

**Vestavia Hills  
City Council Agenda  
December 14, 2015  
5:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – Brian Davis, Public Services Director
4. Pledge Of Allegiance - Gray Goodspeed, Troop 1
5. Announcements and Guest Recognition
6. City Manager's Report
7. Councilors' Reports
8. Approval of Minutes – November 16, 2015 (Work Session), November 23, 2015 (Regular Meeting) and December 2, 2015 (Work Session)

**Old Business**

9. Resolution Number 4770 - A Resolution Authorizing The Purchase Of Firearms For The Vestavia Hills Police Department (*Public Hearing*)
10. Resolution Number 4772 – A Resolution Accepting A Bid For CWSRF Project At Little Shades Creek At A Negotiated Price And Authorizing Further Expenditures For Park Amenities (*Public Hearing*)
11. Resolution Number 4773 – A Resolution Authorizing The Funding Of RMS Software Through New World From Special Fund 11 – Court And Corrections (*Public Hearing*)

**New Business**

12. Resolution Number 4774 – A Resolution Appointing A Member To The Vestavia Hills Library Board
13. Resolution Number 4775 – A Resolution Appointing A Member To The Vestavia Hills Park And Recreation Board
14. Resolution Number 4776 - A Resolution Accepting A Bid For Fire Department Uniforms
15. Resolution Number 4777 - A Resolution Accepting A Bid For Nomex Fire Department Uniforms

## **New Business (Requesting Unanimous Consent)**

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

16. Ordinance Number 2611 – Annexation – 90-Day Final – 3579 Valley Circle, Lot 18, Block 1, Amended Map Of Dolly Ridge Estates, 2<sup>nd</sup> Addition; P. David Deusner, Owner  
*(Public Hearing)*
17. Ordinance Number 2612 – Rezoning - 3579 Valley Circle, Lot 18, Block 1, Amended Map Of Dolly Ridge Estates, 2<sup>nd</sup> Addition; Rezone From Jefferson County R-1 To Vestavia Hills, R-2, Compatible Zoning For Annexation; P. David Deusner, Owner  
*(Public Hearing)*
18. Ordinance Number 2613 – Annexation – 90-Day Final – 3527 Valley Circle, Lot 5, Block 1, Amended Map Of Dolly Ridge Estates, Second Sector; Paul and Katie Harbinson, Owners  
*(Public Hearing)*
19. Ordinance Number 2614 – Rezoning - 3527 Valley Circle, Lot 5, Block 1, Amended Map Of Dolly Ridge Estates, Second Sector; Rezone From Jefferson County R-1 To Vestavia Hills, R-2, Compatible Zoning For Annexation; Paul and Katie Harbinson, Owners  
*(Public Hearing)*
20. Ordinance Number 2615 – Annexation – 90-Day Final – 2615 Alta Vista Circle; Lot 6, Altadena Valley Country Club Sector; Bradley and Kelly Belew, Owners  
*(Public Hearing)*
21. Ordinance Number 2616 – Rezoning - 2615 Alta Vista Circle; Lot 6, Altadena Valley Country Club Sector; Rezone From Shelby County E-1 To Vestavia Hills E-2; Compatible Zoning For Annexation; Bradley And Kelly Belew, Owners  
*(Public Hearing)*
22. Ordinance Number 2617 – Annexation – 90-Day Final – 2700 Alta View Drive; Brad and Molly Ainsworth, Owners  
*(Public Hearing)*
23. Ordinance Number 2618 – Rezoning – 2700 Alta View Drive; Rezone From Jefferson County E-1 To Vestavia Hills E-2; Compatible Zoning For Annexation; Brad And Molly Ainsworth, Owners  
*(Public Hearing)*
24. Ordinance Number 2619 – Annexation – 90-Day Final – 4670 Caldwell Mill Road; Brooks and Elisabeth Souders, Owners  
*(Public Hearing)*
25. Ordinance Number 2620 – Rezoning – 4670 Caldwell Mill Road; Rezone From Jefferson County E-2 To Vestavia Hills R-1; Compatible Zoning For Annexation; Brooks and Elisabeth Souders, Owners  
*(Public Hearing)*



26. Ordinance Number 2621 – Rezoning – 3112 Blue Lake Drive, Lot 5, Topfield Subdivision; Rezone From Vestavia Hills R-1 (Residential) To Vestavia Hills O-1 (Office District); HD Holdings, LLC, Owner (*Public Hearing*)
27. Ordinance Number 2622 – Conditional Use Approval – 2565 Mountain Woods Drive; Lot 16, Mountain Woods Park, 2<sup>nd</sup> Addition; Conditional Use For The Housing And Raising Of Six (6) Urban Hens With Conditions; April And Ginger Aaron-Brush, Owners (*Public Hearing*)
28. Ordinance Number 2623 – Conditional Use Approval – 1793 Shades Crest Road; Conditional Use Approval For Construction Of A Guest House On Said Property With Conditions; David B. Delozier, Owner (*Public Hearing*)
29. Ordinance Number 2624 – Conditional Use Approval – 1836 And 1842 Shades Crest Road; Lots 1 & 2, Bradshaw Addition To Vestavia; Conditional Use Approval To Construct Front Security Fence/Gates; Phylis And John Smith, Owners (*Public Hearing*)
30. Ordinance Number 2625 - An Ordinance Declaring Certain Real Property As Surplus And Authorizing The City Manager To Execute And Deliver A Purchase And Sale Agreement For Said Property (*Public Hearing*)
31. Resolution Number 4778 - A Resolution Authorizing The City Manager To Repair The Wald Park Swimming Pool (*Public Hearing*)
32. Resolution Number 4779 – A Resolution For Project Number STPBH-3715() [Proj. Ref. No. 100063244] Roadway And Intersection Improvements On Cahaba River Road From SR-38 (US-280) To Key Drive In Vestavia Hills For Preliminary Engineering (*Public Hearing*)
33. Resolution Number 4780 – A Resolution For Project Number STPBH-3715() [Proj. Ref. No. 100063244] Roadway And Intersection Improvements On Cahaba River Road From SR-38 (US-280) To Key Drive In Vestavia Hills For Right-Of-Way Agreement (*Public Hearing*)
34. Resolution Number 4781 – A Resolution For Project Number STPBH-3715() [Proj. Ref. No. 100063244] Roadway And Intersection Improvements On Cahaba River Road From SR-38 (US-280) To Key Drive In Vestavia Hills For Roadway And Intersection Improvements (*Public Hearing*)
35. Resolution Number 4782 – A Resolution Authorizing The City Manager To Execute And Deliver Multijurisdictional Agreements With The Cities Of Mountain Brook, Birmingham And Jefferson County For Project Number STPBH-3715() Cahaba River Road From SR-38 (US 280) To Key Drive (*Public Hearing*)
36. Ordinance Number 2626 – An Ordinance Authorizing The Mayor And City Manager To Execute And Deliver A General Sales Contract For The Purchase Of 0.42 Acres Of Property To Be Used As A Part Of A Proposed Alternate Access To The Recreational

Fields To Be Constructed At The Former Altadena Valley Country Club (*Public Hearing*)

37. Ordinance Number 2627 – An Ordinance Authorizing The Operation Of Transportation Network Companies (Tncs) In The City Of Vestavia Hills, Alabama To Provide For The Permitting, Rules And Regulations For Said Tncs And To Provide Penalties For Violation Thereof (*Public Hearing*)
38. Citizens Comments
39. Motion For Adjournment

**CITY OF VESTAVIA HILLS**  
**CITY COUNCIL**  
**WORK SESSION**  
**MINUTES**  
**NOVEMBER 16, 2015**

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.  
George Pierce  
John Henley  
Jim Sharp

**MEMBERS ABSENT:** Steve Ammons, Mayor Pro-Tem

**OTHER OFFICIALS PRESENT:** Jeff Downes, City Manager  
Rebecca Leavings City Clerk  
Jim St. John, Fire Chief  
Dan Rary, Police Chief

The Mayor opened the meeting and introduced Andrew Edwards, Vestavia Hills' representative on the MAX Board.

Mr. Edwards introduced Barbara Murdock, MAX Interim Director, Debra Birdwalker, MAX Attorney and Dr. Henry Ikwut-Ukwa, MAX.

Discussion ensued over a proposal to add a route through Cahaba Heights. Numbers were presented with two agreements in order to propose alternatives to the routes in that area. Discussion ensued also into the numbers for ridership taken from random counts on the bus; and when newer technology would be installed to provide ridership numbers.

Mr. Edwards stated that he has pushed for studies concerning rates and ridership and has been instrumental in bringing about changes that he feels will give the needed information.

Discussion ensued about such areas as technology and needed capital upgrades. The two agreements were accepted and the Mayor and Council advised the MAX members that they would take these under advisement.

The Mayor introduced Toby Roth, Government Affairs for Uber. Mr. Roth explained to the Council that studies have shown that if Uber operates in larger cities, it isn't very effective without support from the suburban communities, so he was there to speak to the Council about adoption of an Ordinance to allow Uber to operate in Vestavia Hills. He spoke to his negotiations in other municipalities as well as Birmingham.

Mr. Downes stated that they feel if the suburban communities will allow Uber to operate, it might persuade Birmingham to finally adopt one as well.

Mr. Downes gave an update on the following:

- The sale of the present public works facility for development of a retail center anchored by Freddy's Frozen Custard and Steakburgers. He indicated that they need a survey of the property and that Mr. Boone is drafting an agreement to be presented at the December 14 meeting for a first read.
- The City has finally been given authority by the new owner to begin bush hogging the property. Site preparations for the residential area should begin next January.
- Mr. Monk is working on the paperwork necessary to secure the donation of part of the AVCC property for use as recreational fields.
- The City is still pursuing a western entrance to the recreational fields at the AVCC and negotiations are continuing.
- The City is continuing to negotiate with the sole bidder for the Meadowlawn project and the contractor is preparing to sell and move the homes.
- The City has received an offer to purchase the Great Rock Road property from Price Hightower to build a single-family residence. This item is on the agenda tonight for consideration to begin a "due diligence" period for him to inspect the property and determine if he can build on it.
- The BWWB has installed the water main in the new "Hollis Crossing" which is the new roadway being constructed next to the Vestavia Hills Elementary School Cahaba Heights. He indicated that the school would be attached to the service during the holidays while school isn't in session.
- City leaders have been studying the idea of centralized public relations. He indicated that will be a subject the Council will discuss in a retreat scheduled in January.

The Mayor updated the Council on the following:

- A scheduled retreat in Guntersville in January 2016 which will include Department Heads.
- Reopening of the Annexation Study for an update.
- Mediation for the Vestavia Plaza lawsuit that has been ongoing for a number of years.
- A report on the leased areas at the City Center. The Mayor indicated that, overall, about 90% of the space at City Center has been leased.

There being no further business, work session adjourned at 7:34 PM.

Alberto C. Zaragoza, Jr.  
Mayor

Attested by:

Rebecca Leavings  
City Clerk

## CITY OF VESTAVIA HILLS

### CITY COUNCIL

### MINUTES

### NOVEMBER 23, 2015

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

**MEMBERS PRESENT:**

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

**MEMBERS ABSENT:**

Jim Sharp

**OTHER OFFICIALS PRESENT:**

Jeff Downes, City Manager  
Patrick H. Boone, City Attorney  
Rebecca Leavings, City Clerk  
George Sawaya, Deputy Treasurer  
Danny Rary, Police Chief  
Jim St. John, Fire Chief

Invocation was given by David Harwell, followed by the Pledge of Allegiance.

### **ANNOUNCEMENTS, GUEST RECOGNITION, CANDIDATES**

- The Mayor announced that a work session would be held by the City Council in order to interview applicants for the Library Board and the Park & Recreation Board vacancies. He stated that the public is invited to attend.
- City Hall will be closed November 26 & 27 in observance of Thanksgiving.
- The Mayor recognized Rebecca Leavings, City Clerk, and announced that she had just been sworn in to serve as President of the Alabama Association of Municipal Clerks, a professional association of Municipal Clerks for the State of Alabama.
- The Mayor gave public notice of the requested postponement of proposed Ordinance Number 2608 originally scheduled for December 14. He stated that the applicant has requested a delay beyond the holidays until January 25, 2016. If the drawings are to proceed to Council, this is the tentative date that the Ordinance will be presented. Notifications will be sent to the public announcing the date and time of the hearing.

## **ALDOT PUBLIC INVOLVEMENT HEARING**

Members from Alabama Department of Transportation (ALDOT) were present at the City Council meeting to invite input in a public involvement hearing for Project Number CMAQ-7030(600) for sidewalk along CR-43 (Massey Road) from SR-3 (US-31, Montgomery Highway) to CR-99 (Columbiana Road) in Vestavia Hills. ALDOT attendees were: Alfredo Acoff, State Environment Coordinator; Justin McDaniel, Project Manager (Env. Tech Section); Dannette Ratcliff, Project Manager (East Central Region); and Sandra F. P. Bonner, Environmental Coordinator (East Central Region). Joining with ALDOT attendees were representatives from Neel-Schaffer: Jennifer Peace, Project Manager/Designer and Bob Portera, Project Designer.

Ms. Peace, Project Manager, began the presentation by relating a scope of the overall project along Massey Road and areas as described. Maps were also presented showing the entire area to be improved and the public was invited to view the maps prior to the meeting.

Discussion ensued as to the extremely poor condition of parts of Massey Road which really need immediate attention. The Mayor stated that Massey Road is a very busy road and that anything done during the construction time to help traffic flow would be needed in this area. There will still be heavy traffic need for this roadway.

Discussion ensued and ALDOT representatives indicated the project duration would span 12 to 16 months to completion. Bike lanes are impossible in this area and sidewalks were difficult, but they were worked into the project.

The Mayor opened the floor for a public hearing.

Carol Walker, 2203 Rosewood Drive, applauded the efforts and noted this project is needed. She asked that the Sidewalk Master Plan be utilized in the designs for the sidewalks.

Karen Odle, 1212 Graylynn Circle, asked about the timeline of the project.

Ms. Peace stated that the tentative date is July 2016.

David Harwell, 1803 Catala Raod, asked about the funding for the project.

Mr. Brady explained that the project is an 80/20 split between the City and the State of Alabama with Alabama paying the majority of the cost.

David Wheeler, Crossgate Place, asked about the total cost of the project.

Ms. Peace stated that estimates are \$900,000, not including utility relocation costs.

There being no one else to address the Council, the Mayor closed the public hearing.

### **CITY MANAGER'S REPORT**

- Mr. Downes reported that the City closed on the sale of the old Municipal Center to Chick Fil-A and the monies for the sale have been received in the Finance Department. He stated that they intend to commence construction beginning January 4 with anticipated opening date of June 2, 2016.
- Mr. Downes gave an update on the resurfacing of Overton, Tyler and Columbiana Roads with a March 2016 bid date which will be handled by ALDOT.
- The Meadowlawn project will be underway soon. The contractor who will be moving the homes has placed "for sale" signs in order to sell the homes before they are moved so there is a definite location for moving them before leaving the property. The homes should be moved within the next 30 days. He indicated the City is moving utilities and foundations now in order to allow the units to be moved.
- Completion of the small section of the street now known as Hollis Crossing (formerly CHERP and the new Main Street) was delayed from completion to await BWWB location for lateral water lines. The main has now been constructed and a lateral is being installed to the school during the holidays which will allow a separation of water mains for each structure. Paving should occur over the next week, assuming the weather holds.

### **COUNCILORS' REPORTS**

- Mr. Pierce welcomed Chamber members Michael Giardina and Jimese Harkley and recognized Mrs. Karen Odle, Chamber President, who was also in attendance.
  - Mrs. Odle recognized Mr. Harkley for winning the National Next Credit Union Executive which was a nationwide competition of approximately 200 individuals. Mr. Harkley will be a part of the new America's First Credit Union opening soon just down the road from City Hall.
- Mr. Pierce reminded everyone that the Holiday in the Hills celebration continues with a tree lighting festival beginning at 6 PM here at City Hall. The activities continue to December 12 with a Breakfast with Santa at the Civic Center and December 13 Christmas Parade in Liberty Park. Mr. Pierce reminded everyone to shop in Vestavia Hills.
- Mr. Ammons recognized Lilla Hood, Park and Recreation Board Member. Ms. Hood has served her appointment and will be rolling off the Board this year.



**APPROVAL OF MINUTES**

The minutes of November 9, 2015 (Regular Meeting) were presented for approval.

**MOTION** Motion to dispense with the reading of the minutes of November 9, 2015 (regular meeting) and approve them as presented was by Mr. Perce and second by Mr. Henley. Roll call vote as follows:

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

Motion carried.

**OLD BUSINESS**

None.

**NEW BUSINESS**

**RESOLUTION NUMBER 4769**

**Resolution Number 4769 – Alcohol License – Approving an 020- Restaurant Retail Liquor License for Fig Tree Concepts LLC d/b/a Fig Tree Café; 3160 Cahaba Heights Road; Jon Holland, Executive (*public hearing*)**

**MOTION** Motion to approve Resolution Number 4769 was by Mr. Ammons. Second was by Mr. Henley.

Mr. Downes stated that this was a request for an existing restaurant called the Fig Tree Café to obtain a restaurant liquor license. He stated that the applicant has gone through the normal review from the Police Department and the Chief has indicated there were no problems found.

Jon Holland was present in regard to the request.

The Mayor opened the floor for a public hearing.

