing Date, then in such event this Agreement shall automatically be terminated, cancelled, null and void and of no legal force and effect.

The City shall have no legal obligation to close this sale unless and until all seven Closing Conditions have been completed and satisfied. Stated another way, if any one of the Closing Conditions is not completed and satisfied, then in such event this Real Estate Sale and Purchase Agreement shall be automatically terminated and of no legal force and effect.

26. CONDITION OF PROPERTY: The Property is sold in “as is condition with any and all faults.” Purchaser expressly acknowledges and agrees that Seller makes

no representations or warranties regarding the condition of the Property, except to the extent expressly and specifically set forth herein.

27. CONSTRUCTION OF TERMS: Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision. Any ambiguities of this Agreement shall be construed fairly and equitably regardless of the participation of either party in drafting this Agreement. The reference in terms to gender and number shall be modified as may be appropriate.

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be executed as of the date first above written.

SELLER:

WITNESS
ALABAMA

CITY OF VESTAVIA HILLS,

By _____

Alberto C. Zaragoza, Jr.
Its Mayor

PURCHASER:

WITNESS

HES INVESTMENTS, LLC

By _____

W. Jordy Henson
Its Managing Member

**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Alberto C. Zaragoza, Jr., whose name as Mayor of the City of Vestavia Hills, Alabama, is signed to the foregoing Real Estate Purchase and Sale Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the document, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the _____day of _____, 2012.

My Commission Expires:

Notary Public
SEAL

**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that W. Jordy Henson, whose name as Managing Member of HES Investments, LLC, is signed to the foregoing Real Estate Purchase and Sale Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the document, he, as such officer and with full authority, executed the same voluntarily for and as the act of said HES Investments, LLC.

Given under my hand and official seal, this the _____day of _____, 2012.

My Commission Expires:

Notary Public
SEAL

**EXHIBIT A
TO
PURCHASE AND SALE AGREEMENT**

A parcel of land situated in the Northeast Quarter of the Southwest Quarter of Section 30, Township 18 South, Range 2 West, Jefferson County, Alabama, being more particularly described as follows:

From the Southwest corner of said quarter-quarter section run thence in an Easterly direction along the South line of same for a distance of 589.77 feet to the point of beginning of the parcel herein described; thence turn an angle to the left of 103 degrees 33 minutes 57 seconds and run in a Northwesterly direction for a distance of 206.63 feet; thence turn an angle to the right of 101 degrees 35 minutes 18 seconds and run in an Easterly direction for a distance of 359.60 feet to a point on the Westerly right-of-way of U.S. Highway 31, said point being in a curve to the right having a radius of 3173.97 feet and a central angle of 3 degrees 54 minutes 57 seconds and being concave to the West with a chord which forms an interior angle of 98 degrees 29 minutes 45 seconds with the previous call; thence run along the arc of said curve in said right-of-way line in a southerly direction for a distance of 216.93 feet to the South line of said quarter-quarter section, the chord of said curve forming an interior angle of 79 degrees 31 minutes 36 seconds with said South line of said quarter-quarter section; thence run in a Westerly direction along said South line for a distance of 350.34 feet to the point of beginning.

**EXHIBIT B
TO
PURCHASE AND SALE AGREEMENT**

**EXHIBIT C
TO
PURCHASE AND SALE AGREEMENT**

**CERTIFICATION OF
NONFOREIGN STATUS**

This Certification of Nonforeign Status is made by _____
_____ (“Seller”) to the
_____ (“Purchaser”), pursuant to Section 1445 of the
Internal Revenue Code (the “Code”).

Section 1445 of the Code provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform the Purchaser that withholding of tax is not required upon the disposition of a United States real property interest by Seller, the undersigned hereby certifies the following on behalf of Seller:

1. Seller is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Internal Tax Regulations). Seller is a domestic corporation organized under the laws of the State of Alabama. Seller is not a partner in any foreign partnership and does not have any interest in any foreign trust or foreign estate (as those terms are defined in the Code and Income Tax Regulations).

2. Seller’s employer identification number is 63-0371391.

3. Seller’s office address is _____

_____.

Seller understands that this Certification of Nonforeign Status may be disclosed to the Internal Revenue Service by Purchaser and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under the penalties of perjury, I declare that I have examined this Certification of Nonforeign Status and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Seller.

[Signature Page Follows]

This Certification is signed by the undersigned on the ____ day of _____, 20____.

By: _____

Name: _____

Title: _____

RESOLUTION NUMBER 4319

**A RESOLUTION APPOINTING AN ELECTION
MANAGER FOR THE 2012 CITY OF VESTAVIA HILLS
MUNICIPAL ELECTION**

WHEREAS, the City of Vestavia Hills General Municipal Election will be held on August 28, 2012; and

WHEREAS, the City of Vestavia Hills Municipal Run-off Election will be held October 9, 2012; and

WHEREAS, the Mayor has qualified as a candidate in the 2012 General Municipal Election; and

WHEREAS, the Mayor has appointed Rebecca Leavings, City Clerk, to serve as the Election Manager for the 2012 Municipal Elections.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS AS FOLLOWS:

- (1) That Rebecca Leavings, City Clerk, is hereby appointed to serve as the Election Manager for the 2012 Municipal Elections; and
- (2) That said appointment will be effective immediately upon adoption and approval of said Resolution Number 4319.

DONE, ORDERED, APPROVED and ADOPTED this the 9th day of July, 2012.

