

**Vestavia Hills
City Council Agenda
May 12, 2014
5:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – George Pierce – Malinda Weaver, Associate Pastor, Vestavia Hills United Methodist Church
4. Pledge Of Allegiance
5. Announcements, Candidate and Guest Recognition
6. City Manager's Report
7. Councilors' Reports
8. Approval of Minutes – April 22, 2014 (Work Session) and April 28, 2014 (Regular Meeting)

New Business

9. Resolution Number 4589 - A Resolution Appointing A Member To The Jefferson-Blount-St. Clair Mental Health Authority Board
10. Resolution Number 4592 - A Resolution Appointing A Member To The Vestavia Hills Tree Commission
11. Resolution Number 4590 - A Resolution Of Preliminary Approval For, And Authorization Of Certain Actions In Respect Of, An Economic Development Project

New Business (Unanimous Consent Requested)

12. Ordinance Number 2500 – An Ordinance Authorizing And Directing The Sale Of Real Estate Situated At 1112 Montgomery Highway

First Reading (No Action Taken At This Meeting)

13. Resolution Number 4591 – De-Annexation – 140 Montgomery Highway; Deborah R. Tisdale, Owner
14. Citizens Comments
15. With Motion For Adjournment

CITY OF VESTAVIA HILLS

CITY COUNCIL

WORK SESSION

MINUTES

APRIL 22, 2014

The City Council of Vestavia Hills met in a special work session on this date at 8:00 AM following posting/publishing pursuant to Alabama law. The Mayor called the work session 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
Jim Sharp

OTHER OFFICIALS PRESENT:

Rebecca Leavings, City Clerk

The following applicants each interviewed with the Council beginning at 8 AM: (1) Kimberly Barlow Cook; (2) Caswell H. McWaters, Jr.; (3) Allison Campbell Miller; and (4) Jerry Dent.

Work session adjourned at 12:30 PM.

Alberto C. Zaragoza, Jr.
Mayor

Attested by:

Rebecca Leavings
City Clerk

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

APRIL 28, 2014

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
Jim Sharp

OTHER OFFICIALS PRESENT:

Jeff Downes, City Manager
Rebecca Leavings, City Clerk
Melvin Turner, Finance Director
George Sawaya, Deputy Treasurer
Brian Davis, Public Services Director
Taneisha Tucker, Library Director
Dan Rary, Police Chief
Jim St. John, Fire Chief

Invocation was given by Rev. Roger Salter, St. Matthew's Episcopal Church, followed by the Pledge of Allegiance led by Cub Scout, Pack 1: Andrew Morris, 2650 Paden Place; Clay Johnston, 2117 Woodhue Circle; Turner Whitley, 3248 Wagon Gap Trail; Turner Whitley, 3248 Wagon Gap Trail; Hampton Hollifield, 400 Surrey Drive; Brodyn Cheesman, 1924 Post Oak Road; Carter Measel, 2473 Jannebo Road; Marek Ledvina, 732 Paden Drive; Noah Stephens, 1721 Lincoya Road; Henry Harlan, 2204 Rushmore Way; Philip Mitchell, 735 Van Buren Drive.

ANNOUNCEMENTS, GUEST RECOGNITION

- David Wheeler, 2532 Crossgate Place, introduced himself and declared that he is a candidate for State House District 47.
- Steve Ammons announced that he is a candidate for Jefferson County Tax Collector in the upcoming election.

CITY MANAGER REPORT

- Mr. Downes gave an update on the weather readiness preparations of the City.
- Mr. Downes gave an update on the 30-day mark of the WebQA action program that was implemented recently. He stated that 71% of the requests in the application have been completed and a mobile app is ready for residents to put into their Iphone or Droid.
- Mr. Downes announced that businesses affected by the recent flooding will be offered low-interest loans. He stated that this program would also allow owners of residential properties to apply for assistance.
- Mr. Downes asked Mrs. Tucker to give an update on some new programs at the Library.
 - Taneisha Tucker announced that the Library in the Forest will begin offering two new services. The first called “Hoopla” which allows video streaming of movies and television shows. The second, called “Zenith” is a large newsstand and should be available by late May.
- Mr. Downes recognized Tyler Slaten, the City’s Intern brought to us through the MBA program at UAB. Mr. Slaten has worked with the City the past few months and assisted quite a bit with the City’s special election held in March. Mr. Downes wished him all the best in his future career.
- Mr. Downes reported that the tag sales are averaging approximately 36 per day. The next couple of days will complete the City’s first month at renewing the tags.

COUNCILOR REPORTS

- Mr. Ammons thanked the staff for all the work done during the Mayor’s Cup. He stated that a field was dedicated as “Freeman Field” during this event and was very well attended.
- Mr. Ammons stated that the annual shrimp boil honoring Vestavia’s first responders as well as Public Services was held and was also well attended.
- Mr. Henley stated that the interview scheduled tomorrow with an applicant for the new Superintendent of Education will be postponed because of the weather.
- Mr. Pierce gave an update of a public presentation of a voluntary drug testing program that is beginning this year. He encouraged anyone interested in the program to attend.
- The Mayor stated that “Art in the Hills” was held for the first time this year and featured 47 artists. The artists were all pleased with the hospitality from the young volunteers who assisted during the entire event. He stated that the Beautification Board did an outstanding job with this event.
- The Annual Mayor’s Prayer Breakfast will be held Tuesday, April 29, 2014 at the Vestavia Country Club. Keynote speaker is Roxanne Richardson from Wellhouse
-

FINANCIAL REPORTS

Melvin Turner, III, presented the financial reports for month ending March, 2014. He read and explained the balances.

APPROVAL OF MINUTES

The minutes of the April 14, 2014 (Regular Meeting) and April 17, 2014 (Work Session) were presented for approval.

MOTION Motion to dispense with the reading of the minutes of the meeting of April 14, 2014 (Regular Meeting) and April 17, 2014 (Work Session) and approve them as presented was by Mr. Sharp and second by Mr. Pierce.

Roll call vote as follows:

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

OLD BUSINESS

ORDINANCE NUMBER 2494

Ordinance Number 2494 – Rezoning – 1421 Round Hill Road; Lot 19, 5th Addition To Vesthaven, Sector 4; Rezone From Vestavia Hills R-2 (Residential) To Vestavia Hills Inst-1 (Institutional); City Of Vestavia Hills, Owner (*public hearing*)

MOTION Motion to approve Ordinance Number 2494 was by Mr. Henley and second was by Mr. Sharp.

Mr. Downes stated that this request is to rezone property adjacent to the Library for construction of a 46-space parking lot. He stated that the Commission reviewed this request last month and unanimously recommended approval.

The Mayor opened the floor for a public hearing. There being no one to address the Council on this rezoning request, the Mayor closed the public hearing and called for the question.

Roll call vote as follows:

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

ORDINANCE NUMBER 2495

Ordinance Number 2495 – An Ordinance Granting A Conditional Use Approval For A 120’ Stealth Monopole (Monopine) On Property Located At 2062 Columbiana Road; AT&T Petitioner; Davis Properties, LLC, Owner; N. Andrew Rotenstreich, Representing (public hearing)

MOTION Motion to approve Ordinance Number 2495 was by Mr. Pierce and second was by Mr. Henley.

Mr. Downes stated that this is a request by AT&T for a 120’ stealth monopine on the property.

Andrew Rotenstreich, attorney representing the applicant, explained the need in the area for the cellular coverage and their efforts in attempting to co-locate. However, there are no existing facilities in the area that are high enough or in an area that would provide coverage to the needed area. He explained the request and concurred with the conditions given in the ordinance.

Mr. Sharp stated that the Commission unanimously recommended approval of the request.

Discussion ensued from the Council concerning the color of the pole, the need for reception in the area, photo renditions of the proposed structure and the sightline from various directions.

The Mayor opened the floor for a public hearing.

