Vestavia Hills City Council Agenda January 12, 2015 5:00 PM

- 1. Call to Order
- 2. Roll Call
- 3. Invocation Karen Odle, President/CEO, Vestavia Hills Chamber of Commerce
- 4. Pledge Of Allegiance
- 5. Announcements and Guest Recognition
- 6. City Manager's Report
- 7. Councilors' Reports
- 8. Approval of Minutes December 18, 2014 (Work Session) and December 22, 2014 (Regular Meeting)

Old Business

- 9. Ordinance Number 2551 Rezoning 4325 Dolly Ridge Road; Rezone From Vestavia Hills R-4 (Residential District) To Vestavia Hills B-1.2 (Neighborhood Mixed Use District)
- Resolution Number 4667 A Resolution Authorizing the City Manager To Execute and Deliver An Agreement With Volkert, Inc. For Consulting Services For The Sicard Hollow Pedestrian Tunnel Design Services
- 11. Resolution Number 4669 A Resolution Forming A Health Authority And Appointing Directors To The Authority

New Business

- 12. Resolution Number 4671 A Resolution Calling For A Public Hearing For Adoption Of The 2015 Fire Safety Code In Proposed Ordinance Number 2553
- 13. Resolution Number 4672 A Resolution Accepting An RFP For Athletic Field Maintenance, Authorizing The City Manager To Execute And Deliver An Agreement For Said Maintenance And Reallocating Funding In The 2015 Fiscal Year Budget For Maintenance Expense
- 14. Resolution Number 4673 A Resolution Declaring Certain Personal Property As Surplus And Authorizing The Sale/Disposal Of Said Property

15. Resolution Number 4674 – A Resolution Changing Signatures At Regions Bank On The City's Court Bond Account

New Business (Requesting Unanimous Consent)

First Reading (No Action Taken At This Meeting)

- 16. Resolution Number 4675 A Resolution Authorizing The Purchase Of Radio Equipment From E-911 Funds
- 17. Ordinance Number 2552 Conditional Use Approval For Home Occupation 702 Hampden Place Circle; Lisa Eaker, Owner
- 18. Citizens Comments
- 19. Motion For Adjournment

CITY OF VESTAVIA HILLS

CITY COUNCIL

WORK SESSION

MINUTES

DECEMBER 18, 2014

The City Council of Vestavia Hills met in a work session on this date at 5:00 PM 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

John Henley George Pierce Jim Sharp

OTHER OFFICIALS PRESENT: Jeff Downes, City Manager

Wendy Appling, Deputy City Clerk

Dan Rary, Police Chief Jim St. John, Fire Chief

George Sawaya, Deputy Finance Director

The Mayor called the Meeting with the Mayor to order.

The Mayor and City Manager discussed with the Council several topics/updates, including but not limited to:

- UAB
- Buckhead Pilot Program
- Health Authority
- Inside The Fences Maintenance Proposal

Chief Rary updated the Council on the protest for December 19, 2014 at the Summit in the City of Birmingham.

Chief St. John stated that he needs approval for the ECD Board Certification that is performed yearly. He also needs better communication services for territory at Station 2. He has the money available for this in special funds and will provide more information at a later date.

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Alberto C. Zaragoza, Jr. Mayor

Attested by:

Wendy Appling
Deputy City Clerk/GIS Specialist

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

DECEMBER 22, 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

Patrick H. Boone, City Attorney Rebecca Leavings, City Clerk Melvin Turner, Finance Director George Sawaya, Deputy Treasurer

Dan Rary, Police Chief
Jim St. John, Fire Chief
Terry Ray, Deputy Fire Chief
Taneisha Tucker, Library Director
Brian Davis, Public Services Director
Christopher Brady, City Engineer

Invocation was given by Melvin Turner, III, followed by the Pledge of Allegiance.

ANNOUNCEMENTS, GUEST RECOGNITION, CANDIDATES

- Mr. Ammons welcomed Tommy Coggin, Park Board President, to the meeting.
- The Mayor presented a Certificate of Appreciation to Ms. Sara Robicheaux for her service to the City's Library Board.

CITY MANAGER REPORT

- Mr. Downes asked Chief Rary and Chief St. John to address the Council.
 - o Chief St. John announced that Walmart had given the City's Fire Department a \$1,000 grant which will be used for personal protection for the department employees. He expressed gratitude to Walmart for the grant and for continued support of the department.
 - o Chief Rary also announced that Walmart had given his department a \$1,000 grant to be used toward law enforcement purposes. He, too, thanked Walmart for continued support of the City's Police Department.
- Mr. Downes stated that the City administrative offices will be closed on December 23, 24, 31 and January 1 in observance of the Christmas and New Year's holidays.

COUNCILOR REPORTS

- Mr. Pierce thanked residents for shopping locally over the past few months and asked them to continue to shop within the City for their holiday needs.
- The Mayor stated that Holiday in the Hills grows each year and reminded everyone of the continuing scheduled activities.

APPROVAL OF MINUTES

The minutes of November 20, 2014 (Work Session), December 8, 2014 (Work Session) and December 8, 2014 (Regular Meeting) were presented for approval.

MOTION

Motion to dispense with the reading of the minutes of November 20, 2014 (Work Session) and approve them as presented was by Mr. Pierce and second by Mr. Ammons. Roll call vote as follows:

Mr. Pierce – yes Mr. Sharp – yes Mr. Ammons – yes

Mayor Zaragoza – abstain motion carried.

The minutes of December 8, 2014 (Work Session) and December 8, 2014 (Regular Meeting) were presented for approval.

MOTION Motion to dispense with the reading of the minutes of December 8, 2014 (Work Session) and December 8, 2014 (Regular Meeting) and approve them as presented was by Mr. Pierce and second by Mr. Henley. Roll call

vote as follows:

Mr. Henley – yes

Mr. Pierce – yes Mr. Sharp – yes

Mr. Ammons – yes

Mayor Zaragoza – yes

motion carried.

OLD BUSINESS

ORDINANCE NUMBER 2544

Ordinance Number 2544 – Annexation – 90-Day Final – 2429 Dolly Ridge Road; A Portion of Lot 36, Rocky Ridge Estates; Lila P. Williams, Owner; Earl Gibson, Representing

MOTION Motion to approve Ordinance Number 2544 was by Mr. Pierce and second was by Mr. Sharp.

Mr. Downes explained that this is the 90-day approval of an annexation that was approved a few months ago for construction of two new homes.

Earl Gibson was present in regard to this request.

The Mayor opened the floor for a public hearing. There being no one to address the Council concerning this request, he closed the floor and asked for the question.

Roll call vote as follows:

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

ORDINANCE NUMBER 2545

Ordinance Number 2545 – Rezoning – 2429 Dolly Ridge Road; A Portion Of Lot 36, Rocky Ridge Estates; Rezone From Jefferson County E-2 (Residential) To Vestavia Hills R-2 (Residential) For Construction Of Two Single-Family Homes; Lila P. Williams, Owner; Earl Gibson, Representing

MOTION Motion to approve Ordinance Number 2545 was by Mr. Pierce and second was by Mr. Henley.

Mr. Downes explained that this rezones the property from its present Jefferson County zoning to Vestavia Hills R-2 to allow the construction of two homes.

Earl Gibson was present in regard to this request.

The Mayor opened the floor for a public hearing. There being no one to address the Council concerning this request, he closed the floor and asked for the question.

Roll call vote as follows:

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

ORDINANCE NUMBER 2549

Ordinance Number 2549 - Conditional Use Approval - 2409 Acton Road; Conditional Use Approval For Operation Of A Feline Veterinary Clinic; BRC Dolly Creek Station LLC, Owner; Jackie A. Holmes, DVM, Representing

MOTION Motion to approve Ordinance Number 2549 was by Mr. Ammons and second was by Mr. Sharp.

Mr. Downes explained that this request would allow a feline veterinary clinic in the Dolly Creek Shopping Center. This business owner was actually approved previously in a part of Cahaba Heights, but that location didn't work out so she's requesting to relocate her practice. The Ordinance carries a certain number of stipulations which were read aloud to the Council.

Jackie Holmes, DVM, was present in regard to this request. She indicated that she has reviewed the stipulations in the Ordinance and finds no problems.

The Mayor opened the floor for a public hearing. There being no one to address the Council concerning this request, he closed the floor and asked for the question.

Roll call vote as follows:

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

Mr. Ammons – yes
motion carried.

ORDINANCE NUMBER 2550

Ordinance Number 2550 – An Ordinance To Prohibit Distracted Driving In School Zones And Providing Penalties For The Violation Thereof

MOTION Motion to approve Ordinance Number 2550 was by Mr. Ammons and second was by Mr. Henley.

Mr. Ammons began the discussion on this proposed Ordinance and thanked several SRO's (School Resource Officers) who were in attendance. He indicated that this was brought to his attention by these Officers and was needed to protect those directing traffic as well as all pedestrians within the carpool areas all around the School Zones. He

stated that many of the officers have been "grazed" and/or actually struck by vehicles with drivers who are distracted. The officers have no course of action, but this Ordinance would allow them to give warning or, in some cases, actually cite an individual who is not paying attention and strikes a pedestrian.

Lt. Brian Gilham stated that the proposed Ordinance gives the officers a foundation in which to address the safety of pedestrians. Many of the City's officers have been struck by vehicles and have been lucky that no serious injuries have occurred yet but it's just a matter of time if the situation isn't addressed.

Mr. Henley stated that a copy of the proposed Ordinance was presented to the City's Board of Education last week and they passed a Resolution in support of the proposed Ordinance. A copy of that Resolution was presented.

Mr. Boone stated that he sees no problems with the Ordinance and asked, if adopted, that a copy of the Board's Resolution be attached.

Mr. Pierce asked how parents will be made aware of the Ordinance.

Mr. Henley stated that they will develop a strategy to get the word out.

The Mayor opened the floor for a public hearing. There being no one to address the Council concerning this request, he closed the floor and asked for the question.

Mr. Pierce thanked the SRO's for their service to the students as well as the faculty of the City's schools.

Roll call vote as follows:

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

Mr. Ammons – yes
motion carried.

NEW BUSINESS

RESOLUTION NUMBER 4664

Resolution Number 4664 – A Resolution Appointing A Member To The Vestavia Hills Park And Recreation Board

Mr. Ammons stated that the Council interviewed six candidates. He thanked all the individuals who applied and indicated that the City is lucky to have so many talented individuals willing to serve on these various boards. He stated that following the interviews, he'd like to nominate David Myers to be appointed to the upcoming vacancy on the City's Park and Recreation Board.

MOTION Motion to approve Resolution Number 4664 to appoint David Myers was by Mr. Ammons and second was by Mr. Henley.

The Mayor opened the floor for a public hearing. There being no one to address the Council concerning this request, he closed the floor and asked for the question.

Roll call vote as follows:

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

RESOLUTION NUMBER 4665

Resolution Number 4665 – A Resolution Appointing A Member To The Vestavia Hills Library Board

Mayor Zaragoza passed the gavel to Mayor Pro-Tem Ammons and stated that the City Council interviewed three applicants for the upcoming vacancy on the City's Library Board. He stated that all three were well-qualified applicants; but, following the interviews, he nominated Anna Curry Gualano to fill the vacancy.

Mayor Pro-Tem Ammons opened the floor for a motion.

MOTION Motion to approve Resolution Number 4665 to appoint Anna Curry Gualano was by Mayor Zaragoza and second was by Mr. Sharp.

The Mayor Pro-Tem opened the floor for a public hearing. There being no one to address the Council concerning this request, he closed the floor and asked for the question.

Roll call vote as follows:

Mr. Pierce – yes
Mr. Sharp – yes
Mr. Sharp – yes
Mr. Ammons – yes
Mr. Ammons – yes
Mr. Ammons – yes

Mr. Ammons passed the gavel back to the Mayor.

RESOLUTION NUMBER 4668

Resolution Number 4668 – A Resolution Determining That Certain Personal Property Is Not Needed For Public Or Municipal Purposes And Directing The Sale/Disposal Of Said Surplus Property

Mr. Downes stated that the Fire Chief has indicated a vehicle and some generators are of no further use to the City. This Resolution will declare the items as surplus and allow the sale/disposal of them.

MOTION Motion to approve Resolution Number 4668 was by Mr. Ammons and second was by Mr. Henley.

Roll call vote as follows:

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

Mr. Ammons – yes
motion carried.

NEW BUSINESS (REQUESTING UNANIMOUS CONSENT)

MOTION Motion for unanimous consent for the immediate consideration and action on Resolution Number 4666 was by Mr. Henley. Second was by Mr.