Mary Lee Rice
Council President

ATTESTED BY:

Rebecca Leavings
City Clerk

APPROVED BY:

Alberto C. Zaragoza, Jr.
Mayor

RESOLUTION NUMBER 4324

**A RESOLUTION AUTHORIZING THE MAYOR TO RELOCATE
UTILITY POLES AND UTILITY SERVICES FOR THE
CONSTRUCTION OF HEALTHY WAY**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
VESTAVIA HILLS, AS FOLLOWS:**

1. The Mayor is hereby authorized to do all actions necessary to relocate utility poles and utility services through Alabama Power Company, AT&T and Charter Communications for the construction of Healthy Way at an estimated cost not to exceed \$145,000; and
2. This Resolution shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED on this the 9th day of July, 2012.

Mary Lee Rice
Council President

ATTESTED BY:

Rebecca Leavings
City Clerk

APPROVED BY:

Alberto C. Zaragoza, Jr.
Mayor

Rebecca Leavings

From: Christopher Brady
Sent: Friday, July 06, 2012 10:25 AM
To: Mayor; Rebecca Leavings; Randy Robertson
Cc: Brian Davis
Subject: Patchwork utility relocations
Importance: High

These are additional construction costs associated with utility relocations for the Patchwork Entrance Road and Cahaba River Road Intersection Improvements. I received the following updated cost estimates this morning.

Alabama Power Company.....	\$50,000
AT&T.....	\$75,000
Charter.....	\$20,000
Total.....	\$145,000

Each utility has expressed an opportunity to further consider cost reductions to the City, but at this point, this is the latest not-to-exceed cost.

Due to time considerations and avoiding any delays in construction, I am requesting immediate consideration to approve this cost.

Christopher Brady, PE, CFM
City Engineer, City of Vestavia Hills
513 Montgomery Highway
Vestavia Hills, Alabama 35216
phone: 205-978-0198
fax: 205-978-0122
email: city.engineer@ci.vestaviiahills.al.us

RESOLUTION NUMBER 4322

A RESOLUTION ORDERING THE DEMOLITION OF A BUILDING OR STRUCTURE LOCATED AT 1459 MONTGOMERY HIGHWAY, VESTAVIA HILLS, ALABAMA, PARCEL ID# 39-01-1-001-002.000-RR2 and 29-36-4-007-005.000-RR6, IN COMPLIANCE WITH SECTIONS 11-40-30 THROUGH 11-40-36, SECTIONS 11-53B-1 THROUGH 11-53B-16, INCLUSIVE, OF THE *CODE OF ALABAMA*, AND IN COMPLIANCE WITH ORDINANCE NUMBER 2382 OF THE CITY OF VESTAVIA HILLS, ALABAMA; AND CALLING FOR SAID DEMOLITION TO BE PERFORMED BY THE CITY OF VESTAVIA HILLS AND DIRECTING THE CITY ATTORNEY AND THE CITY CLERK TO CAUSE THE COST OF SUCH DEMOLITION TO BE CHARGED AGAINST THE LAND ON WHICH THE BUILDING OR STRUCTURE EXISTS AS A MUNICIPAL LIEN OR CAUSE SUCH COST TO BE RECOVERED IN A SUIT AT LAW AGAINST THE OWNER OR OWNERS

WHEREAS, the appropriate Municipal Officials determined that the condition of the building or structure located at 1459 Montgomery Highway, Vestavia Hills, Alabama, Parcel I.D. Number 39-01-1-001-002.000-RR2 and 29-36-4-007-005.000-RR6 is in such a condition as to make it dangerous to the life, health, property, morals, safety, or general welfare of the public or the occupants.

WHEREAS, contemporaneously with the filing of “Finding of Public Nuisance, Notice and Order to Remedy and Notice of Lis Pendens” on Maddox Enterprises LP, Jefferson County Sewer Service Office, Jefferson County, Total Fire Protection, Karen Maddox, Larry C. Maddox, Richard M. Maddox and Birmingham Water Works, a copy of same was sent via certified mail, properly addressed and postage prepaid to:

A. All person or persons, firm, association, or corporation last assessing the subject property for state taxes to the address on file in the Jefferson County Tax Collector’s Office’

B. The record property owner or owners (including any owner or owners of an interest in the subject property) as shown from a search of records of the office the judge of Probate of Jefferson County, Alabama, at the owner or owners’ last known address and at the address of the subject property,

C. All mortgagees of record as shown from a search of the records of the office of the Judge of Probate of Jefferson County, Alabama, to the address set forth in the mortgage or, if no address for the mortgagee is set forth in the mortgage, to the address determined to be the correct address by the appropriate Municipal Officials;

D. All lien holders of record as shown from a search of the records of the office of the Judge of Probate of Jefferson County, Alabama to the address set forth in the statement of lien or, if no address for the lien holder is set forth in the statement of lien, to the address determined to be the correct address by the appropriate Municipal Officials;

E. Such other persons who are otherwise known to the City Clerk or to the Appropriate Municipal Officials who could have an interest in the subject property;

WHEREAS, contemporaneously with the filing of the “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of Lis Pendens”, a copy of the same was posted at or within three feet of an entrance to the building on the subject property and posted in three public places located within the City of Vestavia Hills: 1) Vestavia Hills Municipal Center, 2) Vestavia Hills Library in the Forest, and 3) Vestavia Hills Civic Center.

WHEREAS, notice that the appropriate Municipal Officials have made a finding that the subject property is a dangerous building because it is unsafe to the extent that it is a public nuisance and is subject to demolition and that a public hearing would be held on a certain date was also given to all interested parties and to the public at large by publication in the *Alabama Messenger*.