Jenny Lysinger, 3767 Poe Drive, commended Mr. Holland and his business and recommended that the request be approved by the Council.

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

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

Motion carried.

**RESOLUTION NUMBER 4771**

**Resolution Number 4771 – A Resolution Declaring A Certain Fire Department Pumper As Surplus And Directing The Sale/Disposal Of Said Property**

**MOTION** Motion to approve Resolution Number 4771 was by Mr. Ammons. Second was by Mr. Henley.

Mr. Downes stated that the City recently received the new pumper which took one out of circulation. This Resolution declares the item as surplus and allows the City to sell it.

Discussion ensued as to the value of the vehicle and Chief St. John gave some market costs but it would depend on what another Department might give for it.

There being no one to address the Council, the Mayor called for the question. Roll call vote as follows:

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

Motion carried.

**NEW BUSINESS**

The Mayor opened the floor for a motion for unanimous consent for the immediate consideration and action on Ordinance Number 2610.

**MOTION** Motion for immediate consideration and action on Ordinance Number 2610 was by Mr. Pierce and second was by Mr. Henley.

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

Motion carried.

**ORDINANCE NUMBER 2610**

**Ordinance Number 2610 – An Ordinance Amending Ordinance Number 2570 Finding And Determining That Real Property (“The Property”) Being Vacant Property Situated At 2253 Great Rock Road, Vestavia Hills, Alabama Owned By The City Of Vestavia Hills, Alabama Is Not Needed For Public Or Municipal Purposes; And To Authorize And**

**Direct The City Manager To Execute And Deliver A Land Sales Contract To Sell Said Property**

**MOTION** Motion to approve Ordinance Number 2610 was by Mr. Henley. Second was by Mr. Pierce.

Mr. Downes explained that this Resolution accepts an offer to sell this residential property to Price Hightower and to allow a due diligence period to hopefully construct a home. Pursuant to the court settlement, a portion of the proceeds will be paid to some banks (approximately \$17,000) leaving a net of \$27,500. This will partially offset the cost of demolition and legal fees incurred by the City for abatement of the nuisance.

The Mayor opened the floor for a public hearing.

David Harwell, 1803 Catala Road, asked about the total expenditure the City incurred for this abatement.

Mr. Downes stated that he doesn't have the exact figure but it was in excess of the \$27,500.

Carol Walker 2203 Rosewood Drive, stated there's not many vacant lots in this area and should sell for more; but, she understands this has been on the market for several months with no real offers.

Jenny Lysinger, 3757 Poe Drive, asked about liability costs to holding onto the property.

Mr. Downes stated that liability and maintenance of the lot would only cost the City more.

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

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

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

The Mayor stated that the following Resolutions and/or Ordinances will be presented at a public hearing at the Council's next regularly scheduled meeting on December 7, 2015 at 5 PM.

- Resolution Number 4770 - A Resolution Authorizing The Purchase Of Firearms For The Vestavia Hills Police Department (*Public Hearing*)

- Resolution Number 4772 – A Resolution Accepting A Bid For CWSRF Project At Little Shades Creek At A Negotiated Price And Authorizing Further Expenditures For Park Amenities (*Public Hearing*)
- Resolution Number 4773 – A Resolution Authorizing The Funding Of RMS Software Through New World From Special Fund 11 – Court And Corrections (*Public Hearing*)

### **CITIZENS COMMENTS**

The Mayor opened the floor for citizen comments.

- David Harwell, 1803 Catala Road, stated that he would love to see some type of ROW acknowledgement at the intersection of Leona Way, Old Creek and 31 to see and show who has the ROW with the increase of Leona Way from the new City Hall.
- Patrick Boone stated that the law firm of Hand Arendall represented the City on this public nuisance case which went to courts. He stated that this was one of the worst nuisances that he has ever seen and one of the duties of the City leaders is to promote the health safety and welfare of the community and the City didn't break even on this, but did get rid of a serious nuisance.

**MOTION** Motion to adjourn was by Mr. Henley and second was by Mr. Pierce.  
Meeting adjourned at 5:59 PM.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**CITY OF VESTAVIA HILLS**  
**CITY COUNCIL**  
**WORK SESSION**  
**MINUTES**  
**DECEMBER 2, 2015**

The City Council of Vestavia Hills met in a work session on this date at 7:30 AM following posting/publishing pursuant to Alabama law. The Mayor called the work session to order and the City Clerk checked the roll with the following:

**MEMBERS PRESENT:**

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

The Mayor opened the work session and explained that this is to interview applicants for the Vestavia Hills Library Board and the Vestavia Hills Park and Recreation Board.

The Council interviewed the following applicants:

Vestavia Hills Library Board:

- Jimmy Bartlett
- Lucy M. Rose
- Tonya Grico
- David Harwell (submitted an application but was out of town and couldn't be interviewed.)

Vestavia Hills Park and Recreation Board:

- Donald Rubin
- Kight Jones
- Earl H. Lawson, Jr.
- Craig P. Rogers

There being no further business, work session adjourned at 12:30 PM.

Alberto C. Zaragoza, Jr.  
Mayor

Attested by:

Rebecca Leavings  
City Clerk

**RESOLUTION NUMBER 4770**

**A RESOLUTION AUTHORIZING THE VESTAVIA HILLS POLICE DEPARTMENT TO PURCHASE FIREARMS**

**WHEREAS**, the Police Chief has identified a need of firearms for his department as detailed in an Interoffice Memorandum to the City Manager dated November 13, 2015 in an amount not to exceed \$80,000, a copy of which is marked as “Exhibit A” and is attached to and incorporated into this Resolution Number 4770 as though written fully therein; and

**WHEREAS**, funding for said firearms shall be derived from the Police Department Confiscation Account; and

**WHEREAS**, Section 41-16-51(13) of the Code of Alabama, 1975, states “Contractual services and purchases of commodities for which there is only one vendor or supplier and contractual services and purchase of personal property which by their very nature are impossible to award by competitive bidding;” and

**WHEREAS**, the manufacturer, Glock, has established a non-negotiable price on Law Enforcement weapons thus exempting the firearms from competitive bidding; and

**WHEREAS**, the City Manager concurs with the Police Chief’s recommendation for said purchase to be funded from Police Confiscations; and

**WHEREAS**, the Mayor and City Council feel it is in the best public interest to approve said purchase.

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

1. The Police Chief is hereby authorized to purchase firearms as detailed in said “Exhibit A” in an amount not to exceed \$80,000; and
2. Said purchase shall be expensed to the Police Department Confiscations Account; and
3. This Resolution Number 4770 shall be effective immediately upon adoption and approval.

**APPROVED and ADOPTED** this the 14<sup>th</sup> day of December, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk



**VESTAVIA HILLS POLICE DEPARTMENT**

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**To: Mr. Downes**

**MEMO**

**From: Chief Dan Rary**

**CC: Becky Leavings**

**Date: 13 Nov 2015**

**Re: Request for Council agenda**

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Mr. Downes,

I am requesting that the following item be placed on the City Councils agenda for 23 Nov 15 for first read.

I am requesting to purchase duty handguns for the Police Department. The total price for this project will not exceed \$80,000.00. The breakdown of this expense is below.

Glock 41 45acp handguns [100 X \$504.00=\$50,400]

Surefire X300U lights [100 X \$185.00 = \$18,500.00]

Holster [100 X\$100.00 = \$10,000.00]

Funding will come from the PD Confiscations Account.

We do not have to bid this out due to Glock establishing a non-negotiable price on Law Enforcement weapons. A Glock distributor for Alabama is Gulf States Distributors in Montgomery, AL who we have an existing bid for Police Equipment.

**Section 41-16-51**

**Contracts for which competitive bidding not required.**

(13) Contractual services and purchases of commodities for which there is only one vendor or supplier and contractual services and purchases of personal property which by their very nature are impossible to award by competitive bidding.

**RESOLUTION NUMBER 4772**

**A RESOLUTION ACCEPTING A BID FOR CWSRF PROJECT AT LITTLE SHADES CREEK AT A NEGOTIATED PRICE AND AUTHORIZING FURTHER EXPENDITURES FOR PARK AMENITIES**

**WHEREAS**, The City of Vestavia Hills, Alabama, working under a grant/loan from Clean Water State Revolving Fund opened and publicly read sealed bids for a green infrastructure project that will provide water quality and flood control benefits to Little Shades Creek also known as CWSRF Project at Little Shades Creek (“the Project”); and

**WHEREAS**, the only bid received was submitted by Forestry Environmental Services, Inc., in the amount of \$685,000, a copy of which is marked as Exhibit A, attached to and incorporated into this Resolution Number 4772 as though written fully therein; and

**WHEREAS**, Forestry Environmental Services, Inc., being the only bid submitted, the City Manager and Public Services Director negotiated a reduced price in the amount of \$452,690 pursuant to the detail marked as Exhibit B, a copy of which is attached to and incorporated into this Resolution Number 4772 as though written fully therein; and

**WHEREAS**, the Community Foundation of Greater Birmingham has donated \$50,000 to purchase certain amenities for the newly constructed natural area; and

**WHEREAS**, an additional \$50,000 will be required to cover needed City infrastructure costs such as sidewalks, etc.; and

**WHEREAS**, the Mayor and City Council feel it is in the best public interest to accept said bid at the negotiated price.

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

1. The bid package submitted by Forestry Environmental Services, Inc., as renegotiated by the City Manager and Public Services Director in a scope and price not to exceed \$452,690 is hereby accepted as detailed in Exhibits A & B; and
2. The City Manager is hereby authorized to expend up to \$50,000 for park amenities from funding of the Community Foundation of Greater Birmingham; and
3. Funding required for project completion shall be derived from the ADEM Clean Water grant/loan until those funds are exhausted. Further funding shall be derived from the City’s Capital Reserve Fund.

4. This Resolution Number 4772 shall become effective immediately upon adoption and approval.

**ADOPTED and APPROVED** this the 14<sup>th</sup> day of December, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

Walter Schoel Engineering Co., Inc.

### PROPOSAL FORM

To: City of Vestavia Hills Date: 10/19/2015  
(Awarding Authority)

In compliance with your Advertisement for Bids and subject to all the conditions thereof, the undersigned  
Forestry Environmental Services, Inc  
(Legal Name of Bidder)

hereby proposes to furnish all labor and materials and perform all work required for the construction of  
**CWSRF Project at Little Shades Creek**  
in accordance with Drawings and Specifications listed on the "List of Contract Documents" included in  
the Project Manual.

The Bidder, which is organized and existing under the laws of the State of Alabama,  
having its principal offices located at: 2871 Acton Rd Ste 222  
BIRMINGHAM, AL 35243

is:  a Corporation  a Partnership  an individual  a Limited Liability Company  
(other) \_\_\_\_\_.

Email Address mhm@forestryenv.com Company Web-site: www.forestryenvironmental.com

**LISTING OF PARTNERS OR OFFICERS:** If Bidder is a Partnership, list all partners and their  
addresses; if Bidder is a Corporation, list the names, titles, and business addresses of its officers:

Mark Lawrence President 126 Highland View Dr Bham AL 35242  
\_\_\_\_\_  
\_\_\_\_\_

**BIDDER'S REPRESENTATION:** The Bidder declares that it has examined the site of the Work,  
having become fully informed regarding all pertinent conditions, and that it has examined the Drawings  
and Specifications (including all Addenda received) for the Work and the other Bid and Contract  
Documents relative thereto, and that it has satisfied itself relative to the Work to be performed.

**ADDENDA:** The Bidder acknowledges receipt of Addenda Nos. 1 through 1 inclusively.

**BASE BID:** For construction complete as shown and specified, the sum of SIX HUNDRED EIGHTY  
FIVE THOUSAND AND NO/100 Dollars (\$ 685,000.00)\*

\* Attach a detailed line item breakdown that supports each of these numbers

Walter Schoel Engineering Co., Inc.

**ALTERNATES:** If alternates as set forth in the Bid Documents are accepted, the following adjustments are to be made to the Base Bid:

Pavilion \$ 55,000.00 XX

**SUBS AND VENDORS: (List of major subcontractors and vendors included in this proposal)**

Scope of Work	Subcontractor or Vendor
<u>RCP PIPE</u>	<u>HANSON Precast</u>
<u>Concrete Sidewalk &amp; Curb</u>	<u>Bulls Construction (DBE)</u>
<u>Trees</u>	<u>Green Valley / Hunter Trees</u>
<u>Plants</u>	<u>BAKER Environmental</u>
<u>Bench / water fountain / Picnic Table / Trash</u>	<u>Giffis</u>
<u>Red Rock</u>	<u>Southern Red Rock</u>
<u>Seed</u>	<u>Native American Seed</u>

Walter Schoel Engineering Co., Inc.

**BID SECURITY:** The undersigned agrees to enter into a Construction Contract and furnish the prescribed Performance and Payment Bonds and evidence of insurance within fifteen calendar days, or such other period stated in the Bid Documents, after the contract forms have been presented for signature, provided such presentation is made within 90 calendar days after the opening of bids, or such other period stated in the Bid Documents. As security for this condition, the undersigned further agrees that the funds represented by the Bid Bond (or cashier's check) attached hereto may be called and paid into the account of the Awarding Authority as liquidated damages for failure to so comply.

Attached hereto is a: (Mark the appropriate box and provide the applicable information.)

- Bid Bond, executed by Travelers Casualty and Surety Company of America as Surety,
- a cashier's check on the \_\_\_\_\_ Bank of \_\_\_\_\_, for the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) made payable to the Awarding Authority.

**BIDDER'S ALABAMA LICENSE:**

State License for General Contracting: 21921 License Number U Bid Limit HS Highway & Streets Type(s) of Work EVS Stream Restoration, MU Municipal Utility

**CERTIFICATIONS:** The undersigned certifies that he or she is authorized to execute contracts on behalf of the Bidder as legally named, that this proposal is submitted in good faith without fraud or collusion with any other bidder, that the information indicated in this document is true and complete, and that the bid is made in full accord with State law. Notice of acceptance may be sent to the undersigned at the address set forth below.

The Bidder also declares that a list of all proposed major subcontractors and suppliers will be submitted at a time subsequent to the receipt of bids as established by the Architect in the Bid Documents but in no event shall this time exceed twenty-four (24) hours after receipt of bids.

Legal Name of Bidder Forestry Environmental Services, Inc

Mailing Address P.O. Box 380185 BIRMINGHAM, AL 35238

\* By (Legal Signature) *Mark Lawrence*

\* Name (type or print) Mark Lawrence (Seal)

\* Title President

Telephone Number 205-288-7084

\* If other than the individual proprietor, or an above named member of the Partnership, or the above named president, vice-president, or secretary of the Corporation, attach written authority to bind the Bidder. Any modification to a bid shall be over the initials of the person signing the bid, or of an authorized representative.

# THE AMERICAN INSTITUTE OF ARCHITECTS

## AIA Document A310 Bid Bond

KNOW ALL MEN BY THESE PRESENTS, THAT WE Forestry Environmental Services, Inc.

P.O. Box 380185 Birmingham, AL 35238

as Principal, hereinafter called the Principal, and Travelers Casualty and Surety Company of America

One Tower Square , Hartford, CT 06183

a corporation duly organized under the laws of the State of CT

as Surety, hereinafter called the Surety, are held and firmly bound unto City of Vestavia Hills

513 Montgomery Hwy Vestavia Hills, AL 35266

as Obligee, hereinafter called the Obligee, in the sum of Five Percent of Amount Bid Not To Exceed Ten Thousand

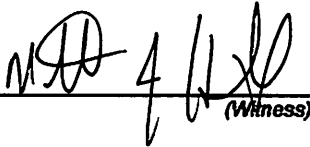
Dollars ( \$10,000.00 ),

for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for CWSRF Project in Cahaba Heights

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and materials furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this 19th day of October, 2015

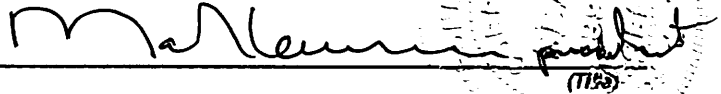
  
(Witness)

Forestry Environmental Services, Inc.

(Principal)

(Seal)

By:

  
(Title)

Travelers Casualty and Surety Company of America

(Surety)

(Seal)

By:

  
Attorney-in-Fact Jeffrey W. Cutshall

(Title)

  
Jennifer Barranco (Witness)



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Surety Bond No. Bid Bond

Principal: Forestry Environmental Services, Inc.

OR

Project Description: CWSRF Project in Cahaba Heights

Obligee: City of Vestavia Hills

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint Jeffrey W. Cutshall of the City of Birmingham, State of AL, their true and lawful Attorney-in-Fact, to sign, execute, seal and acknowledge the surety bond(s) referenced above.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 10th day of September, 2012.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut

City of Hartford ss.

By:

[Signature]
Robert L. Raney, Senior Vice President

On this the 10th day of September, 2012, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the 30th day of June, 2016.