Pierce. Roll call vote as follows:

Mr. Pierce – yes Mr. Sharp – yes Mr. Ammons – yes

Mayor Zaragoza – yes motion carried.

RESOLUTION NUMBER 4666

Resolution Number 4666 – A Resolution Authorizing the City Manager To Execute and Deliver An Agreement With Wisener, LLC For Consulting Services For The Meadowlawn Estates Acquisition Services

MOTION Motion to approve Resolution Number 4666 was by Mr. Ammons and second was by Mr. Henley.

Mr. Downes stated that the City is moving to design and construct a new park in the Meadowlawn part of Cahaba Heights but first must move forward with the acquisition of four residential properties. Since the City is using proceeds from the Federal Government, a consultant needs to be retained to handle the paperwork and ensure that everything is done correctly in securing the properties. This Resolution will allow the City Manager to retain Wisener LLC for this service in an amount not to exceed \$27,000 which will be part of the \$1.2 estimated project cost.

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

Roll call vote as follows:

Mr. Pierce – yes Mr. Sharp – yes Mr. Ammons – yes Mayor Zaragoza – yes Mr. Ammons – 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 January 12, 2015 at 5 PM.

- Ordinance Number 2551 Rezoning 4325 Dolly Ridge Road; Rezone From Vestavia Hills R-4 (Residential District) To Vestavia Hills B-1.2 (Neighborhood Mixed Use District)
- Resolution Number 4667 A Resolution Authorizing the City Manager To Execute and Deliver An Agreement With Volkert, Inc. For Consulting Services For The Sicard Hollow Pedestrian Tunnel Design Services
- Resolution Number 4669 A Resolution Forming A Health Authority And Appointing Directors To The Authority

CITIZENS COMMENTS

None.

MOTION Motion to adjourn was by Mr. Pierce and second was by Mr. Sharp. Meeting adjourned at 6:46 PM.

Alberto C. Zaragoza, Jr. Mayor

Attested by:

Rebecca Leavings City Clerk

ORDINANCE NUMBER 2551

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 PROPERTY FROM VESTAVIA HILLS R-4 TO VESTAVIA HILLS B-1.2

BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Vestavia Hills R-4 (residential) Vestavia Hills B 1.2 (neighborhood mixed use district):

4325 Dolly Ridge Road City of Vestavia Hills, owner(s)

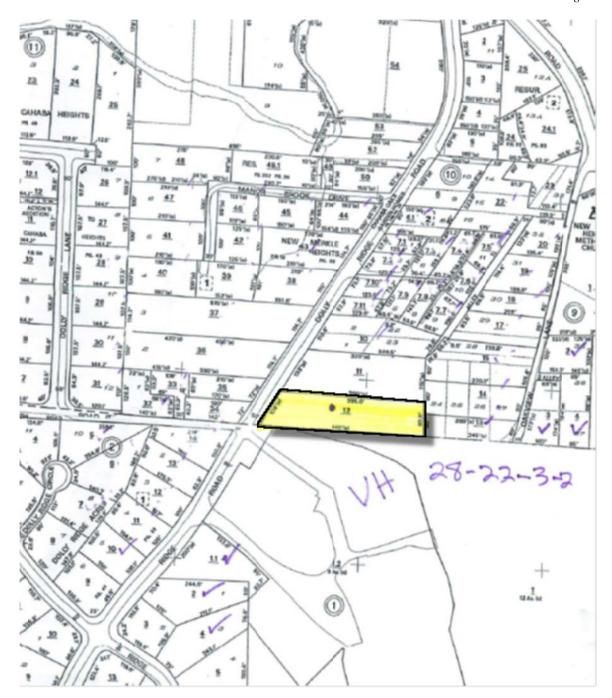
More particularly described as follows:

Commence at the NE corner of the NE ¼ of the SW ¼ of Section 22, Township 18 South, Range 2 West, Jefferson County Alabama, and run in a Westerly direction along the ¼ line for a distance of 535.38 feet to a found rebar; thence continue in a Westerly direction for a distance of 448.54 feet to a point on the Easterly right-of-way of Dolly Ridge Road; thence run in a Northeasterly direction along the right-of-way for a distance of 107.93 feet to a point; thence turn an interior angle to the left of 114 degrees 58' 21" and run in an Easterly direction for a distance of 396.86 feet to a found rebar; thence run in a Southerly direction for a distance of 93.82 feet, more or less, to the point of beginning.

APPROVED and ADOPTED this the 12th day of January 2015.

Alberto C. Zaragoza, Jr. Mayor

ATTESTED BY:	
Rebecca Leavings	
City Clerk	
CERTIFICATION:	
I, Rebecca Leavings, as City Clerk of a certify that the above and foregoing copy of correct copy of such Ordinance that was duly Vestavia Hills on the 12 th day of January 201 said City.	adopted by the City Council of the City of
Posted at Vestavia Hills Municipal Convex Merkle House and Vestavia Hills Recommendation, 2015.	enter, Vestavia Hills Library in the Forest, creational Center this the day of
	ebecca Leavings City Clerk



CITY OF VESTAVIA HILLS

SYNOPSIS AND STAFF RECOMMENDATION CONCERNING APPLICATION BEFORE THE PLANNING AND ZONING COMMISSION

Date: NOVEMBER 13, 2014

- <u>CASE</u>: P-1114-55
- **REQUESTED ACTION:** Rezoning Vestavia Hills R-4 to Vestavia Hills B-1.2
- ADDRESS/LOCATION: 4325 Dolly Ridge Rd.
- APPLICANT/OWNER: City of Vestavia Hills
- REPRESNTING AGENT: Thorton Hydinger & Sorrell Chew
- **GENERAL DISCUSSION:** Property directly adjacent to Cahaba Heights Elementary. Property is currently owned by City and is part of an overall redevelopment effort in Cahaba Heights. City and developer are requesting a B-1.2 rezoning to create a denser more urban development. New development will host a dermatology practice.
- <u>CAHABA HEIGHTS COMMUNITY PLAN</u>: The request is consistent with the results from the Cahaba Heights charrette.

• 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: Development plan to include construction of access to neighboring properties.
- 3. City Fire Marshal Review: I have reviewed the application and I have no issues with this request.
- 4. **Building Safety Review:** I have reviewed the application and I have no issues with this request.

MOTION Mr. Wolfe made a motion to approve Rezoning of 4325 Dolly Ridge Rd. from Vestavia Hills R-4 to Vestavia Hills B-1.2 For The Purpose Of A Medical Office Building Conditioned on the site plan and rendering presented. Second was by Mr. House. Motion was carried on a roll call; vote as follows:

Mr. Goodwin – yes
Mr. Gilchrist – yes
Mr. Wolfe – yes
Mr. Larson – yes
Mr. House – yes
Motion carried.

Rezone from VH R-4 to B 1.2

City of Vestavia Hills

VH

CITY OF VESTAVIA HILLS

APPLICATION

PLANNING AND ZONING COMMISSION

I. INSTRUCTIONS AND INFORMATION:

- (1) The Vestavia Hills Planning and Zoning Commission meets regularly on the second Thursday of each month at 6:00 PM in Council Chambers at the Municipal Center.
- (2) All materials and information relating to a zoning/rezoning request or conditional use approval before the Planning and Zoning Commission must be submitted to the Office of the City Clerk no later than 25 working days prior to the scheduled meeting at which it shall be considered. All information relating to Preliminary Map approvals must be submitted to the Office of the City Clerk no later than 20 days prior to the scheduled meeting at which is shall be considered. All information relating to Final Map approvals must be submitted to the Office of the City Clerk no later than 15 days prior to the scheduled meeting at which it is to be considered.
- (3) This application must be filled out in its entirety complete with zip codes.
- (4) All applicable fees shall accompany this application prior to its being considered complete. Fees include an application fee of \$100.00 along with applicable postage per property owner to be notified for Commission meeting. Fees may also include notification fees for City Council meeting and publication fees which will be billed to applicant at a later date. **No permits will be issued until all fees have been paid.
- (5) Appropriate plats and maps with proper legal description shall accompany this application. Please refer to attached checklist.

<u>II.</u>	APPLICAN	APPLICANT INFORMATION: (owner of property)					
	NAME:	The City of Vestavia Hills	007				
	ADDRESS:	513 Montgomery Hwy Vestavia Hills, AL 35216					
	ADDICESS.	•	Ū				
			Pt				
	MAILING A	DDRESS (if different from above)	•				
	PHONE NUN	78-0100					
	NAME OF REPRESENTING ATTORNEY OR OTHER AGENT: Hydinger Ste						
9							
g	a>	Properties, LLC 2801 Hwy 280 South Protec	tive CtR				

P1114-55//28-22-2-10-12 4325 Dolly Ridge Rd.

Rezone from VH R-4 to B 1.2

City of Vestavia Hills

VH

P&Z Application

Page 5

ACTION REQUESTED HI. Request that the above described property be zoned/rezoned VHR-4 From: B_{1.2} To: For the intended purpose of: Medical Office Building (Example: From "VH R-1" to "VH O-1" for office building) **if additional information is needed, please attached full description of request** PROPERTY DESCRIPTION: (address, legal, etc.) IV. 4325 Dolly Ridge Road Vestavia Hills, AL 35243 Tax ID# 28-00-22-2-010-012.000 Property size: _____ feet X _____ feet. Acres: **INFORMATION ATTACHED:** Attached Checklist complete with all required information. Application fees submitted. I do hereby declare the above statements are true and that I, the owner, and/or my duly appointed representative will be at the scheduled hearing.

Given under my hand and seal 3th day of October. 20

Notary Public

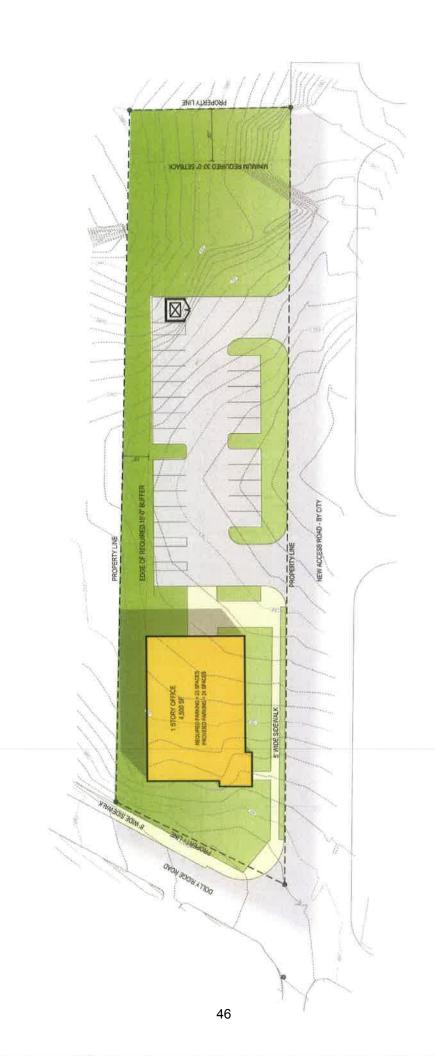
ty Manager, Vestavia Hills, AL

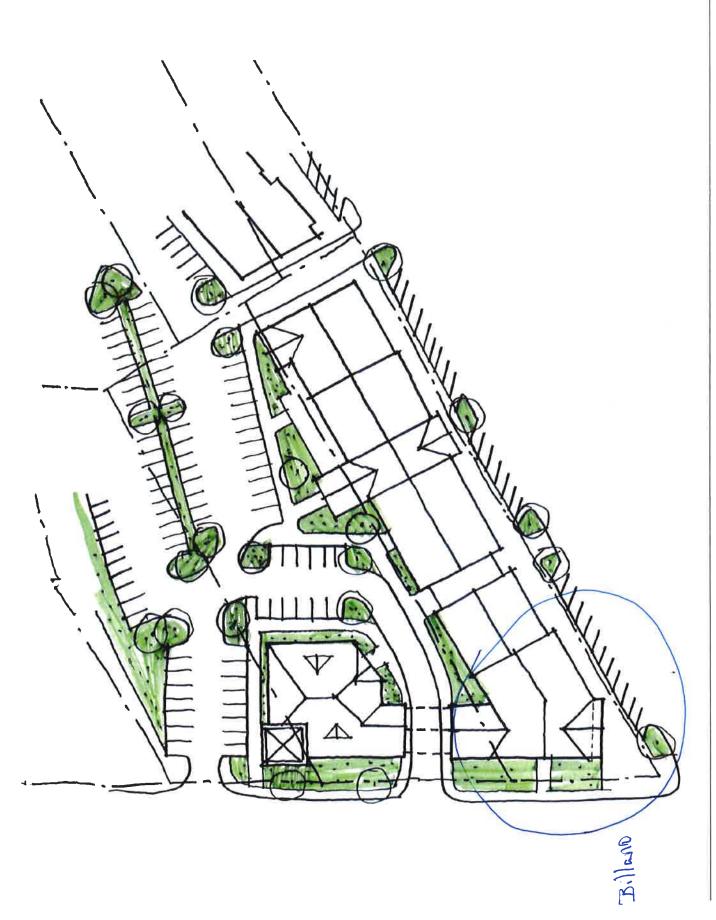
My commission expires

day of

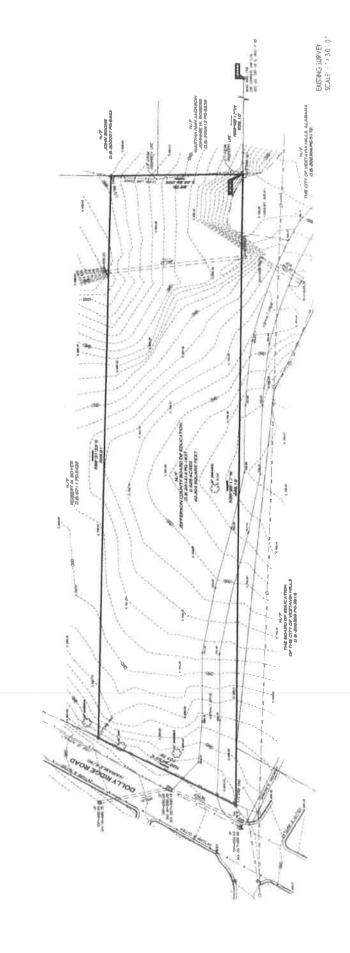
Representing Agent (if any)/date







P1114-55//28-22-2-10-12
4325 Dolly Ridge Rd.
Rezone from VH R-4 to B 1.2
City of Vestavia Hills
R4