BE IT RESOLVED by the City Council of the City of Vestavia Hills, Alabama while in regular session on Monday, July 23, 2012 at 5:00 p.m. as follows:

Section 1. A Public Hearing was held on July 23, 2012 at 5:00 p.m. and after due deliberation the City Council of the City of Vestavia Hills, Alabama finds that the structure standing at 1459 Montgomery Highway, Vestavia Hills, Alabama, Parcel ID# 39-01-1-001-002.000-RR2 and 29-36-4-007-005.000-RR6 is unsafe to the extent of becoming a public nuisance to the citizens of the City of Vestavia Hills, Alabama and is due to be condemned and demolished in compliance with Sections 11-40-30 through 11-40-36 and Sections 11-53B-1 through 11-53B-16, inclusive, of the *Code of Alabama* (1975), and Ordinance Number 2382 of the City of Vestavia Hills, Alabama;

Section 2. That said demolition is to be performed by the City of Vestavia Hills; and

Section 3. That the City Attorney and the City Clerk are hereby directed to cause the cost of such demolition to be charged against the land on which the building or structure is located and shall constitute a lien on the property for the amount of the assessment or cause such cost to be recovered in a suit at law against the owner or owners.

ADOPTED this the 23rd day of July, 2012.

Steve Ammons
Council President

ATTESTED BY:

Rebecca Leavings
City Clerk

APPROVED BY:

Alberto C. Zaragoza, Jr.
Mayor

CERTIFICATION OF CITY CLERK

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, Rebecca Leavings, City Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true and correct copy of a Resolution duly and legally adopted by the City Council of the City of Vestavia Hills, Alabama, on the 23rd day of July, 2012 while in regular session on Monday, July 23, 2012, and the same appears of record in the minute book of said date of said City.

Witness my hand and seal of office this _____, 20__.

Rebecca Leavings, City Clerk

RESOLUTION NUMBER 4323

**A RESOLUTION AUTHORIZING THE MAYOR TO INVITE BIDS
FOR THE DEMOLITION OF THE PROPERTY DESCRIBED IN
RESOLUTION NUMBER 4322**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
VESTAVIA HILLS, ALABAMA, AS FOLLOWS:**

1. The Mayor is hereby authorized to invite competitive bids for the demolition of the property located at 1459 Montgomery Highway pursuant to the adoption of Resolution Number 4322; and
2. The results of said bid shall be presented to the City Council for consideration and selection of an award of bid; and
3. This Resolution shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 23rd day of July, 2012.

Steve Ammons
Council President

ATTESTED BY:

Rebecca Leavings
City Clerk

APPROVED BY:

Alberto C. Zaragoza, Jr.
Mayor

ORDINANCE NUMBER 2416

AN ORDINANCE TO FURTHER AMEND THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF VESTAVIA HILLS, ALABAMA, ADOPTED SEPTEMBER 16, 1985, AND AS LAST AMENDED SO AS TO CHANGE THE CLASS OF DISTRICT ZONING OF A PARCEL OF PROPERTY FROM JEFFERSON COUNTY E-1 TO VESTAVIA HILLS E-2

BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Jefferson County E-1 to Vestavia Hills E-2;

2665 Alta Glen Drive
Susan Henry, Owner(s)

APPROVED and ADOPTED this the 23rd day of July, 2012.

Steve Ammons
Council President

ATTESTED BY:

Rebecca Leavings
City Clerk

APPROVED BY:

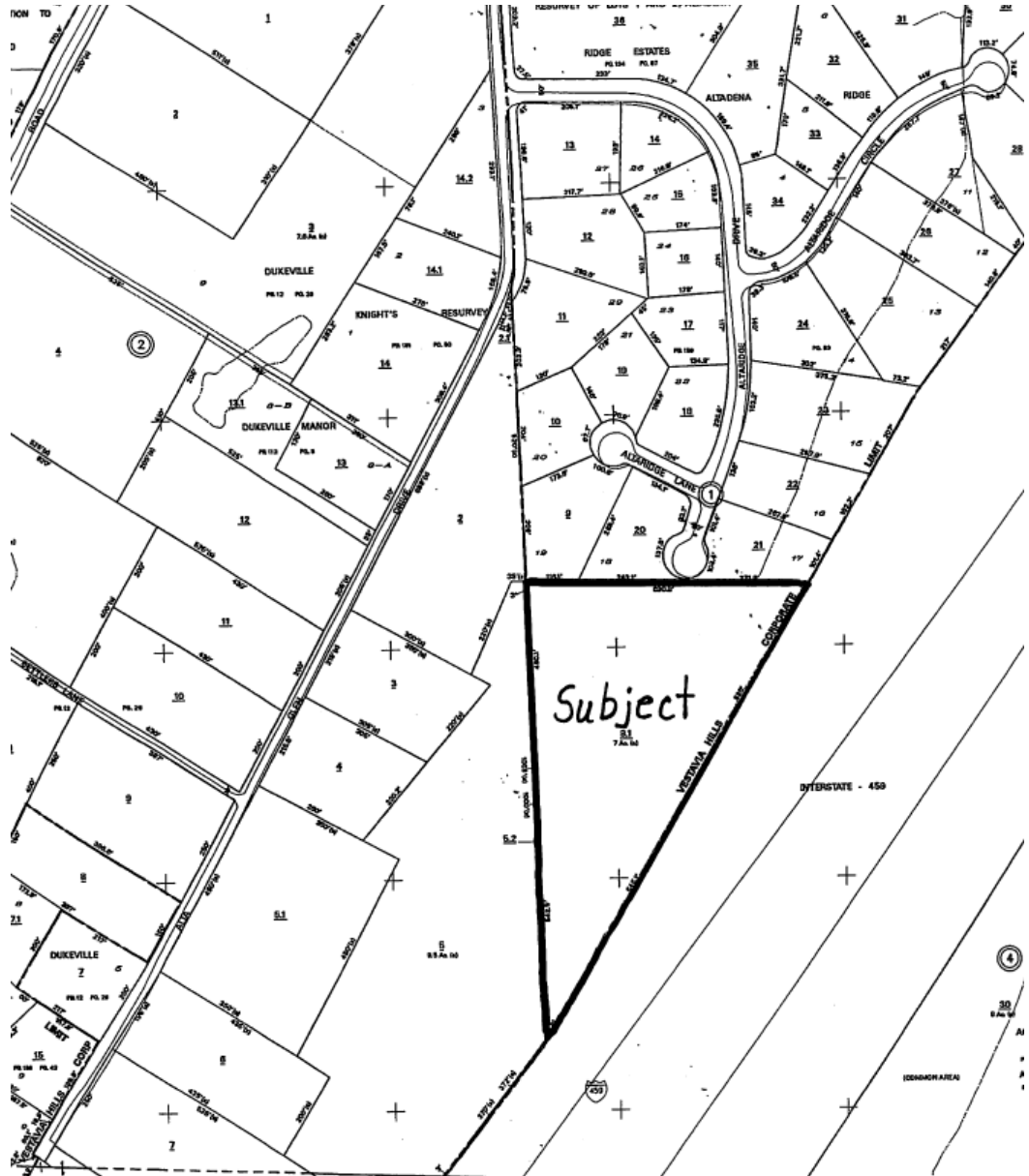
Alberto C. Zaragoza, Jr.
Mayor

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2416 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 23rd day of July, 2012 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills New Merkle House, Vestavia Hills Civic Center and Vestavia Hills Library in the Forest this the _____ day of _____, 2012.

Rebecca Leavings
City Clerk



CITY OF VESTAVIA HILLS
SYNOPSIS AND STAFF RECOMMENDATION CONCERNING
APPLICATION BEFORE THE PLANNING AND ZONING COMMISSION

Date: May 3, 2012

- **CASE:** P-0512-19
- **REQUESTED ACTION:** Application for Rezoning of 2665 Alta Glen Drive from Jefferson County E-1 to Vestavia Hills E-2
- **PROPOSED USE(S):** E-2 residential
- **ADDRESS/LOCATION.** 2665 Alta Glen Drive; Vestavia Hills AL 35243
- **APPLICANT/OWNER:** Susan Henry, 2665 Alta Glen Drive, Vestavia Hills AL 35243
- **REPRESENTING AGENT:** Susan Henry, 2665 Alta Glen Drive, Vestavia Hills AL 35243
- **GENERAL DISCUSSION:** This property is located on Alta Glen Drive and consists of 7.25 acres with two residential units constructed on it. The property was annexed in the early 90's but never compatibly zoned. The owner has approached the City with the possibility of maybe carving out a third lot on the property but was advised that compatible zoning needed to be completed on the property regardless of any future plans. This request is to compatibly zone the property. It is interesting to note that if the compatible zoning had occurred when the property was annexed, the compatible zoning at that time would have been R-1. However, compatible zoning at this time is E-2 zoning with a minimum 1 acre lot.
- **CITY OF VESTAVIA HILLS COMPREHENSIVE PLAN:** This property is located not in any Figure of the Vestavia Hills Comprehensive Master Plan but is located an area developed as low density residential. This request is consistent with the plan.
- **STAFF REVIEW AND RECOMMENDATION:**
 1. **City Clerk Review:** I have looked at all of the relevant zoning / subdivision requirements related to this proposal, including application, notification, setbacks, area of lot development, etc. Notification has been sent to property owners pursuant to Alabama law. I have reviewed this request and find it does meet the minimum requirements of the proposed zoning.

City Clerk Recommendation: No recommendation

2. **City Engineer Review:** No problems noted.
3. **City Fire Marshal Review:** No problems noted.
4. **Building Safety Review:** No problems noted.

P&Z Recommendation

MOTION Mr. Farrell made a motion to recommend the rezoning of 2665 Alta Glen Drive From Jefferson County E-1 to Vestavia Hills E-2. Second was by Mr. Burrell. Motion was carried on a roll call; vote as follows:

<u>Ms. Fancher – yes</u>	<u>Mr. House – yes</u>
<u>Mr. Burrell – yes</u>	<u>Mr. Farrell – yes</u>
<u>Mr. Gilchrist – yes</u>	<u>Mr. Sharp – yes</u>
<u>Mr. Visintainer – yes</u>	<u>Mr. Larson – yes</u>
<u>Motion carried.</u>	

ORDINANCE NUMBER 2415

AN ORDINANCE TO FURTHER AMEND THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF VESTAVIA HILLS, ALABAMA, ADOPTED SEPTEMBER 16, 1985, AND AS LAST AMENDED SO AS TO CHANGE THE CLASS OF DISTRICT ZONING OF A PARCEL OF PROPERTY FROM VESTAVIA HILLS R-4 TO VESTAVIA HILLS B-1

BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Vestavia Hills R-4 to Vestavia Hills B-1;

4240 Oakview Lane
Maude Powell, Owner(s)

BE IT FURTHER ORDAINED, that said zoning is conditioned upon the following: (1) uses on property are limited so as to prohibit convenience stores, laundry or dry cleaning businesses, produce markets, fast food restaurants, bars, lounges and veterinary hospitals or practices; (2) that property lines to the rear shall be screened with a combination of privacy fencing and evergreen plantings; and (3) that said conditions will be executed in the form of private restrictive covenants to be filed and recorded in the Jefferson County Office of the Judge of Probate and a copy filed with the Office of the City Clerk to be affixed and incorporated into this Ordinance Number 2415 as if written fully therein.

