

**Vestavia Hills  
City Council Agenda  
January 28, 2013  
5:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – Joe Comer, Horizon Church
4. Pledge of Allegiance
5. Announcements and Guest Recognition
6. City Manager’s Report
7. Councilors’ Reports
8. Presentation – Birmingham Water Works Board – Bennie Myles
9. Approval Of Minutes –January 14, 2013 (Work Session) and January 14, 2013 (Regular Meeting)

**Old Business**

10. Resolution Number 4391 – A Resolution Accepting The Dedication Of The Streets Known As Miller Hill Drive and Miller Hill Way In The Miller Hill Subdivision (*Public Hearing*)
11. Resolution Number 4392 – A Resolution Accepting A Proposal From Patrick H. Boone For Performing The Duties Of City Attorney For The City Of Vestavia Hills (*Public Hearing*)
12. Resolution Number 4393 – A Resolution Authorizing The Mayor And City Manager To Enter Into An Agreement With Shelby County 9-1-1 And Shelby County For Dispatch Services For The City Of Vestavia Hills And To Execute All Actions Necessary To Accomplish Said Transition (*Public Hearing*)
13. Ordinance Number 2428 – Rezoning - 312 Montgomery Highway; Rezone from Vestavia Hills R-2 (residential) to Vestavia Hills O-1 (office); Jean Daniel; owner (*Public Hearing*)
14. Ordinance Number 2429 – An Ordinance To Repeal Ordinance Number 1688 And Establish A Flood Damage Prevention Ordinance For The City Of Vestavia Hills (*Public Hearing*)

## **New Business**

15. Resolution Number 4394 – A Resolution Approving An Alcohol License For Golden Harvest Culinary, Inc., D/B/A La Catrina Mexican Cantina For The On-Premise Sale Of 020 – Restaurant Retail Liquor, Toshimi Hira, Executive (*Public Hearing*)
16. Resolution Number 4395 – A Resolution Authorizing The Mayor And City Manager To Enter Into An Agreement For Retail Consulting Services Utilizing GIS Technology With The Shopping Center Group LLC (TSCG)

## **First Reading (No Action Taken At This Meeting)**

17. Resolution Number 4396 – A Resolution Authorizing The City Manager To Pay Off A Lease For A 2012 Chevrolet Tahoe And Declaring Said Vehicle As Surplus To Allow The Sale And/Or Salvage Of Said Vehicle (*Public Hearing*)
18. Resolution Number 4397 – A Resolution Changing And Adopting A Logo For The City Of Vestavia Hills (*Public Hearing*)
19. Citizens Comments
20. Executive Session
21. Motion For Adjournment

## **CITY OF VESTAVIA HILLS**

### **CITY COUNCIL**

### **WORK SESSION**

**JANUARY 14, 2013**

The City Council of Vestavia Hills met in work session on this date at 4:00 PM following posting/publication as required by Alabama law. The Mayor called the meeting to order and the City Clerk called the roll with the following:

**MEMBERS PRESENT:**

Alberto C. Zaragoza, Mayor  
Steve Ammons, Mayor Pro-Tem  
George Pierce  
John Henley  
Jim Sharp

**OTHER OFFICIALS PRESENT:**

Randy Robertson, City Manager  
Patrick H. Boone, City Attorney  
Rebecca Leavings, City Clerk  
Christopher Brady, City Engineer  
Dan Rary, Police Chief  
Tim Holcomb, Deputy Police Chief  
Melvin Turner, III, Finance Director  
George Sawaya, Deputy Treasurer  
Jim St. John, Fire Chief  
Terry Ray, Battalion Chief  
Darrin Estes, IT Director  
Brian Davis, Director, Public Services  
Taneisha Young-Tucker, Library Director

### **PRESENTATION BY ALDOT ON HIGHWAY 280 IMPROVEMENTS**

John Cooper and Brian Davis of the Alabama Department of Transportation (ALDOT) gave a presentation to the Council detailing several planned improvements on intersections within and near the City limits in order to help traffic move along Highway 280 at a more efficient pace. Details of the following intersections were shown and explained: Cherokee Road, Rocky Ridge Road; Dolly Ridge Road and Summit Parkway.

The ALDOT team answered questions from the City Council concerning the improvements, their funding and future public meetings concerning the improvements.

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There being no further discussion, work session adjourned at 4:59 PM.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk



## **CITY OF VESTAVIA HILLS**

### **CITY COUNCIL**

### **MINUTES**

**JANUARY 14, 2013**

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

**MEMBERS PRESENT:**

Mayor Alberto C. Zaragoza, Jr.  
Steve Ammons, Mayor Pro-Tem  
George Pierce  
John Henley

**MEMBERS ABSENT:**

Jim Sharp

**OTHER OFFICIALS PRESENT:**

Randy Robertson, City Manager  
Patrick Boone, City Attorney  
Rebecca Leavings, City Clerk  
Christopher Brady, City Engineer  
Danny Rary, Police Chief  
Tim Holcomb, Deputy Police Chief  
Darrin Estes, IT Director  
Melvin Turner, III, Finance Director  
George Sawaya, Dep. Treasurer  
Conrad Garrison, City Planner  
Keith Blanton, Building Official  
Jim St. John, Fire Chief  
Rita Hosmer, Accounts Payable Adm.  
Fred Baughman, Economic Dev. Director

Invocation was given by Dr. Dennis Anderson, Vestavia Hills Baptist Church, followed by the Pledge of Allegiance.

### **ANNOUNCEMENTS, GUEST RECOGNITION**

- The Mayor welcomed Boy Scouts from Troop 76.

### **CITY MANAGER REPORT**

- Mr. Robertson presented Rita Hosmer with the January Employee of the Month recognition. He described Ms. Hosmer's diligence at her job and her abilities which resulted in multiple savings for the City.
- Chief St. John recognized Ms. Harriett McQueen, St. Vincent's Occupational, who has worked with the City to save approximately \$2,500 annual on required Public Safety employee physicals.
- The 2<sup>nd</sup> anniversary of the opening of the Library in the Forest was celebrated last Sunday with a huge crowd in attendance. Mr. Robertson stated that the event was well done.
- Lamar Advertising has agreed to donate slides on two local digital billboards advertising the City and City events at no cost. Mr. Robertson stated that when a slot isn't sold to a paid advertiser, the City's slides will run. He thanked Lamar for its generosity.
- Mr. Robertson and Barry Davis presented some preliminary renderings of the proposed garage facility being designed for the Cahaba Heights area.

### **COUNCILOR REPORTS**

- Mr. Pierce stated that Mr. Sharp is making good progress following his recent surgery. The Council wished Mr. Sharp well in his recovery.

### **FINANCIAL REPORTS**

Mr. Turner presented the financial reports for month ending November 2012. He read and explained the balances and answered questions from the Council.

### **APPROVAL OF MINUTES**

The minutes of the December 26, 2012 (Regular Meeting); December 20, 2012 (Special Meeting) and January 3, 2013 (Special Meeting) were presented for approval.

**MOTION** Motion to dispense with the reading of the minutes of the December 10, 2012 (Regular Meeting) and approve them as presented was by Mr. Ammons and second by Mr. Pierce. Roll Call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Ammons – yes	Mayor Zaragoza – yes

Motion carried.

**OLD BUSINESS**

**RESOLUTION NUMBER 4384**

**Resolution Number 4384 - A Resolution Ordering The Demolition Of A Building Or Structure Located At 3317 Mountainside Road, Vestavia Hills, Alabama, Parcel Id# 28-23-2-4-10-RR-0, 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 (*Public Hearing*)**

**MOTION** Motion to adopt Resolution Number 4384 was by Mr. Ammons and second was by Mr. Pierce.

Ben Goldman, attorney from Hand Arendall and representing the City, indicated that this Resolution is in regard to a Lis Pendens issued for the property located at 3317 Mountainside Road. He explained that the residence on the property had been damaged by the April 2011 tornado and has not been repaired. The Council was presented with packets containing the notifications, Lis Pendens and photographs of the property. Mr. Goldman recognized the property owners, Mr. and Mrs. Paul Stewart, who were in attendance.

Keith Blanton, Building Official, gave a brief background of the property and his findings. He indicated that, in his opinion, the structure is dangerous and poses a threat to the general public and is due to be demolished by the technical codes as adopted by the City.

Mr. Goldman presented additional materials with a copy dated June 6, 2011 in a letter to Tim Bowen, a structural engineer and a building permit dated August 15, 2011.

Paul Stewart stated that he has been in negotiations with his insurance company for months. He stated that every "fix" the insurance experts suggest and perform turns out to make the situation worse. He stated that he doesn't feel it is safe for his family to stay at this residence.

Mr. Goldman asked Mr. Stewart if he could demolish the structure. Mr. Stewart stated that he could demolish it himself and that he will continue to deliberate this with the insurance company.

The Mayor opened the floor for a public hearing. There being no one present to address the Council concerning this issue, the Mayor closed the public hearing.

Mr. Henley disclosed to the City Attorney and the audience that he is a State Farm agent and asked if he should recuse himself from voting on this issue.

The City Attorney asked Mr. Henley if he had any personal interest in this property or if there was any conflict that would impair his judgment in this matter. Mr. Henley stated that there were no issues of that nature and the City Attorney that stated he was free to vote on the issue.

There being no further discussion, the Mayor called for the question.

**MOTION** Question called on a roll call vote:

Mr. Pierce – yes

Mr. Henley – yes

Mr. Ammons – yes

Mayor Zaragoza – yes

Motion carried.

### **RESOLUTION NUMBER 4385**

**Resolution Number 4385 - A Resolution Ordering The Demolition Of A Building Or Structure Located At 2733 Rocky Ridge Road, Vestavia Hills, Alabama, Parcel Id# 28-29-1-1-1-RR-2, 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 (*Public Hearing*)**

**MOTION** Motion to adopt Resolution Number 4385 was by Mr. Ammons and second was by Mr. Henley.

Ben Goldman, attorney from Hand Arendall and representing the City, indicated that this Resolution is in regards to a Lis Pendens issued for the property located at 2733 Rocky Ridge Road. He explained that the residence on the property had been damaged and has not been repaired. The Council was presented with packets containing the notifications, Lis Pendens and photographs of the property. Mr. Goldman recognized the property owner's attorney, Sam Maples, who was in attendance.

Keith Blanton, Building Official, gave a brief background of the property and his findings. He indicated that, in his opinion, the structure is dangerous and poses a threat

to the general public and is due to be demolished by the technical codes as adopted by the City.

Mr. Goldman indicated that the owner appears willing to demolish the structure himself if this Council decides it needs to be demolished. He stated that could be accomplished by administratively delaying the actual demolition.

Mr. Maples indicated that the owner has received one bid for demolition and this 90-day delay would give him the opportunity to evaluate the best alternative and resolve the situation before the City has to intervene.

Mr. Goldman pointed out that if the property ownership changes, it cannot be transferred unless the new owner agrees to comply with the provisions of the Resolution. He stated that he recommends approval of the Resolution.

The Mayor opened the floor for a public hearing. There being no one present to address the Council concerning this issue, the Mayor closed the public hearing. There being no further discussion, the Mayor called for the question.

**MOTION** Question called on a roll call vote:  
Mr. Pierce – yes                      Mr. Henley – yes  
Mr. Ammons – yes                      Mayor Zaragoza – yes  
Motion carried.

**RESOLUTION NUMBER 4381**

**Resolution Number 4381 – Annexation – 90-day – 4918 Cahaba River Road; Shannon Waltchack; Len Shannon, Representing (*Public Hearing*)**

**MOTION** Motion to adopt Resolution Number 4381 was by Mr. Pierce and second was by Mr. Henley.

Len Shannon was present in regard to this request.

Mr. Pierce presented the report from the Standing Annexation Committee which found no adverse conditions.

Ms. Leavings stated that the request is to annex and rezone the property for construction of a new facility to be occupied by a medical equipment supplier which will require a commercial zoning to allow storage of the supplies. This Resolution will begin the 90-day annexation process.

Mr. Shannon stated that his company will retain 50 percent ownership in the building.

The Mayor opened the floor for a public hearing. There being no one present to address the Council concerning this issue, the Mayor closed the public hearing. There being no further discussion, the Mayor called for the question.

**MOTION** Question called on a roll call vote:  
Mr. Pierce – yes                      Mr. Henley – yes  
Mr. Ammons – yes                      Mayor Zaragoza – yes  
Motion carried.

**ORDINANCE NUMBER 2426**

**Ordinance Number 2426 – An Ordinance Authorizing And Directing The Sale Of Real Estate Situated At 1112 Montgomery Highway In The City Of Vestavia Hills, Alabama, Commonly Referred To As The Old Library Property And More Particularly Described In Exhibit A And The Execution And Delivery Of A Real Estate Purchase And Sale Agreement (*Public Hearing*)**

**MOTION** Motion to adopt Ordinance Number 2426 was by Mr. Ammons and second was by Mr. Pierce.

John Benner was present in regard to this request.

Mr. Boone gave the background on this Ordinance which will begin a due diligence period for the sale of the old library property. He explained the terms and conditions of the Ordinance and indicated that the Council will have final say on the sale of the property. Notice of this public hearing was in the form of a Resolution adopted last December and later published in the *News*.

The Mayor opened the floor for a public hearing. There being no one present to address the Council concerning this issue, the Mayor closed the public hearing. There being no further discussion, the Mayor called for the question.

**MOTION** Question called on a roll call vote:  
Mr. Pierce – yes                      Mr. Henley – yes  
Mr. Ammons – yes                      Mayor Zaragoza – yes  
Motion carried.

**NEW BUSINESS**

**RESOLUTION NUMBER 4386**

**Resolution Number 4386 – A Resolution Accepting Offer Of Financial Assistance Through The Federal Land And Water Conservation Fund Program Administered By ADECA For A Bridge Across Little Shades Creek**

**MOTION** Motion to adopt Resolution Number 4386 was by Mr. Ammons and second was by Mr. Pierce.

Mr. Robertson explained that this Resolution accepts a grant from ADECA for construction of a bridge across Little Shades Creek in McCallum Park.

The Mayor pointed out that the funds for the local match were approved last November and this Resolution allows the execution of the documents and the acceptance of the funding.

Mr. Brady answered specific questions concerning the bid.

**MOTION** Question called on a roll call vote:  
Mr. Pierce – yes                      Mr. Henley – yes  
Mr. Ammons – yes                      Mayor Zaragoza – yes  
Motion carried.

**RESOLUTION NUMBER 4387**

**Resolution Number 4387 – A Resolution Accepting Offer Of Financial Assistance Through The Federal Highway Administration Recreational Trails Program Administered By ADECA For A Connector Trail In McCallum Park**

**MOTION** Motion to adopt Resolution Number 4387 was by Mr. Ammons and second was by Mr. Henley.

Mr. Robertson explained that this Resolution accepts a grant from ADECA for construction of recreational trails in McCallum Park.

The Mayor pointed out that the funds were also approved last November and this Resolution allows the execution of the documents and the acceptance of the funding.

Mr. Brady answered specific questions concerning the bid.

**MOTION** Question called on a roll call vote:

Mr. Pierce – yes  
Mr. Ammons – yes

Mr. Henley – yes  
Mayor Zaragoza – yes  
Motion carried.