[Signature]
Marie C. Tetreault, Notary Public



This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

**RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

**FURTHER RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

**FURTHER RESOLVED**, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

**FURTHER RESOLVED**, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and affixed the seals of said Companies this 19th day of October, 2015



Kevin E. Hughes, Assistant Secretary



**To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at [www.travelersbond.com](http://www.travelersbond.com). Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.**

**Project: CWSRF PROJECT LITTLE SHADES CREEK**  
**Bid Date: OCTOBER 19, 2015**  
**By: FORESTRY ENVIRONMENTAL SERVICES, INC**

**schedule "A"**

<i>Item</i>	<i>Description</i>	<i>Qty</i>		<i>Bid Unit Cost</i>	<i>Bid Total</i>
1	MOBILIZATION / GENERAL CONDITIONS	1	LS	50,000.00	\$50,000.00
2	DEMOLITION	1	LS	50,000.00	\$50,000.00
3	CLEAR AND GRUBB	1	LS	8,000.00	\$8,000.00
4	EROSION CONTROL	1	LS	21,500.00	\$21,500.00
5	STRIP TOPSOIL	1	LS	9,300.00	\$9,300.00
6	GRADING	1	LS	100,000.00	\$100,000.00
7	FINE GRADE SITE	1	LS	36,000.00	\$36,000.00
8	RIFFLE CONSTRUCTION	1	LS	9,000.00	\$9,000.00
9	J HOOK CONSTRUCTION	1	LS	11,500.00	\$11,500.00
10	CROSS VANE CONSTRUCTION	1	LS	8,000.00	\$8,000.00
11	STORM SEWER SYSTEM	1	LS	17,800.00	\$17,800.00
12	WATER SERVICE / WATER FOUNTAIN	1	LS	10,800.00	\$10,800.00
13	BIO-SWALE	1	LS	12,800.00	\$12,800.00
14	RIBBON CURB	1	LS	4,500.00	\$4,500.00
15	BACKFILL CURB	1	LS	510.00	\$510.00
16	RED DOG PAVING WITH BASE	1	LS	13,100.00	\$13,100.00
17	CONCRETE APRON	1	LS	5,060.00	\$5,060.00
18	PARKING BUMPERS AND STRIPING	1	LS	5,450.00	\$5,450.00
19	SIDEWALK	1	LS	46,200.00	\$46,200.00
20	REPLATE TOPSOIL	1	LS	15,100.00	\$15,100.00
21	SOD	1	LS	25,000.00	\$25,000.00
22	COIR MATERIAL	1	LS	5,400.00	\$5,400.00
23	MONUMENT SIGN	1	LS	32,200.00	\$32,200.00
24	BENCHES / TRASH / PICNIC TABLE	1	LS	12,300.00	\$12,300.00
25	TREES	1	LS	27,400.00	\$27,400.00
26	PINE / HARDWOOD MIX	1	LS	19,200.00	\$19,200.00
27	WETLAND PLUG MIX	1	LS	60,500.00	\$60,500.00
28	STREAM BANK	1	LS	16,400.00	\$16,400.00
29	MEADOW SEED MIX	1	LS	7,200.00	\$7,200.00
30	FINAL CLEANUP	1	LS	5,400.00	\$5,400.00
31	MAINTENANCE OF WORK	1	LS	39,380.00	\$39,380.00
				<b>Bid Total</b>	<b>\$685,000.00</b>

ALTERNATE 1 PAVILION

1 LS 55,000.00 \$ 55,000.00

STATE OF ALABAMA



BID LIMIT: U

LICENSE NO. 21921

AMOUNT: UNLIMITED

TYPE: RENEWAL

# State Licensing Board for General Contractors

THIS IS TO CERTIFY THAT

FORESTRY ENVIRONMENTAL SERVICES INC

BIRMINGHAM, AL 35238

is hereby licensed a General Contractor in the State of Alabama and is authorized to perform the following type(s) of work:

EV-S: STREAM RESTORATION, HS: HIGHWAYS AND STREETS, MU: MUNICIPAL AND UTILITY

until **September 30, 2016** when this Certificate expires. **116629**

Witness our hands, and seal of the Board, dated Montgomery, Ala.

*Charles A. Webb, Jr.*

1st day **September, 2015**

SECRETARY TREASURER

*[Signature]*

CHAIRMAN



**Project: CWSRF PROJECT LITTLE SHADES CREEK**  
**Bid Date: OCTOBER 19, 2015 REVISED**  
**By: FORESTRY ENVIRONMENTAL SERVICES, INC**

**schedule " A "**

<i>Item</i>	<i>Description</i>	<i>Qty</i>		<i>Bid Unit Cost</i>	<i>Bid Total</i>
1	MOBILIZATION / GENERAL CONDITIONS	1	LS	48,000.00	\$48,000.00
2	CLEAR AND GRUBB	1	LS	8,000.00	\$8,000.00
3	EROSION CONTROL	1	LS	21,500.00	\$21,500.00
4	STRIP TOPSOIL	1	LS	9,300.00	\$9,300.00
5	GRADING	1	LS	100,000.00	\$100,000.00
6	FINE GRADE SITE	1	LS	25,000.00	\$25,000.00
7	RIFFLE CONSTRUCTION	1	LS	9,000.00	\$9,000.00
8	JHOOK CONSTRUCTION	1	LS	11,500.00	\$11,500.00
9	CROSS VANE CONSTRUCTION	1	LS	8,000.00	\$8,000.00
10	STORM SEWER SYSTEM	1	LS	17,800.00	\$17,800.00
11	BIO-SWALE	1	LS	12,800.00	\$12,800.00
12	REPLATE TOPSOIL	1	LS	15,100.00	\$15,100.00
13	SOD	1	LS	25,000.00	\$25,000.00
14	COIR MATERIAL	1	LS	5,400.00	\$5,400.00
15	TREES	1	LS	27,400.00	\$27,400.00
16	PINE / HARDWOOD MIX (CHANGE TO 3 GALLON)	1	LS	17,600.00	\$17,600.00
17	WETLAND PLUG MIX (CHANGED TO BARE ROOT)	1	LS	46,500.00	\$46,500.00
18	STREAM BANK (CHANGE TO BARE ROOT)	1	LS	12,500.00	\$12,500.00
19	MEADOW SEED MIX	1	LS	7,200.00	\$7,200.00
20	FINAL CLEANUP	1	LS	5,400.00	\$5,400.00
21	MAINTENANCE OF WORK	6	MO	3,281.67	\$19,690.00
				<b>Bid Total</b>	<b>\$452,690.00</b>

There will be a credit of \$55 per load for every load that is hauled off by the City of Vestavia in one of their Triaxle Trucks.

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

November 3, 2015

Melissa,  
please scan  
and email a copy  
to C. Brady,  
R. Leavings + myself  
Thx  
JC/11-5-15

By Hand Delivery

City Manager Jeffrey D. Downes  
Vestavia Hills Municipal Center  
1032 Montgomery Highway  
Vestavia Hills, Alabama 35216

In Re: Competitive Bid Submitted by Forestry Environmental Services, Inc.  
for Work at Meadowlawn Estates

Dear Mr. Downes:

On November 2, 2015, you hand delivered to me copies of the following documents with a request that I review the same and furnish you with my written legal opinion:

1. Estimate of Probable Cost in the amount of \$444,578.75 for construction of a passive park on the Meadowlawn property.
2. Summary of Bid submitted by Forestry Environmental Services, Inc. in the amount of \$685,000.00.
3. E-mail from Civil Engineer Taylor Schoel, dated October 29, 2015, regarding the Alabama Competitive Bid Law.

The purpose of this letter is to respond to your request.

**I. FACTS**

On June 10, 2015, the City of Vestavia Hills, Alabama ("City") purchased Lots 32, 33, 34 and 35 in Meadowlawn Estates along Dolly Ridge Road pursuant to the authority of the Residential Buyouts Along Floodway Program. The City plans to build a passive park on the four lots with an estimated budget in the amount of \$444,578.75. The City advertised for competitive bids. Forestry Environmental Services, Inc. submitted the only bid in the amount of \$685,000.00.

## **II. LEGAL ISSUE**

What legal options does the City have when only one responsible and responsive bid has been received in response to the advertisement for competitive bids?

## **III. PUBLIC WORKS PROJECT**

In my opinion, the work for construction of a passive park at Meadowlawn Estates constitutes a public works project. Alabama law regarding the letting, execution and administration of public improvements contracts ("public works") by municipalities is set forth in Title 39, Chapters 1 through 5, of the *Code of Alabama, 1975*.

The Alabama Public Works Law regarding public works construction projects provides, among other things, that a public works project is the expenditure of public funds on real estate owned by municipalities or on a structure attached to that real estate. Title 39-2-1(6), *Code of Alabama, 1975*, defines "public works" as:

"(6) PUBLIC WORKS. The construction, installation, repair, renovation, or maintenance of public buildings, structures, sewers, waterworks, roads, curbs, gutters, side walls, bridges, docks, underpasses, and viaducts as well as any other improvement to be constructed, installed, repaired, renovated, or maintained on public property and to be paid, in whole or in part, with public funds or with financing to be retired with public funds in the form of lease payments or otherwise."

## **IV. COMPETITIVE BIDS WERE REQUIRED FOR THIS PROJECT**

Alabama law at Title 39-2-2(a) *Code of Alabama, 1975*, required that this contract be awarded after inviting competitive bids and provides in pertinent part as follows:

"(a) Before entering into any contract for a public works involving an amount in excess of fifty thousand dollars (\$50,000), the awarding authority shall advertise for sealed bids. If the awarding authority is the state or a county, or an instrumentality thereof, it shall advertise for sealed bids at least once each week for three consecutive weeks in a newspaper of general circulation in the county or counties in which the improvement or some part thereof, is to be made. If the awarding authority is a municipality, or an instrumentality thereof, it shall advertise for sealed bids at least once in a newspaper of general circulation published in the municipality where the awarding authority is located. If no newspaper is published in the municipality, the awarding authority shall advertise by posting notice thereof on a bulletin board maintained outside the purchasing office and in any other manner and for the length of time

as may be determined. In addition, to bulletin board notice, sealed bids shall also be solicited by sending notice by mail to all persons who have filed a request in writing with the official designated by the awarding authority that they be listed for solicitation on bids for the public works contracts indicated in the request. If any person whose name is listed fails to respond to any solicitation for bids after the receipt of three such solicitations, the listing may be canceled. With the exception of the Department of Transportation, for all public works contracts involving an estimated amount in excess of five hundred thousand dollars (\$500,000), awarding authorities shall also advertise for sealed bids at least once in three newspapers of general circulation throughout the state. The advertisements shall briefly describe the improvement, state that plans and specifications for the improvement are on file for examination in a designated office of the awarding authority, state the procedure for obtaining plans and specifications, state the time and place in which bids shall be received and opened, and identify whether prequalification is required and where all written prequalification information is available for review. All bids shall be opened publicly at the advertised time and place. No public work as defined in this chapter involving a sum in excess of fifty thousand dollars (\$50,000) shall be split into parts involving sums of fifty thousand dollars (\$50,000) or less for the purpose of evading the requirements of this section.”

## V. GENERAL LAW RELATIVE TO COMPETITIVE BIDS

### A. EXPENDITURE OF PUBLIC FUNDS (SECTION 94, AS AMENDED BY AMENDMENTS 112 AND 558 OF THE CONSTITUTION OF ALABAMA):

1. Everything that a governmental body does must be done in the **best interest of the public.**

2. Government officials must act in **good faith** in executing the requirements of law.

### B. SUPREME COURT OF ALABAMA:

1. *White v. McDaniel Ford Tractor Company, Inc.*, 287 Ala. 77 and 248 So.2d 121 (1971).

(a) Public officials must exercise their **discretion** in competitive bid matters.

(b) Public officials must exercise **good faith**.

2. *Mobile Dodge, Inc. v. Mobile County*, 442 So.2d 56 (1983):

- (a) Public officials must act **reasonably**.
- (b) Public officials must act **rationaly**.
- (c) Public officials must exercise **good faith**.
- (d) Public officials must have **proper motives**.
- (e) Public officials cannot **abuse their discretion**.

## **VI. BIDS AND BIDDING; AWARDS**

Title 39-2-6(b), *Code of Alabama, 1975*, provides as follows:

“(b) If no bids or only one bid is received at the time stated in the advertisement for bids, the awarding authority may advertise for and seek other competitive bids, or the awarding authority may direct that the work shall be done by force account under its direction and control or, with the exception of the Department of Transportation, the awarding authority may negotiate for the work through the receipt of informal bids not subject to the requirements of this section. Where only one responsible and responsive bid has been received, any negotiation for the work shall be for a price lower than that bid.”

## **VII. LEGAL OPTIONS**

Based upon the above statute, it is my legal opinion that the City has the following options:

- A. Reject the bid and advertise and seek other competitive bids.
- B. Direct that the work shall be done by “force account” under the direction and control of the City. Title 39-2-1(2), *Code of Alabama, 1975*, defines “force account work” as follows:

“(2) **FORCE ACCOUNT WORK.**—Work paid for by reimbursing for the actual costs for labor, materials, and equipment usage incurred in the performance of the work, as directed, including a percentage for overhead and profit, where appropriate.”

- C. Negotiate for the work through the receipt of informal bids.
- D. If there is only one responsible and responsive bid received, the City may negotiate for the work provided the negotiation results in a price lower than the bid submitted.



## **VIII. NEGOTIATION OR FORCE ACCOUNT**

Title 39-2-6(d), *Code of Alabama, 1975*, provides as follows:

“(d) On any construction project on which the awarding authority has prepared plans and specifications, received bids, and has determined to do by force account or by negotiation, the awarding authority shall make available the plans and specifications, an itemized estimate of cost and any informal bids for review by the Department of Examiners of Public Accounts and, upon completion of the project by an awarding authority, the final total costs together with **an itemized list of cost of any and all changes made in the original plans and specifications** (*emphasis added*) shall also be made available for review by the Department of Examiners of Public Accounts. Furthermore, the above described information shall be made public by the awarding authority upon request. Upon the approval of the awarding authority, its duly authorized officer or officers may, when proceeding upon the basis of force account, **let any subdivision or unit of work by contract on informal bids.**”(*emphasis added*)

Based upon the language of the above statute, it is my legal opinion that if the City rejects the bid and negotiates for the work through the receipt of informal bids, then in such event the City may change the original plans and specifications and/or let any subdivision or unit of work by contract on informal bids.

## **IX. E-MAIL FROM TAYLOR SCHOEL DATED OCTOBER 29, 2015**

A. **ALABAMA PUBLIC WORKS COMPETITIVE BID LAW:** The Alabama law regarding the letting, execution and administration of public improvement contracts by state agencies generally was enacted in 1997 and amended in 2011.

B. **E-MAIL FROM TAYLOR SCHOEL, DATED OCTOBER 29, 2015:** According to Taylor Schoel, all legal authorities supporting his opinions were opinions issued by the Alabama Attorney General prior to 1997. Those opinions were as follows:

<b><u>Schoel Opinion Number</u></b>	<b><u>Attorney General Opinion</u></b>
1	A/G Opinion, dated December 6, 1985
2	A/G Opinion, dated August 18, 1986; and A/G Opinion, dated August 20, 1985
3	A/G Opinion, dated April 29, 1988

November 3, 2015

Page 6

C. MY OPINION: It is my legal opinion that none of the opinions of the Attorney General referred to in section B above apply to the legal issue under consideration by the City because all of said opinions were issued prior to the enactment of Section 39-2-1 through Section 39-2-14, *Code of Alabama, 1975*.

## X. CONCLUSION

I recommend that you attempt to negotiate for the work through the receipt of informal bids authorized by Section 39-2-6(b), *Code of Alabama, 1975*, and if necessary change the plans and specifications as authorized by Section 39-2-6(d), *Code of Alabama, 1975*.

Please call me if you have any questions regarding this legal opinion.

Sincerely,

A handwritten signature in blue ink that reads "Patrick H. Boone". The signature is written in a cursive style with a long horizontal line extending to the right.

Patrick H. Boone  
Vestavia Hills City Attorney

PHB:gp

**RESOLUTION NUMBER 4773**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO FUND ONE-HALF OF ANNUAL MAINTENANCE FOR RMS SOFTWARE FOR NEW WORLD TO SPECIAL FUND 11 – COURT AND CORRECTION**

**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 fund one-half of annual maintenance for RMS Software through New World from Special Fund Account 11 – Court and Corrections in the amount of \$41,250 (annual maintenance of \$82,500); and
2. This Resolution Number 4773 shall become effective immediately upon adoption and approval.

**ADOPTED and APPROVED** this the 14<sup>th</sup> day of December, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

## Melvin Turner

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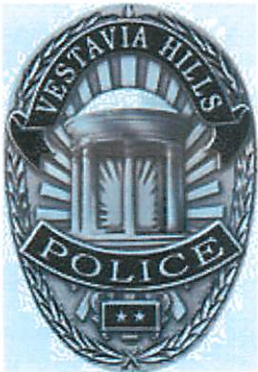
**From:** Tim Holcomb  
**Sent:** Friday, November 13, 2015 8:32 AM  
**To:** Melvin Turner  
**Cc:** Darrin Estes; Danny Rary  
**Subject:** Funding Request

Mr. Turner,

Darrin advised me that we need additional funding to cover \$41,250 of our yearly maintenance fee to New World Systems for our RMS software in the Police Department.

The total annual fee is \$82,500, but only \$41,250 was actually budgeted.