APPROVED and ADOPTED this the 23rd day of July, 2012.

Steve Ammons
Council President

ATTESTED BY:

Rebecca Leavings
City Clerk

APPROVED BY:

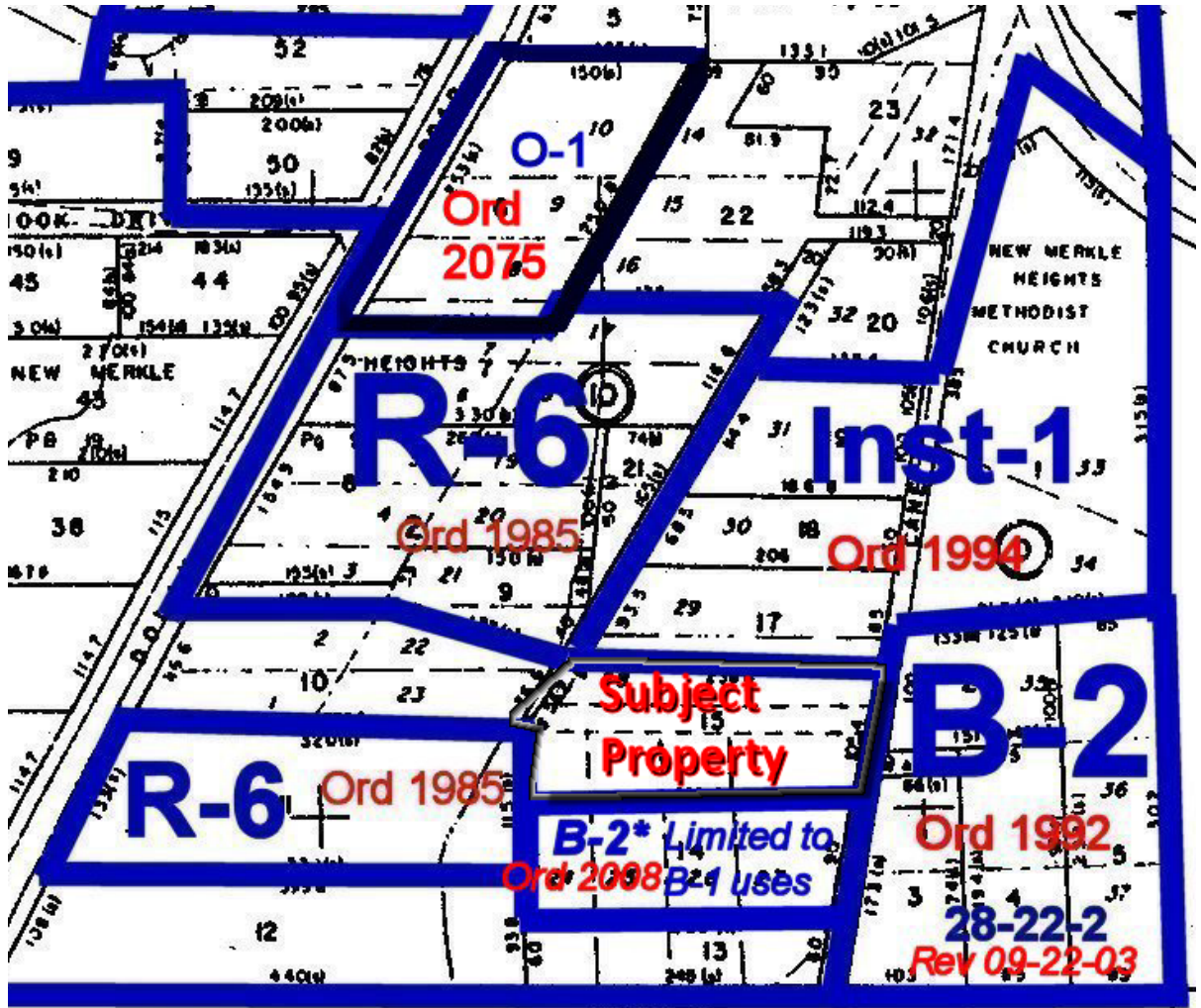
Alberto C. Zaragoza, Jr.
Mayor

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2415 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 23rd day of July, 2012 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills New Merkle House, Vestavia Hills Civic Center and Vestavia Hills Library in the Forest this the _____ day of _____, 2012.