PROPOSED VESTAVIA HILLS DEVELOPMENT

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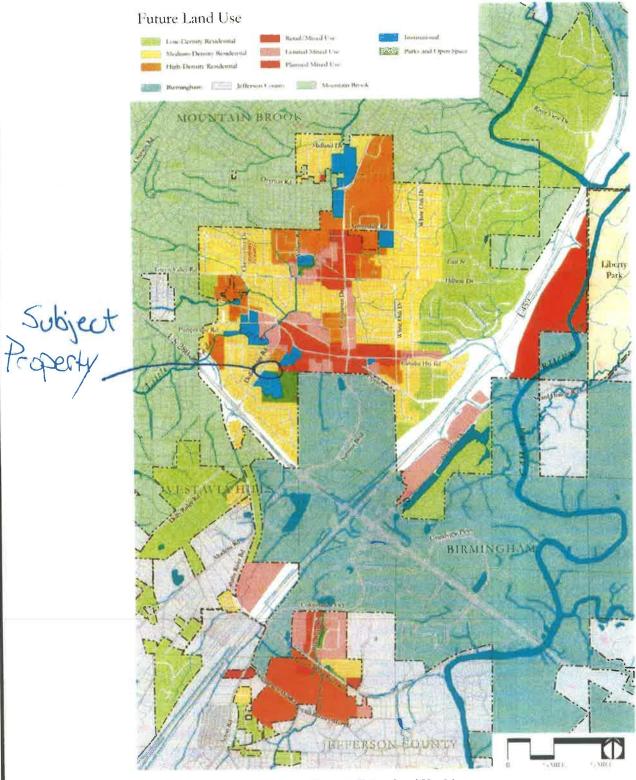


Figure 4: Future Land Use Map

Page 14

RESOLUTION NUMBER 4667

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT WITH VOLKERT, INC. FOR CONSULTING SERVICES FOR THE SICARD HOLLOW PEDESTRIAN TUNNEL DESIGN SERVICES

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

- 1. The City Manager is hereby authorized to execute and deliver an agreement with Volkert, Inc. for consulting services for Sicard Hollow Pedestrian Tunnel Design Services in an amount not to exceed \$74,300.00; and
- 2. A copy of said agreement is marked as Exhibit "A" attached and incorporated into this Resolution Number 4667 as though written fully therein; and
- 3. This Resolution Number 4667 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 12th day of January, 2015.

Alberto C. Zaragoza, Jr. Mayor

ATTESTED BY:

Rebecca Leavings City Clerk

EXHIBIT A

OWNER/CONSULTANT AGREEMENT

between the	nd	Volkert,		d into this		,	here	after r	eferred to	
WHEREAS, professional of Services;	the plan	OWNER ning, prog	desire rammi	es to retain ng, and engi	the CON neering se	ISUL ervice	TAN es as	T to outlin	perform ned in the	certain Scope
WHEREAS, Owner;	the	CONSUL	ΓANT	desires to pe	erform sai	d pr	ofes	sional	services	for the

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter stipulated to be kept and performed, the parties hereto agree as follows:

ARTICLE I - SCOPE OF SERVICES

SECTION I – GENERAL SERVICES

The CONSULTANT shall perform certain professional and engineering services as requested by the OWNER for a pedestrian tunnel to connect the Liberty Park Sports Complex (LPSC) and the Sicard Hollow Athletic Complex (SHAC).

The scope of services proposed to complete this project is summarized herein below.

Design Engineering

- Conduct a project kick-off meeting to discuss project details, schedule, and confirm City's goals and objectives.
- Gather and review the following information:
 - Previous studies and grant application documents provided by the City or currently available mapping including: GIS, quad maps, aerial maps,
 - Current planning and zoning maps.
 - Meet with the City regarding any known future developments. Identify any right-of-way issues.
- Coordinate with the City and other utilities to obtain available utility mapping within the project area.
 - Coordinate with Alabama Power in regards to the transmission lines.
 - Coordinate with the Birmingham Water Works Board to relocate or protect the existing 24-inch diameter water transmission main.

- Conduct a detailed survey of the proposed site and surrounding area. This survey will be used to determine all existing grades / ground surface elevations. Volkert will also survey all existing drainage structures, existing features, existing utilities, and a complete survey of Sicard Hollow Road for a distance of 300' on either side of the proposed tunnel.
- Subsurface utilities will be potholed with non-destructive methods to confirm elevation.
- Conduct a detailed geotechnical investigation to determine subsurface condition, structural excavation, bedding and backfill requirements, and to minimize the cost of risk on the project.
- Finalize our study of viable structural alternatives and select a preferred structural alternative in accordance with the Owner's objectives.
 - o Jacked box culvert to minimize impact to traffic and utilities or...
 - Cut and Cover for a box culvert with phased Maintenance of Traffic (MOT) for Sicard Hollow Road.
- Perform engineering design for selected tunnel alternative. Coordinate design with Volkert CEI to coordinate constructability and budgetary issues.
- Coordinate design with TAP requirements to ensure available funding is secured.
- Conduct phased design reviews with City and ALDOT. Each review will include an updated construction estimate.
 - Schematic Design (30%) Vestavia Only
 - o Plan in Hand (60%)
 - o P.S. & E. (85%)
 - Original Submittals (100%)
 - Additional reviews conducted, if required.
- Assist the City with Bid Phase services

Construction Engineering and Inspection (CE&I)

CE&I services are not included in the General Services and shall be added by supplemental agreement to this contract as Special Services.

SECTION II - SPECIAL SERVICES

At the written request of the OWNER, the CONSULTANT shall accomplish such special services as required by the OWNER. When the CONSULTANT is requested to provide

special services, such services may be provided by CONSULTANT'S own forces or through subcontracts with other professionals. However, contracts with other professionals for special services must have the written approval of the OWNER before the work is initiated. Special services which may be requested include, but are not necessarily limited to the following:

- A. Land Surveys as necessary to establish property boundaries required for property acquisition purposes or preparation of property maps.
- B. Soils and Materials Investigations including laboratory and field testing of soils and materials required for construction quality control purposes.
- C. Engineering Surveys for construction to include topographic surveys, base line surveys, cross section surveys, aerial photography, etc., as required and approved by the OWNER.
- D. Observation of construction by project representative as approved by the OWNER. When authorized by the OWNER, the duties, responsibilities and limitations of authority shall be included in a supplemental agreement.
- E. Assistance to the OWNER as expert witness in litigation arising from development or construction of project as determined appropriate by OWNER and CONSULTANT.
- F. Accomplishment of special surveys and investigations, and the preparation of special reports and drawings as may be requested or authorized in writing by the OWNER.
- G. Preparation of pre-applications and applications for federal and/or state assistance grants for funding of projects.

ARTICLE II – GENERAL PROVISIONS

SECTION I – RESPONSIBILITIES OF THE OWNER

As a party to this Agreement, the OWNER shall:

- A. Make available for CONSULTANT'S use all record drawings, maps, soil data, etc. that are readily available to the OWNER, and the CONSULTANT shall have the right to rely upon the completeness and accuracy thereof.
- B. Designate a person to act with authority on OWNER'S behalf and respond in a timely manner to submissions by CONSULTANT providing approvals and authorizations as appropriate so that work may continue at a normal pace.

C. Pay all costs associated with special services authorized by the OWNER, and all costs associated with obtaining bids from contractors.

SECTION II - METHOD OF PAYMENT

The CONSULTANT agrees to provide professional services for all services included in Article I – Scope of Services and the OWNER agrees to pay the CONSULTANT a LUMP SUM fee for design engineering services <u>\$74,300</u>.

- A. Partial payments for all services performed by the CONSULTANT under the terms of the Agreement shall be made no more often than monthly to the CONSULTANT by the OWNER upon receipt of invoices and other evidence of performance as may be deemed necessary by the OWNER. Payments shall be due and payable within thirty (30) days of the date of invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate of one and one-half percent (1 ½%) per month and OWNER shall reimburse CONSULTANT for any expenses, including legal costs, incurred in collection of outstanding amounts due from OWNER.
- B. For Projects involving a supplemental agreement, the scope of services and amount of compensation to be paid will be included therein.
- C. The OWNER will pay the CONSULTANT for special services performed by subconsultants at the actual invoice amount times a factor of 1.10 for assisting and coordinating the subconsultant's services.
- D. Reimbursable expenses are defined as follows:

Travel and subsistence cost, long distance telephone, printing and reproduction, computer services, application fees or deposits, and all other costs incidental to performing the assignment.

- E. The OWNER as purchaser of the services described herein shall pay any applicable sales tax in the manner and in the amount as required by law.
- F. Payment shall be made payable to Volkert, Inc. and submitted to the following address: *Dept. #2042, Volkert, Inc., P.O. Box 11407, Birmingham, AL 35246-2042.*

SECTION III - MISCELLANEOUS

A. <u>Extra Work</u>: It is mutually understood and agreed that the OWNER will compensate the CONSULTANT for services resulting from changes in the scope of a project or its design, including but not necessarily limited to, change in size, complexity, project schedules, character of construction, revisions to previously accepted studies, reports, design documents or contract documents and for

preparation of documents for separate bids, when such revisions are due to causes beyond the CONSULTANT'S control and when requested or authorized by the OWNER. Compensation for such extra work when authorized by the OWNER shall be mutually agreed upon prior to beginning work.

- Ownership and Reuse of Documents: All Project documents including but not B_{α} necessarily limited to reports, drawings, studies, findings, correspondence, specifications, survey notes, estimates, maps, computations, calculations, computer files, Computer Assisted Design and Drafting (CADD) files (electronic and hard copy), and other data, as well as any and all other documents and other materials prepared, generated, or furnished by or for CONSULTANT and/or its Subconsultant(s) for the Project pursuant to this Agreement (hereinafter referred to in this Section B. as "Documents") are instruments of service with respect to the Project, and CONSULTANT shall retain an ownership and intellectual property interest therein regardless whether the Project is completed. OWNER may make and retain copies thereof for information and reference in connection with the use and/or occupancy of the Project by OWNERS and others. However, such Documents are not intended for reuse or future use by OWNER or others for any purpose whatsoever or on any other project. No representation is made that such Documents are or will be suitable for reuse or future use by OWNER or others for any purpose whatsoever or on any other project. Any use of such Documents by OWNER or others on any project other than the project which is the subject of this Agreement is not advised and shall be done without warranty, representation, or liability to any extent whatsoever on the part of OWNER shall defend, indemnify, save and hold harmless CONSULTANT. CONSULTANT, its officers, directors, employees, agents, successors, and assigns against any and all liability for any and all claims, demands, fines, fees, damages, actions, causes of action, lawsuits, expenses (including attorneys' fees), mediations, and arbitrations arising out of, resulting from, or relating in any way to the OWNER'S use of such Documents.
- C. Exclusivity of Remedies: To the fullest extent permitted by law, the total liability, in the aggregate, of CONSULTANT and CONSULTANT'S officers, directors, employees, agents and independent professional associates and consultants, and of any of them, to OWNER and anyone claiming by, through or under OWNER, for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to CONSULTANT'S services, the project or this agreement from any cause or causes whatsoever, including but not limited to the negligence, errors, omissions, strict liability or breach of contract by CONSULTANT or CONSULTANT'S officers, directors, employees, agents or independent professional associates or consultants, or any of them, shall be limited to and shall not exceed the total compensation received by CONSULTANT under this agreement.
- D. <u>Indemnification</u>: To the fullest extent permitted by law, and up to the limits of the exclusivity of remedies provision, *supra*, CONSULTANT shall indemnify

OWNER and OWNER'S officers, directors and employees for costs, losses, judgments, damages and expenses (including reasonable attorneys' fees) to the extent caused by the negligent acts, errors and omissions of CONSULTANT in the performance of its professional services hereunder. In any matters involving allegations of negligent performance of professional services by CONSULTANT, CONSULTANT'S defense duties under this indemnification provision (which are expressly disclaimed) shall include only reimbursement of reasonable defense costs to the extent incurred as a proximate result of CONSULTANT'S actual negligent performance.