Deputy Chief Tim Holcomb  
Vestavia Hills Police Department  
1032 Montgomery Highway  
Vestavia Hills, AL 35216  
Office- (205)978-0111



**RESOLUTION NUMBER 4774**

**APPOINTING A MEMBER TO THE  
VESTAVIA HILLS LIBRARY BOARD**

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

**WHEREAS,** \_\_\_\_\_ is hereby appointed as a member of the  
City of Vestavia Hills Library Board; and

**WHEREAS,** the said appointment of \_\_\_\_\_ shall be  
effective January 1, 2016 and shall expire December 31, 2019.

**APPROVED AND ADOPTED** this the 14<sup>th</sup> day of December, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**RESOLUTION NUMBER 4775**

**APPOINTING A MEMBER TO THE  
VESTAVIA HILLS PARK AND  
RECREATION BOARD**

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

**WHEREAS,** \_\_\_\_\_ is hereby appointed as a member of the City  
of Vestavia Hills Park and Recreation Board; and

**WHEREAS,** the appointment of \_\_\_\_\_ shall be effective January 1,  
2016, and shall expire December 31, 2020.

**APPROVED AND ADOPTED** this the 14<sup>th</sup> day of December, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**RESOLUTION NUMBER 4776**

**A RESOLUTION ACCEPTING A BID FOR UNIFORMS FOR THE  
VESTAVIA HILLS FIRE DEPARTMENT**

**WHEREAS**, on November 25, 2015 at 10:00 a.m. the City of Vestavia Hills publicly read aloud bids submitted for uniforms for the Vestavia Hills Fire Department; and

**WHEREAS**, the Fire Chief has reviewed the bids, detailed them in an Interoffice Memorandum dated November 30, 2015 and recommended acceptance of the bid submitted by McCain Uniforms; a copy of said Interoffice Memorandum is marked as Exhibit A attached to and incorporated into this Resolution Number 4776 as if written fully therein; and

**WHEREAS**, the Mayor and City Council feel it is in the best public interest to accept the recommendation of the Fire Chief and accept said bid as detailed above.

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

1. The bid submitted by McCain Uniforms as detailed in attached Exhibit A and recommended by the Fire Chief, is hereby accepted; and
2. The Mayor and City Manager are hereby authorized to execute and deliver any and all documents necessary to secure said agreement and/or for said purchase; and
3. This Resolution Number 4776 shall become effective immediately upon adoption and approval.

**DONE, ORDERED, ADOPTED and APPROVED** this the 14<sup>th</sup> day of December, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk



**VESTAVIA HILLS FIRE DEPARTMENT**

**MEMORANDUM**

TO: Jeff Downes, City Manager  
FROM: Jim St. John, Fire Chief  
DATE: November 30, 2015  
RE: Fire Department Uniform bid

Invitations to bid for Fire Department uniforms were sent to 4 vendors.

NAFECO, Inc. and Municipal and Commercial Uniform responded with a "No Bid".

McCain Uniforms provided a bid with no exceptions, but equivalent products for the long sleeve and short sleeve dress uniform shirts; rather than Southeastern brand, the bid is for Fechheimer brand. I have inspected a product sample and I consider it to be equivalent.

I recommend that McCain Uniforms' bid be accepted.



**RESOLUTION NUMBER 4777**

**A RESOLUTION ACCEPTING A BID FOR NOMEX UNIFORMS FOR THE VESTAVIA HILLS FIRE DEPARTMENT**

**WHEREAS**, on November 25, 2015 at 10:00 a.m. the City of Vestavia Hills publicly read aloud bids submitted for Nomex uniforms for the Vestavia Hills Fire Department; and

**WHEREAS**, the Fire Chief has reviewed the bids, detailed them in an Interoffice Memorandum dated November 30, 2015 and recommended acceptance of the bid submitted by NAFECO; a copy of said Interoffice Memorandum is marked as Exhibit A attached to and incorporated into this Resolution Number 4777 as if written fully therein; and

**WHEREAS**, the Mayor and City Council feel it is in the best public interest to accept the recommendation of the Fire Chief and accept said bid as detailed above.

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

1. The bid submitted by NAFECO as detailed in attached Exhibit A and recommended by the Fire Chief, is hereby accepted; and
2. The Mayor and City Manager are hereby authorized to execute and deliver any and all documents necessary to secure said agreement and/or for said purchase; and
3. This Resolution Number 4777 shall become effective immediately upon adoption and approval.

**DONE, ORDERED, ADOPTED and APPROVED** this the 14<sup>th</sup> day of December, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk



**VESTAVIA HILLS FIRE DEPARTMENT**

**MEMORANDUM**

TO: Jeff Downes, City Manager  
FROM: Jim St. John, Fire Chief  
DATE: November 30, 2015  
RE: Fire Department Nomex uniform bid

Invitations to bid for Fire Department Nomex uniforms were sent to 4 vendors, and we received 3 bids.

Based upon wear-tests conducted for over one year, the invitation specified Workrite brand garments.

McCain Uniforms provided a bid proposing Flying Cross brand as an equivalent. They provided a sample which I have inspected. The shirt and trousers are not autoclaved and do not hold creases well. Additionally, the trousers are constructed of a much lighter material than the Workrite trousers. I do not consider the Flying Cross brand to be equivalent to the Workrite brand Nomex uniform.

Cintas Corporation and NAFECO, Inc. each bid without exceptions. Cintas Corporations' bid was \$200.60 per set. The NAFECO, Inc. bid was \$184.75 per set, with larger uniforms costing \$230.25 per set. Most members of the department will be fitted with uniforms falling in the range of sizes at the lower cost, so accepting the NAFECO bid will be less expensive.

I recommend that the NAFECO, Inc. bid be accepted for Nomex uniforms.

**ORDINANCE NUMBER 2611**

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

**WHEREAS**, on the 14th day of September, 2015, a petition was presented to the City Council of the City of Vestavia Hills, Alabama, proposing the annexation of certain property to the City of Vestavia Hills, Alabama, under the provisions of Act 32 of the Special Session on the Alabama Legislature of 1964; and

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

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

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

3579 Valley Circle  
Lot 18, Block 1, Amended Map of Dolly Ridge Estates, 2nd Addition  
P. David Deusner, Owner(s)

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

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

**ADOPTING and APPROVED** this the 28th day of December, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

**ATTESTED BY:**

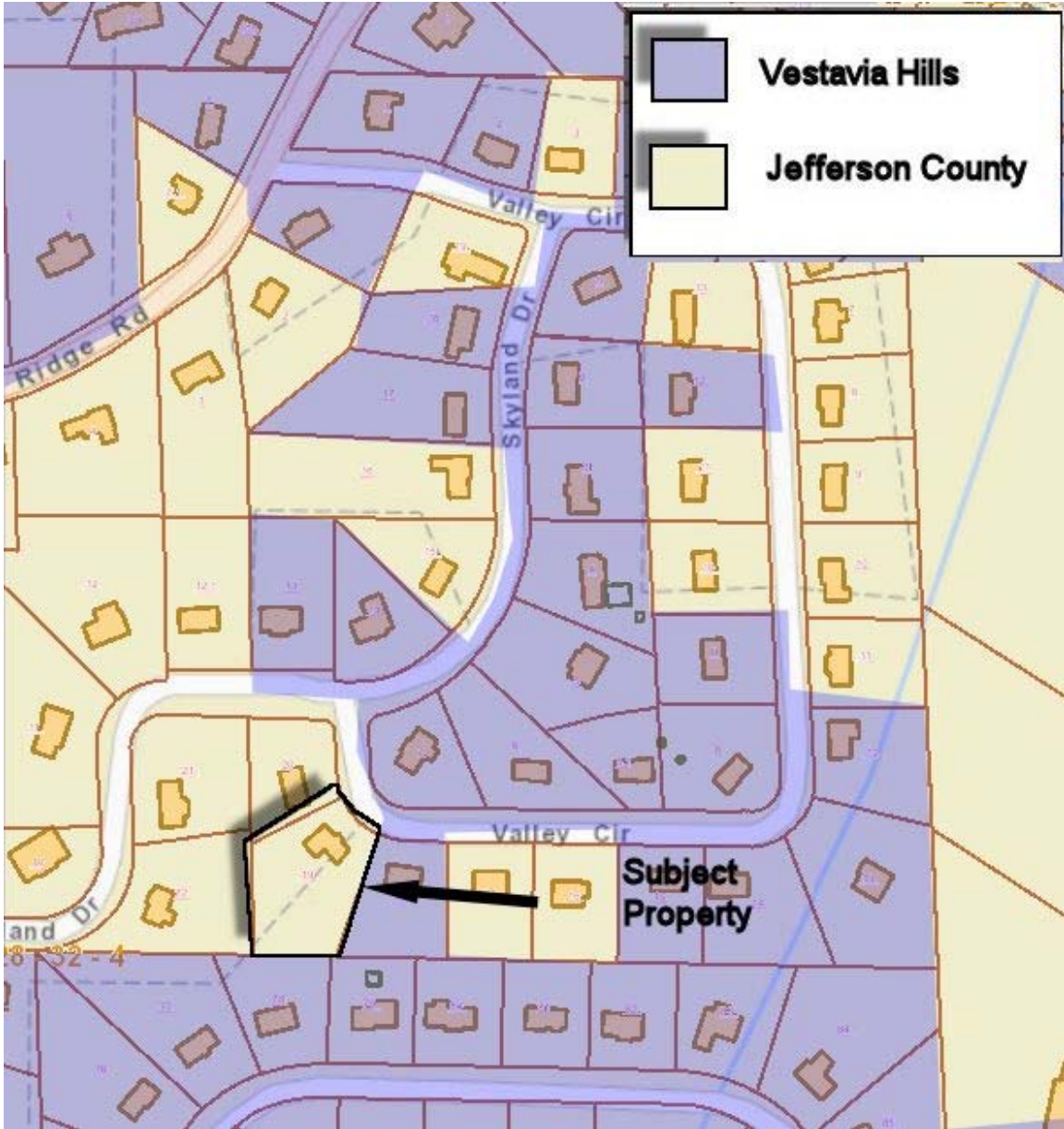
Rebecca Leavings  
City Clerk

**CERTIFICATION:**

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2611 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 28th day of December, 2015, as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, 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



**Annexation Committee Petition Review**

Property: 3579 Valley Circle

Owners: David Deusener

Date: 8-25-15

1. The property in question is contiguous to the city limits.  
Yes  No  Comments: \_\_\_\_\_

2. The land use of the petitioned property is compatible with land use in the area.  
Yes  No  Comments: \_\_\_\_\_

3. The property being petitioned is noted in the September 2006 Annexation Policy Task Force Report as an area of interest to the city for annexation.  
Yes  No  Comments \_\_\_\_\_

4. Streets and drainage structures are in substantial compliance with city regulations and building codes, and in good condition at the time of the annexation.  
Yes  No  Comments Roadway will need Resurfacing in near future

5. Individual household has a Jefferson or Shelby County Tax Assessor minimum market value of 238,300. Meets city criteria: Yes  No   
Comment: \_\_\_\_\_

6. This street has fewer than 100% of the individual properties within the limits of the city  
Yes  No   
Number of total homes 22 Number in city 11

7. Fire dues pursuant to Act #604 of the State of Alabama, and any other assessments on the property shall be the responsibility of the property owner, and their payment proven to the city.  
Agreed to by petitioner: Yes  No  Comment \_\_\_\_\_

Property: 3579 Valley Circle

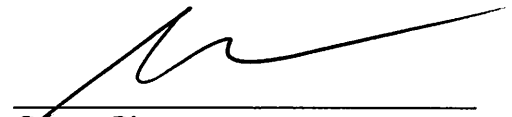
8. A non-refundable administrative fee of \$100 has been paid to the city. Furthermore, voluntary contributions, including an application fee, of \$ \_\_\_\_\_ will be paid to offset costs associated with the annexation. Yes  No \_\_\_\_\_ Comment \_\_\_\_\_

9. Property is free and clear of hazardous waste, debris and materials. Yes  No \_\_\_\_\_ Comment \_\_\_\_\_

10. Are there any concerns from city departments? Yes  No \_\_\_\_\_ Comments: Road will need Resurfacing in near future

11. Information on children: Number in family 2; Plan to enroll in VH schools Yes  No \_\_\_\_\_ Comments: \_\_\_\_\_

Other Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

  
\_\_\_\_\_  
George Pierce  
Chairman

**EXHIBIT "C"**

**CITY OF VESTAVIA HILLS**  
*Department Review of Proposed Annexation*  
*(To Be completed by City Staff)*

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The following properties have requested to be annexed into the City. Please review this request and then forward your comments to the City Clerk as soon as is reasonably possible.

Location: 3579 Valley Circle

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**Engineering:** \_\_\_\_\_ Date: \_\_\_\_\_ Initials: \_\_\_\_\_

*3579 Valley Circle – no major concerns noted; roadway is in fair to poor condition and will need to be resurfaced in near future; 18" concrete drainage pipe is in good condition.*

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**Public Services:** \_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**Police Department:** \_\_\_\_\_ Date: 8-7-15 Initials: 

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**Fire Department:** \_\_\_\_\_ Date: 8/12/15 Initials: 

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**PARCEL #:** 28 00 32 4 001 019.000  
**OWNER:** DEUSNER PHILIP D  
**ADDRESS:** 3579 VALLEY CIR BIRMINGHAM AL 35243  
**LOCATION:** 3579 VALLEY CIR BHAM AL 35243

[ 111-C0 ] Baths: 4.0 H/C Sqft: 2,399  
 18-034.0 Bed Rooms: 4 Land Sch: G1  
 Land: 80,500 Imp: 160,800 Total: 241,300  
 Acres: 0.000 Sales Info: 09/28/2012  
 \$239,000

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

Tax Year : 2015

SUMMARY    LAND    BUILDINGS    SALES    PHOTOGRAPHS    MAPS

**SUMMARY**

**ASSESSMENT**

PROPERTY CLASS: 3 OVER 65 CODE:  
 EXEMPT CODE: 2-2 DISABILITY CODE:  
 MUN CODE: 02 COUNTY HS YEAR: 2013  
 SCHOOL DIST: EXM OVERRIDE AMT: \$0.00  
 OVR ASD VALUE: \$0.00 TOTAL MILLAGE: 50.1  
 CLASS USE:  
 FOREST ACRES: 0 TAX SALE:  
 PREV YEAR VALUE: \$238,300.00 BOE VALUE: 0

**VALUE**

LAND VALUE 10% \$80,500  
 LAND VALUE 20% \$0  
 CURRENT USE VALUE [DEACTIVATED] \$0  
CLASS 2  
CLASS 3  
 POOL VINYL 300 29VP300 \$5,900  
 BLDG 001 111 \$154,900  
 TOTAL MARKET VALUE [APPR. VALUE: \$241,300]: \$241,300  
 Assesment Override:  
 MARKET VALUE:  
 CU VALUE:  
 PENALTY:  
 ASSESSED VALUE:

**DEEDS**

**INSTRUMENT NUMBER**

[201217-25417](#) 9/28/2012  
[201105-3581](#) 06/14/2011  
[200110-8283](#) 08/24/2001

**PAYMENT INFO**

INSTRUMENT NUMBER	DATE	PAY DATE	TAX YEAR	PAID BY	AMOUNT
<a href="#">201217-25417</a>	9/28/2012	12/2/2014	2014	CORELOGIC INC	\$1,146.38
<a href="#">201105-3581</a>	06/14/2011	11/19/2013	2013	CORELOGIC INC	\$1,146.38
<a href="#">200110-8283</a>	08/24/2001	10/11/2012	2012	SPARKS LAW FIRM LLC	\$2,118.20
		20111216	2011	***	\$1,015.63
		20101201	2010	***	\$1,062.73
		20091207	2009	***	\$1,062.73
		20090316	2008	***	\$1,124.19
		20080201	2007	***	\$1,196.52
		20061207	2006	***	\$906.91
		20051206	2005	***	\$896.40
		20050215	2004	***	\$870.37
		20040325	2003	***	\$776.68
		20030513	2002	***	\$611.42
		20020212	2001	***	\$568.70
		20001031	2000	***	\$555.20
		19991120	1999	***	\$555.20
		19981125	1998	***	\$391.48
		19971121	1997	***	\$391.48
		19961120	1996	***	\$386.48

STATE OF ALABAMA

\_\_\_\_\_ COUNTY

PETITION FOR ANNEXATION TO THE  
CITY OF VESTAVIA HILLS, ALABAMA

Date of Petition: 2-25-15

To the Honorable Mayor and City Council of the City of Vestavia Hills, Alabama:

We, the undersigned owners of the properties set out in red outline in Exhibit "A" attached hereto, which properties are contiguous to the City limits of the City of Vestavia Hills, Alabama, under the authority of Act No. 32 of the Special Session of the Alabama Legislature of 1964, do hereby petition the City of Vestavia Hills, Alabama, that the properties set out in red outline in Exhibit "A" attached, situated in Jefferson County, Alabama, be annexed to the City of Vestavia Hills, Alabama. The metes and bounds description of the boundary of the property of the undersigned proposed to be annexed is also set out on said Exhibit "A" and a map showing in red the property proposed for annexation by this petition is also attached and made a part hereof.

The undersigned petitioners do further petition that the Honorable Mayor and City Council of the City of Vestavia Hills, Alabama, set a date for the hearing of this petition and any objections in writing to the petition or protest, on a date certain and that no less than ninety (90) days before said date certain for said hearing on this petition, that a notice of said hearing along with this petition be published in a newspaper of general circulation in Jefferson County, Alabama.

We, the undersigned petitioners do also ask that the Honorable Mayor and City Council of the City of Vestavia Hills, Alabama, do all things necessary and requisite to comply with the terms of Act No. 32 of the Special Session of the Alabama Legislature of 1964.

**EXHIBIT "A"**

LOT: 18

BLOCK: 1 Amended Map of Dolly Ridge Estates, second edition

SURVEY: \_\_\_\_\_

RECORDED IN MAP BOOK Volume 76, PAGE 82 IN THE  
PROBATE OFFICE OF Jefferson COUNTY, ALABAMA.