Rebecca Leavings
City Clerk



CITY OF VESTAVIA HILLS
SYNOPSIS AND STAFF RECOMMENDATION CONCERNING
APPLICATION BEFORE THE PLANNING AND ZONING COMMISSION

Date: May 3, 2012

- **CASE:** P-0512-20
- **REQUESTED ACTION:** Application for Rezoning of 4240 Oakview Lane; Rezone from VH R-4 (residential) to B-2 (business)
- **PROPOSED USE(S):** B-2 business
- **ADDRESS/LOCATION.** 4240 Oakview Lane; Vestavia Hills AL 35243
- **APPLICANT/OWNER:** Maude Powell, 3341 Dell Road, Birmingham AL 35223
- **REPRESENTING AGENT:** Maude Powell, 3341 Dell Road, Birmingham AL 35223
- **GENERAL DISCUSSION:** This property is located on Oak View Lane. There is an existing residential structure that was repaired following last years April tornado. The property was formerly owned by the adjacent church and has been purchased by the applicant in the hopes of creating an artists studio. The required zoning for such a studio is B-2 but applicant has offered to record covenants to prohibit any convenience store or filling station. The property is located across from a commercial building and parking is located on the street. Applicant has submitted plans showing proposed parking on the property and ADA compliance as well as proposed buffering.
- **CITY OF VESTAVIA HILLS COMPREHENSIVE PLAN:** This property is located in Figure 19 of the Vestavia Hills Comprehensive Master Plan in an area designated as village center. This request is consistent with the plan. This property is designated as “institutional” in the Cahaba Heights Community Plan, this request is not consistent with this plan but is located in an area primarily zoned business district from redevelopment of properties formerly owned by the Church.
- **STAFF REVIEW AND RECOMMENDATION:**
 1. **City Clerk Review:** I have looked at all of the relevant zoning / subdivision requirements related to this proposal, including application, notification, setbacks, area of lot development, etc. Notification has been sent to property

owners pursuant to Alabama law. I have reviewed this request and find it does meet the minimum requirements of the proposed zoning.

City Clerk Recommendation: No recommendation

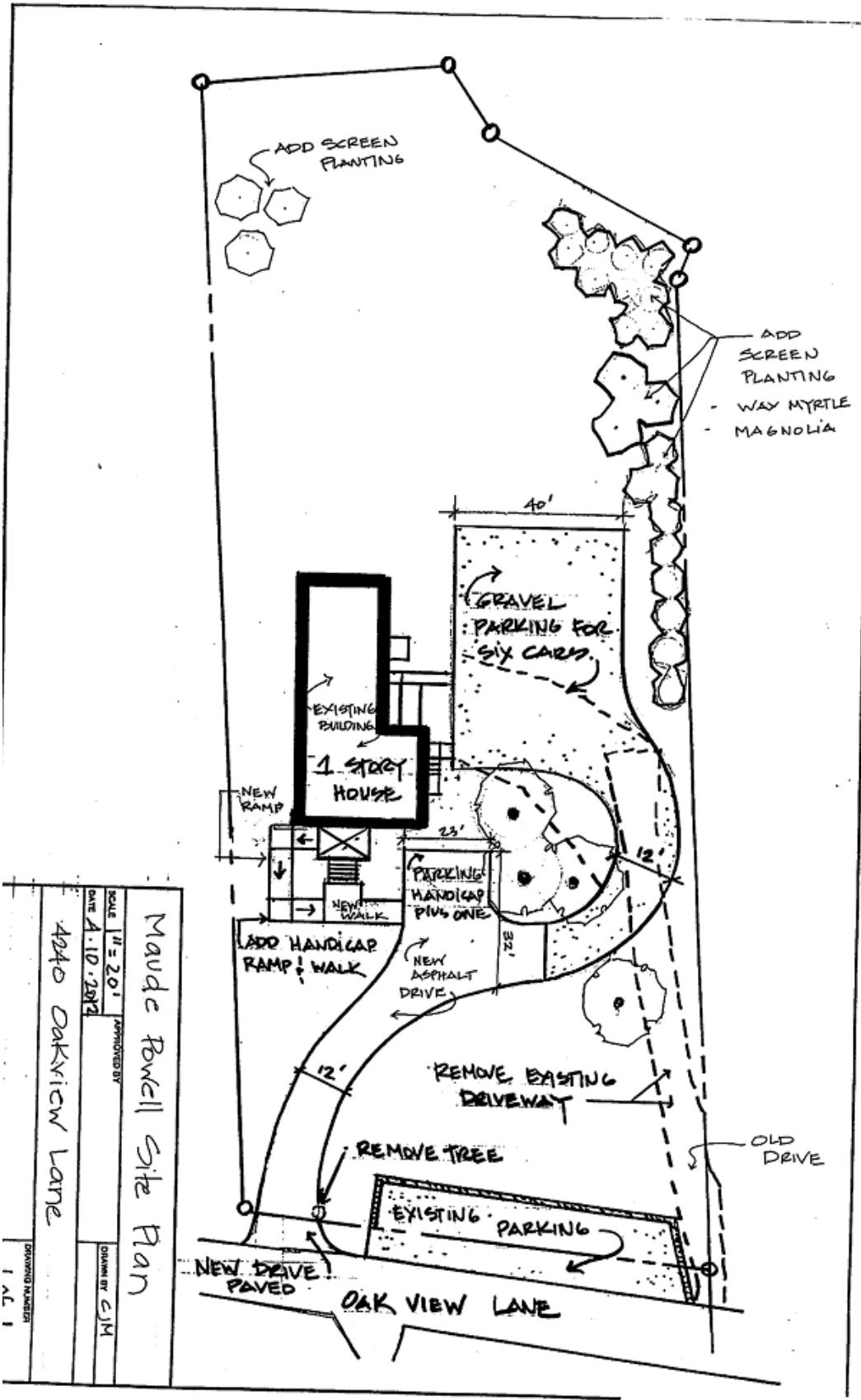
2. **City Engineer Review:** Prefers street parking to be removed.
3. **City Fire Marshal Review:** Site visit discussed all needed improvements with applicant
4. **Building Safety Review:** Building to be brought to code; site visit and all requirements conveyed to applicant.