The following individuals addressed the Council on the request:

- a. Estelle Murdock, Crestmont Drive;
- b. Jeremy Jones, 2043 Crestmont Drive;
- c. Jason Irving, 2025 Crestmont Drive;
- d. Bryan Belknap, 2054 Crestmont Drive

Issues stated by residents included concerns regarding blasting, flooding, diseased tree removal, the ability to add other carriers to the structure and radiation emitting from the antennae.

Mr. Rotenstreich answered each concern stating that they have no desire or belief that any blasting will be needed. If needed, they would go through the proper surveys and permits. He stated that the emission levels from these antennas only stretch 30’ and will not be deferential to anyone with a 120’ high pole.

There being no one to address the Council on this matter, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

Mr. Pierce – yes

Mr. Henley – yes

Mr. Sharp – yes
Mayor Zaragoza – yes

Mr. Ammons – yes
motion carried.

RESOLUTION NUMBER 4580

Resolution Number 4580 – A Resolution Authorizing The Mayor And City Manager To Enter Into An Agreement With Daniel Corporation As Master Developers Of Patchwork Farms (*public hearing*)

MOTION Motion to approve Resolution Number 4580 was by Mr. Pierce and second was by Mr. Ammons.

Mr. Downes gave a brief background on the charrette that was held concerning the development of Patchwork Farms. He stated that they have been working with Daniel Corporation to act as the master developer to keep the development in sync with the plans determined at the charrette. This agreement will finalize the negotiations and retain Daniel as the master developer.

Mr. Boone stated that he has reviewed the agreement and found one problem that Daniel has agreed to modify.

Doug Neal, representing Daniel Corporation, concurred.

The Mayor opened the floor for a public hearing. There being no one to address the Council on this matter, the Mayor closed the public hearing and called for a motion to amend in order to modify the agreement to include Mr. Boone's revision.

MOTION Motion to modify the agreement to include Mr. Boone's revision (deletion of Article 5, Subsections 5.02 and 5.03) concerning indemnity was made by Mr. Pierce and second was by Mr. Ammons. Roll call vote as follows:

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

The Mayor called for the question. Roll call vote as follows:

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

ORDINANCE NUMBER 2498

Ordinance Number 2498 – An Ordinance Adopting And Enacting A New Municipal Code Of Ordinances For The City Of Vestavia Hills (*public hearing*)

MOTION Motion to approve Ordinance Number 2498 was by Mr. Henley and second was by Mr. Sharp.

Mr. Downes stated that the City's codification of ordinances has been republished in order to bring the document up-to-date. He stated that this Ordinance adopts the republished Code so that City Officials can utilize it.

The Mayor opened the floor for a public hearing. There being no one to address the Council on this matter, the Mayor closed the public hearing and called for the question.

Roll call vote as follows:

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

NEW BUSINESS

RESOLUTION NUMBER 4585

Resolution Number 4585 - A Resolution Appointing A Member To The Vestavia Hills Board Of Education

The Mayor gave a brief background of the process the Council uses to select a new Board member each year. He explained the publication of the City's agendas, minutes, etc. He then opened the floor for a public hearing on Resolution 4585.

The following individuals address the Council concerning this Resolution:

- a. Beth Sanders, 2305 Ponderosa Circle;
- b. Anita Turner, 1872 Rosemont Lane;
- c. Buck Witt, 2457 Dolly Ridge Trail;
- d. Kim Benos, 2606 Dolly Ridge Crest;
- e. Robert Ferris, 3400 Sheffield Drive;
- f. Jack Traffanstadt, 2104 Countryridge Lane;
- g. Jamie Blair, 2875 Acton Road and Superintendent of Education.

Issues raised included length of terms and reappointment of members; term limits; appointing the right person for the job, rotation of members in order to continue "fresh blood" within the Board, etc.

Mr. Boone stated that he issued a written opinion concerning term limits and indicated that the Council cannot require term limits of members because it is contrary to Alabama Law.

The Mayor opened a floor for a motion to amend Resolution Number 4585 in order to add a nominee.

MOTION Motion to approve Resolution Number 4585 was by Mr. Henley and second was by Mr. Ammons.

Mr. Henley stated that four applicants were interviewed for the appointment. He stated their names: Kimberly Cook, Caswell McWaters, Allison Miller and Jerry Dent. He stated that each of the applicants had his own unique qualifications and that the choice was to request that Jerry Dent fill this appointment.

MOTION Motion to amend Resolution Number 4585 to appoint Jerry Dent to the Vestavia Hills Board of Education was by Mr. Pierce and second was by Mr. Ammons. Roll call vote as follows:

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

There being no further discussion on the matter, the Mayor called for the question. Roll call vote as follows:

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

RESOLUTION NUMBER 4586

Resolution Number 4586 - A Resolution Declaring Certain Personal Property As Surplus And Directing The Sale/Disposal Of Said Property

MOTION Motion to approve Resolution Number 4586 was by Mr. Pierce and second was by Mr. Ammons.

Mr. Downes explained that this is a request to sell a vehicle that was confiscated a while ago and now is no longer needed by the Police Department. He stated that all proceeds from the sale of the vehicle will be earmarked for law enforcement purposes.

The Mayor called for the question. Roll call vote as follows:

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

RESOLUTION NUMBER 4587

Resolution Number 4587 - A Resolution Authorizing The City Manager To Execute And Deliver An Application For A CWSRF Loan From The Alabama Water Pollution Control Authority

MOTION Motion to approve Resolution Number 4587 was by Mr. Henley and second was by Mr. Ammons.

Mr. Downes explained that this Resolution would allow him to make application for a Clean Water Grant in order to purchase a few homes in the Meadowlawn area for construction of a greenway. He stated that this has been discussed before but that grant wasn't approved and this is another option.

Mr. Sharp stated that a greenway is needed in that area.

Mr. Henley asked about the number of homes and the scope of work.

Mr. Downes explained that isn't as many as last time, but there could be subsequent requests that might help with more buyouts.

The Mayor opened the floor for a public hearing. There being no one to address the Council on this matter, the Mayor closed the public hearing and called for the question.

Roll call vote as follows:

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

RESOLUTION NUMBER 4588

Resolution Number 4588 – A Resolution Authorizing The City Manager To Make Application Through The FY 2014 Transportation Alternatives Program For Construction Of A Tunnel To Connect Pedestrian Routes In Vestavia Hills

MOTION Motion to approve Resolution Number 4588 was by Mr. Ammons and second was by Mr. Sharp.

Mr. Downes explained that this is another grant opportunity to request funding to build a pedestrian tunnel under Sicard Hollow Road and connect the City's two athletic facilities.

The Mayor opened the floor for a public hearing. There being no one to address the Council on this matter, the Mayor closed the public hearing and called for the question.

Roll call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Sharp – 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 on May 12, 2014 at 5 PM.

- None.

CITIZENS COMMENTS

Brian Davis, 1717 Crosswood Lane, stated that the City's Health Fair will be held this Saturday from 9 AM to 1 PM.

PRESENTATION – GOODWYN MILLS AND CAWOOD

Jane Ross, GMC presented depictions of their designs for the I-65/Montgomery Highway intersection Improvements. She explained the recommended changes, the scope of recommended work and an estimate of the cost of improvements.

Discussion ensued among the City Manager and the City Council concerning the types of plants, the scope of work and the letting of bids. The Council concurred to allow the City Manager to move forward with the planned improvements and bids.

MOTION Motion to adjourn was by Mr. Pierce and second was by Mr. Ammons. Meeting adjourned at 7:25 PM.

Alberto C. Zaragoza, Jr.
Mayor

Attested by:

**Rebecca Leavings
City Clerk**

RESOLUTION NUMBER 4589

A RESOLUTION APPOINTING MEMBERS TO THE JEFFERSON-BLOUNT-ST. CLAIR MENTAL HEALTH AUTHORITY BOARD

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

1. Dr. Bobby S. "Bob" Terry is hereby appointed to serve on the Jefferson-Blount-St. Clair Mental Health Authority as representative of the City of Vestavia Hills; and
2. This appointment shall become effective immediately upon adoption and approval and shall continue until the Mayor and Council amend this Resolution Number 4589; and
3. This Resolution Number 4589 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 12th day of May, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk



Reporting. Connecting. Inspiring.