### **RESOLUTION NUMBER 4388**

#### **Resolution Number 4388 – A Resolution Authorizing The Mayor And City Manager To Execute And Deliver An Agreement With Sweeping Corp Of America To Provide Street Sweeping Services For The City Of Vestavia Hills**

**MOTION** Motion to adopt Resolution Number 4388 was by Mr. Henley and second was by Mr. Pierce.

Mr. Robertson explained that this Resolution allows execution of a street sweeping agreement in the amount of \$9,000. The funds were budgeted in the current fiscal year's budget.

Mr. Pierce asked if this was on select streets.

Mr. Robertson stated it was on principal arterials and they would stretch the money as far as possible.

Mr. Ammons suggested that the parking lots at the playing fields be included if possible.

**MOTION** Question called on a roll call vote:

Mr. Pierce – yes  
Mr. Ammons – yes

Mr. Henley – yes  
Mayor Zaragoza – yes  
Motion carried.

### **RESOLUTION NUMBER 4389**

#### **Resolution Number 4389 – A Resolution Accepting A Bid For Pothole Patcher For The Public Services Department**

**MOTION** Motion to adopt Resolution Number 4389 was by Mr. Henley and second was by Mr. Pierce.

Mr. Robertson explained that this Resolution accepts a bid for a pothole patcher for the City. The funds were budgeted and the item was bid and this was the lowest bidder. He explained that this piece of equipment will allow hot asphalt patching and greatly improve the life of the repair.



Mr. Pierce asked about sharing equipment with sister municipalities.

**MOTION** Question called on a roll call vote:

Mr. Pierce – yes

Mr. Henley – yes

Mr. Ammons – yes

Mayor Zaragoza – yes

Motion carried.

### **RESOLUTION NUMBER 4390**

#### **Resolution Number 4390 – A Resolution Accepting The US-31 Corridor Redevelopment Plan Dated October 2012**

**MOTION** Motion to adopt Resolution Number 4390 was by Mr. Pierce and second was by Mr. Henley.

Mr. Robertson explained that this Resolution accepts the US-31 Corridor Redevelopment Plan as written and submitted by the RPC of Greater Birmingham. He gave a background of the development of the study along with the presentations made for the property owners and the general public.

Mr. Garrison stated that this Resolution will allow Mr. Baughman and him to move forward on actions to write the code and look at incentives for redevelopment.

**MOTION** Question called on a roll call vote:

Mr. Pierce – yes

Mr. Henley – yes

Mr. Ammons – yes

Mayor Zaragoza – yes

Motion carried.

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

The Mayor stated that the following Resolutions and/or Ordinances will be presented at a public hearing at the Council's next regularly scheduled meeting of January 28, 2013 at 5 PM.

- Resolution Number 4391 – A Resolution Accepting The Dedication Of The Streets Known As Miller Hill Drive and Miller Hill Way In The Miller Hill Subdivision (*Public Hearing*)
- Resolution Number 4392 – A Resolution Accepting A Proposal From Patrick H. Boone For Performing The Duties Of City Attorney For The City Of Vestavia Hills (*Public Hearing*)
- Resolution Number 4393 – A Resolution Authorizing The Mayor And City Manager To Enter Into An Agreement With Shelby County 9-1-1 And Shelby County For Dispatch Services For The City Of Vestavia Hills And To Execute All Actions Necessary To Accomplish Said Transition (*Public Hearing*)

- Ordinance Number 2428 – Rezoning - 312 Montgomery Highway; Rezone from Vestavia Hills R-2 (residential) to Vestavia Hills O-1 (office); Jean Daniel, owner (*Public Hearing*)
- Ordinance Number 2429 – An Ordinance To Repeal Ordinance Number 1688 And Establish A Flood Damage Prevention Ordinance For The City Of Vestavia Hills (*Public Hearing*)

### **CITIZENS COMMENTS**

David Russell, Birmingham, Alabama, asked the Council for a Resolution to support Cooper Green Hospital.

Lauren Daniel, 2311 Fox Glen Circle, stated that the Library's 2<sup>nd</sup> Anniversary was a complete success and thanked the Mayor and Council for their continued support.

**MOTION** Motion to adjourn the meeting at 6:45 PM was by Mr. Ammons. Mr. Pierce seconded the motion. Roll call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Sharp – yes	Mr. Ammons – yes
Mayor Zaragoza – yes	Motion carried.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**RESOLUTION NUMBER 4391**

**A RESOLUTION ACCEPTING THE DEDICATION OF THE STREETS  
KNOWN AS MILLER HILL DRIVE AND MILLER HILL WAY  
LOCATED IN MILLER HILL SUBDIVISION**

**WHEREAS**, Signature Homes is the developer of Miller Hill Subdivision in Vestavia Hills, Alabama. This dedication consists of the streets named Miller Hill Drive and Miller Hill Way; such dedication to include the public portions of said subdivision; and

**WHEREAS**, the streets and improvements were built according to the City of Vestavia Hills' specifications and the development company is presenting them to the City of Vestavia Hills for acceptance, complete with a guarantee against any defects for a period of one (1) year from date of dedication.

**NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA**, that the City hereby accepts the offer of dedication made by Signature Homes, for the Miller Hill Subdivision and said streets shall be and are hereby public streets.

**ADOPTED and APPROVED** this the 28<sup>th</sup> day of January, 2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk



3545 MARKET STREET  
HOOVER, AL 35226  
PHONE 205-989-5588  
FAX 205-989-8884

December 17, 2012

Rebecca Leavings  
City Clerk  
City of Vestavia Hills  
513 Montgomery Highway  
Vestavia Hills, AL 35216

Ms. Leavings:

We hereby acknowledge completion of the Miller Hill Subdivision, including the final seal of the following roads: Miller Hill Drive and Miller Hill Way. Please accept this as our request to dedicate the public portions of the Miller Hill Subdivision.

Feel free to contact me at (205) 290-2328 with any questions you may have pertaining to this matter.

Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joe Etheridge".

Joe Etheridge  
Signature Homes

## Rebecca Leavings

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**From:** Christopher Brady  
**Sent:** Friday, December 21, 2012 5:13 PM  
**To:** Joe Etheridge  
**Cc:** Rebecca Leavings  
**Subject:** RE: Miller Hill Completion

Thank you Joe! I did have my inspector stop by again today and he confirmed all looked ok.

I will get you something a little more formal next week. But if this does suffice, City of Vestavia Hills has reviewed and inspected the public infrastructure and will be making favorable recommendation to City Council for acceptance of the City streets.

Have a Merry Christmas!

-----  
Christopher Brady, PE  
City Engineer, City of Vestavia Hills

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**From:** Joe Etheridge [mailto:jetheridge@e-signaturehomes.com]  
**Sent:** Friday, December 21, 2012 8:02 AM  
**To:** Christopher Brady  
**Subject:** RE: Miller Hill Completion

Good morning Christopher. As of yesterday, all of the items noted below have been completed.

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**From:** Joe Etheridge  
**Sent:** Wednesday, December 19, 2012 10:36 AM  
**To:** 'Christopher Brady'  
**Subject:** RE: Miller Hill Completion

Thanks Christopher. I will find out when we can have these items addressed and completed. Have a great Christmas!

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**From:** Christopher Brady [mailto:city.engineer@ci.vestaviiahills.al.us]  
**Sent:** Wednesday, December 19, 2012 10:08 AM  
**To:** Joe Etheridge  
**Subject:** RE: Miller Hill Completion

Joe,

I have had our crew out earlier this week re-checking some of the pipe that was cleaned. They noted the following items that were not addressed yet. I wanted to see if you could have Flannigan follow up:

Line D-2 60' into pipe, build up of rocks in pipe, unable to camera past this spot.  
D-2 invert not poured in bottom of box -STR 2-2  
D-9 inverts not poured in bottom of box -- STR 8-2 and STR 9-2

I can have my crew meet on site if needed.

Thanks,

1/10/2013

**RESOLUTION NUMBER 4392**

**A RESOLUTION ACCEPTING A PROPOSAL FROM PATRICK  
H. BOONE FOR PERFORMING DUTIES AS CITY ATTORNEY  
FOR THE CITY OF VESTAVIA HILLS, ALABAMA**

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

1. The proposal submitted by Patrick H. Boone to perform the duties of City Attorney for the City of Vestavia Hills in an amount not to exceed \$100,000 is hereby accepted; and
2. This Resolution Number 4392 shall be effective immediately upon adoption and approval.

**DONE, ORDERED, ADOPTED and APPROVED** this the 28<sup>th</sup> day of January,  
2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**PATRICK H. BOONE**  
ATTORNEY AND COUNSELOR AT LAW  
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705  
215 RICHARD ARRINGTON, JR. BOULEVARD NORTH  
BIRMINGHAM, ALABAMA 35203-3720

TELEPHONE (205) 324-2018  
FACSIMILE (205) 324-2295

December 6, 2012

By Facsimile Transmission (978-0189)

City Manager Randy Robertson  
Vestavia Hills Municipal Center  
P. O. Box 660854  
Vestavia Hills, Alabama 35266-0854

In Re: Compensation for City Attorney

Dear Mr. Robertson:

The purpose of this letter is to confirm that I have accepted your offer of annual compensation in the amount of \$100,000.00 per year to perform the duties of City Attorney and without the necessity of itemizing my monthly invoices.

Rita Hosmer has requested this letter for auditing purposes.

Sincerely,



Patrick H. Boone  
Vestavia Hills City Attorney

PHB:gp

cc: Rita Hosmer (by fax 978-0132)



# CITY OF VESTAVIA HILLS

## FINANCE DEPARTMENT

ALBERTO "BUTCH" ZARAGOZA  
MAYOR

MELVIN TURNER, III  
FINANCE DIRECTOR/TREASURER

### MEMORANDUM

To: Randy Robertson  
City Manager

From: Melvin Turner, III   
Finance Director

Re: "Proposal" - City Attorney

Date: December 19, 2012

I'm in receipt of a copy of a facsimile transmission dated December 6, 2012 from Attorney Patrick Boone to you accepting an offer to provide legal services for the City of Vestavia Hills for fiscal year 2012-2013 in the amount of \$100,000.00. Please be apprised that the total costs for all legal services, inclusive of Attorney Boone's services, were budgeted and approved for fiscal year 2012-2013 in the amount of \$120,000.00.

**Given the multiple projects and issues the City is undertaking and facing requiring the services of Attorney Boone in this fiscal year, it is my opinion that your proposal would be a cost savings to the City of Vestavia Hills.**

Because the proposal succeeded the budget approval and the proposed amount exceeds Attorney Boone's projected and last year's amounts (FY 2012 - \$82,250.00) by more than \$35,000.00, the proposal will require approval of the Vestavia Hills City Council.

The Finance Department is prepared to compensate Attorney Boone for the month of November 2012, per your initial proposal (\$8,333.34 monthly), pending Council approval of same.

  
\_\_\_\_\_  
Randy Robertson  
City Manager



Memorandum  
December 19, 2012  
Page 2

A handwritten signature in black ink, appearing to read "Melvin Turner, III", is written over a horizontal line. The signature is stylized and cursive.

Melvin Turner, III  
Finance Director

**RESOLUTION NUMBER 4393**

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH SHELBY COUNTY 9-1-1 AND SHELBY COUNTY FOR DISPATCH SERVICES FOR THE CITY OF VESTAVIA HILLS AND TO DO ALL THINGS NECESSARY TO ACCOMPLISH SAID TRANSITION**

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

1. The Mayor and City Manager are hereby authorized to execute and deliver an agreement with Shelby County 9-1-1 and Shelby County to perform dispatch services for the City of Vestavia Hills for a period of five (5) years; and
2. Said agreement is attached to and incorporated into this Resolution Number 4293 as though written fully therein; and
3. The City Manager is hereby authorized to do all actions necessary in order to accomplish said transition of dispatch services to Shelby County; and
4. This Resolution Number 4393 shall become effective immediately upon adoption and approval.

**DONE, ORDERED, ADOPTED and APPROVED** this the 28<sup>th</sup> day of January, 2013.

Alberto C. Zaragoza, Jr.  
Mayor



ATTESTED BY:

Rebecca Leavings  
City Clerk

**CITY OF VESTAVIA HILLS  
513 MONTGOMERY HIGHWAY  
VESTAVIA HILLS, ALABAMA 35216  
(205) 978-0100**

**MEMORANDUM**

TO: Randy Robertson, City Manager

FROM: Chief Rary, Vestavia Hills Police Department   
Chief St. John, Vestavia Hills Fire Department 

DATE: January 9, 2013

RE: Shelby 911 contract

We recommend that the Shelby 911 contract for emergency dispatch be included on the January 14, 2013 as a "First Read". The attached memorandum dated December 26, 2012 describes the steps required to proceed. Finance Director Melvin Turner has advised us that sufficient funding is available in the General Fund to cover start-up costs, and that the General Fund will be reimbursed in subsequent months through accrued savings in reduced operating expenses resulting from the contract.

CITY OF VESTAVIA HILLS  
513 MONTGOMERY HIGHWAY  
VESTAVIA HILLS, ALABAMA 35216  
(205) 978-0100

FILE COPY

MEMORANDUM

TO: Randy Robertson, City Manager

FROM: Chief Rary, Vestavia Hills Police Department  
Chief St. John, Vestavia Hills Fire Department

DATE: December 26, 2012

RE: Shelby 911

Attached are three copies of the contract for service with Shelby 911. With your signature we can continue our preparations to begin offering E-911 service through that agency on June 1, 2013. To continue at this point we will need:

1. The three attached copies of the contract signed. One copy will be ours, the other two will be returned to Shelby 911.
2. Authorization to pay the one-time start-up cost of \$150,000. Shelby 911 left the due date blank. We recommend that the start-up cost be paid on June 1, 2013.
3. Authorization to pay \$43,750 per month for E-911 service.

Additionally, changing our operations will result in needs that are not subject to the contract with Shelby 911. To proceed we recommend the following:

1. Authorization to spend \$172,900 with New World Systems in order to split our Computer-Aided Dispatch (CAD) system from the present shared arrangement with the City of Homewood.
2. Authorization of six additional positions within the Police Department to staff a desk position, acting as the face of the Police Department and the City after hours, on weekends and holidays.

As discussed at the October 2012 offsite, even with up to \$150,000 in cost to separate the CAD system, total time to recoup start-up costs and CAD cost remains approximately 7.3 months and special funds (911 revenue) may be used. Special funds cannot, however, be used to fund the desk positions.

**VESTAVIA HILLS POLICE DEPARTMENT**



**To: Mr. Robertson**

**MEMO**

**From: Chief Dan Rary**

**CC: Becky Leavings**

**Date: 9 Jan 2013**

**Re: Request for Funds – Desk Positions**

---

Mr. Robertson,

I am requesting the Council allocate non-budgeted funding for the hiring of personnel to staff the Desk position effective 1 June 2013 when Shelby County 911 begins providing emergency dispatch services to the City of Vestavia Hill, Al.

Shelby County 911 Center will provide us with high quality professional emergency dispatch service but cannot provide all duties performed by the existing Communication Center. These new positions will perform these other services as well as new duties.

The funding for this project will not exceed \$100,000.00 for the remainder of this budget year.