P&Z Recommendation:

MOTION *Mr. Visintainer made a motion to recommend the rezoning of 4240 Oakview Lane from Vestavia Hills R-4 to Vestavia Hills B-2 with the stipulation that the property can only be used for an artist studio and should the use ever be discontinued for a year, then in such event, the zoning shall revert back to residential. Second was by Mr. Farrell. Motion was carried on a roll call; vote as follows:*

<u>Ms. Fancher – yes</u>	<u>Mr. House – yes</u>
<u>Mr. Burrell – yes</u>	<u>Mr. Farrell – yes</u>
<u>Mr. Gilchrist – yes</u>	<u>Mr. Sharp – yes</u>
<u>Mr. Visintainer – yes</u>	<u>Mr. Larson – yes</u>
<u>Motion carried.</u>	

UPDATE: *Applicant reconsidered P&Z's recommendation and has made amendments to requested zoning to request to B-1, neighborhood commercial with limitations in the form of restrictive covenants. Those restrictions are reflected in the ordinance before the City Council.*



Maude Powell Site Plan

SCALE 1/4" = 20'

DATE 4.10.2012

APPROVED BY

DESIGNED BY CJM

4040 OAKVIEW LANE

OWNER NUMBER 1 N 1

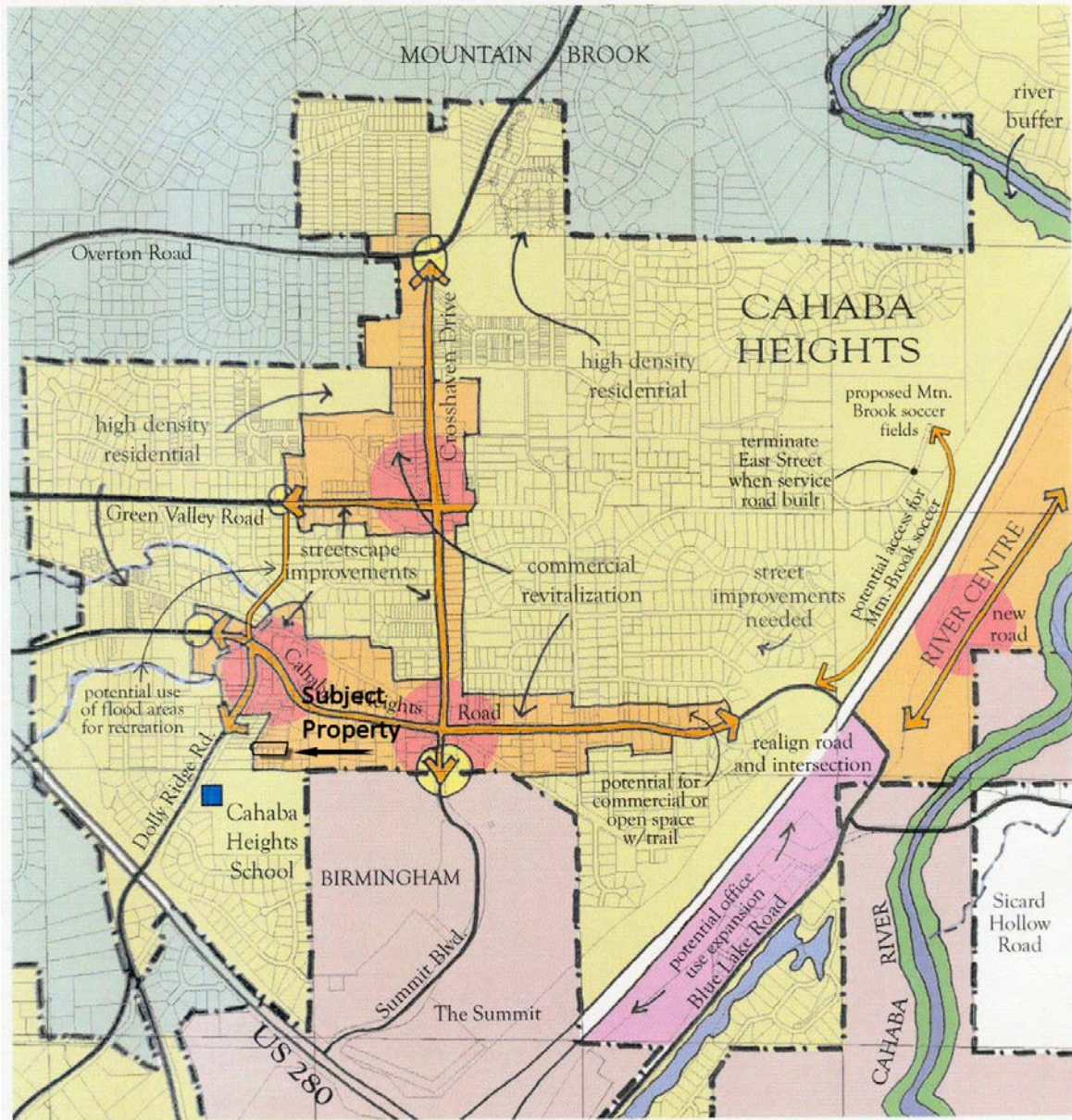
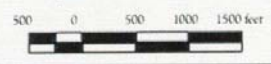


Figure 19: Cahaba Heights
Land Use Analysis

- Neighborhood - primarily low / medium density single-family residential areas with higher densities near village centers. Other uses may include schools, places of worship, recreational areas, and open space.
- Village Center - mixed use centers with highest densities in core areas. Mix of uses should include retail and service businesses, professional offices, high density residential areas, institutions, recreation areas, and public spaces.
- Commercial Core - primarily high density, retail and service business areas with professional offices and multi-family residences on upper floors or on periphery. Other uses may include institutions and public space.
- Gateways and Nodes - Gateways are entryways into the community or village enhanced with consistent signage, landscaping, and other elements. Nodes are sites, such as transit stops, where public spaces, signage, and other public design elements should be considered.