Dr. Bobby S. "Bob" Terry, President and Editor

January 24, 2014

Alberto C. Zaragoza, Jr
City of Vestavia Hills
513 Montgomery Hwy
Vestavia Hills, AL 35216

Dear Mayor Zaragoza:

According to information recently shared with me, I understand Vestavia Hills has an opening on the Jefferson, Blount, St Clair Mental Health Authority. This letter is to express my interest in serving on that board. I have lived in Vestavia Hills for the past 19 years while serving as editor of *The Alabama Baptist*, a statewide publication of the Alabama Baptist State Convention. My wife Patricia is professor of Nutrition and Dietetics at Samford University. Several years ago while living in Louisville, Kentucky, I served on the Board of Directors of the River Region Mental Health-Mental Retardation Board and chaired a catchment area committee serving a 200,000 population base. Among the services we oversaw were a wide range of mental health facilities including an in-patient hospital, an adult day care program for those suffering from mental problems and drug and alcohol programs ranging from individual counseling to a methadone clinic. I served on the Executive Committee of that Board for three years. Since returning to my native state, I have participated in Leadership Birmingham and Leadership Alabama. Locally I serve on the Board of Directors of Community Grief Support Service, am a member of Birmingham Rotary Club where I have twice been vice president of international programs and Dawson Memorial Baptist Church. Among the many responsibilities there has been my service as chairman of the Board of Directors of the Dawson Foundation. I also serve as a Director for Bread for the World where I serve as treasurer for that national nonprofit organization. My interest in mental health issues is long standing. My mother worked in mental health and I have a nephew who was brain damaged at birth due to oxygen deprivation. This has been an issue with which I have always been involved in some way or another. I would appreciate the opportunity of serving on the local Mental Health Authority and would count it a privilege to be one of Vestavia Hills' representatives. Thank you for your consideration of my interest and for whatever help you can provide in channeling this letter through the proper channels for consideration.

Sincerely,

Dr. Bobby S. 'Bob' Terry, Editor
The Alabama Baptist

/vb

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RESOLUTION NUMBER 4592

**A RESOLUTION APPOINTING A MEMBER TO THE VESTAVIA HILLS
TREE COMMISSION**

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

1. Melissa Hipp is hereby appointed to serve on the Vestavia Hills Tree Commission effective immediately until October 31, 2016 when said appointment shall expire; and
2. This Resolution Number 4592 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 12th day of May, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

**CITY OF VESTAVIA HILLS
INTER-DEPARTMENT MEMO**

May 7, 2014

TO: City Clerk Rebecca Leavings

FROM: Mayor Alberto C. Zaragoza, Jr. *ACZ*

Re: Tree Commission Appointment

Please include the following appointment in the May 12, 2014 Council agenda for their consideration:

Tree Commission
Melissa Hipp
Expires 10/31/16

RESOLUTION NO. 4590

A RESOLUTION OF PRELIMINARY APPROVAL FOR, AND AUTHORIZATION OF CERTAIN ACTIONS IN RESPECT OF, AN ECONOMIC DEVELOPMENT PROJECT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA (THE "COUNCIL"), AS GOVERNING BODY OF THE CITY OF VESTAVIA HILLS, ALABAMA (THE "CITY"), as follows:

Section 1. The Council, upon evidence duly presented to and considered by it, has found and determined and does hereby find, determine and declare as follows:

(a) The City is engaged in discussions with Vestavia Hills Investment Partners, LLC, a Georgia limited liability company (the "Developer"), an affiliate of GBT Realty Corporation, concerning the development of a retail shopping facility to consist of not less than 30,000 square feet of gross leasable retail space on certain property located in the City, approximately 3.34 acres located at 1099 Old Montgomery Highway (the "Project");

(b) The development and construction of the Project will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entities because the Project (i) will increase the City's tax base and tax revenues, (ii) will create jobs for residents of the City, (iii) will attract other and additional commercial activity within the City, and (iv) will enhance the quality of life for the residents of the City by offering additional amenities and shopping options for the City's residents;

(c) The Developer has represented to the Council it is essential to the development of the Project for the City to provide financial assistance to the Developer of up to \$1,600,000 (the "Financial Assistance"), subject to certain terms and conditions that are being discussed with the Developer;

(d) The terms and conditions for the granting of the Financial Assistance will be specified in a project agreement (the "Project Agreement") between the City and the Developer that will be presented to the Council for approval;

(e) Prior to approval by the Council of the Financial Assistance and the Project Agreement, a public notice relating to the Financial Assistance shall be published in the *Birmingham News* which is the newspaper having the largest circulation in the City, describing in reasonable detail the proposed action to be taken by the Council, a description of the public benefits sought to be achieved and identifying the private entities for whose benefit the Financial Assistance will be provided.

Section 2. The Council hereby declares that the City is willing to provide Financial Assistance to the Project in an amount up to \$1,600,000, subject to:

(a) certain terms and conditions which are to be negotiated by the Mayor and City Manager and approved by the Council;

(b) compliance by the City with the provisions of Amendment No. 772 of the Constitution of Alabama of 1901, as amended, with respect to the Financial Assistance and the Project Agreement; and

(c) determination of the validity of the Financial Assistance and the Project Agreement by proceedings under Article 17 of Chapter 6 of Title 6 of the Code of Alabama 1975.

Section 3. The Mayor and City Manager are both hereby authorized and directed to complete such negotiations and to present a final Project Agreement to the City Council for approval by or before May 31, 2014, and to take such other actions on behalf of the City as may be necessary or desirable to carry out the purposes of this Resolution.

Section 4. All prior actions taken by the Mayor, the City Manager, or any officer of the City or member of the Council, with respect to the Project or the Financial Assistance are hereby approved, ratified and confirmed.

Section 5. All ordinances, resolutions or orders, or parts thereof, in conflict or inconsistent with the provisions hereof hereby are, to the extent of such conflict or inconsistency, repealed.

Section 6. This Resolution shall take effect immediately.

Passed and adopted this 12th day of May, 2014.

Alberto C. Zaragoza, Jr.
Mayor of the City of Vestavia Hills, Alabama

ATTEST:

Rebecca Leavings
City Clerk

SEAL

ORDINANCE NUMBER 2500

**AN ORDINANCE AUTHORIZING AND DIRECTING THE SALE OF
REAL ESTATE SITUATED AT 1112 MONTGOMERY HIGHWAY**

WHEREAS, the City Manager has received a proposed agreement for the purchase and sale of property located at 1112 Montgomery Highway (Jefferson County Parcel ID # 28-30-3-2-4.002; a copy of which is marked as “Exhibit A” attached to and incorporated into this Ordinance Number 2500; and

WHEREAS, the Mayor and City Council have determined it is in the best public interest to accept said purchase pursuant to the terms and conditions proposed purchase agreement.

NOW, THEREFORE, 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 execute and deliver the attached purchase agreement and deposit said earnest money with Magic City Title; and
2. This Ordinance Number 2500 shall become effective immediately upon adoption, approval and posting/publishing pursuant to Alabama law.

DONE, ORDERED, ADOPTED and APPROVED this the 12th day of May, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE (this "Agreement") is made and entered into as of this ___ day of April, 2014 by and between The City of Vestavia Hills, Alabama ("Seller"), and America's First Federal Credit Union, ("Purchaser").

R E C I T A L S:

Seller is the prior owner of certain real property situated at 1118 Montgomery Highway; Parcel I.D. 28-30-3-002-004.002 00 in Vestavia Hills, Jefferson County, Alabama as more particularly shown and depicted on Exhibit A attached hereto and incorporated herein by reference.