## DISPATCH CONTRACT SERVICES

### City of Vestavia Hills, Shelby County 9-1-1 and Shelby County

THIS AGREEMENT, entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2012 between Vestavia Hills (herein called the CITY), Shelby County Emergency Management Communications District "9-1-1", Federal I.D. 63-1010149 hereinafter referred to as "CONTRACTOR" and Shelby County (herein called the COUNTY):

WHEREAS, Contractor is a duly responsible entity operating under the laws of the State of Alabama, Code of Alabama Section 11-98-1 through 11-98-11 and Acts No. 84-369, 92-562, 2000-693 and 2012-293:

WHEREAS, The Code of Alabama Section 11-98-4 (6) provides the authority "to enter into contracts or agreements with public or private safety agencies for dispatch services when such terms, conditions, and charges are mutually agreed upon, unless otherwise provided by local law":

WHEREAS, Contractor has agreed to accept contract payments from the CITY hereinafter designated and to thereafter perform in consideration thereof, the provisions of this contract effective 2013:

NOW, THEREFORE, in consideration of the above premises and consideration of mutual covenants and agreements contained herein, the parties hereto do hereby agree, covenant and contract as follows:

#### Section 1. Summary

The CITY agrees to engage CONTRACTOR to provide public safety dispatch services for the CITY and the CONTRACTOR hereby agrees to perform the services hereinafter set forth in this agreement in a reasonable and customary manner.

#### Section 2. Scope of Services

CONTRACTOR shall manage the dispatch center and personnel to provide the appropriate public safety call-taking and dispatch services as specified by CITY. These services are outlined in **Exhibit A**. These services may include, but are not limited to the following;

(a) CONTRACTOR will be responsible for answering CITY public safety, logging calls into CONTRACT provided CAD and dispatching the applicable CITY public safety personnel.

(b) CONTRACTOR will provide emergency dispatch services for CITY Police Department and Fire Department.

(c) CONTRACTOR will be responsible for tasks associated with supporting emergency and routine public safety activities such as: checking persons, vehicles, and property through ACJIC/NCIC; making phone calls to obtain civilian services such as utility companies and other requests as directed by CITY public safety personnel.

(d) CONTRACTOR will provide and maintain the communications center physical facilities and necessary hardware/software systems to provide contracted services. CITY and COUNTY agree to negotiate CITY's reasonable percentage of costs for new technologies and systems that may be desired or mandate in the future.

(e) COUNTY will provide additional office space to CONTRACTOR for its renovation for the provision of public safety services

(f) CONTRACTOR is not responsible for any aspect of CITY's public safety land mobile radio system. CITY agrees to provide and maintain a public safety grade radio network for the dispatch of CITY personnel.

**Section 3. Term**

The term of this Agreement will commence on \_\_\_\_\_, 2013 (Effective Date of this Agreement) and will continue for an initial period of five (5) calendar years. At the completion of the five (5) year term, this Agreement will automatically renew for one (1) year terms unless either party terminates under provisions in Section 7.

**Section 4. Communications**

(a) The representatives of the CITY, COUNTY and the CONTRACTOR to whom communications regarding the agreement shall be directed to the following:

(1) CITY: Randy E. Robertson  
City Manager  
513 Montgomery Hwy  
Vestavia Hill, AL 35216

(2) CONTRACTOR: Alan Campbell  
Executive Director  
1004 County Services Drive  
Pelham, AL 35124  
205.439.6911  
[acampbell@shelby911.org](mailto:acampbell@shelby911.org)

(3) COUNTY: Alex Dudchock  
County Manager  
P. O. Box 467  
200 West College Street  
Columbiana, AL 35051  
205.670.6500  
[adudchock@shelbyal.com](mailto:adudchock@shelbyal.com)

### Section 5. Compensation and Method of Payment

(a) *Reoccurring.* CONTRACTOR will provide dispatch services to and paid for by CITY on a monthly basis at **\$43,750** per month for the dispatch support services described in **Exhibit A**. CITY shall make payments of the above monthly charge on or by the 10th day of each month.

(b) *One-Time.* CITY will provide a one-time payment of **\$150,000** to assist in procurement of applicable equipment and software as outlined in **Exhibit B**. CITY and CONTRACTOR agree to negotiate in good faith unforeseen or excess startup costs not provided for in **Exhibit B**. CITY shall make payments of the above one-time charge \_\_\_\_\_.

### Section 6. Adjustment to Compensation

The monthly payment shall be increased (but never decreased) on October 1, 2014 and every October 1 thereafter by an amount equal to the percent increase in the “Southern Region Consumer Price Index – All Urban Consumers” as published by the US BLS for the previous calendar year. CONTRACTOR’S failure to demand any such increase shall not be construed as a waiver of any right thereto and CITY shall be obligated to remit all increases notwithstanding any lack of notice or demand thereof.

### Section 7. Terms and Conditions

(a) *Independence.* CITY is an independent contractor and none of its agents, servants or employees shall be deemed to be under control of CONTRACTOR or COUNTY nor in any way shall any of its agents, servants or employees or other persons, firms or corporations conducting business for CITY be deemed to be employees or agents, servants or employees of CONTRACTOR or COUNTY.

(b) *Indemnity.* To the fullest extent permitted by law, City shall defend (at City’s sole cost and expense), indemnify, protect, and hold harmless Contractor and County, their elected officials, officers, employees, agents and volunteers (collectively the “Indemnified Parties”), from and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties and expenses including legal costs and attorney fees (collectively “Claims”), including but not limited to Claims arising from injuries to or death of persons (City’s employees included), for damage to property, including property owned by City, from any violation of any federal, state or local law or ordinance, negligence, and from errors and omissions committed by City, its officers, employees, representatives, and agents, which Claims arise out of or are related to City’s performance under this Agreement, but excluding such Claims arising from the negligence or willful misconduct of the Contractor and County, their elected officials, officers, employees, agents and volunteers.



(c) *Benefits.* CITY shall be responsible for providing its eligible employees medical, dental, life and disability insurance as CITY shall deem advisable. No agents, servants or employees of CITY shall be provided nor be eligible for medical, dental, life or disability insurance under any policy or policies offered or provided by or in the name of CONTRACTOR or COUNTY or any of its agencies. No employees of CITY will be carried as an insured on any CONTRACTOR or COUNTY insurance policy nor will any CITY employee be eligible for retirement or other benefits offered by the CONTRACTOR or COUNTY to its employees.

(d) *Termination - General.* The CITY or CONTRACTOR may terminate this Agreement in the event of a material breach by the other party of any representation, condition or covenant of this Agreement. The non-breaching party shall give the breaching party thirty (30) business days prior written notice with an opportunity to cure the breach within such thirty (30) business day period. In the event that the breaching party fails to cure the breach within the thirty (30) business day period, the non-breaching party shall have the right to terminate this Agreement.

(e) *Scope Changes.* The CITY may, from time to time, request changes of the CONTRACTOR in the scope of services to be performed hereunder. Such changes, or renegotiation, including any increase or decrease in the amount of the CONTRACTOR'S compensation must be in writing and mutually agreed upon by and between the CITY and CONTRACTOR, shall be incorporated in written amendments to this contract.

(f) *Assignability.* The CITY shall not assign any interest on this contract, and shall not transfer any interest in the same whether by assignment or notation, without the prior written consent of the CONTRACTOR provided, however, that claims for money by the CONTRACTOR from the CITY under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be promptly furnished to the CONTRACTOR and COUNTY.

(g) *Compliance with Local Laws.* The CITY shall comply with all applicable laws, ordinances and codes of the U.S. Government, the State of Alabama and the County. Any legal claims or actions applicable to this contract shall be processed through the Shelby County Court System. CITY shall be responsible for all filing and accounting responsibilities for its entity and its employees, including but not being limited to Social Security, all federal and state tax reporting, unemployment compensation and retirement benefits.

(h) *Audits and Inspection/Access to Records/Record Retention.* At any time during normal business hours, with prior arrangement and as often as the CONTRACTOR or COUNTY may deem necessary, the CITY shall make available to the CONTRACTOR or COUNTY for examination all of its records with respect to matters covered by this contract and will permit the CONTRACTOR or COUNTY to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this contract. CITY shall retain all books, documents, papers, and records which are directly pertinent to this contract for a period of three (3) years following completion of the contracted work and expiration of the contract, unless written permission to destroy them is granted by the CONTRACTOR or COUNTY.

(j) *Effect of this Agreement.* This Agreement, including any Exhibits, constitutes the complete understanding between the Parties with respect to the terms and conditions set forth in herein and supersedes all previous written or oral agreements and representations. This Agreement may be modified only in a writing which expressly references this Agreement and is executed by Both of the Parties.

IN WITNESS WHEREOF, the CITY, COUNTY and the CONTRACTOR have caused this agreement to be executed by their duly authorized officers on the day and year first above written.

**City of Vestavia Hills**

\_\_\_\_\_  
By: Randy E. Robertson, City Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
By: Alberto C. Zaragoza, Jr.; Mayor

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Rebecca Leavings, City Clerk

\_\_\_\_\_  
Date

**Shelby County Commission**

\_\_\_\_\_  
By: Alex Dudchock, County Manager

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Date

**Shelby County Emergency Management  
Communications District**

\_\_\_\_\_  
Alan D. Campbell, Executive Director

\_\_\_\_\_  
Date

ATTEST:

---

---

Date

EXHIBITS/ATTACHMENTS:

Exhibit A – Dispatch Support Services

Exhibit B – One-Time Startup Costs

## Exhibit A

### Dispatch Support Services

#### **1. Services Included**

CONTRACTOR will provide typical dispatch and call taking services as listed. This list is not intended to be all inclusive and can be further negotiated.

##### **Police**

- (a) One dedicated law enforcement dispatch position staffed 24/7/365
- (b) Dispatch of emergent and non-emergent calls
- (c) Tracking of sworn units
- (d) NCIC/ACJIC queries for OLN, VIN, Tag, Articles and Guns
- (e) Notifications to tow companies, utility providers and other resources necessary for the handling of police events
- (f) Assignment of RMS case numbers

##### **Fire/EMS**

- (a) Fire dispatch services using shared dispatchers
- (b) Dispatch of fire units using CAD based unit recommendation established by CITY Fire Department personnel
- (c) Tracking of Fire/EMS units
- (d) Dispatch or notification of fire agencies with CITY Fire Department automatic or mutual aid agreements
- (e) Notifications to ambulance companies, air transport services, utility providers and other resources necessary for the handling of Fire/EMS event

##### **Call Answering**

- (a) 9-1-1 call answering service with 95% of calls answered in 10 seconds or less
- (b) Pre-arrival EMD instructions provided for all calls
- (c) Answering for emergent published fire and police numbers
- (d) Answering calls from alarm companies for monitored public safety alarms
- (e) Custom interface between CONTRACTOR CAD and CITY Police Department's New World RMS
- (f) CONTRACTOR agrees to provide 9-1-1 voice recordings to CITY when necessary to assist with law enforcement investigations or other internal matters

#### **2. Services Not Included**

The following services are not part of this service agreement:

- (a) Telephone systems configuration, installation, support and maintenance
- (b) Non-emergent administrative lines will not be answered by CONTRACTOR
- (c) CITY Police warrant confirmation services will not be provided

#### **3. Assumptions**

The following assumptions have been used in computation of startup costs, timelines, required staffing and operational procedures. Deviation from these assumptions may result in delayed start of services and/or increased startup costs to CITY:

- (a) Voice dispatch will be in plain English with limited or no 10 codes
- (b) CITY provided in-vehicle hardware will be compatible with Intergraph Mobile for Public Safety client
- (c) New World and Intergraph will cooperate to provide a CAD to RMS interface that meets CITY approval
- (d) Voice dispatch for police and fire will utilize the Jefferson County 800 MHz radio system, the Shelby County P25 VHF system or other mutually agreed upon system that can be operated from CONTRACTOR'S facility

#### **4. CITY Responsibilities**

The following items are general conditions of the agreement:

- (a) CITY will provide hardware, network connectivity and technical support for in-vehicle mobile devices
- (b) CITY will provide land mobile radio communications system and maintenance of said system for dispatch of CITY personnel
- (c) CITY will provide a current and up-to-date GIS shape file of city limits
- (d) CITY will provide comprehensive address points, street names and address ranges for CITY Police and Fire jurisdictions 120 days prior to start of dispatch service
- (e) CITY will provide all annexations, ordinances, legislative changes and order of election changes that relate to Police or Fire jurisdictions to COUNTY within 30 days of change
- (f) CITY agrees to maintain the minimum network data security standards that comply with the current Alabama Criminal Justice Information Center Security Policy

**Exhibit B**

**One-Time Startup Costs**

CONTRACTOR has estimated startup costs as itemized below:

Police CAD software license and computer	\$ 20,000
Dispatch console and chair	\$ 8,000
Radio equipment\console	\$ 37,500
Dispatch phone position	\$ 4,000
CAD to RMS Interface	\$ 70,000
Seven concurrent Police mobile clients	\$ 9,000
Shelby County 9-1-1 to Vestavia FD fiber installation	<u>\$ 1,500</u>
	\$150,000

1/4/2013

## Communications Department

Griffin	Bess	Transferred to Bessemer	12/29/2012
Hairston	John	Scheduled to retire	4/1/2013
Irons	Eric	Working	7am - 3pm
Jones	Terria	Transferring to Hueytown	1/24/2013
Lawrence	Heather	Transferred to Trussville	12/15/2012
Mixon	Adrienne	Working	11pm - 7am
Morgan	Bettina	Working	7am - 3pm
Morris	Vaughn	Promoted to PSD-III with Birmingham PD	12/15/2012
Schuhr	Diane	Working	3pm - 11pm
Tatum	Sandra	Transferring to Mtn. Brook	1/15/2013
Wilson	Wendy	Working	3pm - 11pm
Woods	Yolanda	Working	11pm - 7am
Works	Andrea	Working	7am - 3pm

## Exhibit A

### Dispatch Support Services

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	\$150,000

PATRICK H. BOONE  
ATTORNEY AND COUNSELOR AT LAW  
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705  
215 RICHARD ARRINGTON, JR. BOULEVARD NORTH  
BIRMINGHAM, ALABAMA 35203-3720  
TELEPHONE (205) 324-2018  
FACSIMILE (205) 324-2295

January 21, 2013

By Hand Delivery

City Manager Randy Robertson  
Vestavia Hills Municipal Center  
P. O. Box 660854  
Vestavia Hills, Alabama 35266-0854

In Re: Resolution Number 4393  
Dispatch Contract Services

Dear Mr. Robertson:

On January 14, 2013, the Vestavia Hills City Council conducted its regularly scheduled meeting. Resolution Number 4393 authorizing the execution and delivery of a Contract by and between the City of Vestavia Hills, Alabama ("City"), Shelby County Emergency Management Communications District "9-1-1" ("Contractor") and Shelby County ("County") for dispatch services ("Contract") was introduced for a first reading at that meeting. The City Council will consider approval of Resolution Number 4393 and the Contract at its meeting on January 28, 2013.

You have requested that I review the Contract and furnish you with my written legal opinion. The purpose of this letter is to comply with your request.

**I. FACTS**

The proposed Contract provides in Section 7(b) as follows:

**"Section 7. Terms and Conditions**

(b) *Indemnity.* CITY shall indemnify and save CONTRACTOR and COUNTY safe and harmless from any claims made by any person, firm or corporation against CONTRACTOR or COUNTY for injury to property or person arising directly or indirectly out of any activity or pursuit of CITY, which said obligation of indemnity shall include the payment by CITY to CONTRACTOR of any and all attorneys' fees, costs of defense and judgments rendered, if any, in favor of such person, firm or corporation."