E. <u>Insurance</u>: CONSULTANT shall furnish OWNER with Certificate of Insurance confirming following forms and minimum limits of insurance:

TYPE OF COVERAGE	LIMITS
I. Worker Compensation	State - Statutory
Employer Liability	\$500,000 per accident
	\$500,000 disease/each accident
	\$500,000 disease/policy limit
II. Comprehensive or Commercial General Liability	\$1,000,000 per person bodily injury \$1,000,000 per occurrence bodily injury \$1,000,000 property damage \$2,000,000 policy aggregate
III. Automobile Liability	\$1,000,000 combined single limit
IV. Professional Liability	\$2,000,000

- F. <u>Termination</u>: In the event of failure by the CONSULTANT to fulfill in timely and proper manner CONSULTANT'S obligations under this contract, or if the CONSULTANT violates any of the covenants, agreements, or stipulations of this contract, the OWNER shall thereupon have the right to terminate this contract by written notice to the CONSULTANT of such termination, specifying the effective date thereof at least five days before the effective date of such termination and make settlement with CONSULTANT upon an equitable basis for services performed up to the time of termination.
- G. <u>Contract Period</u>: All contracts, agreements, provisions and stipulations of this Agreement shall remain in full force for a period of <u>one (1) year</u> from the date of the Agreement, and for such periods as the contract time may be extended by mutual written agreement between the OWNER and the CONSULTANT.

H. Successors and Assigns:

- OWNER and CONSULTANT each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and CONSULTANT (and to the extent permitted by paragraph 2, the assigns of OWNER and CONSULTANT) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.
- 2. Neither OWNER nor CONSULTANT shall assign, sublet or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent CONSULTANT from employing such independent professional associates and consultants as CONSULTANT may deem appropriate to assist in performance of services hereunder.
- 3. Nothing under this Agreement shall be construed to give any right or benefits in this Agreement to anyone other than OWNER and CONSULTANT, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and CONSULTANT and not for the benefit of any other party.
- Dispute Resolution: If a dispute arises out of or relates to this Agreement or its 1. alleged breach, the OWNER and CONSULTANT shall direct their representatives to endeavor to settle the dispute first through direct discussions. If the dispute cannot be resolved through direct discussions, the OWNER and CONSULTANT shall participate in mediation under the Construction Industry Mediation Rules of the American Arbitration Association then in effect unless the parties mutually agree otherwise, before recourse to litigation. The OWNER'S and CONSULTANT'S representatives shall attend all mediation sessions. Engaging in mediation is a condition precedent to litigation. Should mediation fail to resolve the dispute, the parties shall engage in arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect unless the parties mutually agree otherwise, before recourse to litigation. Arbitration is a condition precedent to litigation. Only after the parties have exhausted direct discussions, mediation, AND arbitration in accordance with the foregoing shall either of them be entitled to initiate litigation. Should either party initiate litigation prior to engaging in direct discussions, good

faith mediation, and arbitration, it shall pay all attorneys' fees and expenses and other costs incurred by the other party in responding to said litigation. Any provisions herein to the contrary notwithstanding, OWNER and CONSULTANT hereby agree that any disputes between them will be tried to the Bench and not to a jury, and each of them willfully and voluntarily waives its right to trial by jury for any dispute arising out of this Agreement.

- Right of Entry: OWNER shall furnish right-of-way on the property for CONSULTANT to perform undisturbed the Services hereunder. CONSULTANT shall take reasonable precautions to minimize damage to the property during the course of its services. OWNER acknowledges that a certain amount of damage, wear and tear, and depreciation is likely to result from CONSULTANT'S operations on the property in furtherance of CONSULTANT'S Services under this Agreement. The cost for restoration or remediation of damaged property which may result from CONSULTANT'S operations is not included in CONSULTANT'S compensation hereunder unless explicitly stated otherwise in this Agreement. If the property is damaged during CONSULTANT'S operations and if OWNER desires CONSULTANT to restore or remediate the property to its former condition, CONSULTANT will do so for additional costs in accordance with the fee schedule referenced herein.
- K. Standard of Care: CONSULTANT shall endeavor to perform its services hereunder consistent with the professional skill and care ordinarily exercised under similar conditions by similarly situated professional consultants practicing in the same field at the same time in the same or similar locality. No warranty, express or implied, is made or intended related to the services provided herein, and CONSULTANT guarantees no particular result.
- L. <u>Disclaimer of Third-Party Benefits:</u> OWNER and CONSULTANT expressly disclaim third-party beneficiaries hereunder and no one not a Party to the Agreement shall be entitled to seek enforcement against OWNER and/or CONSULTANT of any provision herein, or to otherwise seek damages from either Party for the alleged breach of any provision contained herein or purported duty or standard created or conferred hereunder. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a Party to the Agreement to maintain a claim, cause of action, lien or any other damages or any relief of any kind pursuant to the terms and provisions of this Agreement.
- M. <u>Waiver of Consequential Damages:</u> Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither OWNER nor CONSULTANT, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of

consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation, or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both OWNER and CONSULTANT shall require similar waivers of consequential damages protecting all of the entities and persons named herein in all contracts and subcontracts with others involved in this Project.

N. <u>Jurisdiction/Venue</u>: It is expressly agreed and stipulated between the parties that this contract shall be deemed to have been executed in the State of Alabama where the principal office of Volkert, Inc. is located. This contract shall be governed by the laws of the State of Alabama. The Circuit or District Court of the Thirteenth Judicial Circuit of Alabama, Mobile County, Alabama, shall have jurisdiction over any dispute which arises under this contract, and each of the parties shall submit and hereby consents to the jurisdiction of either such court.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement in duplicate as of the day and year first above written.

ATTEST:	OWNER	
Title	Title	
	Federal Employer ID # (Corporation):	
	Social Security # (IndIvidual):	
ATTEST:	Volkert, Inc.	
Title	Title	

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

October 15, 2014

By Hand Delivery

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

In Re: Agreement By and Between the City of Vestavia Hills, Alabama ("City") and Volkert, Inc. ("Consultant")

Dear Mr. Downes:

On October 6, 2014, Melissa Hipp furnished me via electronic mail with a copy of a proposed Agreement by and between the City of Vestavia Hills, Alabama ("Owner") and Volkert, Inc. ("Consultant") prepared and proposed by the Consultant. You have requested that I review the proposed Agreement and provide you with my written legal opinion. The purpose of this letter is to comply with your request.

I. FACTS

Volkert, Inc. has prepared and proposed the execution and delivery of an Agreement by and between the City, as "Owner", and Volkert, Inc., as "Consultant", providing for engineering design services for the construction of a pedestrian tunnel to connect Liberty Park Sports Complex (LPSC) and Sicard Hollow Athletic Complex (SHAC) for and in consideration of the sum of \$74,300.00 ("Agreement").

On October 13, 2014, the City Council of the City of Vestavia Hills, Alabama approved and adopted Resolution Number 4643 authorizing and directing you to execute and deliver an Agreement with Alabama Department of Transportation ("ALDOT") for Project Number TAPAA-TA14(931) for the construction of a pedestrian tunnel to connect LPSC and SHAC. Among other things, the agreement provides that the Federal Highway Administration will provide federal funding equal to eighty percent (80%) of the cost of the construction; provided, however, that the maximum federal money does not exceed Three Hundred Seventy-eight Thousand Nine Hundred Sixty-six Dollars (\$378,966.00). The City will be required to pay the remaining twenty percent (20%) and the cost of preparing the design plans for construction of the project.

Volkert, Inc., as Consultant, proposes to do the engineering design services for and in consideration of \$74,300.00. The Agreement prepared and proposed by Volkert, Inc. raises the legal issues set forth below.

II. LEGAL ISSUE ONE

- A. LEGAL ISSUE ONE: Is the City of Vestavia Hills, Alabama liable for the payment of sales taxes?
- B. <u>LEGAL OPINION</u>: It is my legal opinion that the answer to Legal Issue One is in the negative.
- C. <u>Basis for Legal Opinion</u>: Municipalities in Alabama are not legally required to pay sales taxes. Title 40-23-4(a), *Code of Alabama 1975*, reads in pertinent part as follows:
 - "§40-23-4. Exemptions; Certain Sales.
 - (a) There are exempted from the provisions of this division and from the computation of the amount of the tax levied, assessed, or payable under this division the following:
 - (11) The gross proceeds of sales of tangible personal property to the State of Alabama, to the counties within the state and to incorporated municipalities in the State of Alabama.
 - (15) The gross proceeds of the sale or sales of tangible personal property to county and city school boards, independent school boards, and all educational institutions and agencies of the State of Alabama, the counties within the state, or any incorporated municipalities of the State of Alabama."
 - D. MY RECOMMENDATION: I recommend that Section II-E on page 4 be deleted.

III. LEGAL ISSUE TWO

- A. <u>LEGAL ISSUE Two:</u> May the City legally agree to the language of Section III-G on page 6, which reads as follows:
 - "Contract Period: All contracts, agreements, provisions and stipulations of this Agreement shall remain in full force for a period of one (1) year from the date of the Agreement, and for such periods as the contract time may be extended by mutual written agreement between the OWNER and the CONSULTANT."
- **B.** <u>LEGAL OPINION</u>: It is my legal opinion that the answer to Legal Issue Two is in the negative.

C. BASIS FOR LEGAL OPINION: I base my legal opinion upon the following:

(1) Statute of Limitations:

- (a) <u>Negligence:</u> Title 6-2-38, *Code of Alabama*, 1975, provides that an action to recover damages for negligence must be commenced within two (2) years. Title 6-2-34(9), *Code of Alabama*, 1975, provides that an action upon a contract must be commenced with six (6) years.
- **(b)** Agreements, Etc. To Limit Time Void: Title 6-2-15, Code of Alabama, 1975, provides in words and figures as follows:
 - "§6-2-15. Agreements, etc. to limit time void. Except as may be otherwise provided by the Uniform Commercial Code, any agreement or stipulation, verbal or written, whereby the time for the commencement of any action is limited to a time less than that prescribed by law for the commencement of such action is void."
 - **D.** My RECOMMENDATION: I recommend that Section III-G on page 6 be deleted.

IV. LEGAL ISSUE THREE

A. <u>LEGAL ISSUE THREE:</u> May the City legally agree to the language of Section III-C on page 5, which reads as follows:

"Exclusivity Remedies: To the fullest extent permitted by law, the total liability in the aggregate, of CONSULTANT and CONSULTANT'S officers, directors, employees, agents and independent professional associates and consultants, and of any of them, to OWNER and anyone claiming by, through or under OWNER, for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to CONSULTANT'S services, the project or this agreement from any cause or causes whatsoever, including but not limited to the negligence, errors, omissions, strict liability or breach of contract by CONSULTANT or CONSULTANT'S officers, directors, employees, agents or independent professional associates or consultants, or any of them, shall be limited to and shall not exceed the total compensation received by CONSULTANT under this agreement."?