Seller desires to sell and Purchaser desires to purchase approximately 1.69 acres, more or less, of improved real property (the "Property") which is more particularly shown and depicted on Exhibit A attached hereto and incorporated herein by reference for the purpose of constructing a credit union branch location.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties agree as follows:

1. **Sale and Purchase.** Seller agrees to sell and convey and Purchaser agrees to purchase the Property for the Purchase Price, as hereinafter defined, subject to and upon the terms and conditions hereinafter set forth.

2. **Earnest Money.**

(a) Within 24 hours of execution of this Agreement by Seller and Purchaser, Purchaser will deposit with Magic City Title Company., (the "Title Company"), the sum of Ten Thousand and No/100 Dollars (\$10,000.00) (such amount, together with any interest earned thereon, is hereinafter referred to as the "Earnest Money") which sum shall be deposited by the Title Company into an interest bearing account with a federally insured financial institution. In the event Purchaser determines, in its sole discretion, to terminate this Agreement on or before the expiration of the Inspection Period, as defined in Paragraph 6 below, then the Earnest Money deposited by Purchaser with the Title Company shall be refunded to Purchaser, this Agreement shall be deemed canceled and terminated and, except for the indemnification obligations of Purchaser provided in Paragraph 6(a) below, neither party shall have any further obligation or liability to the other hereunder.

(b) The Title Company shall hold possession of, keep, deliver and dispose of the Earnest Money subject to the terms and conditions of this Agreement and shall otherwise deal with the parties hereto fairly and impartially according to the intent of the parties as herein expressed; provided, however, that the Title Company is to be considered as a depository only, shall not be deemed to be a party to this Agreement except for the purposes of holding the Earnest Money and issuing the Title Commitment (as hereinafter defined) and the title policy and shall not be responsible or liable in any manner whatsoever for the sufficiency, manner of execution or validity of any written instructions, certificates or any other documents received by it, nor as to the identity, authority or rights of any persons (other than the Title

Company) executing this Agreement. The Title Company shall be entitled to rely at all times on instructions given by Seller and/or Purchaser, as the case may be and as required hereunder, without any necessity of verifying the authority therefor.

2.2 The parties further agree to deposit with the Escrow Agent a fully executed copy of this Contract with all attachments and exhibits hereto. The date this Contract has been executed by the last of Seller and Purchaser shall be deemed to be the date of this contract and shall hereafter be referred to as "the date hereof."

3. **Purchase Price.** The purchase price (the "Purchase Price") for the Property to be paid by Purchaser to Seller on the Closing Date, as hereinafter defined, shall be the sum of Nine Hundred Fifty Thousand and 00/100 Dollars (\$950,000.00). The Purchase Price, after deducting therefrom the Earnest Money, shall be paid by Purchaser to Seller on the Closing Date, as hereinafter defined, by wire transfer of immediately available federal funds to an account (or accounts) designated by Seller.

4. **Title Matters.** Purchaser shall promptly order a title insurance commitment (the "Title Commitment") for the issuance by the Title Company of an owner's title insurance policy, ALTA Form 1992-B, in the amount of the Purchase Price covering title to the Property, together with copies of any and all title exceptions and title matters reflected in Schedule B-II of the Title Commitment. Purchaser shall have until the end of the Inspection Period, as defined in Paragraph 6(a) below, to review and approve the Title Commitment. Except for the elimination of existing mortgages encumbering any portion of the Property and any other title matters created by Seller at any time after the date hereof, Seller shall have no obligation to take any affirmative action to eliminate any title objections or exceptions of Purchaser. The costs of the owner's title insurance policy to be issued in the amount of the Purchase Price shall be paid by Purchaser. Any additional title insurance coverage and any title endorsements or special coverage required by Purchaser shall be paid for solely by Purchaser. Promptly following the date hereof, Seller will deliver to Purchaser Seller's title insurance commitment.

5. **Survey, Subdivision, Plans and Access Matters.**

(a) Promptly following the date hereof, Purchaser shall, at Purchaser's sole cost and expense, obtain a current ALTA boundary survey (the "Survey") of the Property, which Survey shall (i) reflect that the Property will abut and be directly adjacent to a public roadway and otherwise satisfy all subdivision requirements of Jefferson County, Alabama (the "County"), (ii) be prepared by a surveyor acceptable to Seller and Purchaser (the "Surveyor") (iii) be certified to Purchaser, Seller and the Title Company, (iv) set forth an accurate metes and bounds legal description of the Property, (v) set forth the gross number of acres (rounded to the nearest one-one thousandth of a percent) and the square footage within the Property (rounded to the nearest one-one thousandth of a percent) (vi) be approved by Seller and Purchaser, in their sole discretion, and (vii) locate and give legal description of any and all access easements and curb cuts serving the Property. Seller shall have no obligation to take any affirmative action to

eliminate any objections of Purchaser to the Survey. All costs and expenses relating to the preparation of the Survey shall be paid solely by Purchaser.

(b) Promptly following the date hereof and the approval of the Survey by Purchaser, Purchaser will obtain, at Purchaser's expense, a Phase 1 Environmental Site Assessment for the Property. The Phase 1 Environmental Site Assessment must be acceptable to Purchaser.

(c) Promptly following the date hereof, Seller will deliver to Purchaser Seller's title commitment, deeds, surveys, studies, reports, plats, environmental or geotechnical studies, plans, licenses, appraisals and any other information relevant to the Property.

Inspection Period.

(a) During the period of time beginning on the effective date hereof and ending at 4:00 p.m. Central Standard/Daylight Savings Time One Hundred Twenty (120) days after the effective date hereof (the "Inspection Period"), Purchaser, Purchaser's authorized agents and employees, as well as others authorized by Purchaser, shall have the right, at Purchaser's sole cost and expense, to conduct such tests, evaluations, inspections, investigations and reviews of the Property (collectively, the "Inspections") and shall otherwise have the right to enter upon the Property to perform any of the Inspections. The Inspections may include, without limitation, determining the financial feasibility of acquiring and developing the Property for the express purpose of constructing a credit union branch location, including financing for the same, reviewing the Title Commitment, preparing and reviewing the Survey, reviewing all applicable title matters affecting any of the Property, evaluating and/or conducting all architectural, engineering, topographical, geological, soil, surface, subsurface, environmental, storm water drainage, traffic, utility availability, zoning and subdivision inquiries and otherwise conducting and performing all other tests and evaluations affecting the Property as Purchaser may require. Purchaser does hereby (i) indemnify, agree to defend and hold Seller harmless from and against any and all claims, costs, expenses and liabilities, including reasonable attorneys' fees, suffered, paid or incurred by Seller arising out of or by virtue of (1) any injury or damage to person (including death) or property caused by any act or omission of Purchaser, its agents, employees or contractors in conducting or performing any of the Inspections and (2) Purchaser's failure to pay all bills, invoices, costs and other charges relating to the Inspections and (ii) agree to promptly repair and replace any damage to the Property resulting from any of the Inspections. The indemnification obligations of Purchaser set forth herein shall survive the Closing or the termination and cancellation of this Agreement.

(b) If, at any time on or before the expiration of the Inspection Period, Purchaser determines, in its sole and absolute discretion, that any of the Inspections are unacceptable to Purchaser, then Purchaser shall have the unqualified right, at its option, to cancel and terminate this Agreement upon written notice to Seller given at any time on or before the expiration of the Inspection Period in which event the Earnest Money shall be refunded to Purchaser, this Agreement shall be deemed canceled and terminated and, except for the indemnification obligations of Purchaser set forth in Paragraph 6(a) above, neither party shall have any further obligation or liability to the other hereunder.

(c) Any documentation provided by Seller, its agents, employees or representatives to Purchaser or to any third parties shall be and is provided without warranty as to any of the matters set forth therein and Purchaser hereby acknowledges and agrees that, no warranties, either express or implied, shall be deemed to have been given or made by Seller, its agents, employees or representatives as to the content, authenticity, truthfulness, correctness or otherwise with respect to any documentation submitted to Purchaser by Seller, its agents, employees or representatives in connection with Purchaser's Inspections. In the event Purchaser elects to terminate this Agreement on or before the expiration of the Inspection Period as provided in Paragraph 6(b) above, Purchaser shall return to Seller all reports and documents furnished by Seller, its agents, employees or representatives.