## II. LEGAL ISSUE

Can the City legally indemnify the Contractor and County against actions, costs, expenses, damages and liabilities to the extent attributable to the acts or omissions of the said Contractor and County?

## III. LEGAL OPINION

It is my legal opinion that the answer to the legal question is in the negative.

## IV. BASIS FOR LEGAL OPINION

I base my legal opinion upon the following legal authorities:

A. CONSTITUTION OF ALABAMA OF 1901: Section 94, as amended by Amendments 112 and 558, of the *Constitution of Alabama* provides as follows:

“The Legislature shall not have power to authorize any county, city, town or other subdivision of this state to lend its credit or to grant public money or thing of value in aid of or to any individual, association or corporation whatsoever.”

In my opinion, it would be a violation of Article IV, Section 94(a) of the *Constitution of Alabama* for the City to indemnify the Contractor and County for actions, costs, expenses, damages and liabilities attributable to the acts or omissions of the employees of the Contractor and/or County.

B. LIMITS OF LIABILITY OF MUNICIPALITIES: Section 11-93-2, *Code of Alabama, 1975*, establishes the maximum amount of damages recoverable against governmental entities. The recovery of damages under any judgment against a city shall be limited to \$100,000.00 for bodily injury or death for one person in any single occurrence and to \$300,000.00 in the aggregate where more than two persons have claims or judgments on account of bodily injury or death arising out of any single occurrence. This statute also provides in pertinent part that recovery of damages under any judgment against a city shall be limited to \$100,000 for damage for loss of property arising out of any single occurrence. It is my opinion that if a city agreed to indemnify third parties, then in such event it would waive these limits of liability.

C. PUBLIC OFFICIALS ARE ENTITLED TO DISCRETIONARY FUNCTION IMMUNITY: Public officials who act within the scope of their authority in performing functions involving discretion are entitled to discretionary function immunity. *Woods v. Wilson*, 539 So.2d 224 and *Hilliard v. Huntsville*, 585 So.2d 889.

It is my opinion that if the City agreed to indemnify a third party, then in such event such indemnity agreement could waive the discretionary function immunity for its public employees.

**D. WANTONNESS:** There is no cause of action against a municipality for wantonness. *Hilliard v. City of Huntsville*, 585 So.2d 889 (Ala.1991) and Title 11-47-190, *Code of Alabama, 1975*. If the City agreed to indemnify another party and that indemnitee was guilty of wanton conduct, then in such events the City would effectively waive its right under the Hilliard case.

**E. INTENTIONAL TORTS:** Likewise, there is no action against a municipality for intentional torts. *Altmayer v. City of Daphne*, 613 So.2d 366 (Ala.1993). If the indemnitee committed an intentional tort, then in such event the City would waive its rights under the *Altmayer* case.

**F. PUNITIVE DAMAGES:** In Alabama, municipalities are not liable for punitive damages (Article I, §§ 1, 5, 6, 7, 9, 11, 13 and 22 of *Alabama Constitution*). Under an indemnity agreement, the City would be required to pay punitive damages if punitive damages were awarded against an indemnitee.

**G. GENERAL COMPREHENSIVE LIABILITY INSURANCE:** The City has general comprehensive liability insurance coverage pursuant to an insurance policy issued by One Beacon Insurance Company and written by its agent, J. Smith Lanier & Co. In very general terms, that policy states in substance that One Beacon will pay damages to others for which the law holds the named insureds responsible. Therefore, unless the Contractor and County were named as additional insureds on the One Beacon insurance policy, there would be no coverage for the City for acts committed by the Contractor and/or County.

## **V. RECOMMENDATION FOR AMENDMENT TO CONTRACT**

I recommend that Section 7(b) of the Contract be amended to read as follows:

(b) To the fullest extent permitted by law, City shall defend (at City's sole cost and expense), indemnify, protect, and hold harmless Contractor and County, their elected officials, officers, employees, agents and volunteers (collectively the "Indemnified Parties"), from and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties and expenses including legal costs and attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to or death of persons (City's employees included), for damage to property, including property owned by City, from any violation of any federal, state or local law or ordinance, negligence, and from errors and omissions committed by City, its officers, employees, representatives, and agents, which Claims arise out of or are related to City's performance under this Agreement, but excluding such Claims arising from the negligence or willful misconduct of the Contractor and County, their elected officials, officers, employees, agents and volunteers."

## **VI. BASIS FOR RECOMMENDATION**

Municipalities may be held liable for the negligent acts of its employees while acting in the line of his or her duty (Title 11-47-190, *Code of Alabama, 1975*). The City of Vestavia Hills has general comprehensive liability insurance that will cover the said negligent acts of its employees in those situations. Therefore, it is my opinion that it is legally permissible for the City to indemnify the Contractor and County regarding negligent acts committed by City employees acting within the line and scope of their duty and authority.

## **VII. CONCLUSION**

For the reasons set forth herein, it is my legal opinion that the City cannot legally indemnify the Contractor and/or County for the negligence or other actions of their employees arising out of the Contract. Therefore, I recommend that Section 7(b) be amended as noted above.

Please call me if you have any questions regarding any of the matters set forth in this legal opinion.

Sincerely,



Patrick H. Boone  
Vestavia Hills City Attorney

PHB:gp

cc: City Clerk Rebecca Leavings  
Deputy Chief Tim Holcomb  
Fire Chief Jim St. John

**ORDINANCE NUMBER 2428**

**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-2 TO VESTAVIA HILLS O-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-2 to Vestavia Hills O-1;

312 Montgomery Highway  
Jean Daniel, Owner(s)

More particularly described as follows:

The North ½ of Lot 49, Map of Beacon Hills, a map or plat of which is recorded in Map Book 26 at Page 34 in the Probate Office of Jefferson County, Alabama, lying in Section 19, Township 18 South, Range 2 West, Jefferson County Alabama and being more particularly described as follows: Begin at a 2'X2' post found in place at the NW corner of said Lot 49; then south 64 degrees 50' 47" east along the northerly line of said Lot 49 a distance of 153.05 feet to a 5/8" rebar found on the westerly right-of-way line of US Highway 31 (AKA Montgomery Highway right-of-way)(150' right-of-way); thence south 26 degrees 20' 00" west along said right-of-way a distance of 90.84 feet to a 1" crimp found; thence North 70 degrees 43' 12" west leaving said right-of-way a distance of 154.30 feet to a RR spike found on the westerly line of said Lot 49; thence North 26 degrees 23' 36" east along said westerly line a distance of 106.63 feet to the point of beginning. Containing 0.35 acres, more or less.

**APPROVED and ADOPTED** this the 28<sup>th</sup> day of January, 2013.

Alberto C. Zaragoza, Jr.  
Mayor

**ATTESTED BY:**

Rebecca Leavings  
City Clerk

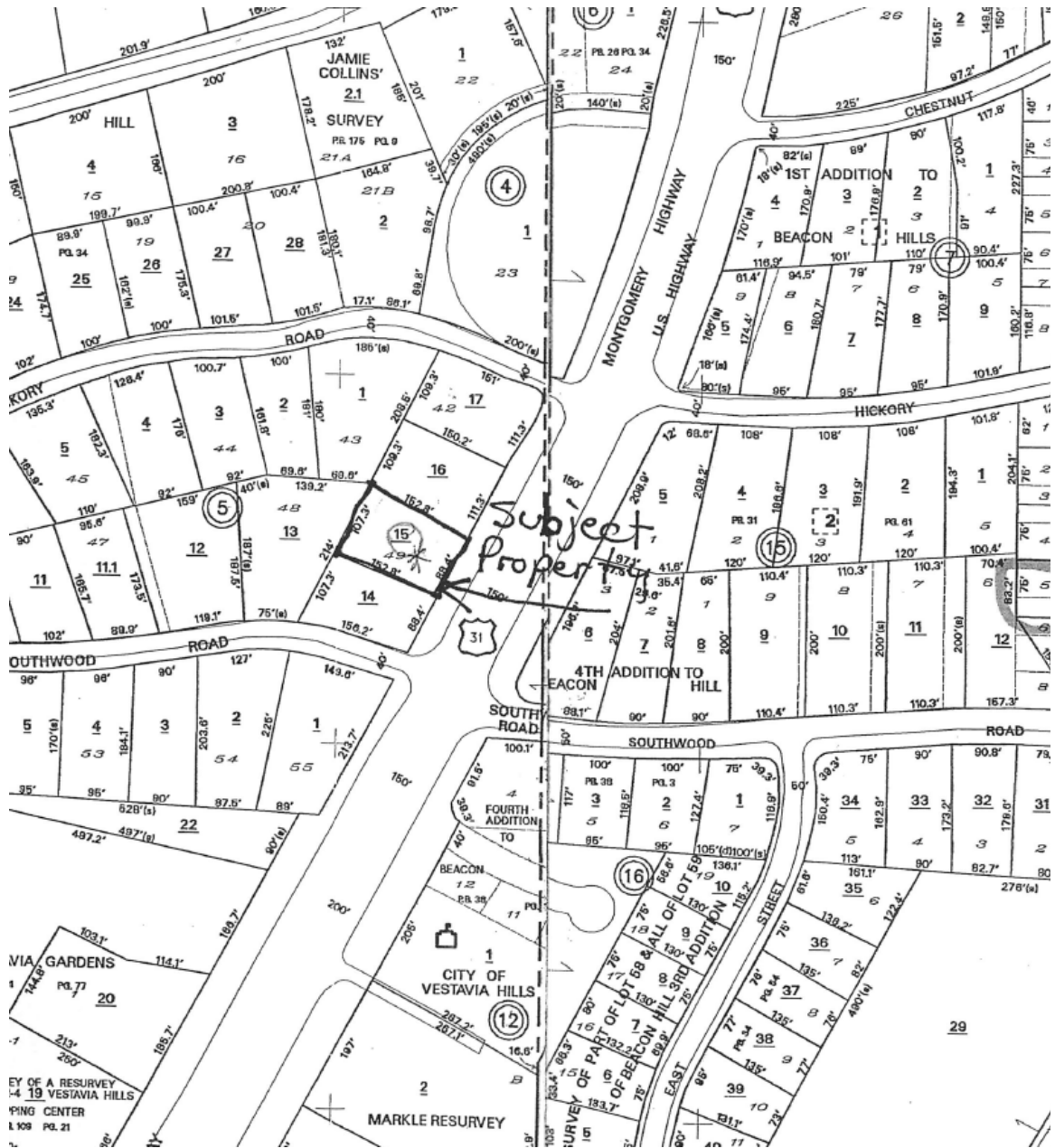
**CERTIFICATION:**

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 # 2428 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 28<sup>th</sup> day of January, 2013 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 \_\_\_\_\_, 2013.

Rebecca Leavings  
City Clerk





**P&Z Recommendation:**

**MOTION** *Mr. Sharp made a motion to recommend the rezoning of 312 Montgomery Highway from Vestavia Hills R-2 to Vestavia Hills O-1 as presented. Second was by Mr. Gilchrist. Motion was carried on a roll call; vote as follows:*

<i>Ms. Fancher – yes</i>	<i>Mr. Farrell – yes</i>
<i>Mr. Burrell – yes</i>	<i>Mr. Sharp – yes</i>
<i>Mr. Gilchrist – yes</i>	<i>Mr. Brooks – yes</i>
<i>Mr. House – yes</i>	<i>Mr. Larson – yes</i>

*Motion carried.*

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

Date: December 13, 2012

- **CASE:** P-1212-40
- **REQUESTED ACTION:** Rezone from Vestavia Hills R-2 to Vestavia Hills O-1
- **PROPOSED USE(S):** Office
- **ADDRESS/LOCATION:** 312 Montgomery Highway
- **APPLICANT/OWNER:** Jean Daniel 312 Montgomery Highway; Vestavia Hills AL 35216
- **REPRESENTING AGENT:** Issac David (205) 823-3851
- **GENERAL DISCUSSION:** This property is located on the southbound lane of Highway 31, situated between Hickory Rd. to the north and Southwood Rd. to the south and is approximately .35 acres. The property is currently zoned R-2 but the applicant requests to be zoned O-1 for a medical office building. The property is situated fronting Montgomery Highway with an insurance office building to the north, residential to the south and west. A proposed site plan is included which appears to meet the requirements of an O-1 zoning including buffering and parking. Applicant will be required to seek and obtain approval from ALDOT for access to Montgomery Highway with the commercially zoned property.
- **CITY OF VESTAVIA HILLS COMPREHENSIVE PLAN:** This request is consistent with the Vestavia Hills Comprehensive Plan
- **STAFF REVIEW AND RECOMMENDATION:**
  1. **City Planner 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.

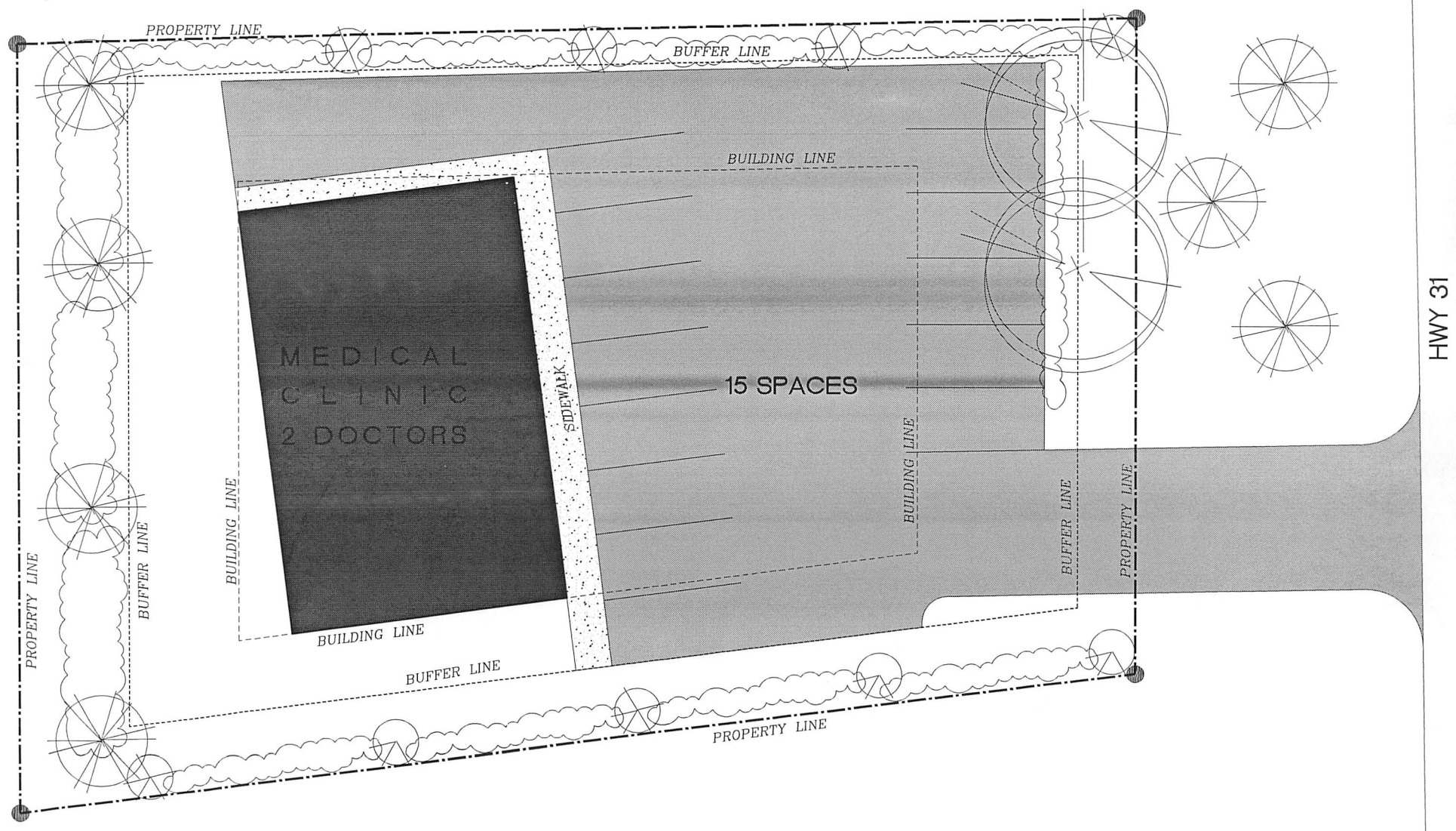
**City Planner Recommendation:** No recommendation

2. **City Engineer Review:** Access permit required from ALDOT; storm water drainage requirements to be met
3. **City Fire Marshal Review:** No problems noted.
4. **Building Safety Review:** No problems noted.