- Professional Offices - primarily professional office uses. Density should vary according to surroundings. Other uses may include retail and services (supporting offices and employees), places of worship, public spaces, and open space.
- Recreation and Open Space - public and private recreation facilities and preserved natural spaces. Recreation facilities may be active, passive or combined. Open spaces are areas preserved in a natural state and may include passive recreational uses.
- Trailheads - Trailheads are public sites along a trail, where bike racks, seating, parking, and public amenities are provided for trail users.
- Schools - School facilities administered by the Vestavia Hills School System.



Future Land Use

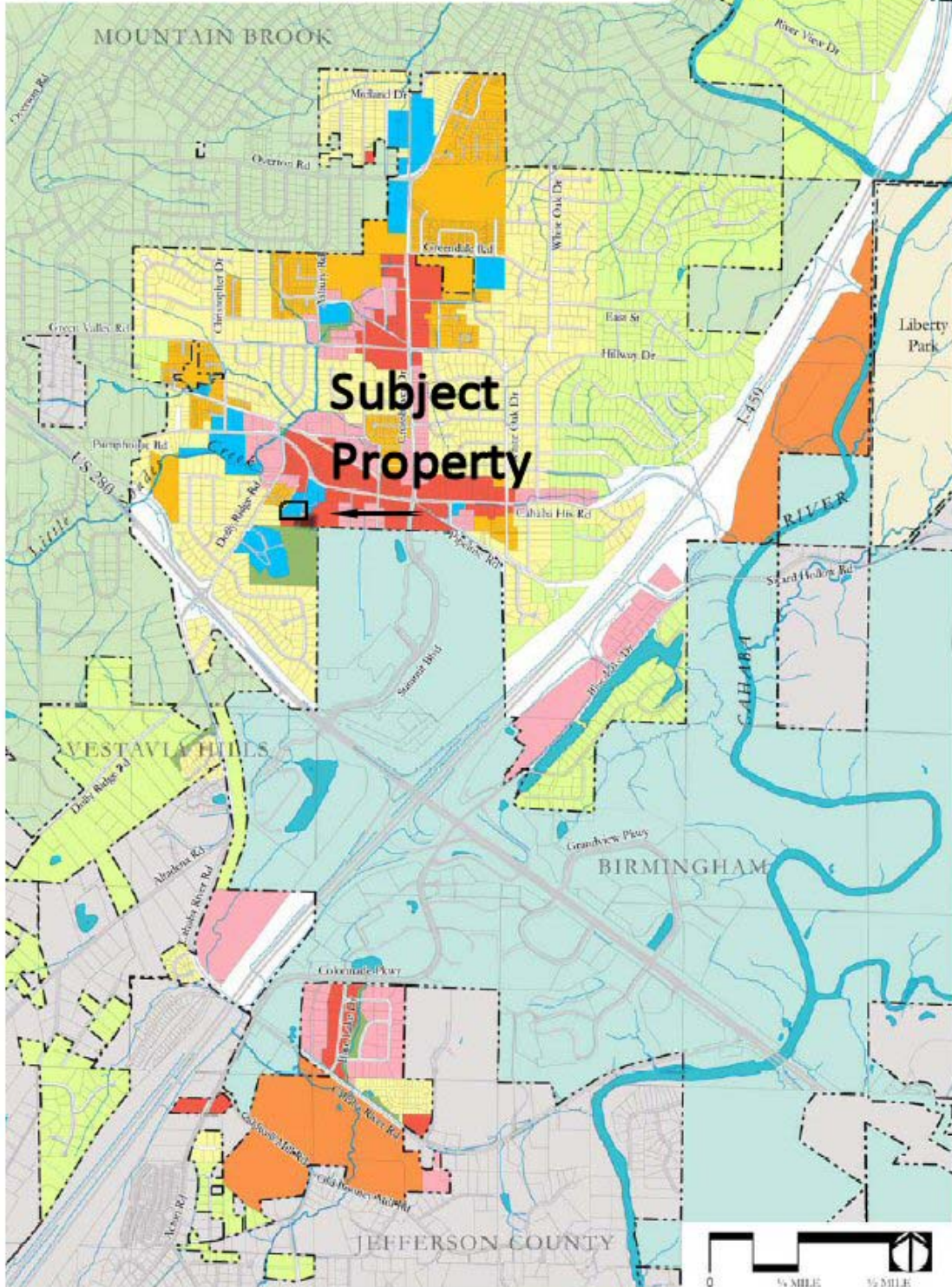
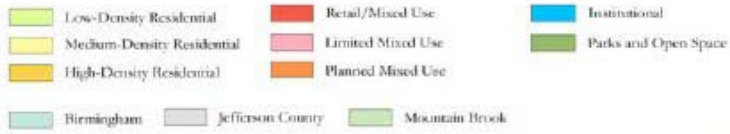


Figure 4: Future Land Use Map