(d) Seller agrees to provide reasonable access to Purchaser or its agents to the current vacant building located on the site for the purpose of determining the necessity and/or feasibility of renovation, demolition, or inspection of the building during the inspection period.

(e) Purchaser's Inspection period may be extended by mutual consent of the Parties to finalize any incomplete inspections or assessments as outlined herein. Such consent shall not be unreasonably withheld by the Seller.

7. No Representations of Suitability. Purchaser acknowledges and agrees that (a) Seller has not made and does not make any covenant, representation or warranty, either express or implied, regarding the physical condition of the Property or any portion thereof, the suitability of the Property for any particular purpose or use whatsoever, the zoning of the Property, utility availability for the Property, whether the Property is subject to surface or subsurface contamination by toxic or hazardous waste or with respect to any other matters affecting the Property or Purchaser's contemplated use thereof, (b) Purchaser has been given the absolute and unfettered right during the Inspection Period to conduct such Inspections of the Property as Purchaser, in its sole discretion, may determine necessary in order to satisfy itself of all conditions and other aspects of the Property, (c) Purchaser has available to it such resources, expertise, consultants and advisors so that it can make a sound and reasoned judgment as to the condition of the Property as well as to all economic conditions, suitability requirements and all other matters affecting the use, development or ownership of the Property and (d) Purchaser shall be solely responsible for constructing, installing and extending to the Property any and all utility lines necessary or required in connection with the development of the Property and otherwise obtaining all applicable utility services and paying all applicable reservation, tap and other fees, costs and expenses relating to any utility services necessary or desired for the Property. Purchaser further acknowledges and agrees that neither Seller nor its agent, has any right or authority to make any statements, evaluations, speculations, opinions, prognoses, determinations, covenants, representations or warranties on behalf of Seller. Purchaser and Seller acknowledge and agree that the Property is to be sold and conveyed to, and accepted by, Purchaser in as-is, where-is condition.

8. Seller's Representations. To the best of its knowledge, Seller makes the following statements, representations, covenants and warranties: (a) there are no existing, pending or threatened assessments, condemnation or eminent domain proceedings which would affect the Property or any part thereof other than those shown on the ALTA Boundary survey;

(b) Seller has received no notice of violation of law or of municipal or other governmental ordinances, orders, rules, regulations, or requirements against or affecting the Property or any part thereof; (c) To the best of Seller's knowledge, there is no pending or threatened litigation concerning the Property; (d) Seller shall cooperate fully in the execution of all applications, forms and instruments to enable Purchaser to proceed fully with its development plans for the use of the Property, and to transfer the benefits of all such permits, licenses, certificates or equivalent documents to Purchaser, although Seller shall not be required to incur any additional expense to do so; (e) Seller has not stored or buried any substances or materials on or under the Property which would be termed hazardous or suspect substances or materials by any state, federal, or municipal statutes or regulations nor, to the best knowledge of the Seller has any other party stored such substances on or under the Property except as previously disclosed, nor has the Property been used at any time by any person as a landfill or waste disposal site. Hazardous materials or substance means any substance:

1. the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law; or
2. which is or becomes defined as a "hazardous waste," "hazardous substance," pollutant or contaminant under any federal, state or local statute, regulation, rule or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.) and/or the Resource Conservation and Recovery Act ((42 U.S.C. § 6901 et seq.); or
3. which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency, or instrumentality of the United States, the State of Alabama or any political subdivision thereof; or
4. the presence of which on the Property causes or threatens to cause a nuisance upon the Property or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Property; or
5. the presence of which on adjacent properties could constitute a trespass by Seller; or
6. without limitation, which contains gasoline, diesel fuel or other petroleum hydrocarbons; or
7. without limitation, which contains polychlorinated biphenols (PCBs), asbestos or urea formaldehyde foam insulation; or
8. without limitation, radon gas.

9. No portion of the Property is classified, or should be classified, as a wetland under applicable laws and regulations; and Seller has good title to the Property, free of any exceptions, liens and encumbrances except those paid by Seller at closing. If the Property contains hazardous materials, the parties may mutually extend the Purchaser's Inspection Period as defined below so Purchaser can perform a Phase II Environmental Assessment at its expense, or the Purchaser may rescind this Agreement and receive a full refund of any Earnest Money.
10. Seller has full power and authority to enter into this Agreement and to perform its obligations hereunder. The execution and delivery of this Agreement and the performance by Seller of its obligations hereunder have been duly authorized by all requisite action and no further action or approval is required in order to constitute this Agreement as a binding and enforceable obligation of Seller.

9. **Closing.**

(a) Subject to the satisfaction of the Closing Conditions, as defined in Paragraph 8(f) below, the consummation of the sale by Seller and the purchase by Purchaser of the Property (the "Closing") shall take place at such place as may be mutually agreed upon by the parties, on the date which is not less than fifteen (15) days following the expiration of the Inspection Period (the "Closing Date"); provided, however, that if all of the Closing Conditions have not been satisfied by the aforesaid Closing Date, then the Closing Date shall be extended to the next business day following the date on which all of the Closing Conditions have been satisfied. If the Closing has not taken place by September 30, 2014 due to no fault of Purchaser, Purchaser may either terminate this Agreement and receive a full refund of its earnest money or .

(b) At the Closing, Seller shall deliver to Purchaser the following:

(i) A general warranty deed (the "Deed") conveying good and marketable fee simple title to the Property to Purchaser free and clear of all liens and encumbrances except for current and future years' ad valorem taxes and/or rollback taxes and library district assessments, all easements, restrictions, mineral rights, reservations, rights-of-way and other matters of record as applicable (collectively, the "Permitted Exceptions"); If the Title Company is unable to issue its policy in accordance with the above paragraph, Purchaser shall advise Seller of such fact and Seller shall immediately proceed to clear title to the Property, Purchaser, at Purchaser's option, may elect one of the following: (a) to waive such title exceptions and close the transaction; or (b) to cancel this Agreement and receive a complete refund of the Earnest Money deposits; provided; however, such cancellation shall be without prejudice to the Purchaser's other rights.

(ii) An owner's affidavit in the form reasonably required by the Title Company;

(iii) Such authorization as the Title Company may deem reasonably necessary to evidence the authorization of Seller to deliver the Deed and the other Closing documents;

(iv) A non-foreign transferor affidavit in compliance with the provisions of The Foreign Investment in Real Property Tax Act of 1980, as amended; and

(v) Such other instruments of transfer and documents as may be reasonably necessary or appropriate to the sale and delivery of the Property or as may be otherwise required by this Agreement.

(c) At the Closing, Purchaser shall deliver to Seller **(i)** by wire transfer to an account designated by Seller, currently available federal funds in an amount equal to the Purchase Price less the Earnest Money and subject to such credits, proration and adjustments as are provided herein, and **(ii)** such other documents as may be reasonably required to properly consummate the purchase and sale transaction contemplated herein. At the Closing, the Title Company shall deliver the Earnest Money to Seller.

(d) All real estate ad valorem taxes and library district assessments for the year of Closing shall be prorated as of the Closing Date on the basis of the most recent tax bill or valuation notice received by Seller for the Property. To the extent any taxes, dues or assessments are paid in advance, then Seller shall receive a credit for the prepaid portion.

(e) Except as otherwise provided herein, Purchaser and Seller shall be responsible for their own respective attorneys' fees. The costs of the owner's title insurance policy to be issued in the amount of the Purchase Price shall be paid by Seller. Any title insurance endorsements or special coverage required by Purchaser shall be paid by Purchaser. Purchaser shall pay all costs and expenses relating to the Inspections and the recording fees and taxes for the Deed. The cost of the Survey, Phase 1 Environmental Site Assessment and Geotechnical and Compaction Studies shall be paid as provided in Paragraphs 5(a), 5(b) and 5(c) above.