B. LEGAL OPINION: It is my legal opinion that the answer to Legal Issue Three is in the negative.

- C. BASIS FOR LEGAL OPINION: I base my legal opinion upon the following:
- (1) <u>Municipalities May Be Liable for the Negligent Acts of Its Employees</u>

 <u>Acting in the Line and Scope of Their Employment:</u> Title 11-47-190, Code of Alabama, 1975, reads as follows:

"No city or town shall be liable for damages for injury done to or wrong suffered by any person or corporation, unless such injury or wrong was done or suffered through the neglect, carelessness or unskillfulness of some agent, officer or employee of the municipality engaged in work therefor and while acting in the line of his or her duty, or unless the said injury or wrong was done or suffered through the neglect or carelessness or failure to remedy some defect in the streets, alleys, public ways or buildings after the same had been called to the attention of the council or other governing body or after the same had existed for such an unreasonable length of time as to raise a presumption of knowledge of such defect on the part of the council or other governing body and whenever the city or town shall be made liable for damages by reason of the unauthorized or wrongful acts or negligence, carelessness or unskillfulness of any person or corporation, then such person or corporation shall be liable to an action on the same account by the party so injured. However, no recovery may be had under any judgment or combination of judgments, whether direct or by way of indemnity under Section 11-47-24, or otherwise, arising out a single occurrence, against a municipality, and/or any officer or officers, or employee or employees, or agents thereof, in excess of a total \$100,000 per injured person up to a maximum of \$300,000 per single occurrence, the limits set out in the provisions of Section 11-93-2 notwithstanding."

- (2) <u>Joint Liability:</u> Title 11-47-191(b), Code of Alabama, 1975, provides as follows:
 - "(b) When a judgment shall be obtained against a municipality and the other party liable as provided in subsection (a) of this section, execution shall issue against the other defendant or defendants in the ordinary form and shall not be demandable of the city or town unless the other defendants are insolvent and the same cannot be made out of their property, and the city or town shall pay only so much of the said judgment as cannot be collected from the other defendants."
- Insurance Carrier and Jeopardize Coverage: Based upon Title 11-47-191(b), Code of Alabama, 1975, it is my legal opinion that if the City agreed to Section III-C that it would prejudice the rights of the City general comprehensive liability insurance carrier and jeopardize coverage under the policy.
- (4) <u>Municipalities Cannot Spend Public Funds to Indemnify Third</u>

 Parties: It is my legal opinion that to agree to shorten the Statute of Limitations and limit the amount of damages would in effect constitute an indemnity agreement. It is my further legal opinion that municipalities in Alabama cannot spend public funds to indemnify third parties. I base my legal opinions 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 Consultant for actions, costs, expenses, damages and liabilities (by limiting Consultant's liability).

(b) <u>Limits of Liability of Municipalities</u>: 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

October 15, 2014 page 6

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. My RECOMMENDATION: I recommend that Section III-C on page 5 be deleted.

V. LEGAL ISSUE FOUR

- A. <u>LEGAL ISSUE FOUR:</u> Should the City agree that the Courts in Mobile County, Alabama shall have jurisdiction over any dispute, which arises under the Agreement?
- **B.** <u>LEGAL OPINION</u>: It is my legal opinion that the answer to Legal Issue Four is in the negative.
- C. BASIS FOR LEGAL OPINION: Title 6-3-7(a), Code of Alabama, 1975, provides that all civil actions against corporations may be brought in any of the following counties:
- 1. The county where the event or omission giving rise to the claim occurred or a substantial part of real property that is the subject of the action is situated (Jefferson County, Alabama); or
- 2. In the county of the corporation's principal office in this state (Volkert, lnc. is located in Mobile); or
- 3. In the county where the plaintiff had its principal office in this state (The City operates in Jefferson County, Alabama); or
- 4. If subdivisions 1, 2 or 3 do not apply, then in any county in which the corporation was doing business at the time of the accrual of the cause of action (Jefferson County, Alabama).
- **D.** MY RECOMMENDATION: I recommend that Section III-N on page 9 be amended so that the dispute, if any, shall be resolved in Jefferson County, Alabama.

VI. LEGAL ISSUE FIVE

- A. <u>LEGAL ISSUE FIVE</u>: Does the indemnification language in Section III-D on pages 5 and 6 adequately indemnify and hold the City and its employees and public officials harmless from the negligence, acts, errors and omissions of the Consultant?
- **B.** LEGAL OPINION: It is my legal opinion that the answer to Legal Issue Five is in the negative.
- C. <u>Basis for Legal Opinion</u>: I base my legal opinion upon the fact that the indemnity is limited to and shall not exceed the total compensation received by the Consultant under the Agreement.
- D. MY RECOMMENDATION: I recommend that Section III-D on pages 5 and 6 be amended so to read, as amended, as follows:
 - Indemnification: To the fullest extent permitted by law, the "D. CONSULTANT shall defend, indemnify and hold harmless the City of Vestavia Hills, Alabama, a municipal corporation, its elected public officials and employees, as Owner, (hereinafter collectively referred to as the "Indemnitees") from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of, related to, or resulting from performance of the design and engineering work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom, and is caused in whole or in part by negligent acts or omissions of the CONSULTANT or CONSULTANT'S officers, directors, employees, agents or independent professional associates or consultants, or any of them, directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether such claim, damage, loss or expense is caused in part, or is alleged but not legally established to have been caused in whole or in part by the negligence or other fault of a party indemnified hereunder. This indemnification shall extend to all claims, damages, losses and expenses for injury or damage to adjacent or neighboring property, or persons injured thereon, that arise out of, relate to, or result from performance of the said design and engineering work."

VII. <u>LEGAL ISSUE SIX</u>

- A. <u>LEGAL ISSUE SIX:</u> Should the City, its public officials and employees be added as additional insureds to the insurance policy of the Consultant described in Section III-E on page 6 of the Agreement?
- **B.** <u>LEGAL OPINION</u>: It is my legal opinion that the answer to Legal Issue Six is in the affirmative.

- C. <u>Basis for Legal Opinion</u>: Adding the City, its public officials and employees as named insureds to the Consultant's insurance policy and coverages provide the maximum protection that is possible in my judgment.
- **D.** MY RECOMMENDATION: I recommend that the following language be added to Section III-E on page 6 of the Agreement:

"The CONSULTANT shall cause the insurance coverages described in this Section E, subparagraphs I, II, III and IV above to include:

- (a) The City of Vestavia Hills, Alabama, a municipal corporation, and its elected public officials and employees, as additional insureds for claims caused in whole or in part by the CONSULTANT'S negligent acts or omissions during the CONSULTANT'S operations; and
- (b) The City of Vestavia Hills, Alabama, a municipal corporation, and its elected public officials and employees as additional insureds for claims caused in whole or in part by the CONSULTANT'S negligent acts or omissions during the CONSULTANT'S completed operations; and
- (c) The insurance policy coverages shall state that these coverages shall be primary insurance for the additional insureds; and
- (d) Contain no exclusions of the additional insureds relative to job accidents; and
- (e) The policies must be on an "occurrence" basis."
- E. OTHER: The Alabama Building Commission provides in Article 37 of ABC Form C-8 "General Conditions of the Contract" that a state agency and its public officials and employees be added as named insureds to the other party's insurance policies and coverages. I realize that municipalities in Alabama are not agencies of the state, but they should have no less protection than such state agencies.

October 15, 2014 page 9

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

Sincerely,

Patrick H. Boone Vestavia Hills City Attorney

tuis Hoone

PHB:gp

RESOLUTION NUMBER 4669

A RESOLUTION FORMING A HEALTH CARE AUTHORITY AND APPOINTING DIRECTORS TO SAID AUTHORITY

WHEREAS, a written application has been filed with the City by three duly qualified electors of the City requesting the incorporation of a health care authority (the "Authority") under the provisions of The Health Care Authorities Act of 1982, codified as Section 22-21-310 et seq. of the Code of Alabama 1975 (the "Enabling Law"). The Authority is to be named "The Health Care Authority of the City of Vestavia Hills". The application was accompanied by a form of certificate of incorporation for the Authority.

WHEREAS, the application and form of certificate of incorporation are attached to this resolution as *Exhibit A*.

WHEREAS, the governing body of the City has reviewed the contents of the application and the accompanying form of certificate of incorporation.

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

- 1. The City Council, the governing body of the City, does hereby declare that it is wise, expedient and necessary that the Authority be formed and does hereby (i) approve the form of the Authority's certificate of incorporation and (ii) authorize the applicants to proceed to form the Authority by filing for record the certificate of incorporation in accordance with the provisions of Section 22-21-314 of the Enabling Law.
- 2. The Directors of the Authority shall be elected by the City Council and shall serve for such term of office as provided in the proposed form of certificate of incorporation. The City Council hereby appoints the following persons to serve as the initial directors of the Authority:

Director with Term	Director with Term	Director with Term
Expiring January 1, 2016	Expiring January 1, 2017	Expiring January 1, 2018
Daniel G. Lovell	C. Steven Ball	W. Robert Cook

The successors to the initial directors shall be elected as provided in the form of certificate of incorporation.

3. Any person or persons designated and authorized by any such officer of the City to act in the name and on behalf of the City, or any one or more of them, are authorized to do and perform or cause to be done and performed in the name and on behalf of the City such other acts, to pay or cause to be paid on behalf of the City such related costs and expenses, and to execute and deliver or cause to be executed and delivered in the name and on behalf of the City such other notices, requests, demands, directions, consents, approvals, orders, applications, certificates, agreements, further assurances, or other instruments or communications, under the

corporate seal of the City, or otherwise, as they or any of them may deem necessary, advisable, or appropriate in order to carry into effect the intent of the provisions of this resolution.

4. This Resolution Number 4669 shall become effective immediately upon its adoption and approval.

ADOPTED and **APPROVED** this the 12th day of January, 2015.

Alberto C. Zaragoza, Jr. Mayor

ATTESTED BY:

Rebecca Leavings City Clerk

EXHIBIT A

APPLICATION FOR INCORPORATION OF A HEALTH CARE AUTHORITY

The undersigned natural persons hereby make application for permission to incorporate a health care authority pursuant to the provisions of The Health Care Authorities Act of 1982, codified as Section 22-21-310 et seq. of the Code of Alabama 1975 (the "Enabling Law").

- 1. The name of the municipality with the governing body of which this application is being filed is the City of Vestavia Hills, a municipal corporation organized under the laws of the State of Alabama (the "City").
- 2. The undersigned applicants propose to incorporate a health care authority pursuant to the provisions of the Enabling Law.
 - 3. Each of the undersigned applicants is a duly qualified elector of the City.
- 4. The applicants hereby request that the City adopt a resolution (i) declaring that it is wise, expedient and necessary that the health care authority being proposed in this application be formed, (ii) approving the certificate of incorporation of the health care authority being proposed in this application, a copy of which is attached hereto as *Exhibit A*, and (iii) authorizing the applicants to proceed to form the health care authority being proposed in this application by filing for record a certificate of incorporation in accordance with the provisions of Section 22-21-314 of the Enabling Law.

IN WITNESS WHEREOF, the undersigned applicants have executed this application on this 12th day of January, 2015.

	Daniel G. Lovell	
-	Co N. D. II	
	Steven N. Ball	
	W Robert Cook	

EXHIBIT B

Form of Certificate of Incorporation

CERTIFICATE OF INCORPORATION OF THE HEALTH CARE AUTHORITY OF THE CITY OF VESTAVIA HILLS

KNOW ALL MEN BY THESE PRESENTS that the undersigned, in order to form a public corporation under and pursuant to the provisions of The Health Care Authorities Act of 1982, codified as Section 22-21-310 et seq. of the Code of Alabama 1975 (the "Enabling Law"), do hereby make, sign, execute, acknowledge and file the following certificate of incorporation:

ARTICLE ONE

The names of the persons forming this public corporation, together with the address of the residence of each of such persons, are:

Daniel G. Lovell, whose place of residence is 3528 Coventry Drive, Vestavia Hills, Alabama 35243;

Steven N. Ball, whose place of residence is 732 Comer Drive, Vestavia Hills, Alabama 35216:

W. Robert Cook, whose place of residence is 1322 Badham Drive, Vestavia Hills, Alabama 35216.

Each of the foregoing named persons is a duly qualified elector of the City of Vestavia Hills.

ARTICLE TWO

The name of the public corporation shall be "The Health Care Authority of the City of Vestavia Hills" (herein referred to as the "Authority").

ARTICLE THREE

The duration of the corporate existence of the Authority is perpetual, subject to the provisions of Section 22-21-339 of the Enabling Law.

ARTICLE FOUR

The name of the authorizing subdivision authorizing the incorporation of the Authority is the City of Vestavia Hills, Alabama, a municipal corporation organized under the laws of the State of Alabama (the "City"). On January 12, 2015, the governing body of the City adopted a resolution approving and authorizing the incorporation of the Authority in accordance with the Enabling Law. A certified copy of the approving resolution is attached hereto as *Exhibit A*.

ARTICLE FIVE

The location of the principal office of the Authority (and its post office address) shall be City of Vestavia Hills, 513 Montgomery Highway, Vestavia Hills, Alabama 35216 Attention: Chairman, The Health Care Authority of the City of Vestavia Hills.