COUNTY ZONING: Jefferson

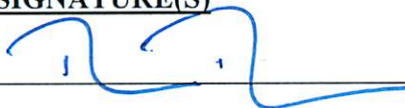
COMPATIBLE CITY ZONING: RI - VNR-2  
(Jefferson) (vestavia)

LEGAL DESCRIPTION (METES AND BOUNDS):

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals, or caused these presents to be executed by their duly authorized representatives, with full authority.

SIGNATURE(S)

DESCRIPTION OF PROPERTY

 Lot 18 Block 1 Survey Amended Map Dolly Ridge trs/les 2nd Ed.

Lot \_\_\_\_\_ Block \_\_\_\_\_ Survey \_\_\_\_\_

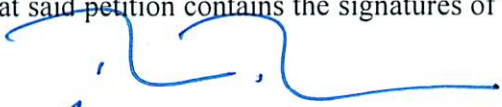
Lot \_\_\_\_\_ Block \_\_\_\_\_ Survey \_\_\_\_\_

(Use reverse side hereof for additional signatures and property descriptions, if needed).

STATE OF ALABAMA

Jefferson COUNTY

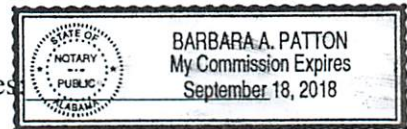
David Deusner being duly sworn says: I am one of the persons who signed the above petition, and I certify that said petition contains the signatures of all the owners of the described property.

  
 \_\_\_\_\_  
 Signature of Certifier  
BARBARA A. PATTON

Subscribed and sworn before me this the 13 day of March, 2015.

Barbara A. Patton  
Notary Public

My commission expires



CONTACT INFO:

DAVID DEUSNER  
 (D) 205-521-8407  
 (C) 323-308-0457  
 (e) ddeusner@babc.com



EXHIBIT "B"

**VESTAVIA HILLS BOARD OF EDUCATION**

1204 Montgomery Highway  
Vestavia Hills AL 35216

(To be completed by the City)

Date of Annexation Petition \_\_\_\_\_ Action Taken: Grant \_\_\_\_\_  
Deny \_\_\_\_\_  
Resolution: Date: \_\_\_\_\_ Number: \_\_\_\_\_  
Overnight Ordinance: Date: \_\_\_\_\_ Number: \_\_\_\_\_  
90 Day Final Ordinance: Date: \_\_\_\_\_ Number: \_\_\_\_\_

(To be completed by Homeowner)

Name(s) of Homeowner(s): Philip David Dausner & Meaghan E. Dausner  
Address: 3579 Valley Circle (C): 205-521-8407  
City: Birmingham State: AL Zip: 35243

Information on Children:

**Plan to Enroll In  
Vestavia Hills School?**

	Name(s)	Age	School Grade	Yes	No
1.	shiloh E. Dausner	4	Pre-School 3K	X	
2.	Trevett Bear M. Dausner	18m		X	
3.					
4.					
5.					
6.					

Approximate date for enrolling students in Vestavia Hills City Schools if above response is "yes": \_\_\_\_\_

**ORDINANCE NUMBER 2612**

**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 JEFFERSON COUNTY R-1 TO VESTAVIA HILLS R-2**

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

3579 Valley Circle  
Lot 18, Blk 1, Amended Map of Dolly Ridge Estates, 2<sup>nd</sup> Addition  
P. David Deusner, Owner

**APPROVED and ADOPTED** this the 28<sup>th</sup> day of December, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

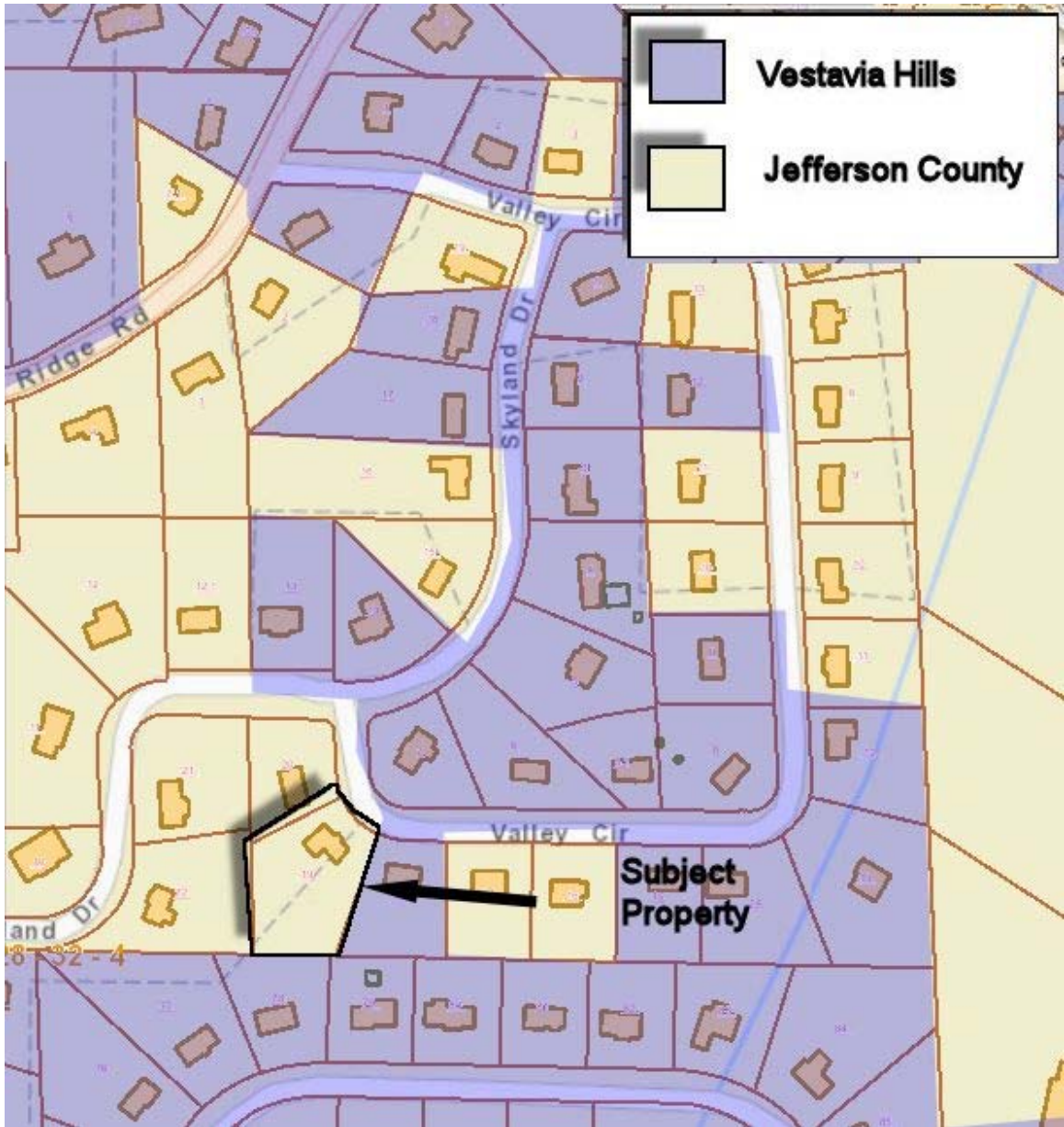
Rebecca Leavings  
City Clerk

**CERTIFICATION:**

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2612 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 28<sup>th</sup> day of December, 2015 as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Library in the Forest, New Merkle House and Vestavia Hills Recreational Center this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Rebecca Leavings  
City Clerk





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

Date: NOVEMBER 12, 2015

- **CASE:** P-1115-62
- **REQUESTED ACTION:** Jefferson County E-1 to Vestavia Hills E-2
- **ADDRESS/LOCATION:** 2720 Alta View Dr.
- **APPLICANT/OWNER:** Brad & Molly Ainsworth
- **GENERAL DISCUSSION:** Property was annexed overnight by City Council on 9/14/15 with the passage of Ordinance 2720. Applicant is requesting the compatible rezoning as part of the annexation process.
- **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:** 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. Visintainer made a motion to recommend rezoning approval of 3579 Valley Circle. from Jefferson County R-1 to Vestavia Hills R-2 For The Purpose Of Annexation. Second was by Mr. Burrell. Motion was carried on a roll call; vote as follows:

Mr. Goodwin – yes  
Mr. Gilchrist – yes  
Mr. Wolfe – yes  
Mr. Brooks – yes  
Motion carried.

Mr. Burrell – yes  
Mr. Sharp – yes  
Mr. Visintainer – yes  
Mr. Larson – yes

**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.**

---

**II. APPLICANT INFORMATION: (owner of property)**

NAME: Philip David Deusner

ADDRESS: 3579 Valley Circle Vestavia Hills, AL 35243

MAILING ADDRESS *(if different from above)* \_\_\_\_\_

PHONE NUMBER: Home 323-308-0457 Office 205-521-8407

NAME OF REPRESENTING ATTORNEY OR OTHER AGENT: \_\_\_\_\_

2015 SEP 22 A 11:25

**III. ACTION REQUESTED**

Request that the above described property be zoned/rezoned

From: Jefferson County R-1

To: VH R-2

For the intended purpose of: Annexation

*(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.)**

Property size: \_\_\_\_\_ feet X \_\_\_\_\_ feet. Acres: .73068445

**V. INFORMATION ATTACHED:**

Attached Checklist complete with all required information.

Application fees submitted.

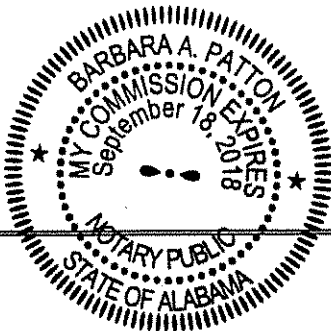
**VI.** I do hereby declare the above statements are true and that I, the owner, and/or my duly appointed representative will be at the scheduled hearing.

*[Signature]* 9-17-15  
Owner Signature/Date

Representing Agent (if any)/date

Given under my hand and seal  
this 17<sup>th</sup> day of September, 2015.

*Barbara A. Patton*  
Notary Public  
My commission expires 18<sup>th</sup>  
day of September, 2018.



**ORDINANCE NUMBER 2613**

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

**WHEREAS**, on the 14th day of September, 2015, a petition was presented to the City Council of the City of Vestavia Hills, Alabama, proposing the annexation of certain property to the City of Vestavia Hills, Alabama, under the provisions of Act 32 of the Special Session on the Alabama Legislature of 1964; and

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

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

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

3527 Valley Circle  
Lot 5, Block 1, Dolly Ridge Estates, Second Sector  
Paul and Katie Harbinson, Owner(s)

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

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

**ADOPTING and APPROVED** this the 28th day of December, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

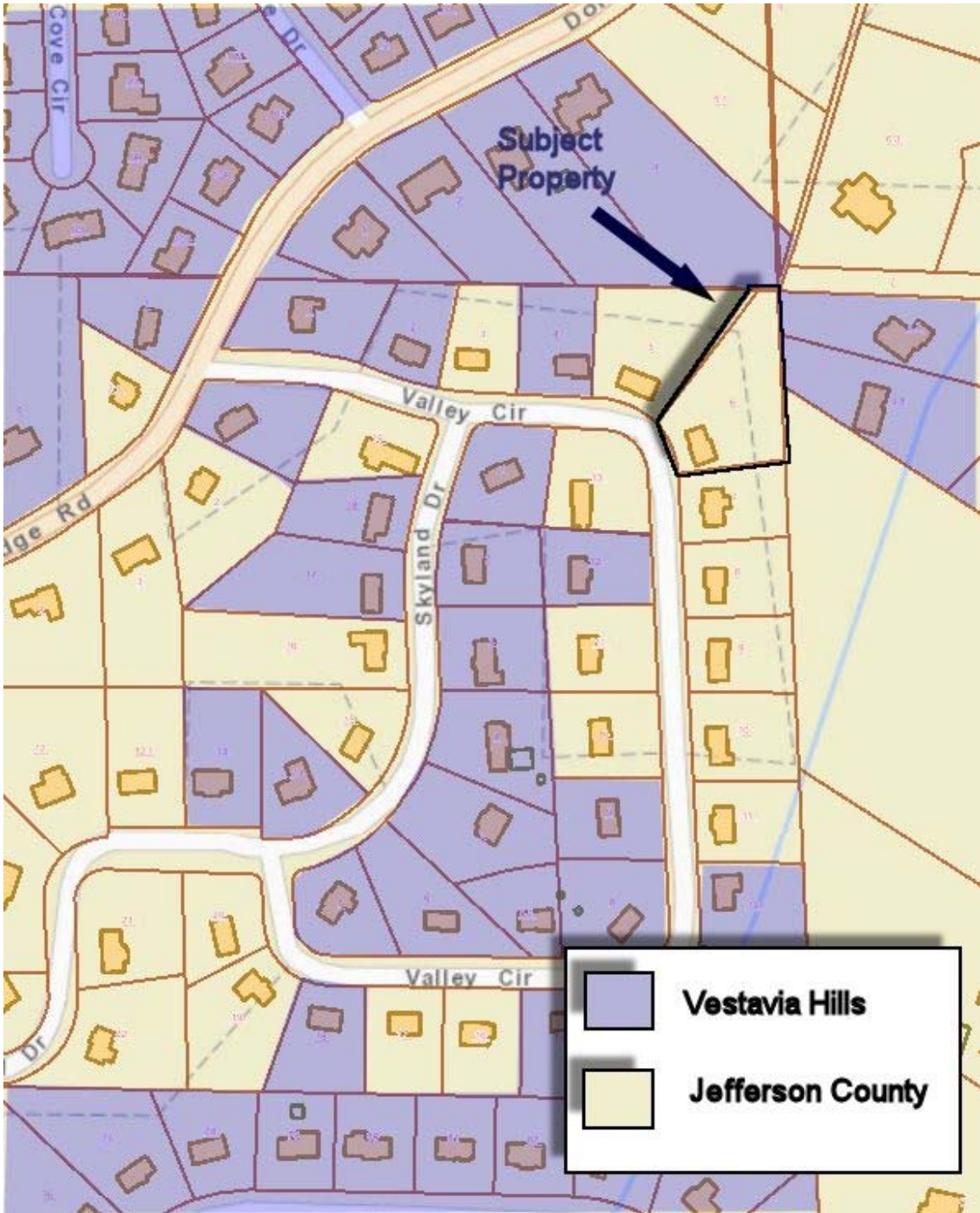
Rebecca Leavings  
City Clerk

**CERTIFICATION:**

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2613 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 28th day of December, 2015, as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, 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



**Annexation Committee Petition Review**

Property: 3527 Valley Circle

Owners: Paul and Katie Harbinson

Date: 8-25-15

1. The property in question is contiguous to the city limits.  
Yes  No  Comments: \_\_\_\_\_  
\_\_\_\_\_
2. The land use of the petitioned property is compatible with land use in the area.  
Yes  No  Comments: \_\_\_\_\_  
\_\_\_\_\_
3. The property being petitioned is noted in the September 2006 Annexation Policy Task Force Report as an area of interest to the city for annexation.  
Yes  No  Comments \_\_\_\_\_  
\_\_\_\_\_
4. Streets and drainage structures are in substantial compliance with city regulations and building codes, and in good condition at the time of the annexation.  
Yes  No  Comments \_\_\_\_\_  
\_\_\_\_\_
5. Individual household has a Jefferson or Shelby County Tax Assessor minimum market value of 221,300.. Meets city criteria: Yes  No   
Comment: \_\_\_\_\_
6. This street has fewer than 100% of the individual properties within the limits of the city  
Yes  No   
Number of total homes 226 Number in city 9
7. Fire dues pursuant to Act #604 of the State of Alabama, and any other assessments on the property shall be the responsibility of the property owner, and their payment proven to the city.  
Agreed to by petitioner: Yes  No  Comment \_\_\_\_\_  
\_\_\_\_\_

Property: 3527 Valley Circle

8. A non-refundable administrative fee of \$100 has been paid to the city. Furthermore, voluntary contributions, including an application fee, of \$ \_\_\_\_\_ will be paid to offset costs associated with the annexation. Yes  No \_\_\_\_\_ Comment \_\_\_\_\_

9. Property is free and clear of hazardous waste, debris and materials. Yes  No \_\_\_\_\_ Comment \_\_\_\_\_

10. Are there any concerns from city departments? Yes \_\_\_\_\_ No  Comments: \_\_\_\_\_

11. Information on children: Number in family 2; Plan to enroll in VH schools Yes  No \_\_\_\_\_ Comments: \_\_\_\_\_

Other Comments: \_\_\_\_\_

  
\_\_\_\_\_  
George Pierce  
Chairman



**EXHIBIT "C"**

**CITY OF VESTAVIA HILLS**  
*Department Review of Proposed Annexation*  
*(To Be completed by City Staff)*

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The following properties have requested to be annexed into the City. Please review this request and then forward your comments to the City Clerk as soon as is reasonably possible.