(f) Notwithstanding anything provided in this Agreement to the contrary, the Closing of the transaction contemplated by the Agreement is expressly subject to the satisfaction of all of the following conditions (collectively, the "Closing Conditions") on or before the Closing Date:

(i) The Property re-plat shall have been approved by the City and County and recorded in the Probate Office to the satisfaction of the Purchaser;

(ii) Purchaser getting approval of its development, design and construction of a credit union branch office;

(iii) Purchaser shall have obtained a Phase 1 Environmental Site Assessment for the Property acceptable to Purchaser, and

(iv) Purchaser shall have obtained a Geotechnical Report and Compaction Study acceptable to Purchaser.

10. **Default and Remedies.**

(a) In the event that Seller shall fail to consummate the transaction as contemplated herein for any reason then Purchaser may, in its sole discretion, either (i) enforce this Agreement and the purchase and sale transaction contemplated herein by specific performance or (ii) terminate this Agreement, whereupon the Earnest Money shall be refunded to Purchaser, this Agreement shall be deemed canceled and terminated and, except for the indemnification obligations of Purchaser set forth in Paragraph 6(a) above, neither party shall have any further obligation or liability to the other hereunder. Purchaser hereby expressly waives any right to seek or obtain any monetary judgment or damages against Seller in the event of any default hereunder by Seller and acknowledges and agrees that no other damages, rights or remedies shall be collectible, enforceable or available to Purchaser.

(b) If, at any time after the expiration of the Inspection Period, Purchaser shall fail to perform its obligation to close the transaction contemplated herein for any reason other than Seller's default or the failure of the condition precedent set forth in Paragraph 5(c) above, then Seller shall retain the Earnest Money in which event this Agreement shall automatically be deemed terminated and canceled and, except for the indemnification obligations of Purchaser set forth in Paragraph 6(a) above, neither party shall have any further obligation or liability to the other hereunder. Because of the difficulty, inconvenience and uncertainty of ascertaining actual damages, no other damages, rights or remedies shall in any case be collectible, enforceable or available to Seller and Seller agrees to accept and retain the Earnest Money as its total damages and relief hereunder in the event Purchaser fails to close the purchase and sale transaction contemplated herein; provided, however, that nothing contained in this Paragraph 9(b) shall be deemed to alter, limit or reduce the indemnification obligations of Purchaser set forth in Paragraph 6(a) above.

11. **Agency Disclosure/ Real Estate Commissions**

(a) The Real Estate Consumer's Agency and Disclosure Act of 1995 (RECAD) [Ala. Code (1975) § 34-27-8 (c), as amended] provides that the parties hereto and their respective real estate brokers complete the following:

Print name of listing real estate brokerage company: N/A

The listing real estate brokerage company is: (two blocks may be checked):

(i) An agent of the Seller []

(ii) An agent of the Buyer []

- (iii) An agent of both the Seller and the Buyer and is acting as a limited consensual dual agent []
- (iv) Assisting the Buyer and the Seller as a transaction broker []

Print name of selling real estate brokerage company: *Mark Dinan Commercial & Investment Real Estate*

The selling real estate brokerage company is : (two blocks may be checked):

- (i) An agent of the Seller []
- (ii) An agent of the Buyer [X]
- (iii) An agent of both the Seller and the Buyer and is acting as a limited consensual dual agent []
- (iv) Assisting the Buyer and the Seller as a transaction broker []

12. **Possession.** Possession of the Property shall be given on the Closing Date, free of any tenancy, leases or rights of occupancy other than any such rights arising out of the Permitted Exceptions.

13. **Miscellaneous.**

(a) **Notices.** All notices required or permitted hereunder shall be in writing and shall be served on all of the parties hereto at the following addresses:

If to Seller: City of Vestavia Hills, Alabama
 Attn: Jeff Downes
 513 Montgomery Highway
 Vestavia Hills, AL 35216

If to Purchaser: America's First Federal Credit Union
 1200 Fourth Avenue North
 Birmingham, AL 35203
 Attention: Alan Stabler, Esq.
 Facsimile: (205) 320-4069

If to Title Company: Magic City Title Company
Attn: Robert McCorkle
3535 Grandview Parkway, Suite 550
Birmingham, AL 35243
Fax: (205) 326-0251

Any such notices shall be deemed to be sufficiently given or served upon any party hereto when either (i) sent by personal delivery to the address set forth above, (ii) sent by facsimile during regular business hours of any regular business day, in which case notice shall be deemed to have been given upon transmission of such notice, (iii) deposited in the United States mail by registered or certified mail, return receipt requested, postage prepaid and addressed as provided above or (iv) deposited with a nationally recognized overnight delivery courier service for next day delivery and addressed as set forth above. The above addresses may be changed by written notice to the other parties given in the manner set forth above.

(b) **Applicable Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Alabama.

(c) **Modification.** Neither this Agreement nor any provision hereof may be waived, modified or amended, except by a written instrument, signed by the party against whom the enforcement of such waiver, modification or amendment is sought, and then only to the extent set forth in such instrument.

(d) **Captions.** The captions or headings used herein are included for convenience and general reference only and shall not be construed to describe, define or limit the scope, intent or construction of this Agreement.

(e) **Exhibits.** Each exhibit which is referred and attached to this Agreement is incorporated herein as if set out fully in the body hereof.

(f) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and, subject to the provisions of **Paragraph 12 (b)** above, their successors and permitted assigns.

(g) **Time.** Time is of the essence in the performance of all obligations of each party to this Agreement.

(h) **Brokerage Commissions.** Seller and Purchaser represent and warrant to each other that, except for Mark Dinan Commercial & Investment Real Estate ("**Dinan**"), which is Purchaser's agent, they have not dealt with any broker or sales agent in connection with this transaction. To the extent the Closing under this Agreement timely occurs, Seller shall pay to Dinan at the Closing a real estate brokerage commission of five percent (5%) of the Purchase Price. Seller and Purchaser each hereby agree to indemnify, defend and hold the other harmless from and against any and all claims, suits, liabilities, judgments and expenses, including reasonable attorney's fees, suffered or incurred by the other party as a result of any

claim or claims for brokerage commissions, finder's fees or other compensation asserted by any person, firm or corporation in connection with the execution of this Agreement and the consummation of the transactions contemplated by this Agreement.

(i) **Entire Agreement.** This Agreement constitutes the entire and complete agreement between the parties hereto and supersedes any prior oral or written agreements or understandings between the parties with respect to the Property. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions herein set forth, and that no modification of this Agreement and no waiver of any of its terms and conditions shall be effective unless made in writing and duly executed by the parties hereto.

(j) **Partial Invalidity.** If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision shall be valid and enforceable to the fullest extent permitted by law.

(k) **Rules of Construction.** The parties hereto and their respective counsel have participated in the drafting and redrafting of this Agreement and the general rules of construction which would construe any provision of this Agreement in favor or to the advantage of one party as opposed to the other as a result of one party drafting this Agreement as opposed to the other or in resolving any conflict or ambiguity in favor of one party as opposed to the other on the basis of which party drafted this Agreement are hereby expressly waived by both parties hereto.

(l) **Survival.** If the Closing occurs hereunder, then all of the terms and provisions of this Agreement shall survive Closing. If, for any reason, either party terminates this Agreement in accordance with the terms and provisions hereof, then, except for the indemnification obligations of Purchaser set forth in Paragraph 6(a) above, all of the terms and provisions of this Agreement shall automatically cease, terminate and be of no further force or effect.