ARTICLE SIX

The Authority is organized pursuant to the provisions of the Enabling Law.

ARTICLE SEVEN

The Authority is to have all powers granted by the Enabling Law and any other laws of the State of Alabama applicable to corporations organized under the Enabling Law.

ARTICLE EIGHT

The Authority shall have 3 directors elected by the governing body of the City. The initial directors shall serve for terms as follows:

- (1) One director shall serve for a term ending January 1, 2016.
- (2) One director shall serve for a term ending December 1, 2017.
- (3) One director shall serve for a term ending December 1, 2018.

The resolution of the governing body of the City electing the initial directors shall designate the end of the term for each of the initial directors.

The term of office for each successor director shall be 3 years, commencing upon the expiration of the term of the director being replaced or the expiration of such director's prior term, as the case may be, unless a director is elected to fill the unexpired term of a director, in which case the successor director's term shall end upon the expiration of the term being filled.

If the term of office being served by any director expires prior to the election of such director for a new term or prior to the election of his successor, such director will continue to serve until his successor is elected.

If at any time there should be a vacancy on the board of directors of the Authority, whether by death, resignation, incapacity, disqualification or otherwise, a successor director to serve for the unexpired term applicable to such vacancy shall be elected by the governing body of the City.

Each director shall be eligible for reelection upon expiration of his or her term.

A director may be removed from office in the manner and upon the grounds provided in Section 22-21-316(d) of the Enabling Law.

Successors to the initial directors of the Authority shall be elected by the governing body of the City in accordance with the nomination process set forth in Section 22-21-352 of the Enabling Law.

ARTICLE NINE

Attached hereto as *Exhibit B* is a certificate by the Secretary of State of the State of Alabama stating that the name proposed for the Authority is not identical to that of any other corporation organized under the laws of the State of Alabama or so nearly similar thereto as to lead to confusion and uncertainty.

ARTICLE TEN

Upon dissolution of the Authority, the title to all of the assets and property of the Authority at the time of such dissolution shall be transferred to the City.

IN WITNESS WHEREOF, the undersigned incorporators have signed this certificate of incorporation on this 12th day of January, 2015.

Daniel G. Lovell	
Steven N. Ball	
W. Robert Cook	

STATE OF ALABAMA JEFFERSON COUNTY

I, the undersigned, a notary public in and for said County in said State, hereby certify that Daniel G. Lovell, Steven N. Ball and W. Robert Cook, whose names are signed to the foregoing instrument and who are known to me, acknowledged before me this day that, being informed of the contents of the instrument, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 12th day of January, 2015.

Notary Public	N		N	lota	ary]	Pub	olic	lic	
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EXHIBIT A

Certified Resolution of the Governing Body of the City Authorizing Incorporation of the Authority

EXHIBIT B

Certificate of Secretary of State

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 16, 2014

By Hand Delivery

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

In Re: The HealthCare Authority of the City of Vestavia Hills

Dear Mr. Downes:

On December 12, 2014, you sent me via electronic mail certain documents prepared by attorney, Curt Gwathney, which include the following:

- 1. Letter, dated December 8, 2014, to you from Curt Gwathney.
- 2. Application for Incorporation for a Health Care Authority.
- 3. Certificate of Incorporation of The Health Care Authority of the City of Vestavia Hills.
 - 4. Resolution to be enacted by the City Council.

You requested that I review the above material and provide you with my written legal opinion and comments. The purpose of this letter is to comply with your request.

BACKGROUND

The City of Vestavia Hills has previously approved three different but similar projects, which are briefly discussed below.

- A. The City approved the creation of a Public Park and Recreation Board pursuant to the authority of Title 11-60-1, et seq., Code of Alabama, 1975. A racquetball facility located almost directly behind the bowling alley was constructed pursuant to this statute. Title 11-60-13, Code of Alabama, 1975, provides that the City was not liable for the payment of any indebtedness of that Public Park and Recreation Board.
- B. A Medical Clinic Board was established pursuant to the authority of Title 11-58-1, Code of Alabama, 1975. Vestavia Pediatrics was created pursuant to this statute and to the best of my knowledge still operates in close proximity to the property located almost adjacent to the U-Haul It property on Highway 31 South. Title 11-58-7, Code of Alabama, 1975, provides that the City would never be liable for any of the indebtedness of the Medical Clinic Board.

December 16, 2014 Page 2

C. The City established the Municipal Special Health Care Facility Authority pursuant to Title 11-62-1, Code of Alabama, 1975. Mount Royal Tower was built pursuant to that statute. Title 11-62-8(e), Code of Alabama, 1975, provides that the City shall never be liable for any of the indebtedness created by that facility.

THE HEALTH CARE AUTHORITIES ACT OF 1982 TITLE 22-21-310, ET SEQ., CODE OF ALABAMA, 1975 (THE "ACT")

I have reviewed this entire Act. It too provides that the City shall never be liable for any of the indebtedness of a Health Care Authority if approved by the City Council and created pursuant to the statute. The Act contains Title 22-21-325, Code of Alabama, 1975, which reads as follows:

"Tittle 22-21-325. State debt not created. All agreements and obligations undertaken, and all securities issued, by an authority shall be solely and exclusively an obligation of the authority and shall not create an obligation or debt of the state, any authorizing subdivision or any other county or municipality within the meaning of any constitutional or statutory provision. The faith and credit of the state, any authorizing subdivision or any other county or municipality shall never be pledged for the payment of any securities issued by an authority; nor shall the state, any authorizing subdivision or any other county or municipality be liable in any manner for the payment of the principal of or interest on any securities of an authority or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever that may be undertaken by an authority."

Based upon my reading of the Health Care Facilities Act of 1982, I see no legal problems for the City if it decides to approve the establishment of such an authority.

Please call me if you have any questions regarding this matter.

aun Hooone

Very truly yours,

Patrick H. Boone Vestavia Hills City Attorney

PHB:gp



KATHRYN J. OTTENSMEYER

t: 205-226-8768

e: kottensmeyer@balch.com

WILLIAM C. GWATHNEY III

t: (205) 226-3446

f: (205) 488-5851

e: cgwathney@balch.com

Memorandum

VIA E-MAIL

TO

Jeff Downes

FROM

Kathryn J. Ottensmeyer

William C. Gwathney III

DATE

December 8, 2014

RE

Formation of Vestavia Hills Health Care Authority and Financing for Impact

Family Counseling

We serve as counsel to Compass Bank. Compass Bank and Impact Family Counseling ("Impact") are considering a loan transaction in which Compass would make a tax-exempt loan of approximately \$1 million to Impact to provide for the acquisition of office space located at 701 Montgomery Highway in the City of Vestavia Hills. Impact is an Alabama nonprofit corporation and an organization recognized under Section 501(c)(3) of the Internal Revenue Code. As a 501(c)(3) corporation, Impact qualifies for tax-exempt financing for the portion of the building it will occupy and use (the portion that will not be leased to for-profit tenants), if that portion of the loan from Compass is issued through a governmental entity such a Health Care Authority formed under Alabama State law¹.

We have recommended that the tax-exempt portion of loan to finance Impact's building acquisition costs be issued under a financing agreement between a newly formed Health Care Authority of the City of Vestavia Hills, Impact Counseling and Compass Bank. Formation of a Health Care Authority by the City of Vestavia Hills is permitted under The Health Care Authorities Act of 1982, codified at Section 22-21-310 et seq. of the Code of Alabama of 1975. Formation of such an Authority would require the following:

1) No less than three Incorporators who are qualified electors of the City of Vestavia Hills (that is registered voters) file an application with the City to form the Authority.

¹ Impact will also be purchasing the first floor of the building, which is currently occupied by Dollar General; that portion of the building acquisition does not qualify for tax-exempt financing because of the private business use of that space; accordingly, Compass expects to make a taxable loan to Impact to finance the portion of the purchase price allocable to the private business use space. The Authority to be formed would not be involved in, nor be a party to, the taxable loan.

2) The City Council considers the application and if, willing to proceed, adopts a resolution approving the application and related certificate of incorporation, which will then be filed with the Jefferson County Judge of Probate, thereby forming the Authority. The resolution forming the Authority appoints the initial Board of Directors (no less than 3 members) for their initial terms of office (not in excess of 6 years). The certificate of incorporation would also require that future directors be appointed by the City.

Attached are drafts of (i) an application to form a Vestavia Hills Health Care Authority, which attaches a proposed certificate of incorporation and (ii) a draft Resolution of the City approving the application and formation of the Authority.

Pursuant to the Health Care Authority Act Section 22-21-325, any debt issued by the Authority cannot be a debt of the City or secured in any way by City property or promise. For the Impact financing, the debt issued by the Authority in connection with this loan from Compass Bank will be payable solely out of loan repayments received from Impact under the financing agreement and other security documents with Compass.

Bank Qualification: As you know the City of Vestavia Hills qualifies as a "small issuer" under the Internal Revenue Code in years in which it issues (or expects to issue) less than \$10 million in tax-exempt debt. The ability to issue bank qualified debt can help the City lower its borrowing costs from some lenders. Since the Authority will be subordinate to the City, debt issued by the Authority will count towards the \$10 million dollar BQ limit of the City in the calendar year in which the debt is issued. We hope to close this loan next month; accordingly, the approximately \$1 million face amount of the loan will count against the City's BQ limit for calendar year 2015. Any future debt issued by the Authority would count against the City's limit in the year it is issued. At this time Impact does not anticipate any further need to make future requests for borrowings. The Authority would have the power to assist other health care related nonprofit entities with their financing needs. In any such future borrowing however, the Authority would be required to request general approval for the financing (sometimes referred to as "TEFRA" approval) from the Mayor of the City or its City Council. This should provide the City with sufficient control over its small issuer status in the future.

Please contact either one of us if you have any questions concerning this project.

RESOLUTION NUMBER 4671

A RESOLUTION GIVING NOTICE OF A PUBLIC HEARING FOR THE ADOPTION OF THE 2015 INTERNATIONAL FIRE CODE FOR THE CITY OF VESTAVIA HILLS

WHEREAS, Section 11-45-8, <u>Code of Alabama</u>, <u>1975</u>, states that prior to adoption of a technical code, the City shall provide a minimum of 15 days notice of the time, place and purpose of such hearing by publishing/posting as required with not less than three copies of the proposed codes will be open for use and examination by the public in the Office of the City Clerk; and

WHEREAS, the City Manager, Mayor and City Council feel it is in the best public interest to adopt the 2015 International Fire Code; and

WHEREAS, the Fire Chief and Fire Marshal of the Vestavia Hills Fire Department have recommended adoption of said Code in the proposed Ordinance Number 2553 which is scheduled to be presented to the Vestavia Hills City Council at a regularly scheduled meeting of February 9, 2015.

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

- 1. Notice is hereby given that proposed Ordinance Number 2553 will be presented by the Vestavia Hills City Council for a public hearing at the regularly scheduled meeting of February 9, 2015 beginning at 5:00 PM in the City Council Chamber, City of Vestavia Hills Municipal Center, 513 Montgomery Highway, Vestavia Hills, Alabama 35216; and
- 2. Not less than three copies of the proposed Codes will be open for use and examination by the public in the Office of the City Clerk, City of Vestavia

Resolution Number 4671 Page 2

Hills, 513 Montgomery Highway, Vestavia Hills, Alabama not less than 15 days prior to the holding of the public hearing; and

3. Said Resolution Number 4671 shall become effective immediately upon adoption and approval by the City of Vestavia Hills.

ADOPTED and APPROVED this the 12th day of January, 2015.

Alberto C. Zaragoza, Jr. Mayor

ATTESTED BY:

Rebecca Leavings City Clerk

RESOLUTION NUMBER 4672

A RESOLUTION ACCEPTING AN REQUEST FOR PROPOSAL (RFP) FOR ATHLETIC FIELD MAINTENANCE, AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT FOR SAID MAINTENANCE AND REALLOCATING FUNDING IN THE 2015 FISCAL YEAR BUDGET FOR MAINTENANCE EXPENSE

WHEREAS, an analysis was done by the Public Services Director which determined that it was in the best public interest to outsource the City's specialized athletic field maintenance; and

WHEREAS, requests a 3-year athletic field maintenance proposals were invited from various companies and were received, publicly opened and read aloud in the City's Council Chamber on January 8, 2015 at 10:00 AM; and

WHEREAS, the RFP's were reviewed by the City's Public Services Director and recommendation was made to accept the RFP submitted by Specialty Turf Supply, Inc. through a memorandum dated January 8, 2015 marked as "Exhibit A," attached to and incorporated into this Resolution Number 4672 as though written fully therein; and

WHEREAS, the 2015 fiscal budget for the City of Vestavia Hills requires reallocation of existing funding in order to expense the cost of above-described maintenance as detailed in a memorandum submitted by the Public Services Director marked as "Exhibit B", attached to and incorporated into this Resolution Number 4672 as though written fully therein; and

WHEREAS, the City Manager has reviewed said recommendation and reallocation and recommends approval; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to accept the recommendation from the City Manager and Public Services Director.