Location: 3527 Valley Circle

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**Engineering:** Date: \_\_\_\_\_ Initials: \_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_ **3527 Valley Circle** – no concerns noted; pavement is in fair condition. \_\_\_\_\_  
\_\_\_\_\_

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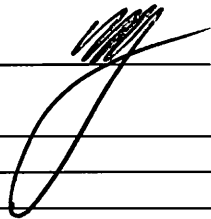
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**Public Services:** Date: \_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**Police Department:** Date: 8-7-15 Initials: 

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**Fire Department:** Date: 8/12/15 Initials: 

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**PARCEL #:** 28 00 32 4 001 006.000  
**OWNER:** HARBISON PAUL K &  
**ADDRESS:** 3527 VALLEY CIR VESTAVIA AL 35243-4603  
**LOCATION:** 3527 VALLEY CIR BHAM AL 35243

[ 111-C- ] Baths: 3.0 H/C Sqft: 2,086  
 18-034.0 Bed Rooms: 4 Land Sch: L1  
 Land: 96,300 Imp: 127,400 Total: 223,700  
 Acres: 0.000 Sales Info: 02/01/2010  
**\$205,000**

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

Tax Year : 2015

SUMMARY    LAND    BUILDINGS    SALES    PHOTOGRAPHS    MAPS

**SUMMARY**

**ASSESSMENT**

PROPERTY CLASS: 3      OVER 65 CODE:  
 EXEMPT CODE: 2-2      DISABILITY CODE:  
 MUN CODE: 02 COUNTY      HS YEAR: 0  
 SCHOOL DIST:      EXM OVERRIDE AMT: \$0.00  
 OVR ASD VALUE: \$0.00      TOTAL MILLAGE: 50.1

CLASS USE:  
 FOREST ACRES: 0      TAX SALE:  
 PREV YEAR VALUE: \$221,300.00      BOE VALUE: 0

**VALUE**

LAND VALUE 10%      \$96,290  
 LAND VALUE 20%      \$0  
 CURRENT USE VALUE [DEACTIVATED]      \$0

CLASS 2

CLASS 3  
 BLDG 001      111      \$127,400

TOTAL MARKET VALUE [APPR. VALUE: \$223,700]: \$223,690

Assesment Override:

MARKET VALUE:

CU VALUE:

PENALTY:

ASSESSED VALUE:

**DEEDS**

**INSTRUMENT NUMBER**

[201001-26827](#)

[258-494](#)

**DATE**

02/03/2010

08/26/1966

**PAYMENT INFO**

PAY DATE	TAX YEAR	PAID BY	AMOUNT
12/2/2014	2014	CORELOGIC INC	\$1,061.21
11/8/2013	2013	BAC TAX SERVICES CORPORATION	\$1,061.21
11/16/2012	2012	BAC TAX SERVICES CORPORATION	\$1,060.72
20111208	2011	***	\$1,043.69
20101203	2010	***	\$2,183.33
20091231	2009	***	\$725.50
20081231	2008	***	\$740.77
20071231	2007	***	\$858.92
20061222	2006	***	\$619.12
20051231	2005	***	\$610.84
20041230	2004	***	\$570.73
20031231	2003	***	\$466.52
20030103	2002	***	\$471.59
20020115	2001	***	\$377.45
20001231	2000	***	\$370.60
19991231	1999	***	\$370.60
19981231	1998	***	\$223.37
19971231	1997	***	\$223.37
19961231	1996	***	\$223.37

STATE OF ALABAMA

Jefferson COUNTY

PETITION FOR ANNEXATION TO THE  
CITY OF VESTAVIA HILLS, ALABAMA

Date of Petition: April 14, 2015

To the Honorable Mayor and City Council of the City of Vestavia Hills, Alabama:

We, the undersigned owners of the properties set out in red outline in Exhibit "A" attached hereto, which properties are contiguous to the City limits of the City of Vestavia Hills, Alabama, under the authority of Act No. 32 of the Special Session of the Alabama Legislature of 1964, do hereby petition the City of Vestavia Hills, Alabama, that the properties set out in red outline in Exhibit "A" attached, situated in Jefferson County, Alabama, be annexed to the City of Vestavia Hills, Alabama. The metes and bounds description of the boundary of the property of the undersigned proposed to be annexed is also set out on said Exhibit "A" and a map showing in red the property proposed for annexation by this petition is also attached and made a part hereof.

The undersigned petitioners do further petition that the Honorable Mayor and City Council of the City of Vestavia Hills, Alabama, set a date for the hearing of this petition and any objections in writing to the petition or protest, on a date certain and that no less than ninety (90) days before said date certain for said hearing on this petition, that a notice of said hearing along with this petition be published in a newspaper of general circulation in Jefferson County, Alabama.

We, the undersigned petitioners do also ask that the Honorable Mayor and City Council of the City of Vestavia Hills, Alabama, do all things necessary and requisite to comply with the terms of Act No. 32 of the Special Session of the Alabama Legislature of 1964.

Paul Harbison - 205-281-6074 - tag = 50 BC 101  
Katie Harbison - 256-572-8555 - tag = 1 AW 22 83

**EXHIBIT "A"**

LOT: 5

BLOCK: 1

SURVEY: Dolly Ridge Estates - Second Addition

RECORDED IN MAP BOOK 76, PAGE 82 IN THE

PROBATE OFFICE OF Jefferson COUNTY, ALABAMA.

COUNTY ZONING: R1

COMPATIBLE CITY ZONING: Vest. RZ

LEGAL DESCRIPTION (METES AND BOUNDS):

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals, or caused these presents to be executed by their duly authorized representatives, with full authority.

**SIGNATURE(S)**

**DESCRIPTION OF PROPERTY**

<u>Paul Harbison</u>	Lot <u>5</u> Block <u>1</u> Survey <u>Dolly Ridge Estates - 2<sup>nd</sup> Add.</u>
<u>Frances Harbison</u>	Lot <u>5</u> Block <u>1</u> Survey <u>Dolly Ridge Estates - 2<sup>nd</sup> Add.</u>
_____	Lot _____ Block _____ Survey _____

*(Use reverse side hereof for additional signatures and property descriptions, if needed).*

**STATE OF ALABAMA**

Jefferson COUNTY

Paul Harbison being duly sworn says: I am one of the persons who signed the above petition, and I certify that said petition contains the signatures of all the owners of the described property.

Paul Harbison  
Signature of Certifier

Subscribed and sworn before me this the 4<sup>th</sup> day of April, 2015

Rhonda McClard  
Notary Public

My commission expires: 10/18/2017



**EXHIBIT "B"**

**VESTAVIA HILLS BOARD OF EDUCATION**

1204 Montgomery Highway  
Vestavia Hills AL 35216

*(To be completed by the City)*

Date of Annexation Petition \_\_\_\_\_ Action Taken: Grant \_\_\_\_\_  
Deny \_\_\_\_\_  
Resolution: Date: \_\_\_\_\_ Number: \_\_\_\_\_  
Overnight Ordinance: Date: \_\_\_\_\_ Number: \_\_\_\_\_  
90 Day Final Ordinance: Date: \_\_\_\_\_ Number: \_\_\_\_\_

*(To be completed by Homeowner)*

Name(s) of Homeowner(s): Paul and Katie Harbison

Address: 3527 Valley Circle

City: Birmingham State: AL Zip: 35243

**Information on Children:**

**Plan to Enroll In  
Vestavia Hills School?**

	Name(s)	Age	School Grade	Yes	No
1.	Olivia Harbison	3		✓	
2.	Hughes Harbison	6 months		✓	
3.					
4.					
5.					
6.					

Approximate date for enrolling students in Vestavia Hills City Schools if above response is "yes": Olivia - August 2016  
Hughes - August 2020

**ORDINANCE NUMBER 2614**

**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 JEFFERSON COUNTY R-1 TO VESTAVIA HILLS R-2**

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

3527 Valley Circle  
Lot 5, Blk 1, Amended Map of Dolly Ridge Estates, 2<sup>nd</sup> Addition  
Paul and Katie Harbison, Owners

**APPROVED and ADOPTED** this the 28<sup>th</sup> day of December, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

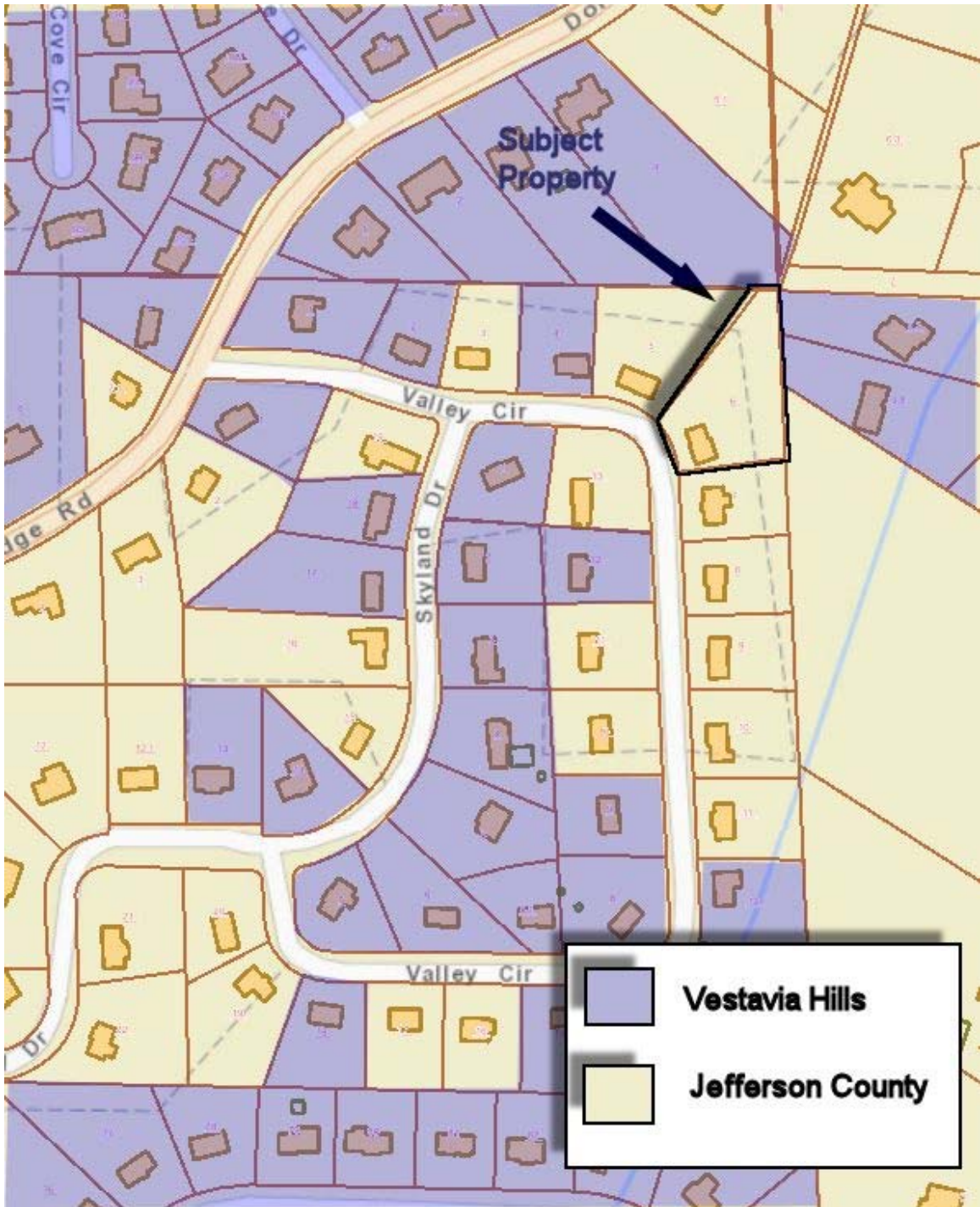
**CERTIFICATION:**

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2614 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 28<sup>th</sup> day of December, 2015 as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Library in the Forest, New Merkle House and Vestavia Hills Recreational Center this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Rebecca Leavings  
City Clerk





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

Date: NOVEMBER 12, 2015

- **CASE:** P-1115-59
- **REQUESTED ACTION:** Jefferson County R-1 to Vestavia Hills R-2
- **ADDRESS/LOCATION:** 3527 Valley Cir.
- **APPLICANT/OWNER:** Paul & Katie Harbison
- **GENERAL DISCUSSION:** Property was annexed overnight by City Council on 9/14/15 with the passage of Ordinance 2587. Applicant is requesting the compatible rezoning as part of the annexation process.
- **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:** 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. Visintainer made a motion to recommend rezoning approval of 3527 Valley Circle. from Jefferson County R-1 to Vestavia Hills R-2 For The Purpose Of Annexation. Second was by Mr. Gilchrist. Motion was carried on a roll call; vote as follows:

Mr. Goodwin – yes  
Mr. Gilchrist – yes  
Mr. Wolfe – yes  
Mr. Brooks – yes  
Motion carried.

Mr. Burrell – yes  
Mr. Sharp – yes  
Mr. Visintainer – yes  
Mr. Larson – yes

## 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.**

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#### II. APPLICANT INFORMATION: (owner of property)

NAME: Paul and Katie Harbison

ADDRESS: 3527 Valley Circle

Birmingham AL 35243

MAILING ADDRESS (if different from above) "same"

PHONE NUMBER: <sup>cell</sup> Home 205-281-6074 Office 205 795 0510

NAME OF REPRESENTING ATTORNEY OR OTHER AGENT: None

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P1115-59//28-32-4-1-6  
3527 Valley Circle  
Rezone from JC R1 to VH R2  
Paul & Katie Harbison  
R1

JC

P&Z Application  
Page 5

**III. ACTION REQUESTED**

Request that the above described property be zoned/rezoned

From: Jefferson County R1

To: VH R2

For the intended purpose of: single family residential - rezone after Annexation

(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.)**

3527 Valley Circle, Vestavia Hills AL 35243

Lot 5, Block 1, Dolly Ridge Estab, Second Sect

Property size: \_\_\_\_\_ feet X \_\_\_\_\_ feet. Acres: .9

**V. INFORMATION ATTACHED:**

Attached Checklist complete with all required information.

Application fees submitted.

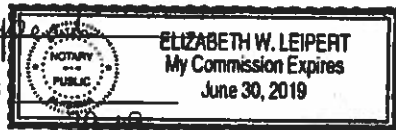
**VI.** I do hereby declare the above statements are true and that I, the owner, and/or my duly appointed representative will be at the scheduled hearing.

PA [Signature] 9/21/2015  
Owner Signature/Date

\_\_\_\_\_  
Representing Agent (if any)/date

Given under my hand and seal  
this 21 day of September, 2015.

Elizabeth W. Leibert  
Notary Public  
My commission expires  
day of 6/30



**ORDINANCE NUMBER 2615**

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

**WHEREAS**, on the 14th day of September, 2015, a petition was presented to the City Council of the City of Vestavia Hills, Alabama, proposing the annexation of certain property to the City of Vestavia Hills, Alabama, under the provisions of Act 32 of the Special Session on the Alabama Legislature of 1964; and

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

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

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

2615 Alta Vista Circle  
Lot 6, Altadena Valley Country Club Sector  
Bradley and Kelly Belew, Owner(s)

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

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

**ADOPTING and APPROVED** this the 28th day of December, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**CERTIFICATION:**

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2615 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 28th day of December, 2015, as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, 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





**Annexation Committee Petition Review**

Property: 2615 Alta Vista Circle

Owners: Bradley and Kelly Belew

Date: 8-25-15

1. The property in question is contiguous to the city limits.  
Yes  No  Comments: \_\_\_\_\_  
\_\_\_\_\_
2. The land use of the petitioned property is compatible with land use in the area.  
Yes  No  Comments: \_\_\_\_\_  
\_\_\_\_\_
3. The property being petitioned is noted in the September 2006 Annexation Policy Task Force Report as an area of interest to the city for annexation.  
Yes  No  Comments \_\_\_\_\_  
\_\_\_\_\_
4. Streets and drainage structures are in substantial compliance with city regulations and building codes, and in good condition at the time of the annexation.  
Yes  No  Comments Improvement in poor condition. Needs resurfacing  
\_\_\_\_\_
5. Individual household has a Jefferson or Shelby County Tax Assessor minimum market value of 296,000. Meets city criteria: Yes  No   
Comment: \_\_\_\_\_
6. This street has fewer than 100% of the individual properties within the limits of the city  
Yes  No   
Number of total homes 16 Number in city 6
7. Fire dues pursuant to Act #604 of the State of Alabama, and any other assessments on the property shall be the responsibility of the property owner, and their payment proven to the city.  
Agreed to by petitioner: Yes  No  Comment \_\_\_\_\_  
\_\_\_\_\_



Property: 2615 ALTA VISTA CIRCLE


8. A non-refundable administrative fee of \$100 has been paid to the city. Furthermore, voluntary contributions, including an application fee, of \$        will be paid to offset costs associated with the annexation.  
Yes  No  Comment       

9. Property is free and clear of hazardous waste, debris and materials.  
Yes  No  Comment       

10. Are there any concerns from city departments?  
Yes  No  Comments: Engineering: Movement is in poor condition, abats RESUR FACING.

11. Information on children: Number in family 2; Plan to enroll in VH schools Yes  No  Comments:       

Other Comments:         
        
      

  
\_\_\_\_\_  
George Pierce  
Chairman

**EXHIBIT "C"**

**CITY OF VESTAVIA HILLS**  
*Department Review of Proposed Annexation*  
*(To Be completed by City Staff)*

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The following properties have requested to be annexed into the City. Please review this request and then forward your comments to the City Clerk as soon as is reasonably possible.