P-1212-40//28-19-3-5-15  
312 Montgomery Hwy  
Rezone from R-2 to O-1  
Jean Daniel R-2

# MEDICAL CLINIC VESTAVIA HILLS, ALABAMA

## PRELIMINARY SITE PLAN 1



P-1212-40/28-19-3-5-15  
312 Montgomery Hwy  
Rezone from R-2 to O-1  
Jean Daniel R-2

# MEDICAL CLINIC

VESTAVIA HILLS, ALABAMA

## DESIGN CONCEPT



## **ORDINANCE NUMBER 2429**

### **AN ORDINANCE TO REPEAL ORDINANCE NUMBER 1688 AND ADOPT A FLOOD DAMAGE PREVENTION ORDINANCE FOR THE CITY OF VESTAVIA HILLS**

#### **Non-Coastal/Riverine Communities**

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

1. Ordinance number 1688 adopted and approved by the Vestavia Hills City Council on April 21, 1997 is hereby repealed in its entirety; and
2. Ordinance Number 2429 is hereby adopted in its entirety as follows:

### **ARTICLE 1**

#### **Statutory Authorization, Findings of Fact, Purpose And Objectives**

##### **SECTION A**            **STATUTORY AUTHORIZATION**

The Legislature of the State of Alabama has in Title 11, Chapter 19, Sections 1-24, Chapter 45, Sections 1-11, Chapter 52, Sections 1-84, and Title 41, Chapter 9, Section 166 of the Code of Alabama, 1975, authorized local government units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Mayor and City Council, of the City of Vestavia Hills, Alabama, does ordain as follows:

##### **SECTION B**            **FINDINGS OF FACT**

- (1) The flood hazard areas of the City of Vestavia Hills, Alabama are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood relief and protection, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
- (2) These flood losses are caused by the occupancy in flood hazard areas of uses vulnerable to floods, which are inadequately elevated, flood proofed, or otherwise unprotected from flood damages, and by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities.

##### **SECTION C**            **STATEMENT OF PURPOSE**

It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (2) restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, or which increase flood heights, velocities, or erosion
- (3) control filling, grading, dredging and other development which may increase flood damage or erosion, and;
- (4) prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands;
- (5) control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters.

**SECTION D**            **OBJECTIVES**

The objectives of this ordinance are:

- (1) to protect human life and health;
- (2) to minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (3) to help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas,
- (4) to minimize expenditure of public money for costly flood control projects;
- (5) to minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (6) to minimize prolonged business interruptions, and;
- (7) to insure that potential home buyers are notified that property is in a flood area.



## ARTICLE 2

### GENERAL PROVISIONS

#### SECTION A            LANDS TO WHICH THIS ORDINANCE APPLIES

This ordinance shall apply to all Areas of Special Flood Hazard within the jurisdiction of Vestavia Hills, Alabama.

#### SECTION B            BASIS FOR AREA OF SPECIAL FLOOD HAZARD

The Areas of Special Flood Hazard identified by the Federal Emergency Management Agency in its **Flood Insurance Study (FIS)**, dated **September 3, 2010**, with accompanying maps and other supporting data **and any revision thereto**, are adopted by reference and declared a part of this ordinance. For those land areas acquired by a municipality through annexation, the current effective FIS and data for Jefferson County, Alabama are hereby adopted by reference. Areas of Special Flood Hazard may also include those areas known to have flooded historically or defined through standard engineering analysis by governmental agencies or private parties but not yet incorporated in a FIS.

#### SECTION C            ESTABLISHMENT OF DEVELOPMENT PERMIT

**A Development Permit shall be required in conformance with the provisions of this ordinance PRIOR to the commencement of any Development activities.**

#### SECTION D            COMPLIANCE

No structure or land shall hereafter be located, extended, converted or altered without **full compliance** with the terms of this ordinance and other applicable regulations.

#### SECTION E            ABROGATION AND GREATER RESTRICTIONS

This ordinance is not intended to repeal, abrogate, or impair any existing ordinance, easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

#### SECTION F            INTERPRETATION

In the interpretation and application of this ordinance all provisions shall be: (1) considered as minimum requirements; (2) liberally construed in favor of the governing body, and; (3) deemed neither to limit nor repeal any other powers granted under state statutes.

#### SECTION G            WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur; flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the Areas of Special Flood Hazard or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part

of Vestavia Hills or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

**SECTION H**                    **PENALTIES FOR VIOLATION**

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than **\$500.00** or imprisoned for not more than **30** days, or both, and in addition, shall pay all costs and expenses involved in the case: Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City of Vestavia Hills from taking such other lawful actions as is necessary to prevent or remedy any violation.

**SECTION I**                    **SAVINGS CLAUSE**

If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held to be noncompliant with 44 Code of Federal Regulation 59-78, such decision shall not affect the validity of the remaining portions of this ordinance.

**ARTICLE 3**

**ADMINISTRATION**

**SECTION A**                    **DESIGNATION OF ORDINANCE ADMINISTRATOR**

The City of Vestavia Hills is hereby appointed to administer and implement the provisions of this ordinance.

**SECTION B**                    **PERMIT PROCEDURES**

Application for a Development Permit shall be made to the City of Vestavia Hills Floodplain Administrator, henceforth referred to as the Floodplain Administrator, on forms furnished by the community **PRIOR** to any development activities, and may include, but not be limited to the following: Plans in duplicate drawn to scale showing the elevations of the area in question and the nature, location, dimensions, of existing or proposed structures, fill placement, storage of materials or equipment, and drainage facilities.

Specifically, the following information is required:

- (1) Application Stage -
  - (a) Elevation in relation to mean sea level (or highest adjacent grade) of the regulatory lowest floor level, including basement, of all proposed structures;
  - (b) Elevation in relation to mean sea level to which any non-residential structure will be flood proofed;

- (c) Design certification from a registered professional engineer or architect that any proposed non-residential flood-proofed structure will meet the flood-proofing criteria of Article 4, Sections B(2) and E(2);
  - (d) Description of the extent to which any watercourse will be altered or relocated as a result of a proposed development, and;
- (2) Construction Stage -

For all new construction and substantial improvements, the permit holder shall provide to the Floodplain Administrator an as-built certification of the regulatory floor elevation or flood-proofing level **using appropriate FEMA elevation or flood-proofing certificate** immediately after the lowest floor or flood proofing is completed. When flood proofing is utilized for non-residential structures, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same.

**Any work undertaken prior to submission of these certifications shall be at the permit holder's risk.** The Floodplain Administrator shall review the above referenced certification data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being allowed to proceed. Failure to submit certification or failure to make said corrections required hereby, shall be cause to issue a stop-work order for the project.

## **SECTION C**                      **DUTIES AND RESPONSIBILITIES OF THE ADMINISTRATOR**

Duties of the Floodplain Administrator shall include, but shall not be limited to:

- (1) Review all development permits to assure that the permit requirements of this ordinance have been satisfied; and, assure that sites are reasonably safe from flooding.
- (2) Review proposed development to assure that all necessary permits have been received from governmental agencies from which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334. Require that copies of such permits be provided and maintained on file.
- (3) When Base Flood Elevation data or floodway data have not been provided in accordance with Article 2 Section B, then the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other sources in order to administer the provisions of Article 4.
- (4) Verify and record the actual elevation in relation to mean sea level (or highest adjacent grade) of the regulatory floor level, including basement, of all new

construction or substantially improved structures in accordance with Article 3 Section B(2) .

- (5) Verify and record the actual elevation, in relation to mean sea level to which any new or substantially improved structures have been flood-proofed, in accordance with Article 4, Sections B (2) and E (2).
- (6) When flood proofing is utilized for a structure, the Floodplain Administrator shall obtain certification of design criteria from a registered professional engineer or architect in accordance with Article 3(B)(1)(c) and Article 4(B)(2) or (E)(2).
- (7) Notify adjacent communities and the Alabama Department of Natural Resources prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Emergency Management Agency (FEMA), and the Alabama Department of Economic and Community Affairs/Office of Water Resources/NFIP State Coordinator's Office.
- (8) For any altered or relocated watercourse, submit engineering data/analysis within six (6) months to the FEMA and State to ensure accuracy of community flood maps through the Letter of Map Revision process. Assure flood carrying capacity of any altered or relocated watercourse is maintained.
- (9) Where interpretation is needed as to the exact location of boundaries of the Areas of Special Flood Hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation. Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this Ordinance.
- (10) All records pertaining to the provisions of this ordinance shall be maintained in the office of the Floodplain Administrator and shall be open for public inspection.

#### **ARTICLE 4**

#### **PROVISIONS FOR FLOOD HAZARD REDUCTION**

#### **SECTION A**            **GENERAL STANDARDS**

In ALL Areas of Special Flood Hazard the following provisions are required:

- (1) New construction and substantial improvements of existing structures shall be anchored to prevent flotation, collapse and lateral movement of the structure;
- (2) New construction and substantial improvements of existing structures shall be constructed with materials and utility equipment resistant to flood damage;

- (3) New construction and substantial improvements of existing structures shall be constructed by methods and practices that minimize flood damage;
- (4) Elevated Buildings - All New construction and substantial improvements of existing structures that include **ANY fully enclosed area** located below the lowest floor formed by foundation and other exterior walls shall be designed so as to be an unfinished or flood resistant enclosure. The enclosure shall be designed to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of flood waters.
  - (a) Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:
    - (i) Provide a **minimum of two openings** having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
    - (ii) The bottom of all openings shall be no higher than one foot above grade; and,
    - (iii) Openings may be equipped with screens, louvers, valves and other coverings and devices provided they permit the automatic flow of floodwater in both directions.
  - (b) So as not to violate the "Lowest Floor" criteria of this ordinance, the unfinished or flood resistant enclosure shall only be used for parking of vehicles, limited storage of maintenance equipment used in connection with the premises, or entry to the elevated area; and,
  - (c) The interior portion of such enclosed area shall not be partitioned or finished into separate rooms.
- (5) All heating and air conditioning equipment and components, all electrical, ventilation, plumbing, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (6) Manufactured homes shall be anchored to prevent flotation, collapse, and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable State requirements for resisting wind forces.
- (7) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (8) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;

- (9) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding, and;
- (10) Any alteration, repair, reconstruction or improvement to a structure which is not compliant with the provisions of this ordinance, shall be undertaken only if the non- conformity is not furthered, extended or replaced.

## **SECTION B**                    **SPECIFIC STANDARDS**

In ALL Areas of Special Flood Hazard designated as A1-30, AE, AH, A (with estimated BFE), the following provisions are required:

- (1) New construction and substantial improvements - Where base flood elevation data are available, new construction and substantial improvement of any structure or manufactured home **shall have the lowest floor, including basement, elevated no lower than one foot above the base flood elevation.** Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of flood waters shall be provided in accordance with standards of Article 4, Section A(4), "Elevated Buildings."
- (2) Non-Residential Construction - New construction and substantial improvement of any non-residential structure located in A1-30, AE, or AH zones, may be flood-proofed in lieu of elevation. **The structure, together with attendant utility and sanitary facilities, must be designed to be water tight to one (1) foot above the base flood elevation,** with walls substantially impermeable to the passage of water, and structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions above, and shall provide such certification to the official as set forth above and in Article 3, Section C (6).
- (3) Standards for Manufactured Homes and Recreational Vehicles - Where base flood elevation data are available:
  - (a) All manufactured homes placed and substantially improved on: (i) individual lots or parcels, (ii) in new or substantially improved manufactured home parks or subdivisions, (iii) in expansions to existing manufactured home parks or subdivisions, or (iv) on a site in an existing manufactured home park or subdivision where a manufactured home has incurred "substantial damage" as the result of a flood, must have the lowest floor including basement elevated no lower than one foot above the base flood elevation.
  - (b) Manufactured homes placed and substantially improved in an existing manufactured home park or subdivision may be elevated so that either:

- (i) The lowest floor of the manufactured home is elevated no lower than one foot above the level of the base flood elevation, or
  - (ii) Where no Base Flood Elevation exists, the manufactured home chassis and supporting equipment is supported by reinforced piers or other foundation elements of at least equivalent strength and is elevated to a maximum of 60 inches (five feet) above grade.
- (c) All Manufactured homes must be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. (Refer: Article 4, Section A)
- (d) All recreational vehicles placed on sites must either:
- (i) Be on the site for fewer than 180 consecutive days, fully licensed and ready for highway use if it is licensed, on it's wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached structures or additions; or
  - (ii) The recreational vehicle must meet all the requirements for "New Construction," including the anchoring and elevation requirements of Article 4 Section B (3)(a)(c), above.

(4) **STANDARDS FOR SUBDIVISIONS**

- (a) All subdivision proposals shall be consistent with the need to minimize flood damage;
- (b) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
- (c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards, and;
- (d) Base flood elevation data shall be provided for subdivision proposals and all other proposed development, including manufactured home parks and subdivisions, greater than fifty (50) lots or five (5) acres, whichever is the lesser.

## **SECTION C**

## **FLOODWAYS**

- (1) **Floodway:** Located within Areas of Special Flood Hazard established in Article 2, Section B, are areas designated as floodway. A floodway may be an extremely hazardous area due to velocity floodwaters, debris or erosion potential. In addition, the area must remain free of encroachment in order to allow for the discharge of the base flood without increased flood heights. Therefore, the following provisions shall apply:
  - (a) The community shall select and adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood, without increasing the water surface elevation of that flood more than one foot at any point;
  - (b) Encroachments are prohibited, including fill, new construction, substantial improvements or other development within the adopted regulatory floodway. Development may be permitted however, provided it is demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the encroachment **shall not result in any increase** in flood levels or floodway widths during a base flood discharge. A registered professional engineer must provide supporting technical data and certification thereof;
  - (c) A community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional FIRM and floodway revision, fulfills the requirements for such revisions as established under the provisions of § 65.12, and receives the approval of the Administrator.
  - (d) Require, until a regulatory floodway is designated, that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than **one foot** at any point within the community.
  - (e) **ONLY** if Article 4 (C)(1)(b), (c) or (d), above are satisfied, then any new construction or substantial improvement shall comply with all other applicable flood hazard reduction provisions of Article 4.