(m) **Intentionally Omitted**

(n) **Intentionally Omitted**

(o) **Recording.** In no event shall this Agreement or any memorandum of this Agreement be recorded by Purchaser. Any such recordation or attempted recordation by Purchaser shall constitute a breach of this Agreement by Purchaser and upon such breach (i) the Earnest Money shall be automatically and irrevocably forfeited by Purchaser to Seller, (ii) this Agreement shall automatically terminate, (iii) Purchaser shall pay to Seller any and all costs and expenses, including reasonable attorneys' fees, incurred by Seller as a result of any action taken by Seller to remedy such breach by Purchaser and (iv) Purchaser shall indemnify, defend and hold Seller harmless from and against any and all claims, demands losses, liabilities, actions,

causes of action and expenses, suffered, paid or incurred by Seller as a result of such breach by Purchaser.

(p) **Assignment.** Purchaser may not assign this Agreement without the prior written consent of Seller, which consent may not be unreasonably withheld, and Purchaser shall have the right, without obtaining any consent or approval of Seller, to assign this Agreement to any entity which is owned or controlled by or is under common control with America's First Federal Credit Union. Notwithstanding the foregoing, the Purchaser named herein shall continue to remain liable for the timely, full and complete performance of all obligations of Purchaser hereunder notwithstanding any permitted assignment by Purchaser of its rights and interests in this Agreement as provided above.

(q) **Risk of Loss:** Seller agrees to keep in force sufficient hazard insurance on the Property to protect all interests until this sale is closed and the deed is delivered. If the Property is destroyed or materially damaged between the date hereof and the closing, and Seller is unable or unwilling to restore it to its previous condition prior to closing, Purchaser shall have the option of canceling this Agreement and receiving the Earnest Money back or accepting the Property in its then condition. If Purchaser elects to accept the Property in its damaged condition, any insurance proceeds otherwise payable to Seller by reason of such damage shall be applied to the balance of the purchase price or otherwise be payable to Purchaser.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above shown.

SELLER:

City of Vestavia Hills, Alabama

By: _____
Its: _____

PURCHASER:

America's First Federal Credit Union

By: 
Its: PRESIDENT & CEO

CONSENT OF TITLE COMPANY

Title Company has joined in the execution of this Agreement in order to acknowledge receipt of the Earnest Money and to agree to act as an escrow agent under Paragraph 2 of the Agreement.

Dated: April __, 2014.

MAGIC TITLE COMPANY

By: _____
Its: _____

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

May 5, 2014

By Hand Delivery

City Manager Jeffrey D. Downes
Vestavia Hills Municipal Center
513 Montgomery Highway
Vestavia Hills, Alabama 35216

Re: Agreement of Purchase and Sale for Old Library

Dear Mr. Downes:

On May 2, 2014, you hand delivered to me a proposed Agreement of Purchase and Sale by and between the City of Vestavia Hills, Alabama ("Seller") and America's First Federal Credit Union ("Purchaser") with a request that I review the document and provide you with my written legal opinion. The purpose of this letter is to comply with your request.

The proposed Agreement has already been signed by America's First Federal Credit Union as Purchaser. After review the document, I have no recommendations for additions, deletions, changes and/or corrections.

I do want to point out, however, that section 4 of the Agreement reads "...The costs of the owner's title insurance policy to be issued in the amount of the Purchase Price shall be paid by **Purchaser.**" (page 2), while section 9(e) on page 7 reads "The costs of the owner's title insurance policy to be issued in the amount of the Purchase Price shall be paid by **Seller.**"

It is my opinion that there is a typographical error in section 4 on page 2. I base my opinion upon the following reasons:

1. The Seller customarily pays for the owner's title insurance policy.
2. The context of the language of section 9(e) on page 7.

Since the contract has already been signed by America's First Federal Credit Union, I do not suggest that the typo be addressed. In my judgment, the cost of the owner's title policy should be an expense charged to the Seller at closing.

May 5, 2014
Page 2

I am enclosing the Agreement that has already been signed by America's First Federal Credit Union. I suggest that Becky attach the legal description to the Agreement designated as Exhibit A.

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

Sincerely,

A handwritten signature in blue ink that reads "Patrick H. Boone". The signature is written in a cursive style with a long, sweeping underline.

Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

RESOLUTION NUMBER 4591

**A RESOLUTION TO REDUCE THE CORPORATE
LIMITS OF THE CITY OF VESTAVIA HILLS,
ALABAMA, AND THE BOUNDARIES THEREOF
REESTABLISHED**

WHEREAS, on October 10, 2003, Deborah R. Tisdale purchased property located at 140 Montgomery Highway, Vestavia Hills, Alabama; and

WHEREAS, Ms. Tisdale has filed a petition with the City Council of the City of Vestavia Hills requesting de-annexation of her property by letter dated April 8, 2014, a copy of which is marked as Exhibit A, attached to and incorporated into this Resolution Number 4591 as though written fully therein; and

WHEREAS, the Mayor and Council agree it is in the best public interest to grant Ms. Tisdale's request determining that the property located at 140 Montgomery Highway, Vestavia Hills, Alabama described in paragraph 4 below is of no benefit to the City.

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

1. This action is taken pursuant to the authority set forth in Title 11-42-200, et. seq., Code of Alabama, 1975; and
2. That petition signed by Deborah R. Tisdale represents her as sole owner of said 140 Montgomery Highway; and
3. The City Council of the City of Vestavia Hills, Alabama, has determined and decided that the public good requires that the request of Deborah R. Tisdale is due to be granted; and

4. That the legal description of the property to be de-annexed is described as follows:

140 Montgomery Highway
Block 4, A.A. Gambill's Homesite Shades Mountain
Map Book 16, Map Page 53, Office of the Judge Of Probate, Jefferson County Alabama
Deborah R. Tisdale, owner

5. The property owned by Deborah R. Tisdale located in the City of Vestavia Hills, Jefferson County, Alabama, more particularly described in paragraph 4 above is hereby de-annexed from the corporate city limits of the City of Vestavia Hills, Alabama.

6. The corporate limits of the City of Vestavia Hills, Alabama, are hereby reduced so as to exclude the territory described in paragraph 3 above and the boundaries of the City are hereby re-established accordingly.

7. That pursuant to Section 11-42-201 of the Code of Alabama, 1975, the Clerk shall certify a copy of such Resolution, together with a plat or map correctly defining the corporate limits proposed to be established and the names of all qualified electors residing in the territory proposed to be excluded from the area of such corporation and file the same with the Judge of Probate of Jefferson County.

DONE, ORDERED, APPROVED and ADOPTED this the 28th day of May, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca H. Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Resolution 4591 is a true and correct copy of such Resolution that was duly adopted by the City Council of the City of Vestavia Hills on the 28th day of May, 2014, as same appears in the official records of said City.

Rebecca Leavings
City Clerk



Deborah R. Tisdale
140 Montgomery Hwy
Birmingham, AL 35216
April 8, 2014

To: City Council Vestavia Hills, Alabama
513 Montgomery Hwy
Vestavia Hills, Alabama, 35216

Dear Council:

I own and live at 140 Montgomey Highway, and wish to have my property removed (de-annexed) from the City Limits of Vestavia Hills, Alabama and returned to Jefferson County at-large. The reasons for this request are numerous, and are listed below.