Location: 2615 Alta Vista Circle

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**Engineering:** \_\_\_\_\_ Date: \_\_\_\_\_ Initials: \_\_\_\_\_

*2615 Alta Vista Circle – within Shelby County; pavement is in poor condition and needs resurfacing in near future; this lot sits below street level and has existing drainage concerns with water from street.*

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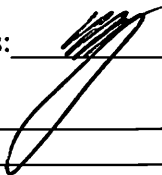
**Public Services:**

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**Police Department:**


Date: 8-7-15 Initials: 

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**Fire Department:**

Date: 8/12/15 Initials: 

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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SHELBY COUNTY, ALABAMA. CITIZEN ACCESS PORTAL

WELCOME PROPERTY TAX BOE PERSONAL PROPERTY REDEMPTION

• Search

**PARCEL #:** 10 2 04 0 001 007.002  
**OWNER:** KREITNER LINDSEY & THOMAS JASON  
**ADDRESS:** 2615 ALTA VISTA CIR BIRMINGHAM AL 35243

Baths: 3.5 H/C Sqft: 2,521  
 Land: 80,000 Imp: 222,700 Total: 302,700  
 Acres: 0.450 Sales Info: 09/13/2011 \$260,500

• Pay Tax

« Previous Next » [ 1 / 1 Records ]

Tax Year : 2015

• Assessment

SUMMARY LAND BUILDINGS SALES PHOTOGRAPHS MAPS

• Forms

**SUMMARY**

<b>ASSESSMENT</b>			<b>VALUE</b>	
PROPERTY CLASS:	3	OVER 65 CODE:	LAND VALUE 10%	\$80,000
EXEMPT CODE:	10	DISABILITY CODE:	LAND VALUE 20%	\$0
MUN CODE:	01 COUNTY	HS YEAR:	CURRENT USE VALUE	\$0
SCHOOL DIST:	2	EXM OVERRIDE AMT:		\$0.00
OVR ASD VALUE:	\$0.00		<b>CLASS 2</b>	
			<b>CLASS 3</b>	
<b>CLASS USE:</b>		<b>TAX SALE:</b>	BLDG 1	111 \$222,700
FOREST ACRES:	0	BOE VALUE:		0
PREV YEAR VALUE:	\$296,000.00		<b>TOTAL MARKET VALUE:</b>	\$302,700

**TAX INFO**

	CLASS	MUNCODE	ASSD. VALUE	TAX	EXEMPTION	TAX EXEMPTION	TOTAL TAX
STATE	3	1	\$30,280	\$196.82	\$4,000	\$26.00	\$170.82
COUNTY	3	1	\$30,280	\$227.10	\$2,000	\$15.00	\$212.10
SCHOOL	3	1	\$30,280	\$484.48	\$0	\$0.00	\$484.48
DIST SCHOOL	3	1	\$30,280	\$423.92	\$0	\$0.00	\$423.92
CITY	3	1	\$30,280	\$0.00	\$0	\$0.00	\$0.00
FOREST	3	1	\$0	\$0.00	\$0	\$0.00	\$0.00

ASSD. VALUE: \$30,280.00      \$1,332.32      **GRAND TOTAL: \$1,291.32**

**DEEDS**

**INSTRUMENT NUMBER**

- [20141029000341450](#)
- [20110920000277770](#)
- [20110407000108070](#)
- [20020052162000000](#)

DATE	PAY DATE	TAX YEAR	PAID BY	AMOUNT
10/27/2014		2015		\$0.00
9/13/2011	10/31/2014	2014	TITLESOUTH	\$1,261.40
3/30/2011	11/15/2013	2013	PENNYMAC LOAN SERVICES, LLC	\$1,261.40
9/6/2002	11/19/2012	2012	FLAGSTAR BANK	\$1,152.80
	10/7/2011	2011	MCLEOD & ASSOCIATES FILE#110347	\$1,301.88
	11/10/2010	2010	BAC TAX SERVICES	\$1,322.12
	11/9/2009	2009	BAC TAX SERVICES CORPORATION	\$1,155.80
	11/12/2008	2008	COUNTRYWIDE TAX SERVICES CORP	\$1,166.36
	11/16/2007	2007	COUNTRYWIDE	\$1,163.72
	11/17/2006	2006	COUNTRYWIDE	\$1,081.00
	11/18/2005	2005	COUNTRYWIDE HOME LOANS	\$2,104.96
	11/16/2004	2004	COUNTRYWIDE	\$264.00

- QUICK LINKS**
- PTC Info
  - Assessment
  - Collection
  - Property Deeds
  - Millage Rate
  - Contact Us
  - County Site
  - Get Adobe Reader
  - \*\* News \*\*



DON ARMSTRONG  
 Property Tax Commissioner

SHELBY COUNTY  
 102 Depot Street  
 Columbiana, AL 35051  
 (205) 670-6900



Powered By: E-Ring, Inc.

Website Disclaimer

STATE OF ALABAMA

Shelby COUNTY

PETITION FOR ANNEXATION TO THE  
CITY OF VESTAVIA HILLS, ALABAMA

Date of Petition: 5/15/15

To the Honorable Mayor and City Council of the City of Vestavia Hills, Alabama:

We, the undersigned owners of the properties set out in red outline in Exhibit "A" attached hereto, which properties are contiguous to the City limits of the City of Vestavia Hills, Alabama, under the authority of Act No. 32 of the Special Session of the Alabama Legislature of 1964, do hereby petition the City of Vestavia Hills, Alabama, that the properties set out in red outline in Exhibit "A" attached, situated in Shelby County, Alabama, be annexed to the City of Vestavia Hills, Alabama. The metes and bounds description of the boundary of the property of the undersigned proposed to be annexed is also set out on said Exhibit "A" and a map showing in red the property proposed for annexation by this petition is also attached and made a part hereof.

The undersigned petitioners do further petition that the Honorable Mayor and City Council of the City of Vestavia Hills, Alabama, set a date for the hearing of this petition and any objections in writing to the petition or protest, on a date certain and that no less than ninety (90) days before said date certain for said hearing on this petition, that a notice of said hearing along with this petition be published in a newspaper of general circulation in Jefferson County, Alabama.

We, the undersigned petitioners do also ask that the Honorable Mayor and City Council of the City of Vestavia Hills, Alabama, do all things necessary and requisite to comply with the terms of Act No. 32 of the Special Session of the Alabama Legislature of 1964.

5/15/15

Blackbeard@gmail.com

cell 205-704-2090

office 205-702-2150

**EXHIBIT "A"**

LOT: 6

BLOCK: Altadena Valley Country Club Sector

SURVEY: \_\_\_\_\_

RECORDED IN MAP BOOK 4, PAGE 71 IN THE  
PROBATE OFFICE OF Shelby COUNTY, ALABAMA.

COUNTY ZONING: \_\_\_\_\_

COMPATIBLE CITY ZONING: \_\_\_\_\_

LEGAL DESCRIPTION (METES AND BOUNDS):

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals, or caused these presents to be executed by their duly authorized representatives, with full authority.

<u>SIGNATURE(S)</u>	<u>DESCRIPTION OF PROPERTY</u>
<u>[Signature]</u>	Lot <u>6</u> Block _____ Survey <u>Mapbook 4, page 71</u>
<u>Kelly Belen</u>	Lot _____ Block _____ Survey _____
_____	Lot _____ Block _____ Survey _____

(Use reverse side hereof for additional signatures and property descriptions, if needed).

STATE OF ALABAMA

Shelby COUNTY

[Signature] being duly sworn says: I am one of the persons who signed the above petition, and I certify that said petition contains the signatures of all the owners of the described property.

[Signature]  
Signature of Certifier

Subscribed and sworn before me this the 11 day of May, 20 15.

Cynthia C. Moore  
Notary Public

My commission expires: 2/2/19



**EXHIBIT "B"**

**VESTAVIA HILLS BOARD OF EDUCATION**

**1204 Montgomery Highway  
Vestavia Hills AL 35216**

*(To be completed by the City)*

Date of Annexation Petition \_\_\_\_\_ Action Taken: Grant \_\_\_\_\_  
Deny \_\_\_\_\_  
Resolution: Date: \_\_\_\_\_ Number: \_\_\_\_\_  
Overnight Ordinance: Date: \_\_\_\_\_ Number: \_\_\_\_\_  
90 Day Final Ordinance: Date: \_\_\_\_\_ Number: \_\_\_\_\_

*(To be completed by Homeowner)*

Name(s) of Homeowner(s): Bradley J. & Kelly D. Belaw

Address: 2615 Alta Vista Circle

City: Birmingham State: AL Zip: 35243

**Information on Children:**

**Plan to Enroll In  
Vestavia Hills School?**

	Name(s)	Age	School Grade	Yes	No
1.	Charles Conner Belaw	15	9	X	
2.	Daley Walker Belaw	13	7	X	
3.					
4.					
5.					
6.					

Approximate date for enrolling students in Vestavia Hills City Schools if above response is "yes": Already Enrolled in VH Schools

**ORDINANCE NUMBER 2616**

**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 SHELBY COUNTY E-1 TO VESTAVIA HILLS E-2**

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

2615 Alta Vista Circle  
Lot 6, Altadena Valley Country Club Estates  
Bradley and Kelly Belew, Owners

**APPROVED and ADOPTED** this the 28<sup>th</sup> day of December, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk



**CERTIFICATION:**

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2616 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 28<sup>th</sup> day of December, 2015 as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Library in the Forest, New Merkle House and Vestavia Hills Recreational Center this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Rebecca Leavings  
City Clerk



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

Date: NOVEMBER 12, 2015

- **CASE: P-1115-61**
- **REQUESTED ACTION:** Shelby County E-1 to Vestavia Hills E-2
- **ADDRESS/LOCATION:** 2615 Alta Vista Circle.
- **APPLICANT/OWNER:** Bradley & Kelly Belew
- **GENERAL DISCUSSION:** Property was annexed overnight by City Council on 9/14/15 with the passage of Ordinance 2615. Applicant is requesting the compatible rezoning as part of the annexation process.
- **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:** 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. Visintainer made a motion to recommend rezoning approval of 2615 Alta Vista Circle from Shelby County E-1 to Vestavia Hills E-2 For The Purpose Of Annexation. Second was by Mr. Burrell. Motion was carried on a roll call; vote as follows:

Mr. Goodwin – yes  
Mr. Gilchrist – yes  
Mr. Wolfe – yes  
Mr. Brooks – yes  
Motion carried.

Mr. Burrell – yes  
Mr. Sharp – yes  
Mr. Visintainer – yes  
Mr. Larson – yes

## 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.**

---

### II. APPLICANT INFORMATION: (owner of property)

NAME: Bradley and Kelly Belew

ADDRESS: 2615 Alta Vista Circle, Birmingham Al 35243

MAILING ADDRESS (if different from above) \_\_\_\_\_

PHONE NUMBER: Home 205-969-9577 Office 205-704-2099

NAME OF REPRESENTING ATTORNEY OR OTHER AGENT: \_\_\_\_\_

---

**III. ACTION REQUESTED**

Request that the above described property be zoned/rezoned

From: Shelby County E-1

To: Vestavia Hills E-2

For the intended purpose of: Annexation

*(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.)**

2615 Alta Vista Circle, Lot 6, Altadena Valley Country Club Sector, Birmingham Al 35243

Property size: 137 feet X 157 feet. Acres: 1/2

**V. INFORMATION ATTACHED:**

Attached Checklist complete with all required information.

Application fees submitted.

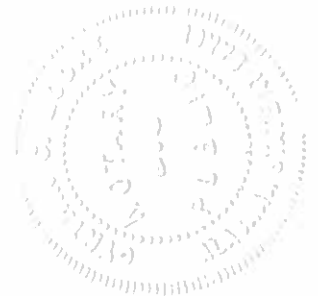
**VI.** I do hereby declare the above statements are true and that I, the owner, and/or my duly appointed representative will be at the scheduled hearing.

 9/22/15  
Owner Signature/Date

\_\_\_\_\_  
Representing Agent (if any)/date

Given under my hand and seal  
this 22 day of September, 20 15.

Cynthia C. Moore  
Notary Public  
My commission expires 2  
day of February, 20 19.



**ORDINANCE NUMBER 2617**

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

**WHEREAS**, on the 14th day of September, 2015, a petition was presented to the City Council of the City of Vestavia Hills, Alabama, proposing the annexation of certain property to the City of Vestavia Hills, Alabama, under the provisions of Act 32 of the Special Session on the Alabama Legislature of 1964; and

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

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

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

2720 Alta View Drive  
Brad and Molly Ainsworth, Owner(s)

More particularly described as follows:

A parcel of land situated in the SW ¼ of Section 27 and the SE ¼ of Section 28, Township, 18 South, Range 2 West, being more particularly described as follows:

Commence at the SE corner of the NE ¼ of the SE ¼ of Section 28, and run in a southerly direction along the east line of the SE ¼ of the SE ¼ of Section 28, a distance of 100.00 feet to a point; thence 112 degrees 50' to the right in a northwesterly direction a distance of 165.20 feet to the point of beginning; thence continuing along the last described course a distance of 35.34 feet to a point; thence 7 degrees 53' to the right in a northwesterly

direction, a distance of 283.32 feet to a point on the rear line of Lot 16, Altadena Estates; thence 108 degrees 24' 30" to the right in a northeasterly direction along the rear line of Lots 16 & 15, Altadena Estates and its prolongation thereof a distance of 588.51 feet to a point; thence 109 degrees 31' to the right in a southeasterly direction a distance of 190.00 feet to a point; thence 66 degrees 51' to the right in a southwesterly direction a distance of 163.77 feet to a point; thence 13 degrees 58' to the left in a southwesterly direction a distance of 125.65 feet to the point of curve (PC) of a curve to the left having a radius of 202.63 feet, and a central angle of 22 degrees, 20'; thence along the arc of said curve to the left a distance of 78.98 feet to the point of reverse curve, (PRC), thence along the arc of a curve to the right having a radius of 187.11 feet, and a central angle of 24 degrees 08' for a distance of 78.81 feet to the point of beginning.

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

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

**ADOPTING and APPROVED** this the 28th day of December, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

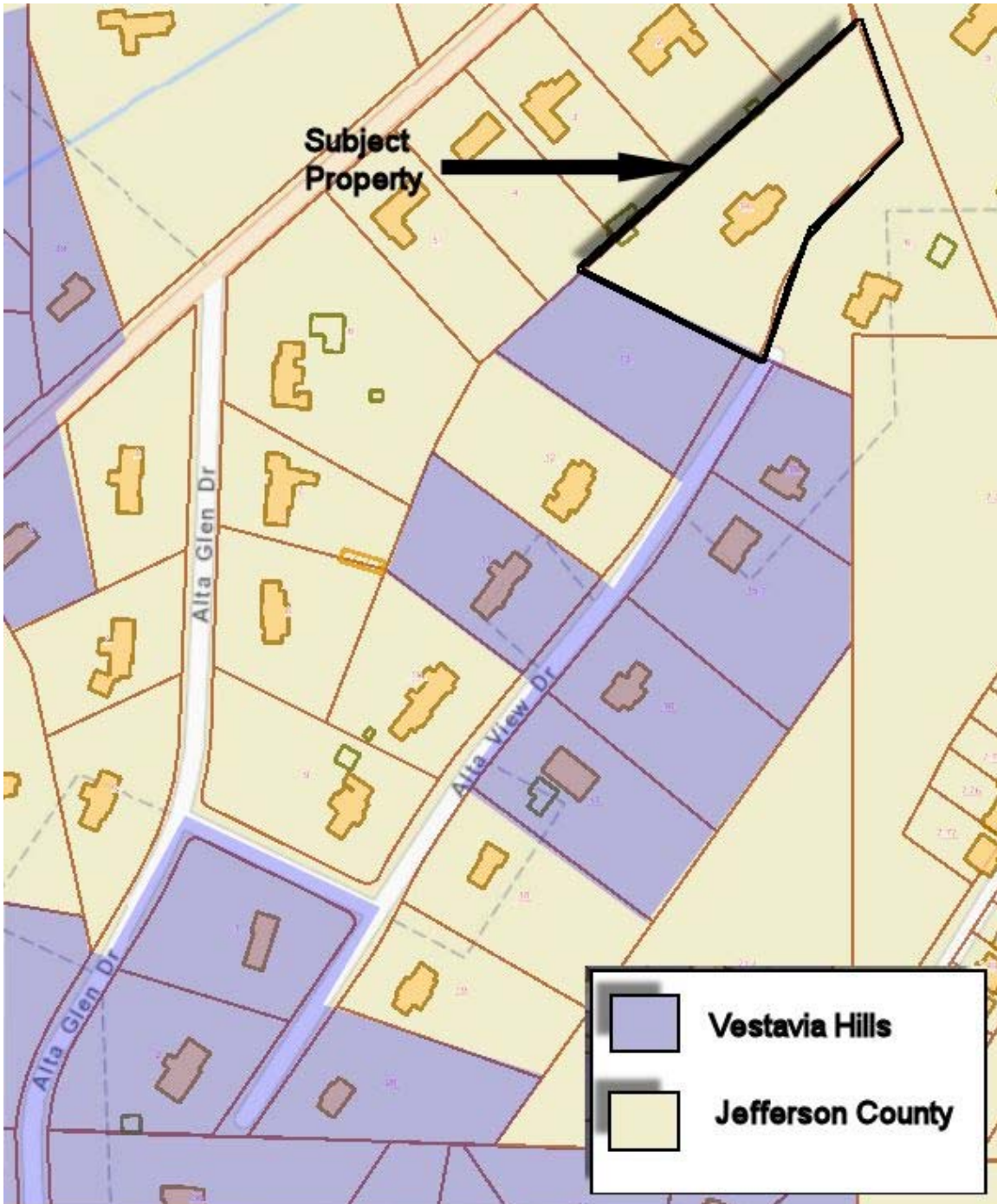
**CERTIFICATION:**

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2617 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 28th day of December, 2015, as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, 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





**Annexation Committee Petition Review**

Property: 2720 Alta View Drive

Owners: Tony and Abbie Miller

Date: 8-25-15

1. The property in question is contiguous to the city limits.  
Yes  No  Comments: \_\_\_\_\_  
\_\_\_\_\_
2. The land use of the petitioned property is compatible with land use in the area.  
Yes  No  Comments: \_\_\_\_\_  
\_\_\_\_\_
3. The property being petitioned is noted in the September 2006 Annexation Policy Task Force Report as an area of interest to the city for annexation.  
Yes  No  Comments \_\_\_\_\_  
\_\_\_\_\_
4. Streets and drainage structures are in substantial compliance with city regulations and building codes, and in good condition at the time of the annexation.  
Yes  No  Comments \_\_\_\_\_  
\_\_\_\_\_
5. Individual household has a Jefferson or Shelby County Tax Assessor minimum market value of 696,000. Meets city criteria: Yes  No   
Comment: \_\_\_\_\_
6. This street has fewer than 100% of the individual properties within the limits of the city  
Yes  No   
Number of total homes 16 Number in city 8
7. Fire dues pursuant to Act #604 of the State of Alabama, and any other assessments on the property shall be the responsibility of the property owner, and their payment proven to the city.  
Agreed to by petitioner: Yes  No  Comment \_\_\_\_\_  
\_\_\_\_\_



**EXHIBIT "C"**

**CITY OF VESTAVIA HILLS**  
*Department Review of Proposed Annexation*  
*(To Be completed by City Staff)*

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The following properties have requested to be annexed into the City. Please review this request and then forward your comments to the City Clerk as soon as is reasonably possible.