**SECTION D**                    **BUILDING STANDARDS FOR STREAMS WITHOUT ESTABLISHED BASE FLOOD ELEVATIONS (APPROXIMATE A-ZONES)**

Located within the Areas of Special Flood Hazard established in Article 2, Section B, where streams exist but no base flood data have been provided (Approximate A-Zones), the following provisions apply:

- (1) When base flood elevation data or floodway data have not been provided in accordance with Article 2(B), then the Floodplain Administrator shall obtain, review, and reasonably utilize any scientific or historic Base Flood Elevation and floodway data available from a Federal, State, or other source, in order to administer the provisions of Article 4. ONLY if data are not available from these sources, then the following provisions (2&4) shall apply:
- (2) No encroachments, including structures or fill material, shall be located within an area equal to the width of the stream or twenty-five feet, whichever is greater, measured from the top of the stream bank, unless certification by a registered professional engineer is provided demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (3) All development in Zone A must meet the requirements of Article 4, Section A and Section B (1) through (4).
- (4) In special flood hazard areas without base flood elevation data, new construction and substantial improvements of existing structures shall have the lowest floor of the lowest enclosed area (including basement) elevated no less than three (3) feet above the highest adjacent grade at the building site. Also, in the absence of a base flood elevation, a manufactured home must also meet the elevation requirements of Article 4, Section B, Paragraph (3)(b)(ii) in that the structure must be elevated to a maximum of 60 inches (5 feet). Openings sufficient to facilitate the unimpeded movements of flood waters shall be provided in accordance with standards of Article 4, Section A (4) "Elevated Buildings".

The Floodplain Administrator shall require a registered surveyor or engineer to provide certification of the lowest floor elevation level and the record shall become a permanent part of the permit file.

## **SECTION E STANDARDS FOR AREAS OF SHALLOW FLOODING (AO ZONES)**

Areas of Special Flood Hazard established in Article 2, Section B, may include designated "AO" shallow flooding areas. These areas have base flood depths of one to three feet (1'-3') above ground, with no clearly defined channel. The following provisions apply:

- (1) All new construction and substantial improvements of residential and non-residential structures shall have the lowest floor, including basement, elevated to the flood depth number specified on the Flood Insurance Rate Map (FIRM) above the highest adjacent grade. **If no flood depth number is specified, the lowest floor, including basement, shall be elevated at least Two (2) feet above the highest adjacent grade.** Openings sufficient to facilitate the unimpeded movements of flood waters shall be provided in accordance with standards of Article 4, Section A(4), "Elevated Buildings".

The Floodplain Administrator shall require a registered surveyor or engineer to provide certification of the lowest floor elevation level and the record shall become a permanent part of the permit file.

- (2) New construction and the substantial improvement of a non-residential structure may be flood-proofed in lieu of elevation. **The structure, together with attendant utility and sanitary facilities, must be designed to be water tight to the specified FIRM flood level or two (2) feet (if no map elevation is listed), above highest adjacent grade,** with walls substantially impermeable to the passage of water, and structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions above, and shall provide such certification to the official as set forth above and as required in Articles 3(B)(1)(c) and (3)(B)(2).
- (3) Drainage paths shall be provided to guide floodwater around and away from any proposed structure.

## **ARTICLE 5**

## **VARIANCE PROCEDURES**

- (A) The Flood Hazard Appeal Board (Vestavia Hills Board of Zoning Adjustment) as established by the Vestavia Hills City Council shall hear and decide requests for appeals or variance from the requirements of this ordinance.
- (B) The board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the Floodplain Administrator in the enforcement or administration of this ordinance.
- (C) Any person aggrieved by the decision of the Flood Hazard Appeal Board may appeal such decision to the Jefferson County Civil Court as provided in *Code of Alabama, 1975*.
- (D) Variances may be issued for the repair or rehabilitation of Historic Structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum to preserve the historic character and design of the structure.
- (E) Variances may be issued for development necessary for the conduct of a functionally dependent use, provided the criteria of this Article are met, no reasonable alternative exists, and the development is protected by methods that minimize flood damage during the base flood and create no additional threats to public safety.
- (F) Variances shall not be issued within any designated floodway if ANY increase in flood levels during the base flood discharge would result.
- (G) In reviewing such requests, the Flood Hazard Appeal Board shall consider all technical evaluations, relevant factors, and all standards specified in this and other sections of this ordinance.
- (H) **Conditions for Variances:**
  - (1) **A variance shall be issued ONLY when there is:**
    - (i) a finding of good and sufficient cause,
    - (ii) a determination that failure to grant the variance would result in exceptional hardship; and,
    - (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or

victimization of the public, or conflict with existing local laws or ordinances.

- (2) The provisions of this Ordinance are minimum standards for flood loss reduction, therefore any deviation from the standards must be weighed carefully. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief; and, in the instance of a Historic Structure, a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the building.
  - (3) **Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation of the proposed lowest floor and stating that the cost of flood insurance will be commensurate with the increased risk to life and property resulting from the reduced lowest floor elevation.**
  - (4) The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the Alabama Department of Economic and Community Affairs/Office of Water Resources upon request.
- (I) Upon consideration of the factors listed above and the purposes of this ordinance, the Flood Hazard Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

## **ARTICLE 6**            **DEFINITIONS**

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

**"Addition (to an existing building)"** means any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a fire wall. Any walled and roofed addition which is connected by a fire wall or is separated by an independent perimeter load-bearing wall shall be considered "New Construction".

**"Appeal"** means a request for a review of the Floodplain Administrator's or Flood Hazard Appeal Board's interpretation of any provision of this ordinance.

**"Area of shallow flooding"** means a designated AO or AH Zone on a community's Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet, and/or where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

**"Area of special flood hazard"** is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. In the absence of official designation by the Federal Emergency Management Agency, Areas of Special Flood Hazard shall be those designated by the local community and referenced in Article 2, Section B.

**"Base flood"** means the flood having a one percent chance of being equaled or exceeded in any given year.

**"Basement"** means that portion of a building having its floor sub grade (below ground level) on all sides.

**"Building"** means any structure built for support, shelter, or enclosure for any occupancy or storage.

**"Development"** means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations, and storage of equipment or materials.

**"Elevated building"** means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, pilings, posts, columns, piers, or shear walls.

**"Existing Construction"** Any structure for which the "start of construction" commenced before April 21, 1997.

**"Existing manufactured home park or subdivision"** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction of streets, and final site grading or the pouring of concrete pads) is completed before April 21, 1997.

**"Expansion to an existing manufactured home park or subdivision"** means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed, including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads.

**"Flood" or "flooding"** means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- a. the overflow of inland or tidal waters; or
- b. the unusual and rapid accumulation or runoff of surface waters from any source.

**"Flood Hazard Boundary Map (FHBM)"** means an official map of a community, issued by the Federal Insurance Administration, where the boundaries of areas of special flood hazard have been designated as Zone A.

**"Flood Insurance Rate Map (FIRM)"** means an official map of a community, on which the Federal Emergency Management Agency has delineated the areas of special flood hazard and/or risk premium zones applicable to the community.

**"Flood Insurance Study"/ "Flood Elevation Study"** means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide and/or flood-related erosion hazards.

**"Floodplain"** means any land area susceptible to being inundated by water from any source.

**"Floodway" (Regulatory Floodway)** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

**"Functionally dependent facility"** means a facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facility that are necessary for the loading and unloading of cargo or passengers, and shipbuilding, and ship repair facilities. The term does not include long-term storage or related manufacturing facilities.

**"Highest adjacent grade"** means the highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

**"Historic Structure"** means any structure that is;

- a. Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register:
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district:
- c. Individually listed on a state inventory of historic places and determined as eligible by states with historic preservation programs which have been approved by the Secretary of the Interior; or
- d. Individually listed on a local inventory of historic places and determined as eligible by communities with historic preservation programs that have been certified either:
  1. By an approved state program as determined by the Secretary of the Interior, or
  2. Directly by the Secretary of the Interior in states without approved programs.

**Levee** means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

**Levee System** means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

**Lowest floor** means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage, in an area other than a basement, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of other provisions of this code.

**"Manufactured home"** means a building, transportable in one or more section, built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailers, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.

**Manufactured Home Park or Subdivision** means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**"Mean Sea Level"** means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this ordinance, the term is synonymous with National Geodetic Vertical Datum (NGVD) of 1929 or other datum.

**"National Geodetic Vertical Datum (NGVD)"** as corrected in 1929 is a vertical control used as a reference for establishing varying elevations within the floodplain.

**"New construction" means** ANY structure (see definition) for which the "start of construction" commenced after April 21, 1997, and includes any subsequent improvements to the structure.

**"New manufactured home park or subdivision"** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after April 21, 1997.

**"Repetitive Loss"** means flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damages occurred.



**"Recreational vehicle"** means a vehicle which is:

- a. Built on a single chassis;
- b. 400 square feet or less when measured at the largest horizontal projection;
- c. Designed to be self-propelled or permanently towable by a light duty truck; and
- d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**"Remedy a violation"** means to bring the structure or other development into compliance with State or local flood plain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

**Section 1316:** No new flood insurance shall be provided for any property which the Administrator finds has been declared by a duly constituted State or local zoning authority or other authorized public body, to be in violation of State or local laws, regulations or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.

**"Start of construction"** means the date the development permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of the structure such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation, and includes the placement of a manufactured home on a foundation. (Permanent construction does not include initial land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of buildings appurtenant to the permitted structure, such as garages or sheds not occupied as dwelling units or part of the main structure. (NOTE: accessory structures are NOT exempt from any ordinance requirements) For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**"Structure"** means a walled and roofed building that is principally above ground, a manufactured home, a gas or liquid storage tank.

**"Substantial damage"** means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. Substantial damage also means flood related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damages occurred.

**"Substantial improvement"** means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "repetitive loss" or "substantial damage", regardless of the actual repair work performed. The market value of the building should be (1) the appraised value of the structure prior to the start of the initial repair or improvement, or (2) in the case of damage, the value of the structure prior to the damage occurring. This term includes structures which have incurred "substantial damage", regardless of the actual amount of repair work performed.

For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the building. The term does not, however, include either: (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or; (2) Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

**"Substantially improved existing manufactured home parks or subdivisions"** is where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds 50 percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

**"Variance"** is a grant of relief from the requirements of this ordinance which permits construction in a manner otherwise prohibited by this ordinance.

**"Violation"** means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in the Code of Federal Regulations (CFR) §44, Sec. 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) and corresponding parts of this ordinance is presumed to be in violation until such time as that documentation is provided.

**ARTICLE 7            SEVERABILITY**

If any section, clause, sentence, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

**DONE, ORDERED, ADOPTED and APPROVED** this the 28<sup>th</sup> day of January, 2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**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 # 2429 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 28<sup>th</sup> day of January, 2013 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 \_\_\_\_\_, 2013.

Rebecca Leavings  
City Clerk



**FEMA**

JAN 04 2013

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

The Honorable Charles A. McCallum  
Mayor, City of Vestavia Hills  
513 Montgomery Highway  
Vestavia Hills, Alabama 35216

Dear Mayor McCallum:

I am writing this letter as an official reminder that the City of Vestavia Hills, Alabama, has until February 20, 2013, to adopt and have the Department of Homeland Security's Federal Emergency Management Agency (FEMA) Regional Office approve floodplain management measures that satisfy 44 Code of Federal Regulations (CFR) Section 60.3(d) of the National Flood Insurance Program (NFIP) regulations.

The City of Vestavia Hills must adopt floodplain management measures, such as a floodplain management ordinance, that meet or exceed the minimum NFIP requirements (copy enclosed) by February 20, 2013, to avoid suspension from the NFIP. If suspended, your community becomes ineligible for flood insurance through the NFIP, new insurance policies cannot be sold, and existing policies cannot be renewed.

The NFIP State Coordinating Office for your State has verified that Alabama communities may include language in their floodplain management measures that automatically adopt the most recently available flood elevation data provided by FEMA. Your community's floodplain management measures may already be sufficient if the measures include suitable automatic adoption language and are otherwise in accordance with the minimum requirements of the NFIP. The NFIP State Coordinator can assist you further in clarifying questions you may have about automatic adoption.

Under the Flood Disaster Protection Act of 1973, as amended, flood insurance must be purchased by property owners seeking any Federal financial assistance for construction or acquisition of buildings in SFHAs. This financial assistance includes certain federally guaranteed mortgages and direct loans, federal disaster relief loans and grants, as well as other similarly described assistance from FEMA and other agencies.

In addition, all loans individuals obtain from Federally regulated, supervised, or insured lending institutions that are secured by improved real estate located in SFHAs are also contingent upon the borrower obtaining flood insurance coverage on the building. However, purchasing and maintaining flood insurance coverage on a voluntary basis is frequently recommended for properties located outside SFHAs.

The Honorable Charles A. McCallum

JAN 04 2013

Page 2

Your NFIP State Coordinator and FEMA would like to assist the City of Vestavia Hills to ensure it remains in good standing with the NFIP and avoids suspension from the Program. If your community is suspended, it may regain its eligibility in the NFIP by enacting the floodplain management measures established in 44 CFR Section 60.3 of the NFIP regulations. As stated in my previous correspondence, I recommend you contact your NFIP State Coordinator or the FEMA Regional Office if the City of Vestavia Hills is encountering difficulties in enacting its measures.

I recognize that your community may be in the final adoption process or may have recently adopted the appropriate floodplain management measures. Please submit these measures to the Floodplain Management Program at the Alabama Department of Economic and Community Affairs. Ken Meredith, CFM, the NFIP State Coordinator, is accessible by telephone at (334) 353-0853, in writing at Post Office Box 5690, Montgomery, Alabama 36103, or by electronic mail at [ken.meredith@adeca.alabama.gov](mailto:ken.meredith@adeca.alabama.gov).

The FEMA Regional staff in Atlanta, Georgia, is also available to assist you with your floodplain management measures. The FEMA Regional Office may be contacted by telephone at (770) 220-5200 or in writing. Please send your written inquiries to the Director, Federal Insurance and Mitigation Division, FEMA Region IV, at 3003 Chamblee-Tucker Road, Atlanta, Georgia 30341.

In the event your community does not adopt and/or submit the necessary floodplain management measures that meet or exceed the minimum NFIP requirements, I must take the necessary steps to suspend your community from the NFIP. This letter is FEMA's final notification before your community is suspended from the Program.