- My home and property upon which it sits are outside the boundaries of Vestavia Hills.
- My home sits on a State Highway for which the 'right of way' is not maintained by Vestavia Hills, but by The State of Alabama.
- The Mayor for Vestavia specifically informed me that the right of way in front of my home would not be maintained by the city of Vestavia and thus the Kudzu is allowed to grow in an unsightly manner such that it overtakes my property and home yearly if, I, as a 58 year old women, do not maintain it. I have attempted to have several companies give me an estimate to clean it up on my property alone. Several companies refused to tackle the problem, and the one which would was \$3000 for the one time clean up of my property only. All adjacent property is covered in Kudzu. Kudzu grows at 8-12 inches a day from all shoots, making my property clean-up almost completely a waste of time and money. After speaking with the mayor of Vestavia Hills, I contacted the state highway department, and they suggested that I place pigs (which 'root' kudzu), on the state right of way and in my yard to eliminate the Kudzu.
- The property South of me and between my property and Vestavia Hills proper and in route to Vestavia Hills is owned by the community of Homewood. The property North of me is owned by the community of Homewood as well. The property West of me is also owned by Homewood.
- On two occasions, I have caught thieves in my home. My home is less than 2 blocks from the City of Vestavia Hills police department, yet when I dialed 911, it took 15 minutes to get a policeman to respond to my call. Both times, my calls went first to a Homewood dispatch, and then was transferred to the Vestavia Hills dispatch. On the first occasion, the delay allowed time for the thieves to pull out my driveway past me with my things in their truck. I followed them giving directions to the dispatch, yet the police never came until I announced to the dispatch that I had lost them in Homewood. On the second occasion, subsequent to the same delay, instead of quickly dispatching an officer, the dispatcher questioned me as to why I thought someone was in my home. I had brought an associate with me to my home to confirm my belief that someone was in my home in my absence. When the police did arrive, instead of blocking the two entrance/exit points, the police followed me through the house. I had a flashlight, they toted a flashlight and both had 9mm automatic pistols pulled as they followed me through the house. (I am in no way attempting to criticize the police, these were nice officers, and they attempted to address the issue at hand to the degree that they could)
- Upon purchasing my home for approximately \$285,000, I had to pay a tax bill of over \$8000. The next year was lower, the third year without any improvements or changes, or re-evaluation or inspection, my property was again tax valued at over \$550,000, and my taxes have since been above \$5000. Now, I receive a notice that my home after 10 years of being worth

\$550,000 to Vestavia Hills is suddenly worth only demolition.....yet NOTHING has changed in 10 years

- My power is provided by Alabama Power, via a substation in Homewood.**
- My water and sewage is via Jefferson County**
- I have no children in the Vestavia Hills School District, nor have I ever, nor will I ever.**
- Since moving into my home, I have had a brick mailbox and security gates that were up for many years before the purchase of the property removed without notification from anyone.**
- I have had cars vandalized, I have had my doors kicked in, and I have had my water meter tampered with such that one month my water bill was \$15 the next month it was over \$3200, and the next month \$15, yet for all three months the usage was zero (0) CF. After three years, of my attempts, and my attorney's attempts to get the Water board to correct this, they will not correct this mistake and it has been applied to my credit report in a negative way (and no, my basement was not flooded with 10, yes TEN, 18'X33'X4'swimming pools worth of water, and no, the apartments directly below my property were not flooded)**

At this point in time, I can not find any value in being part of the Vestavia Hills community, and wish to be de-annexed, and returned to the Jefferson County Jurisdiction at large.

Please bring this matter before the open council session, and I wish to thank you in advance for your speedy attention to de-annexing my property.

Sincerely,

Deborah R. Tisdale

**cc Timothy Fulmer,
c/o Natter and Fulmer
3800 Colonade Parkway
Birmingham, AL35243
(205) 968-5300**



Homewood

US 51

28-19-1

Subject Property

Vestavia Hills

Homewood

Vestavia Hills

28-19-4

PARCEL #: 28 00 19 1 002 006.000
OWNER: TISDALE DEBORAH R
ADDRESS: 140 MONTGOMERY HWY VESTAVIA AL 35216-1228
LOCATION: 140 MONTGOMERY HWY BHAM AL 35216

[111-B-] Baths: 3.5 H/C Sqft: 6,074
 18-001.0 Bed Rooms: 4 Land Sch: G2
 Land: 277,000 Imp: 351,800 Total: 628,800
 Acres: 0.000 Sales Info: 11/01/2003
 \$270,000

<< Prev Next >> [1 / 0 Records] Processing...

Tax Year : 2013

SUMMARY LAND BUILDINGS SALES PHOTOGRAPHS MAPS

SUMMARY

ASSESSMENT		VALUE	
PROPERTY CLASS: 3	OVER 65 CODE:	LAND VALUE 10%	\$277,000
EXEMPT CODE: 2-2	DISABILITY CODE:	LAND VALUE 20%	\$0
MUN CODE: 20 VESTAVIA HILLS	HS YEAR: 0	CURRENT USE VALUE [DEACTIVATED]	\$0
SCHOOL DIST:	EXM OVERRIDE AMT: \$0.00	<u>CLASS 2</u>	
OVR ASD VALUE: \$0.00	TOTAL MILLAGE: 92.6	<u>CLASS 3</u>	
CLASS USE: FOREST ACRES: 0	TAX SALE:	BLDG 001	111 \$351,800
PREV YEAR VALUE: \$628,800.00	BOE VALUE: 0	TOTAL MARKET VALUE [APPR. VALUE: \$628,800]: \$628,800	
		Assesment Override:	
		MARKET VALUE:	
		CU VALUE:	
		PENALTY:	
		ASSESSED VALUE:	

TAX INFO

	CLASS	MUNCODE	ASSD. VALUE	TAX	EXEMPTION	TAX EXEMPTION	TOTAL TAX
STATE	3	20	\$62,880	\$408.72	\$4,000	\$26.00	\$382.72
COUNTY	3	20	\$62,880	\$848.88	\$2,000	\$27.00	\$821.88
SCHOOL	3	20	\$62,880	\$515.62	\$0	\$0.00	\$515.62
DIST SCHOOL	3	20	\$62,880	\$0.00	\$0	\$0.00	\$0.00
CITY	3	20	\$62,880	\$3,099.98	\$0	\$0.00	\$3,099.98
FOREST	3	20	\$0	\$0.00	\$0	\$0.00	\$0.00
SPC SCHOOL1	3	20	\$62,880	\$949.49	\$0	\$0.00	\$949.49
SPC SCHOOL2	3	20	\$62,880	\$0.00	\$0	\$0.00	\$0.00

**** DELINQUENT ****

ASSD. VALUE: \$62,880.00

TOTAL FEE & INTEREST: (Detail) \$287.74

\$5,822.69

GRAND TOTAL: \$6,057.43

Payoff Quote

DEEDS

INSTRUMENT NUMBER
[200317-1680](#)

PAYMENT INFO

DATE	PAY DATE	TAX YEAR	PAID BY	AMOUNT
10/10/2003		2013		\$0.00
	1/30/2013	2012	TISDALE DEBORAH R	\$5,774.69
	20111231	2011	***	\$6,058.04
	20101231	2010	***	\$6,058.04
	20091231	2009	***	\$6,058.04
	20081231	2008	***	\$5,212.61
	20071231	2007	***	\$5,169.08
	20061231	2006	***	\$5,036.67
	20051108	2005	***	\$4,695.91
	20041230	2004	***	\$8,339.74
	20031112	2003	***	\$7,702.65
	20021116	2002	***	\$6,997.04
	20020514	2001	***	\$3,625.05
	20001128	2000	***	\$9,944.51
	19981231	1998	***	\$3,666.95

LAND COMPUTATION

	Code	Acerage	Square Foot	Market Value	CU. Value
SITE VALUE	3 111 HOUSEHOLD UNITS	0	14688	\$277,000.00	

ROLLBACK/HOMESITE/MISCELLANEOUS

LEGAL DESCRIPTION

SUB DIVISON1: GAMBILL A A HSD 28-19-1
 SUB DIVISON2:

MAP BOOK: 16 PAGE: 53
 MAP BOOK: 0 PAGE: 0

PRIMARY BLOCK: 4
 PRIMARY LOT:

SECONDARY BLOCK: 0
 SECONDARY LOT: 0

METES AND BOUNDS: BLK 4 AA GAMBILLS HOMESITE 16/53 *

SALES INFORMATION

11/1/2003	\$270,000.00	2	BOOK:200401 PAGE:008903	Land & Building
8/1/2000	\$500,000.00	2	BOOK:200013 PAGE:003830	Land & Building
1/1/1999	\$375,000.00	4	BOOK:9902 PAGE:003311	Land & Building
10/1/1995	\$280,000.00	1	BOOK:9510 PAGE:009896	Land & Building