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

- 1. The RFP submitted by Specialty Turf Supply, Inc. is hereby accepted as proposed for a 3year maintenance agreement for athletic field maintenance; and
- 2. The City Manager is hereby authorized to reallocate funding within the Public Services (Park and Recreation, Engineering and Public Works) budget for fiscal year 2015 as detailed in the attached "Exhibit B;" and

- 3. The City Manager is hereby authorized to execute and deliver any and all agreements to secure said RFP services following written approval from the City's legal counsel; and
- 4. This Resolution Number 4672 shall become effective immediately upon adoption and approval.

DONE ORDERED, ADOPTED and APPROVED this the 12th day of January, 2015.

Alberto C. Zaragoza, Jr. Mayor

ATTESTED BY:

Rebecca Leavings City Clerk City of Vestavia Hills Public Services 513 Montgomery Highway Vestavia Hills, AL 35216 205.978.0150

Interoffice Memo

January 8, 2015

TO: Jeff Downes

City Manager

FROM: Brian C. Davis

Public Services Director

RE: Inside the Fence Proposals

On January 8, 2015, we opened proposals for "inside the fence" maintenance of the athletic fields in Vestavia Hills. The companies that submitted proposals all have specialized certifications in the care of turf grasses. There were five proposals submitted with the following basic information for the remainder of the current fiscal year (8.5 months):

- 1. Specialty Turf Supply, Inc. \$165,563.71
- 2. Turf Management System \$279,004.00
- 3. Sweetwater (synthetic turf at SHAC only) \$35,398.96
- 4. Landscape Workshop \$190,192.45 (no game day preparation included)
- 5. Honours Golf \$264,888.33 (includes a \$7,000/month management fee and \$4,595/month equipment lease)

Each of these proposals has some additional day-to-day operational costs associated with them (i.e. paint, chalk, irrigation repairs, mound clay, drying agent, infield mix, sod for large areas, etc.) Please see attached spreadsheet for the offset of the current budget to cover the cost of the proposal.

Based on the proposals submitted, I am recommending that we use Specialty Turf Supply, Inc. They currently maintain other public and private fields for Shelby County (Herdmont Park), Samford University, and Soccer Blast.

We are currently working on the agreement to cover the term of the proposal and will have it ready for Patrick Boone's review as soon as possible.

CC: Rebecca Leavings

City Clerk

Specialty	Turf Supply								
					Fdemand	December C		Offered Costs	
	Proposed Contract				Equipment	Recent C		Offered Costs	
		January 15, 2015 - September 3	0, 2015		Lightweight Jacobsen	4,000 - 5		\$ 4,200.00	
					Heavy Duty Jacobsen	\$	5,000.00		
		Annual	\$ 233,737.00		Groomers	Average		\$ 3,020.00	
		FY 2015 (Jan 15 to Sep 30)	\$ 165,563.71		Sprayer *	\$	3,010.00		
					Toro Topdresser	\$	1,000.00		
		Contractor Assume Equipment	\$ (35,920.00)		Ty-Crop Topdresser	\$	4,500.00	\$ 4,100.00	
		FY 2015	\$ 12,920.00						
		FY 2016	\$ 12,000.00		* Sold on GovDeals				
		FY 2017	\$ 11,000.00						
		Contract Expense for FY2015	\$ 152,643.71						
	Initial Capital Improvement		\$ 15,590.00						
	Wald Park 2, 3, 4			VHYB to expense					
	Other facilities		\$ 4,525.00	City expense					
	TOTAL	il se	\$ 4,525.00						
	Total outlay for FY2015		\$ 157,168.71						
Current Ar	ppropriation Offset				Current Line Items	Budget		Actual	As of 12/17/2014
Current A	Indication offset				Field Maintenance	\$	70.000.00	\$ 48,777.00	
	Part Time Seasonal Staff (Vacant)		\$ 20,428.00			-		\$ 48,777.00	
	Summer Interns (Vacant)		\$ 19,376.00						,
	General Fund Capital <\$5k		¥ 10,0.000		Total Outlay	\$	157,168.71		
	General Fund Capital 1958	Pull Behind Sprayer	\$ 2,000.00		Total Offset	\$	226,122.00		
		Ballfield Power Brooms	\$ 2,000.00		Positive Cash Flow	5	(68,953.29)		
		Walk Behind Aerator	\$ 6,000.00				, , , , , , , , , , , , , , , , , , , ,		
	Capital Fund		, ,,,,,,,,,,		This positive Cash Flor	w will be u	sed as it has i	n the past for n	naintenance issues
		Infield Groom Master	\$ 18,000.00		fields. The contract h				
		Tractor(Lease-Purchase)**	\$ 35,000.00		repairs, aerification, to				
	LP - FT Night and Weekend	Vacated through attrition	\$ 24,666.00		rye grass, etc.)	,	J,		•
	LP- PT		\$ 29,925.00		71-8				
-	WP- PT		\$ 19,950.00						
	Sub-Total		\$ 177,345.00						
	Current Maintenance Accounts		\$ 48,777.00						
	TOTAL Offset	1	\$ 226,122.00						
-	TOTAL Offset		Q 220,222.00						

RESOLUTION NUMBER 4673

A RESOLUTION DETERMINING THAT CERTAIN PERSONAL PROPERTY IS NOT NEEDED FOR PUBLIC OR MUNICIPAL PURPOSES AND DIRECTING THE SALE/DISPOSAL OF SAID SURPLUS PROPERTY

WITNESSETH THESE RECITALS

WHEREAS, the City of Vestavia Hills, Alabama, is the owner of personal property detailed in the attached "Exhibit A"; and

WHEREAS, the City has determined that it would be in the best public interest to sell said property.

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

- 1. The City Manager is hereby authorized to sell and/or dispose of the abovereferenced surplus personal property in order to obtain the best resale value of said vehicles; and
- 2. This Resolution Number 4673 shall become effective immediately upon adoption and approval.

DONE, ORDERED, APPROVED and ADOPTED on this the 12th day of January, 2015.

Alberto C. Zaragoza, Jr. Mayor

ATTESTED BY:

Rebecca Leavings City Clerk

Rebecca Leavings

Subject: FW: Equipment List

Jacobsen Reel Mower LF 1880 Asset #12063

Smithco Drag Machine Asset #12045

Smithco Super Star Groom Master Asset #12161

Jacobsen Tri King 1900D Asset #12041

Cushman Turf Truckster 160 gallon mounted sprayer Asset #12016

Jacobsen LF 3800 Reel Mower Asset #12008

Toro Top Dresser Asset #12026

Cushman GA60 Asset #120914

Quick Pass 450 Tycrop Top Dresser Asset #12044

National Mower Asset #13393

Cushman Groomaster Asset #12043

RESOLUTION NUMBER 4674

A RESOLUTION CHANGING THE CITY OFFICIALS DESIGNATED AND AUTHORIZED TO SIGN CHECKS AND DRAFTS FOR PAYMENTS FROM CITY OF VESTAVIA HILLS ACCOUNTS ON DEPOSIT IN THE REGIONS BANK.

BE IT RESOLVED by the Mayor and City Council of the City of Vestavia Hills, Alabama, as follows:

- 1. That the Regions Bank be, and hereby is, designated as the depository of the City of Vestavia Hills Court Bond Account, and that the officers and employees of said City named herein below are hereby authorized to endorse, in the name of the City, for the purpose of deposit and collection, in and with said bank, checks, drafts, notes and other like obligations issued and drawn to and owned by said City; and it is further resolved that endorsement for deposit and collection may be by the written or stamped endorsement of the City without designation of the party making the endorsement.
- 2. That said bank be, and hereby is, authorized to pay out the funds of this corporation on deposit with it from time to time upon said depository and signed in the name of this corporation by any one (1) of the following, whether said checks are payable to cash, bearer, or the order of the corporation, or to any third party, or to the order of any signing or countersigning officer of the corporation or any other corporation officer, in either their individual or official capacity, without further inquiry or regard to the authority of said officer(s) and/or other person(s) or the use of said checks, drafts, and orders or the proceeds thereof;

Jeffrey Downes	
City Manager	
, .	
Alberto C. Zaragoza, Jr.	
Mayor	

Rebecca Leavings
City Clerk
•
Melvin Turner, III
Finance Director/City Treasurer
Joy Moman
Magistrate Supervisor/Court Clerk
Nancy Chadbourne
Magistrate
Margean Cummings
Magistrate
Shellie McKown
Court Clerk

3. That the said bank shall not be, in any manner whatsoever, responsible for or required to see the application of any of the funds of this corporation deposited with it, checked out, or borrowed from it, or secured by the discount of notes and other obligations to it as hereinbefore provided, and all such transactions shall be conclusively presumed to be legally binding upon this corporation.

Resolution Number 4674

Page 3

4. That Rebecca Leavings, the City Clerk of this municipality, shall file with the

said bank a certified copy of this resolution under the corporate seal of this corporation

and shall also file with the said bank a certified list of the persons at the present time

holding offices of City Manager, Mayor, City Clerk and City Treasurer in this

corporation, and it shall be conclusively and presumed that the persons so certified as

holding such offices continue respectively to hold the same until the said bank is

otherwise notified in writing by the City of Vestavia Hills by duly authorized Resolution.

5. Any and all resolutions heretofore approved and adopted by the City Council

of the City of Vestavia Hills, Alabama in conflict with this Resolution Number 4674 are

hereby rescinded.

6. That this resolution shall be in full force and effect and binding upon this

municipality as of January 15, 2015 and shall remain in full force and effect until it shall

have been rescinded and written notice of such recession under the corporate seal have

been delivered to said bank.

ADOPTED and APPROVED this the 12th day of January, 2015.

Alberto C. Zaragoza, Jr.

Mayor

ATTESTED BY:

Rebecca Leavings City Clerk

CERTIFICATION:

I the undersigned qualified Clerk of the City of Vestavia Hills, Alabama, do hereby
certify that the above and foregoing is a true copy of a Resolution lawfully passed and
adopted by the City Council of the City named therein, at a regular meeting of such
Council held on the 12 th day of January, 2015, and that such Resolution is of record in the
Minute Book of the City at page thereof.

IN WI	TNESS	WHEREOF, I ha	ve hereunto	set n	ny hand	and	affixed	the	official	seal	of
the Cit	y on this	s da	y of			,	2015.				

Rebecca Leavings City Clerk

SEAL

RESOLUTION NUMBER 4675

A RESOLUTION AUTHORIZING THE CITY MANAGER TO PURCHASE RADIO EQUIPMENT WITH E-911 SPECIAL FUNDS

WHEREAS, the Fire and Police Departments have identified a need to purchase radio equipment for the purpose of transmitting and receiving dispatch calls in the amount of \$45,162.80 as requested in a memorandum from the Fire Chief to the City Manager dated January 7, 2015, a copy of which is marked as "Exhibit A," attached to and incorporated into this Resolution Number 4675 as though written fully therein; and

WHEREAS, the Fire Department has requested that the expense be charged to the E-911 Special Funds account; and

WHEREAS, the City Manager has reviewed the request and recommended acceptance of said purchase and reimbursement; and

WHEREAS, the Mayor and the City Council feel it is in the best public interest to accept the request as presented and recommended by the City Manager.

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

- 1. The City Manager is hereby authorized to purchase radios in the amount of \$45,162.80 to be expensed to the E-911 Special Funds account; and
- 2. This Resolution Number 4675 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 26th day of January, 2015.

Alberto C. Zaragoza, Jr. Mayor

ATTESTED BY:

Rebecca Leavings City Clerk

VESTAVIA HILLS FIRE DEPARTMENT 513 MONTGOMERY HIGHWAY VESTAVIA HILLS, ALABAMA 35216 (205) 978-0225 (205) 978-0205 (FAX)

JAMES R. ST. JOHN FIRE CHIEF

MEMORANDUM

TO: Jeff Downes, City Manager

FROM: Jim St. John, Fire Chief

DATE: January 7, 2015

RE: Request to purchase radio equipment from E-911 funds

I am requesting the City Council, as the ECD board, approve the expenditure of \$45,162.80 from E-911 funds for the purchase of radio equipment. The purchase will include radios for the new police motorcycle, new fire administration vehicle, six dual-band handheld radios, replacement of radio headsets, and installation of an existing radio.