Sincerely,



David H. Stearrett, CFM, Chief  
Floodplain Management Branch  
Federal Insurance and Mitigation Administration

Enclosure

cc: Major P. May, Regional Administrator, FEMA Region IV  
Ken Meredith, CFM, NFIP State Coordinator, Alabama Department of Economic and  
Community Affairs  
Christopher Brady, City Engineer, City of Vestavia Hills

**RESOLUTION NUMBER 4394**

**A RESOLUTION APPROVING ALCOHOL LICENSE  
FOR GOLDEN HARVEST CULINARY INC., D/B/A  
LA CATRINA MEXICAN CANTINA; TOSHIMI  
HIRA, EXECUTIVE**

**WHEREAS**, the City Council of the City of Vestavia Hills, Alabama, approves the alcohol license for Golden Harvest Culinary Inc. d/b/a La Catrina Mexican Cantina, located at 2409 Acton Road; Suite 127, Vestavia Hills, Alabama, for the on-premise sale of 020 - Restaurant Retail Liquor; Toshimi Hira, executive.



**APPROVED and ADOPTED** this the 28th day of January 2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

# INTEROFFICE MEMORANDUM

**DATE:** January 18, 2013  
**TO:** Dan Rary, ~~Acting~~ Police Chief   
**FROM:** Rebecca Leavings, City Clerk   
**RE:** Alcohol License Request – 020 - Restaurant Retail Liquor


Please find attached information submitted by Toshimi Hira who request an alcohol license to sell 020 - Restaurant Retail Liquor at the La Catrina Mexican Cantina, 2409 Acton Road; Suite 127, Vestavia Hills, Alabama.

I am scheduling this case to be heard by the City Council on 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 <b>NO</b> 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: 20130115100930620**

**Type License:** 020 - RESTAURANT RETAIL LIQUOR      **State:** \$300.00 **County:** \$300.00

**Type License:**      **State:**      **County:**

**Trade Name:** LA CATRINA MEXICAN CANTINA      **Filing Fee:** \$50.00

**Applicant:** GOLDEN HARVEST CULINARY INC      **Transfer Fee:**

**Location Address:** 2409 ACTON RD ; SUITE 127 VESTAVIA HILLS, AL 35243

**Mailing Address:** 5000 RICHARD ARRINGTON JR BLVD N BIRMINGHAM, AL 35212

**County:** JEFFERSON **Tobacco sales:** NO      **Tobacco Vending Machines:**

**Sale of Products Containing Ephedrine:** NO      **Type Ownership:** CORPORATION

**Book, Page, or Document info:** LR200805 6727      **Do you sell Draft Beer:** Y

**Date Incorporated:** 04/18/2008 **State incorporated:** AL      **County Incorporated:** JEFFERSON

**Date of Authority:** 04/18/2008      **Alabama State Sales Tax ID:** R000735343

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

Name:	Title:	Date and Place of Birth:	Residence Address:
TOSHIMI HIRA 910233020 - AR	PRESIDENT	08/06/1974 MEXICO CITY, MEXICO	5000 RICHARD ARRINGTON JR BLVD N BIRMINGHAM, AL 35212

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:** TOSHIMI HIRA

**Business Phone:** 501-681-6738

**Fax:**

**Home Phone:** 501-681-6738

**Cell Phone:** 501-681-6738

**E-mail:** TOSHIMI@HIRASGROUP.COM

**PREVIOUS LICENSE INFORMATION:**

**Trade Name:** BLACK JACK GRILLE

**Applicant:** E K RESTAURANTS LLC

**Previous License Number(s)**

**License 1:** 002169537

**License 2:**





**STATE OF ALABAMA**  
**ALCOHOLIC BEVERAGE CONTROL BOARD**  
**ALCOHOL LICENSE APPLICATION**



**Confirmation Number: 20130115100930620**

**Initial each**

**Signature page**

TH  
 TH

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.

TH

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.

/

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.

/

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

/

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

TH

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.

TH

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

forementioned 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.

TH

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.

TH

Applicant Name (print): **TOSHIMI HIRA**

Signature of Applicant: *[Handwritten Signature]*

Notary Name (print): **Valencia Johnson**

Notary Signature: *[Handwritten Signature]*

Commission expires: **1-4-14**

**Application Taken: 1-15-13**      **App. Inv. Completed:**

**Submitted to Local Government:**

**Forwarded to District Office:**

**Received from Local Government:**

**Received in District Office:**

**Reviewed by Supervisor:**

**Forwarded to Central Office:**



**STATE OF ALABAMA**  
**ALCOHOLIC BEVERAGE CONTROL BOARD**  
**ALCOHOL LICENSE APPLICATION**



**Confirmation Number: 20130115100930620**

If applicant is leasing the property, is a copy of the lease agreement attached? **YES**  
 Name of Property owner/lessor and phone number: **BRC DOLLY CREEK STATION 205-789-6872**  
 What is lessors primary business? **SHOPPING CENTER**  
 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: **2800** Display Square Footage:  
 Building seating capacity: **75** Does Licensed premises include a patio area? **YES**  
 License Structure: **ONE STORY** License covers: **ENTIRE STRUCTURE**  
 Number of licenses in the vicinity: **3** Nearest: **1**  
 Nearest school: **2 blocks** Nearest church: **2 blocks** Nearest residence: **2 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)?

<b>Name:</b>	<b>Violation &amp; Date:</b>	<b>Arresting Agency:</b>	<b>Disposition:</b>

[Main Menu](#)

**Application Payment Receipt Confirmation Page**

**Receipt Confirmation Number: 20130115100930620**  
**Application Payment Confirmation Number: 4816654**

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

**Application Information**

Application Type: APPLICATION  
License Type 1: 020 - RESTAURANT RETAIL LIQUOR

Technical Support: 866-353-3468 or [support@alabamainteractive.org](mailto:support@alabamainteractive.org)

Version 1.8.7

Receipt Confirmation Page

Receipt Confirmation Number: **20130115100930620**  
Application Payment Confirmation Number: **4816654**

Payment Summary	
Payment Item	Fee
Application Fee for License 020	\$50.00
<b>Total Amount to be Charged:</b>	<b>\$50.00</b>

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
<b>Total Amount to be Charged:</b>	<b>\$300.00</b>	<b>\$300.00</b>	<b>\$600.00</b>

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: **LA CATRINA MEXICAN CANTINA**  
Applicant Name: **GOLDEN HARVEST CULINARY INC**  
Location Address: 2409 ACTON RD ; SUITE 127  
VESTAVIA HILLS, AL 35243  
  
Mailing Address: 5000 RICHARD ARRINGTON JR BLVD N  
BIRMINGHAM, AL 35212  
  
Contact Person: TOSHIMI HIRA  
Contact Home Phone: 501-681-6738  
Contact Business Phone: 501-681-6738  
Contact Fax:  
Contact Cell Phone: 501-681-6738  
Contact Email Address:  
Contact Web Address:

**RESOLUTION NUMBER 4395**

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY  
MANAGER TO ENTER INTO AN AGREEMENT WITH THE  
SHOPPING CENTER GROUP, LLC (TSCG) FOR RETAIL  
CONSULTING SERVICES UTILIZING GIS TECHNOLOGIES**

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

1. The Mayor and City Manager are hereby authorized to enter into an agreement with The Shopping Center Group LLC (TSCG) for retail consultant services in an amount not to exceed \$15,750.00; and
2. A copy of said agreement is hereby attached to and incorporated into this Resolution Number 4395 as though written fully therein; and
3. This Resolution Number 4395 shall become effective immediately upon adoption and approval.

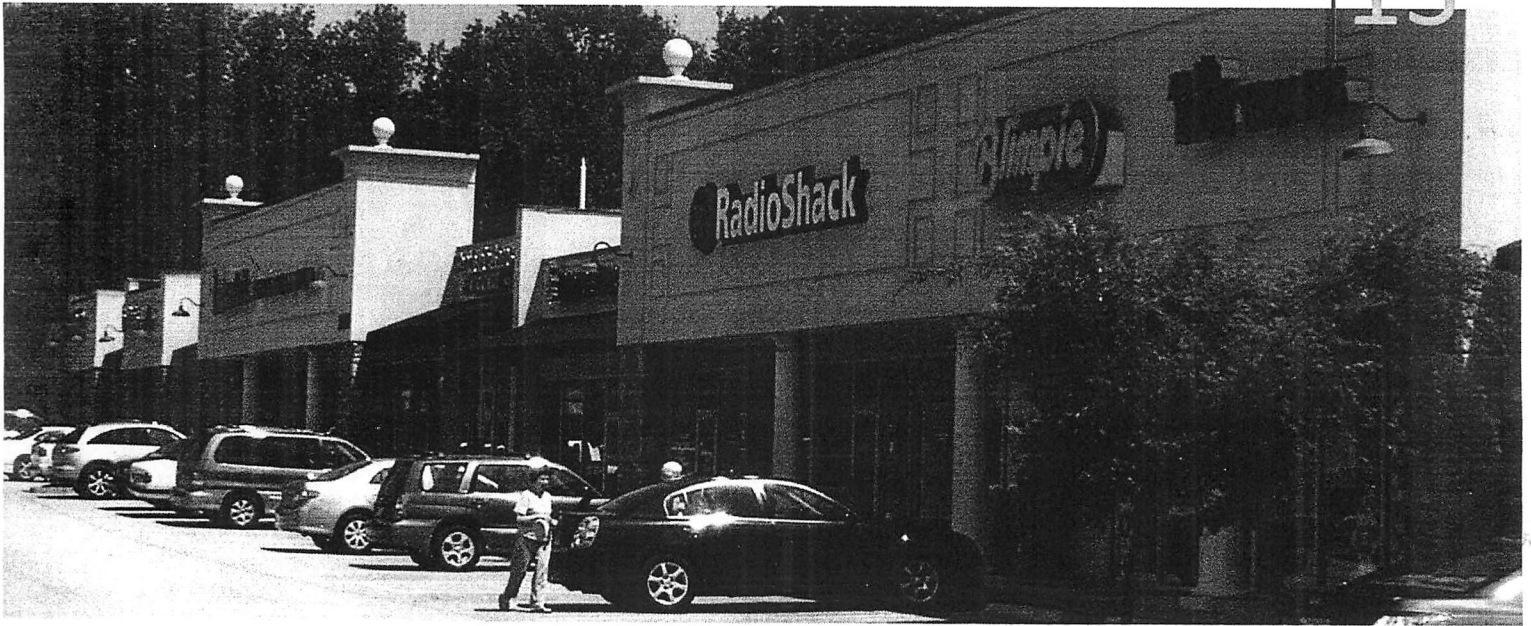
**DONE, ORDERED, ADOPTED and APPROVED** this the 28<sup>th</sup> day of January, 2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk





## Retail Recruitment for Vestavia Hills, Alabama

### Overview of the Proposal

Since 1983, The Shopping Center Group (TSCG) has provided a full assortment of retail real estate brokerage services to retailers, landlords, major developers, investors and financial institutions throughout the Southeast and Mid-Atlantic regions. We have earned our reputation of delivering best in class service in tenant representation, project leasing, property management, development assistance, investment sales and finance. Our approach is service oriented and our commitment to our clients' success in regional expansion plans is uncompromising. As an expert on retail and GIS services used in the retail industry, The Shopping Center Group is honored to present a proposal of products we can provide for Vestavia Hills, Alabama to assist in your retail development marketing plan.

## Retail Recruitment Marketing Materials

The Shopping Center Group, LLC (TSCG) will partner with Vestavia Hills to determine the best practices and materials for local retail recruitment. TSCG's success in the Southeast is attributed to hands-on brokers in local markets developing specific, proven strategies for clients. Using Geographic Information Systems (GIS) resources that rank among the top in the country, TSCG will produce a variety of resources essential to retailers' decision making process for new locations. TSCG recommends Vestavia Hills use the following marketing materials specific to your community's needs.

<b>Recommended Deliverables</b>	<b>\$ 39,500.00</b>
<b>Regional Trade Area Map</b>	
Vestavia Hills in relation to all major anchor retail concepts in Alabama. Customized primary and secondary trade area for included with demographic reports.	
<b>Aerial Overview – Total of 8 Aerial Maps</b>	
One 36"x48" & Seven 11"x17" Aerial Maps with Traffic, Retail, Restaurant, Schools, Major Employers Within the Seven Defined Zones	
<b>Map and Demographic Reports: From 7 Different Points of Interest</b>	
~ Radius Rings: 3, 5, 7, 10 Miles	
~ Drive Times: 5, 10, 15, 20 Minutes	
~ Drive Distance: 5, 10, 20, 30 Miles	
<b>Existing and Potential Business Report</b>	
~ Leakage Report showing retail categories with greatest potential for success	
~ Business Report (excel database) of existing Vestavia Hills retail businesses with contact information, estimated number of employees and estimated sales volumes.	
~ Business Report of similar size communities' businesses with contact information for local and regional businesses who may want to expand in Vestavia Hills.	
<b>Thematic Maps of Vestavia Hills</b>	
Median HH Income, Population Density, Daytime Population, Age and 5 Year Population Growth Projections	
<b>Daytime Population Maps: School Map &amp; Employer Map</b>	
- City wide map plotting schools with enrollment and traffic counts	
- City wide map plotting major employers with # employees and traffic counts	
<b>Marketing Flyer</b>	
8.5x11 duplex promotional piece highlighting key components of the study one each of the seven defined zones	
<b>Sites Flyer</b>	
— Double sided 11x17 flyer marketing 9-12 commercial properties defined by city.	
<b>Lifestyle Report</b>	
Defining the dominate mosaic lifestyle of a typical Vestavia Hills consumer.	
<b>Ongoing Assistance</b>	
<i>Up to 3 demographic reports per a month upon request. Retailers' contact information provided upon request. ICSC Convention assistance. Recommendations for expanding retail concepts. Available assistance as needed for retail oriented information.</i>	
<b>SUBTOTAL</b>	<b>\$ 39,500.00</b>
<b>DISCOUNT for ELIMINATED DELIVERABLES</b>	<b>\$ - 23,750.00</b>
<b>2013 TOTAL</b>	<b>\$ 15,750.00</b>

## *Timeline for Retail Recruitment Consultant Study & Marketing Materials for Vestavia Hills, Alabama*

Following please find the details in regard to timing of product delivery:

### DEFINITIONS AND TERMS

**COMPANY:** THE SHOPPING CENTER GROUP, LLC, a Georgia limited liability company  
c/o Lacy Beasley and or as assigns

**CLIENT:** City of Vestavia Hills, Alabama  
c/o Fred Baughman and or as assigns

**STUDY:** RETAIL RECRUITMENT CONSULTANT SERVICES AND PRODUCTS

<i>Date</i>	<i>Action</i>
DAY 1	Company receives executed contract
DAY 2	Company sends (via email) invoice for first half consultant fees to Client
DAY 15	Company sends a list of all information needed from Client to begin Study
DAY 30	<u>CLIENT</u> returns all requested information to Company
DAY 60	Company delivers first draft of Study to Client
DAY 75	<u>CLIENT</u> returns one list with all requested changes and maps with revisions marked
DAY 90	Company delivers final and complete Study
DAY 90	Company sends (via email) invoice for second half consultant fees to Client



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## Terms of Agreement

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It is with great pleasure that we begin a new partnership with you as a client of The Shopping Center Group's (TSCG) GIS services. We are excited about your enthusiasm and look forward to a long-term mutually beneficial relationship. Herein you will find the key points relative to our working arrangement. If it meets with your approval please acknowledge where indicated and return one copy to me.

1. **Marketing Package:** The maps and demographics will be provided in electronic (pdf) form plus 5 bound books and 5 flash drives. Additional copies can be provided for \$85 each. Files can be printed at will and placed on website.
2. **Agreement to Amount:** Agency hereby agrees to pay TSCG in the amount agreed to in mentioned deliverables and quote. Research provided by TSCG may result in additional expense.
3. **Timing of Payment:** The amount shall be due and payable to TSCG one half (1/2) within thirty (30) days of contract execution, and one half (1/2) within thirty (30) days of Agency taking possession of the materials. An invoice will be sent by TSCG when amounts are due.
4. **Agency Performance:** TSCG shall not be required to make any investigations, warranty or representation with respect to the financial condition of any proposed Agency and partners or its ability to perform its obligations. By recognizing TSCG as being entitled to above agreed amount for services rendered, Agency does not expect, depend or rely upon any warranty, representation or investigation by TSCG of the financial condition of any proposed Agency, or agency partners, or its ability to perform its obligations.
5. **Terms:** The Agreement will become effective upon date of execution by both parties. Information maps (i.e. businesses, schools, employers, traffic) can be updated at no charge during the term of this agreement.
6. **Default:** In the event Agency fails to make payments within the time limits set forth herein, then from the date due until paid, the delinquent amount shall bear interest at the rate of one and one-half percent (1-1/2%) per month. If TSCG shall engage an attorney to collect any unpaid amount due hereunder, the Agency shall pay to TSCG, in addition to such unpaid amount plus interest, reasonable attorney's fee and all expenses incurred by such attorney in connection with collection of such amount so due.

APPROVED this 2<sup>nd</sup> day of January 2013\*

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

TSCG: The Shopping Center Group, LLC

Agency: \_\_\_\_\_

Tax ID# 59-3708465

By: 

By: \_\_\_\_\_

Its: Associate

Its: \_\_\_\_\_

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**From:** Fred Baughman  
**Sent:** Wednesday, January 09, 2013 8:34 AM  
**To:** Rebecca Leavings  
**Cc:** Randy Robertson  
**Subject:** TSCG Agreement

Good Morning Ms. Leavings,

It is my understanding that the agreement with The Shopping Center Group will be on the City Council agenda for the meeting of January 28, 2013. That is the meeting I have asked representatives of TSCG to attend. Also, TSCG is putting together a proposal booklet for the Council members and I am to get it on Thursday of this week.

Thanks!  
Fred

Fred Baughman  
Economic Development Director  
City of Vestavia Hills  
513 Montgomery Highway  
Vestavia Hills, Alabama 35216  
(205) 978-0104 (direct)  
(205) 420-2423 (cell)  
[fbaughman@ci.vestaviiahills.al.us](mailto:fbaughman@ci.vestaviiahills.al.us)

**These funds are budgeted in the Economic Development budget**

PATRICK H. BOONE  
ATTORNEY AND COUNSELOR AT LAW  
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705  
215 RICHARD ARRINGTON, JR. BOULEVARD NORTH  
BIRMINGHAM, ALABAMA 35203-3720

TELEPHONE (205) 324-2018

FACSIMILE (205) 324-2295

January 8, 2013

By Hand Delivery

Mr. Fred Baughman  
Economic Development Director  
Vestavia Hills Municipal Center  
P. O. Box 660854  
Vestavia Hills, Alabama 35266-0854

In Re: Agreement By and Between the City of Vestavia Hills, Alabama  
and The Shopping Center Group, LLC

Dear Mr. Baughman:

On January 4, 2013, your furnished me via electronic mail with a copy of a proposed contract by and between the City of Vestavia Hills, Alabama ("City") and The Shopping Center Group, LLC ("TSCG") with a request that I review the Agreement and provide you with my written legal opinion. The purpose of this letter is to comply with your request.

**I. FACTS**

The Shopping Center Group, LLC ("TSCG") proposes to provide retail attraction services for the City of Vestavia Hills ("City") for and in consideration of the sum of \$15,750.00.

**II. LEGAL ISSUE ONE**

**A. LEGAL QUESTION ONE:** Is the Agreement subject to the Alabama Competitive Bid Law?

**B. ANSWER TO LEGAL QUESTION ONE:** In my opinion, the answer to Legal Question One is in the negative.

C. **BASIS FOR LEGAL OPINION:** The Alabama Competitive Bid Law at Title 41-16-20, *Code of Alabama, 1975*, reads in pertinent parts as follows:

“(a) With the exception of contracts for public works whose competitive bidding requirements are governed exclusively by Title 39, all expenditure of funds of whatever nature for **labor, services, work**, or for the purchase of materials, equipment, supplies, or other personal property involving fifteen thousand dollars (\$15,000) or more, and the lease of materials, equipment, supplies, or other personal property where the lessee is, or becomes legally and contractually, bound under the terms of the lease, to pay a total amount of fifteen thousand dollars (\$15,000) or more, made by or on behalf of any...governing bodies of the municipalities of the state...shall be made under contractual agreement entered into by free and open competitive bidding, on sealed bids, to the lowest responsible bidder.”

The fact that the contract price amounts to \$15,750.00 would lead one to believe that the City must invite competitive bids and award the contract to the lowest responsible bidder. However, Title 41-16-51(a)(3), *Code of Alabama, 1975*, exempts this agreement from the Alabama Competitive Bid Law and reads as follows:

“(3) Contracts for securing services of attorneys, physicians, architects, teachers, superintendents of construction, artists, appraisers, engineers, **consultants**, certified public accountants, public accountants, or other individuals possessing a high degree of professional skill where the personality of the individual plays a decisive part.”

### III. **LEGAL ISSUE TWO**

A. **LEGAL QUESTION TWO:** What is the legal process for approving the execution and delivery of the agreement?

B. **ANSWER TO LEGAL QUESTION TWO:** The process for approving this agreement is as follows:

+

1. **Municipal Contracts Must Be in Writing:** Title 11-47-5, *Code of Alabama, 1975*, provides that all municipal contracts must be in writing and 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.”

2. **Process of Approving the Execution and Delivery of a Municipal Contract:** Municipal contracting is a two-step procedure requiring cooperation between the mayor and council. The City Council must decide whether the municipality should enter into the contract. After the City Council votes to accept a contract, the mayor must then execute the contract for the municipality. *Town of Boligee v. Greene County Water and Sewer Authority*, 77 So.3d 1166 (2011).

3. **Contracts are Approved by Resolution or Ordinance Enacted by the City Council:** A municipal corporation normally accepts an offer by an acceptance signed by the mayor and the clerk who have been authorized to enter into the agreement and bind the municipality. This authority to the mayor and clerk is given by an ordinance or a resolution passed by the governing body, specifically authorizing and directing them to sign the agreement on behalf of the city. In *Van Antwerp, et al v. Board of Commissioners of City of Mobile, et al*, 217 AL 201, 115 So. 239 (1928), the court stated:

“Unless statutes require contracts to be authorized by ordinance, a proper resolution of the governing body identifying, approving and directing the execution of the contract is sufficient.”

4. **The Mayor Shall Sign All Municipal Contracts:** Title 11-43-83, *Code of Alabama, 1975*, provides that the Mayor shall sign all municipal contracts and reads as follows:

“The mayor shall see that all contracts with the town or city are faithfully kept or performed. He shall execute all deeds and contracts and bonds required in judicial proceedings for and on behalf of the city or town and no sureties shall be required on such bond. He shall perform such other executive duties, in addition to those prescribed in this article, as may be required of him by the council.”

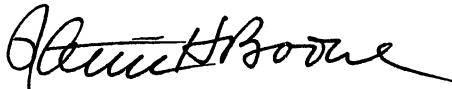
5. **City Manager:** Title 11-43-21(7), *Code of Alabama, 1975*, provides that a city manager has certain authority and reads as follows:

“(7) To make and execute all lawful contracts on behalf of the municipality as to matters within his jurisdiction; provided, that no contract, purchase or obligation involving more than \$100.00 shall be binding until after approval by the governing body.”

#### IV. **CONCLUSION**

It is my legal opinion that the agreement as written meets the requirements of Alabama law. Please call me if you have any questions regarding this matter.

Sincerely,



Patrick H. Boone  
Vestavia Hills City Attorney

PHB:gp

cc: City Manager Randy Robertson (by hand)  
City Clerk Rebecca Leavings (by hand)

**RESOLUTION NUMBER 4396**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO PAY OFF A LEASE ON A 2012 CHEVROLET TAHOE TOTALED IN A VEHICLE ACCIDENT; DECLARING SAID VEHICLE AS SURPLUS AND DIRECTING THE SALE/DISPOSAL OF SAID VEHICLE**

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

1. The City Manager is hereby authorized to pay off a promissory note 443.4003270.004, Asset #256954 to SunTrust Equipment Finance & Leasing Corporation in the amount of \$21,856.85 so that the City may obtain a Certificate of Title on the vehicle; and
2. That said 2012 Chevrolet Tahoe VIN #1GNLC2E08CR188122 shall be declared as surplus and the City Manager shall be authorized to sell and/or dispose of said vehicle as per City policy; and
3. Prior to sale, the Certificate of Title of said vehicle shall be submitted to the State of Alabama for a Salvage Title to allow the vehicle to be sold and/or salvaged pursuant to Alabama law; and
4. This Resolution Number 4396 shall be effective immediately upon adoption and/or approval.

**DONE, ORDERED, ADOPTED and APPROVED** this the 10<sup>th</sup> day of February, 2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

## Rebecca Leavings

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**From:** Tim Holcomb  
**Sent:** Wednesday, January 16, 2013 12:34 PM  
**To:** Randy Robertson  
**Cc:** Danny Rary; Rebecca Leavings  
**Subject:** FW: VIN Number  
**Attachments:** Vestavia Hills,Al - 443-4003270-004 rev.pdf; Remittance Instructions.pdf

Mr. Robertson,

Please see attached pay off quote on Police Unit 104 which was a total loss from a vehicle accident. We are requesting that the balance owed on this vehicle be paid in full, a salvage title be obtained and the vehicle sold. Since these are unbudgeted funds, this requires approval from the City Council. We are requesting that Ms. Leavings include this item on the agenda for the January 28<sup>th</sup> meeting for first read. Please note that the payoff amount is only good through February 15.

Respectfully,

Deputy Chief Tim Holcomb  
Vestavia Hills Police Department  
513 Montgomery Highway  
Vestavia Hills, AL 35216  
Office- (205)978-0111



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**From:** George A. Sawaya  
**Sent:** Wednesday, January 16, 2013 9:45 AM  
**To:** Danny Rary; Tim Holcomb; Rebecca Leavings; Rita Hosmer  
**Subject:** FW: VIN Number

Attached payoff quote from SunTrust on the 2012 Chevy Tahoe.

George A. Sawaya  
Asst. Finance Director  
205-978-0127

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**From:** McClain.Wanda.D [<mailto:Wanda.D.Mcclain@SunTrust.com>]  
**Sent:** Wednesday, January 16, 2013 9:39 AM  
**To:** George A. Sawaya  
**Subject:** RE: VIN Number

Good Morning George,

1/16/2013



SunTrust Equipment Finance & Leasing Corp.  
Hampton Plaza  
300 E. Joppa Road, 7<sup>th</sup> Floor  
Towson, Maryland 21286

Wanda McClain  
Client Services Representative  
(410) 307-6712 (Telephone)  
(410) 307-6713 (Facsimile)  
Wanda.D.McClain@Suntrust.com



January 16, 2013

George Sawaya  
Vestavia Hills, AL, City of  
513 Montgomery Highway  
Vestavia Hills, AL 35216  
VIA EMAIL: asst.trea@ci.vestaviiahills.al.us

RE: Promissory Note 443.4003270.004  
("Promissory Note"), Asset #256954, by and between  
SunTrust Equipment Finance & Leasing Corp  
("Lender"), and Vestavia Hills, AL, City of  
("Borrower").

Dear George:

Lender agrees to relinquish all right, title and interest in the above referenced Promissory Note for asset #256954 in the amount of \$21,856.85 ("Final Payment"). The collateral is listed as a 2012 Chev SUV Tahoe vin# 1GNLC2E08CR188122.

Principal	21,613.78
Interest	<u>243.07</u>
<b>Total</b>	<b>21,856.85</b>

The representations, warranties and covenants of Borrower herein shall be deemed to be continuing and to survive the execution and delivery of this Promissory Note, each Equipment Schedule and any other Loan Documents.

Please forward final payment by wire to the account on the attached sheet by February 15, 2013.

Thank you for your continued business. If you would like to discuss the contents of this letter, please feel free to contact me at (410) 307-6712.

Sincerely,

Wanda McClain  
Client Services Representative

I have reviewed the above terms and, on behalf of Vestavia Hills, AL, City of, agree to them as written.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**RESOLUTION NUMBER 4397**

**A RESOLUTION CHANGING AND ADOPTING AN OFFICIAL  
LOGO FOR THE CITY OF VESTAVIA HILLS, ALABAMA**

**WHEREAS**, the City of Vestavia Hills has utilized certain logos through the years, including some detailed in “Exhibit A,” which is attached and incorporated into this Resolution Number 4397; and

**WHEREAS**, the Market Street Implementation Committee, along with the Vestavia Hills Chamber of Commerce, have requested that the City adopt a new official logo for use in a “branding effort” for the community; and

**WHEREAS**, the requested logo is detailed in “Exhibit B,” which is attached and incorporated into this Resolution Number 4397; and

**WHEREAS**, the Mayor and City Council feel it is in the best public interest to adopt a new official logo for the City as detailed in “Exhibit B.”

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL, AS FOLLOWS:**

1. The logo detailed in the attached “Exhibit B” is hereby adopted and approved as the City of Vestavia Hills official logo; and
2. This logo shall be utilized by the City for all future publications, stationery, etc., which bears a City logo; and
3. This Resolution Number 4397 shall become effective immediately upon adoption and approval.

**DONE, ORDERED, ADOPTED and APPROVED** this the 10<sup>th</sup> day of February, 2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

Exhibit A



*Exhibit B*



VESTAVIA HILLS



VESTAVIA HILLS  
CHAMBER *of* COMMERCE

*Together. A better future for Vestavia Hills.*

January 18, 2013

Rebecca Leavings  
City Clerk  
City of Vestavia Hills  
513 Montgomery Highway  
Vestavia Hills, AL 35216

Dear Mrs. ~~Leavings,~~

*Becky*

Please find enclosed a CD with digital copies of the proposed logo for the City of Vestavia Hills that was recommended by the Implementation Committee on January 10, 2013.

There are a couple of different formats included as the city name as well as department names may be used in different locations on the logo. I have also included copies of the logo that the Vestavia Hills Chamber of Commerce is using for your reference.

The font and color palette information is:

Color: Green = PMS 575 coated (hex #547730)

Grey = PMS 417 uncoated

Font: "Vestavia Hills" is Mrs. Eaves Roman

"Chamber Commerce" is Adobe Garamond Pro Semibold

"of" is Adobe Garamond Pro Italic

The Chamber also uses a tagline of: Together. A better future for Vestavia Hills.

If there is further information that may be needed for City Council consideration, please let me know.

Thanks so much for your help with this effort.

Sincerely,

A handwritten signature in blue ink that reads "Karen J. Odle". The signature is written in a cursive style with a large, stylized "K" and "O".

Karen J. Odle  
President  
Vestavia Hills Chamber of Commerce

Enclosure

cc: Mayor Alberto "Butch" Zaragoza  
City Manager Randy Robertson  
Ms. Robin Tubbs  
Mr. Scott Perry