While this expenditure is not in the FY 2015 budget, it will not cause a negative fund balance through the end of the fiscal year.

ORDINANCE NUMBER 2552

AN ORDINANCE GRANTING A CONDITIONAL USE APPROVAL FOR A HOME OCCUPATION

WHEREAS, on October 16, 2000 the City Council of the City of Vestavia Hills, Alabama approved and adopted Ordinance Number 1838 creating and establishing a P.U.D. (planned unit development) classification; and

WHEREAS, on February 19, 2001 the City Council of the City of Vestavia Hills adopted and approved Ordinance Number 1864 to rezone 3,350 +/- acres from multiple Jefferson County and Vestavia Hills zoning classifications to Vestavia Hills P.U.D.; and

WHEREAS, Section 709.5.A.1.b of Ordinance Number 1838 classifies a "home occupation" permitted only as a "Conditional Use" and

WHEREAS, Ms. Lisa Eaker has submitted application for conditional use approval for a home occupation to be operated in her residence located at 702 Hampden Place Circle, Vestavia Hills, Alabama located in the Liberty Park PUD; and

WHEREAS, Ms. Eaker has indicated in her application for conditional use approval that she will operate her business "Start Somewhere Fitness LLC" with a series of workshops helping sedentary individuals on their way to an active lifestyle through private meetings in large spaces and meeting rooms outside of the residence, etc; and

WHEREAS, a copy of said application dated October 22, 2014 is attached and hereby incorporated into this Ordinance Number 2552.

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

1. Condition Use Approval is hereby approved for Ms. Lisa Eaker for a home occupation as described in the above reference application for her residence

located at 702 Hampden Place Circle, Vestavia Hills, Alabama located in Liberty Park P.U.D. subject to the provisions outlined in Article 9 of the Vestavia Hills Zoning Code outlined as follows:

- (1) "Home occupation is defined as any use customarily conducted entirely within a dwelling and carried on solely by the inhabitant thereof, and which use is clearly incidental, accessory, subordinate and secondary to the use of the dwelling for dwelling purposes, and does not change the character of the dwelling itself or any part of parcel of property in the neighborhood surrounding said dwelling.
- (2) Home occupations shall be conducted only in the main dwelling building on the lot. No more than twenty-five percent (25%) of the said dwelling may be used for a home occupation.
- (3) There shall be no public display of goods and absolutely no commodities sold on the premises.
- (4) No sign may be attached to the dwelling or any part of the real estate advertising any home occupation;
- (5) No home occupation or profession shall be permitted if such occupation creates noise, odors, vibrations or traffic which interferes with the residential qualities of the neighborhood insofar as health, safety, morals, convenience and general welfare are concerned
- (6) In order to be a permitted home occupation or profession, the use must be one which is habitually, customarily and commonly established as a reasonable incidental, accessory, subordinate and secondary use.

(7) Operation of any and all other business of any nature in residential zones is expressly prohibited; and

(8) The activity carried on as home occupation shall be limited to the hours between 7:00 AM and 10:00 PM."

 Conditional Use Approval is further conditioned upon and subject to all applicable private and restrictive covenants attached to the property located at 702 Hampden Place Circle, Vestavia Hills, Alabama located in the Liberty Park P.U.D.

3. A City of Vestavia Hills Business License shall be issued upon application and payment by Ms. Eaker subject to the rules and regulations outlined in the Vestavia Hills Business License code and shall be renewed each year that the home occupation is operated from the location at 702 Hampden Place Circle, Vestavia Hills, Alabama located in the Liberty Park P.U.D.

4. At any time should Ms. Lisa Eaker vacate the premises located at 702 Hampden Place Circle, Vestavia Hills, Alabama, discontinue or relocate her business, this conditional use approval shall be nullified and said Ordinance Number 2552 shall be automatically repealed.

ADOPTED and APPROVED this the 26th day of January, 2015.

Alberto C. Zaragoza 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 # 2552 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 26 th day of January, 2015 as same appears in the official records of said City.
Posted at Vestavia Hills Municipal, Vestavia Hills Library in the Forest, Vestavia Hills New Merkle House and Vestavia Hills Recreational Center this the day of, 2015.
Rebecca Leavings

City Clerk

P1214-57//27-7-1-1-1-27 702 Hampden Place Circle

Conditional Use Lisa Eaker

PUD PR-1

CITY OF VESTAVIA HILLS

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APPLICATION

PLANNING AND ZONING COMMISSION

I. INSTRUCTIONS AND INFORMATION:

- (1) The Vestavia Hills Planning and Zoning Commission meets regularly on the second Thursday of each month at 6:00 PM in Council Chambers at the Municipal Center.
- (2) All materials and information relating to a zoning/rezoning request or conditional use approval before the Planning and Zoning Commission must be submitted to the Office of the City Clerk no later than 25 working days prior to the scheduled meeting at which it shall be considered. All information relating to Preliminary Map approvals must be submitted to the Office of the City Clerk no later than 20 days prior to the scheduled meeting at which is shall be considered. All information relating to Final Map approvals must be submitted to the Office of the City Clerk no later than 15 days prior to the scheduled meeting at which it is to be considered.
- (3) This application must be filled out in its entirety complete with zip codes.
- (4) All applicable fees shall accompany this application prior to its being considered complete. Fees include an application fee of \$100.00 along with applicable postage per property owner to be notified for Commission meeting. Fees may also include notification fees for City Council meeting and publication fees which will be billed to applicant at a later date. **No permits will be issued until all fees have been paid.
- (5) Appropriate plats and maps with proper legal description shall accompany this application. Please refer to attached checklist.

 APPLICANT	TINFORMATION: (owner of property)	
NAME:	Lisa Marie Eaker	
ADDRESS:	702 Hampdon Place Circle	
	Vestavia, AL 35242	
MAILING AI	DDRESS (if different from above)	201
-		000
PHONE NUM	MBER: Home 205-502-7219 Cell Office 512-75:	14095
	EPRESENTING ATTORNEY OR OTHER AGENT:	P 2
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P1214-57//27-7-1-1-27 Ord 102 Hampfer Place Circle Conditional Use Lisa Eaker PUD PR

P&Z Application Page 5

PUD PR-1

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Request that the above described property be approved conditional use approval pursuant to Section (See a Hached) of the Vestavia Hills Zoning Code.
Current Zoning of Property: VN PUD PR-1
Requested Conditional use For the intended purpose of: Start Somewhere
Fitness LLC-offices (see a Hacked)
(Example: From "VH R-1" to "VH O-1" for office building) **if additional information is needed, please attached full description of request**
IV. PROPERTY DESCRIPTION: (address, legal, etc.)
702 Hampden Place Cir 904, Namden Mace
702 Hampden Place Cir 904, Namden Place PB 220 PG62+ Amended PB 221 PG31
Property size: feet X feet. Acres:
V. INFORMATION ATTACHED:
Attached Checklist complete with all required information.
Application fees submitted.
VI. I do hereby declare the above statements are true and that I, the owner, and/or my duly appointed representative will be at the scheduled hearing.
In Man Sole 10/20/14
Owner Signature/Date Representing Agent (if any)/date
Given under my hand and seal this 22 day of October, 2014.
Notary Public
My commission expires January day of 17th , 20 18

Ordinance No. 2552 - E. P. 1214-57//27-7-1-1-27 702 Hampden Place Circle Conditional Lies

Conditional Use Lisa Eaker

PUD PR-1

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October 22nd, 2014

City of Vestavia Hills
Planning and Zoning Commission

To Whom It May Concern:

Regarding the property at: 702 Hampden Place Circle, 35242 Liberty Park

Thank you for your consideration for Conditional Use of my home as the address of record for Start Somewhere Fitness LLC. The primary business plan of Start Somewhere Fitness LLC is to host a series of workshops helping sedentary individuals on their way to an active lifestyle. I will also offer private meetings to those who need additional help or are not comfortable in a group environment. As owner and president of the company I will be seeking large spaces and meeting rooms outside of my home to hold workshops and plan to use smaller spaces at the same facilities or public spaces for the one on one meetings.

I have no plans or intention to do the following:

To conduct workshops at my home

To hold one on one sessions at my home

To erect signage at or near my home or on my personal vehicles

To promote my home as a place of business

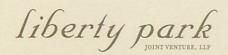
To utilize my home address in any marketing material related to doing business, this includes fliers, business cards, website presence, social media, direct mail pieces and any similar materials

Thank you again for your consideration.

Sinderely,

Lisa Eaker

Ph. 512-751-9095



October 29, 2014

Rebecca Leavings, City Clerk City of Vestavia Hills Vestavia Hills City Hall Vestavia Hills, Alabama 35216

Re: Lisa Eaker

702 Hampden Place Circle Vestavia Hills, AL 35242

Dear Ms. Leavings:

We are writing in connection with the above matter. We understand Mrs. Lisa Eaker is in the process of applying for a conditional use within the PR-1 (Planned Single-Family Residential) classification of the Liberty Park PUD to allow her to conduct a home occupation as an interior designer in her residence.

We have no objection to the granting of the conditional use to allow a home occupation in this case, provided such use is made subject to the following restrictions:

- 1. There shall be no customer, client or employee traffic to, at or near the residence that is generated, directly or indirectly, by the home occupation;
- 2. There shall be no pick ups or deliveries to the residence that are related, directly or indirectly, to the home occupation, including without limitation, pick ups and deliveries by overnight courier services and pick ups and deliveries of inventory, samples or other goods and services related, directly or indirectly, to the home occupation;
- 3. There shall be no signage on the property related, directly or indirectly, to the home occupation; and
- 4. In all respects, there shall be no means, visual or otherwise, by which a casual observer would become aware that the residence is being used for any purpose other than strictly residential.

The foregoing restrictions are in keeping with the intent and spirit of the Liberty Park PUD and with the overall plan of development for Liberty Park as addressed in the Covenants, Conditions and Restrictions that are applicable to the subject property.



Rebecca Leavings October 29, 2014 Page 2

Therefore, we respectfully request that if the Planning and Zoning Commission votes to approve the conditional use applied for in the above referenced matter, such approval will be made subject to the above and foregoing restrictions.

If you have questions or comments regarding this matter, or if we can assist in any other way, please call me at 281-3542.

Very truly yours,

LIBERTY PARK JOINT VENTURE, LLP

By: Samuel G. Lowrey, III

Project Manager

and Authorized Representative

cc: Kathryn Carver, Esq.

CITY OF VESTAVIA HILLS

SYNOPSIS AND STAFF RECOMMENDATION CONCERNING APPLICATION BEFORE THE PLANNING AND ZONING COMMISSION

Date: **DECEMBER 11, 2014**

- <u>CASE</u>: P-1214-57
- **REQUESTED ACTION:** Conditional Use Approval for a home based business
- ADDRESS/LOCATION: 702 Hampden Place Circle.
- <u>APPLICANT/OWNER</u>: Lisa Maria Eaker. 702 Hampden Place Circle, Vestavia Hills
- **GENERAL DISCUSSION:** The applicant wishes to conduct a home based business in Liberty Park. As required by the Liberty Park PUD a conditional use permit is required for a home based business. Applicant indicates that only bookkeeping/accounting would be done at residence. Liberty Park has submitted four requested conditions.
- <u>LIBERTY PARK MASTER PLAN</u>: This request is consistent with the procedures of the Liberty Park PUD.

• 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:** I recommend the Commission recommend approval with the conditions requested by Liberty Park.
- **2. City Engineer Review:** I have reviewed the application and I have no issues with this request.
- 3. **City Fire Marshal Review:** I have reviewed the application and I have no issues with this request
- 4. **Building Safety Review:** I have reviewed the application and I have no issues with this request.

MOTION Mr. Burrell made a motion to recommend approval of Conditional Use Approval for a home based business at 702 Hampden Place Circle with the following conditions:

- 1. There shall be no customers, client or employee traffic to, at or near the residence that is generated, directly or indirectly, by the home occupation;
- 2. There shall be no pick-ups or deliveries to the residence that are related, directly or indirectly, to the home occupation, including without limitation, pick-ups and deliveries by overnight courier services and pick-ups and deliveries of inventory, samples or other goods and services related, directly or indirectly, to the home occupation;
- 3. There shall be no signage on the property related, directly or indirectly, to the home occupation; and
- 4. In all respects, there shall be no means, visual or otherwise, by which a casual observer would become aware that the residence is being used for any purpose other than strictly residential.

Second was by Mr. Gilchrist. Motion was carried on a roll call; vote as follows:

Mr. Goodwin – yes
Mr. Sharp – yes
Mr. Gilchrist – yes
Mr. Larson – yes
Mr. Burrell – yes
Motion carried.