Location: 2720 Alta View Drive

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**Engineering:** \_\_\_\_\_ Date: \_\_\_\_\_ Initials: \_\_\_\_\_

*2720 Alta View Drive – no concerns noted; no additional roadway right-of-way inherited by City as part of this annexation – there is a shared 150-ft private drive that serves this and the adjoining lot.*

**Public Services:**

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**Police Department:** \_\_\_\_\_ Date: 8-7-15 Initials: 

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**Fire Department:** \_\_\_\_\_ Date: 8/12/15 Initials: 

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**PARCEL #:** 28 00 28 4 003 014.000  
**OWNER:** MILLER TONY G & ABBIE T  
**ADDRESS:** 2720 ALTA VIEW DR VESTAVIA AL 35243-4513  
**LOCATION:** 2720 ALTA VIEW DR BHAM AL 35243

[ 111-A0 ] Baths: 5.5 H/C Sqft: 5,724  
 18-013.0 Bed Rooms: 6 Land Sch: A114  
 Land: 213,900 Imp: 544,700 Total: 758,600  
 Acres: 0.000 Sales Info: 06/01/1991  
**\$350,000**

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

Tax Year : 2015

SUMMARY    LAND    BUILDINGS    SALES    PHOTOGRAPHS    MAPS

**SUMMARY**

**ASSESSMENT**

PROPERTY CLASS: 3 OVER 65 CODE:  
 EXEMPT CODE: 2-2 DISABILITY CODE:  
 MUN CODE: 01 COUNTY HS YEAR: 0  
 SCHOOL DIST: EXM OVERRIDE AMT: \$0.00  
 OVR ASD VALUE: \$0.00 TOTAL MILLAGE: 50.1

**VALUE**

LAND VALUE 10% \$213,900  
 LAND VALUE 20% \$0  
 CURRENT USE VALUE [DEACTIVATED] \$0  
CLASS 2  
CLASS 3  
 UTILITY WOOD H 26WDHOM \$200  
 PAVING CONCRETE 34PCR04 \$1,700  
 POOL GUNITE 80 29G0800 \$9,000  
 BLDG 001 111 \$533,800

CLASS USE:  
 FOREST ACRES: 0 TAX SALE:  
 PREV YEAR VALUE: \$696,000.00 BOE VALUE: 0

TOTAL MARKET VALUE [APPR. VALUE: \$758,600]: \$758,600

Assesment Override:

MARKET VALUE:  
 CU VALUE:  
 PENALTY:  
 ASSESSED VALUE:

**DEEDS**

**INSTRUMENT NUMBER**

[4061-975](#)

**PAYMENT INFO**

DATE	PAY DATE	TAX YEAR	PAID BY	AMOUNT
06/28/1991	12/5/2014	2014	ABBIE T.MILLER	\$3,438.96
	11/19/2013	2013	-	\$3,438.96
	11/21/2012	2012	CORELOGIC INC	\$3,701.48
	20111216	2011	***	\$3,765.61
	20101201	2010	***	\$3,752.59
	20091207	2009	***	\$3,752.59
	20081120	2008	***	\$3,828.25
	20071117	2007	***	\$3,802.69
	20061202	2006	***	\$3,146.38
	20051119	2005	***	\$3,054.19
	20041120	2004	***	\$2,972.54
	20031122	2003	***	\$2,849.29
	20021129	2002	***	\$2,389.87
	20011117	2001	***	\$2,389.87
	20001104	2000	***	\$2,389.87
	19991206	1999	***	\$1,880.36
	19981115	1998	***	\$1,670.13
	19971116	1997	***	\$1,670.13
	19961123	1996	***	\$1,665.13

STATE OF ALABAMA

Jefferson COUNTY

PETITION FOR ANNEXATION TO THE  
CITY OF VESTAVIA HILLS, ALABAMA

Date of Petition: 8-011-15

To the Honorable Mayor and City Council of the City of Vestavia Hills, Alabama:

We, the undersigned owners of the properties set out in red outline in Exhibit "A" attached hereto, which properties are contiguous to the City limits of the City of Vestavia Hills, Alabama, under the authority of Act No. 32 of the Special Session of the Alabama Legislature of 1964, do hereby petition the City of Vestavia Hills, Alabama, that the properties set out in red outline in Exhibit "A" attached, situated in Jefferson County, Alabama, be annexed to the City of Vestavia Hills, Alabama. The metes and bounds description of the boundary of the property of the undersigned proposed to be annexed is also set out on said Exhibit "A" and a map showing in red the property proposed for annexation by this petition is also attached and made a part hereof.

The undersigned petitioners do further petition that the Honorable Mayor and City Council of the City of Vestavia Hills, Alabama, set a date for the hearing of this petition and any objections in writing to the petition or protest, on a date certain and that no less than ninety (90) days before said date certain for said hearing on this petition, that a notice of said hearing along with this petition be published in a newspaper of general circulation in Jefferson County, Alabama.

We, the undersigned petitioners do also ask that the Honorable Mayor and City Council of the City of Vestavia Hills, Alabama, do all things necessary and requisite to comply with the terms of Act No. 32 of the Special Session of the Alabama Legislature of 1964.

EXHIBIT "A"

LOT: \_\_\_\_\_

BLOCK: \_\_\_\_\_

SURVEY: \_\_\_\_\_

RECORDED IN MAP BOOK \_\_\_\_\_, PAGE \_\_\_\_\_ IN THE  
PROBATE OFFICE OF \_\_\_\_\_ COUNTY, ALABAMA.

COUNTY ZONING: ESTATE (E-1)

COMPATIBLE CITY ZONING: \_\_\_\_\_

LEGAL DESCRIPTION (METES AND BOUNDS):

LEGAL DESCRIPTION ATTACHED



IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals, or caused these presents to be executed by their duly authorized representatives, with full authority.

SIGNATURE(S)

DESCRIPTION OF PROPERTY

<u>Abbie T. Miller</u>	Lot _____	Block _____	Survey _____
ABBIE T. MILLER	Lot _____	Block _____	Survey _____
_____	Lot _____	Block _____	Survey _____

(Use reverse side hereof for additional signatures and property descriptions, if needed).

STATE OF ALABAMA

Jefferson COUNTY

ABBIE T. MILLER being duly sworn says: I am one of the persons who signed the above petition, and I certify that said petition contains the signatures of all the owners of the described property.

Abbie T. Miller  
*Signature of Certifier*  
 ABBIE T. MILLER

Subscribed and sworn before me this the 29<sup>th</sup> day of JULY, 2015.

Gene W. Gray, Jr.  
 Notary Public  
 Gene W. Gray, Jr.  
 My commission expires: 11/09/18

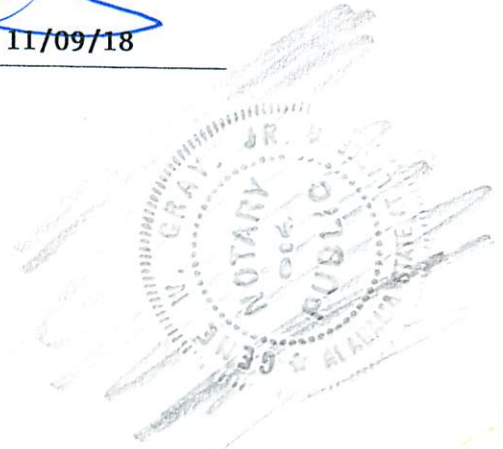




EXHIBIT "B"

**VESTAVIA HILLS BOARD OF EDUCATION**

1204 Montgomery Highway  
Vestavia Hills AL 35216

*(To be completed by the City)*

Date of Annexation Petition \_\_\_\_\_ Action Taken: Grant \_\_\_\_\_  
Deny \_\_\_\_\_  
Resolution: Date: \_\_\_\_\_ Number: \_\_\_\_\_  
Overnight Ordinance: Date: \_\_\_\_\_ Number: \_\_\_\_\_  
90 Day Final Ordinance: Date: \_\_\_\_\_ Number: \_\_\_\_\_

*(To be completed by Homeowner)*

Name(s) of Homeowner(s): ABBIE T. MILLER  
Address: 2720 Alta View Drive  
City: Birmingham State: AL Zip: 35243

Information on Children:

NONE

Plan to Enroll In  
Vestavia Hills School?

	Name(s)	Age	School Grade	Yes	No
1.					
2.					
3.					
4.					
5.					
6.					

Approximate date for enrolling students in Vestavia Hills City Schools if above response is "yes": \_\_\_\_\_

**ORDINANCE NUMBER 2618**

**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 JEFFERSON COUNTY E-1 TO VESTAVIA HILLS E-2**

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

2720 Alta View Drive  
Brad and Molly Ainsworth, Owners

More particularly described as follows:

A parcel of land situated in the SW  $\frac{1}{4}$  of Section 27 and the SE  $\frac{1}{4}$  of Section 28, Township, 18 South, Range 2 West, being more particularly described as follows:

Commence at the SE corner of the NE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 28, and run in a southerly direction along the east line of the SE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 28, a distance of 100.00 feet to a point; thence 112 degrees 50' to the right in a northwesterly direction a distance of 165.20 feet to the point of beginning; thence continuing along the last described course a distance of 35.34 feet to a point; thence 7 degrees 53' to the right in a northwesterly direction, a distance of 283.32 feet to a point on the rear line of Lot 16, Altadena Estates; thence 108 degrees 24' 30" to the right in a northeasterly direction along the rear line of Lots 16 & 15, Altadena Estates and its prolongation thereof a distance of 588.51 feet to a point; thence 109 degrees 31' to the right in a southeasterly direction a distance of 190.00 feet to a point; thence 66 degrees 51' to the right in a southwesterly direction a distance of 163.77 feet to a point; thence 13 degrees 58' to the left in a southwesterly direction a distance of 125.65 feet to the point of curve (PC) of a curve to the left having a radius of 202.63 feet, and a central angle of 22 degrees, 20'; thence along the arc of said curve to the left a distance of 78.98 feet to the point of reverse curve, (PRC), thence along the arc of a curve to the right having a radius of 187.11 feet, and a central angle of 24 degrees 08' for a distance of 78.81 feet to the point of beginning.

**APPROVED and ADOPTED** this the 28<sup>th</sup> day of December, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

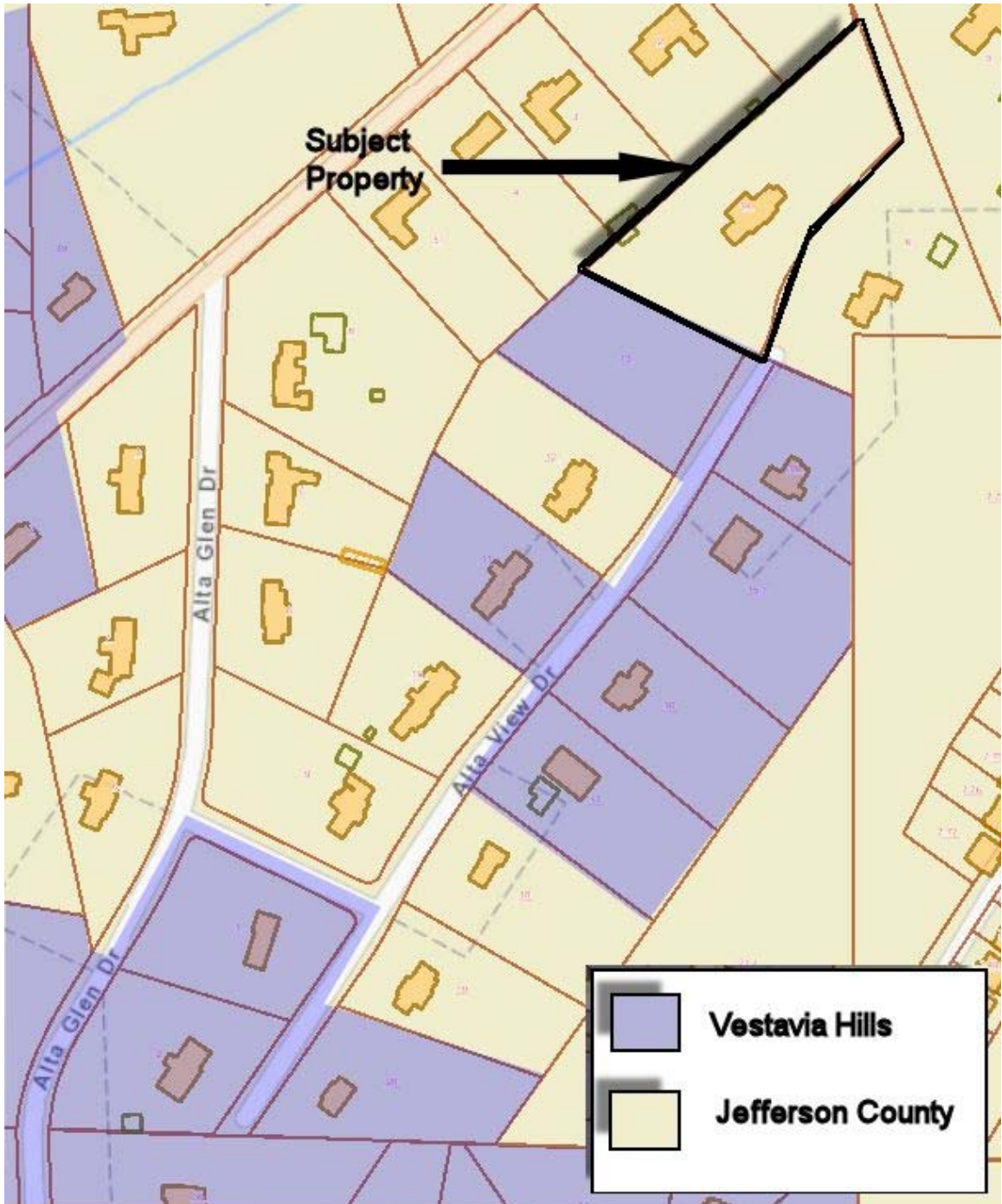
Rebecca Leavings  
City Clerk

**CERTIFICATION:**

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2618 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 28<sup>th</sup> day of December, 2015 as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Library in the Forest, New Merkle House and Vestavia Hills Recreational Center this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Rebecca Leavings  
City Clerk



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

Date: NOVEMBER 12, 2015

- **CASE:** P-1115-62
- **REQUESTED ACTION:** Jefferson County E-1 to Vestavia Hills E-2
- **ADDRESS/LOCATION:** 2720 Alta View Dr.
- **APPLICANT/OWNER:** Brad & Molly Ainsworth
- **GENERAL DISCUSSION:** Property was annexed overnight by City Council on 9/14/15 with the passage of Ordinance 2589. Applicant is requesting the compatible rezoning as part of the annexation process.
- **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:** 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. Gilchrist made a motion to recommend rezoning approval of 2720 Alta View Dr. from Jefferson County E-1 to Vestavia Hills E-2 For The Purpose Of Annexation. Second was by Mr. Burrell. Motion was carried on a roll call; vote as follows:

Mr. Goodwin – yes  
Mr. Gilchrist – yes  
Mr. Wolfe – yes  
Mr. Brooks – yes  
Motion carried.

Mr. Burrell – yes  
Mr. Sharp – yes  
Mr. Visintainer – yes  
Mr. Larson – yes

P1115-62//28-28-4-3-14  
2720 Alta View Drive  
Rezone from JC E1 to VH E2  
Brad & Molly Ainsworth  
JC E1

P&Z Application  
Page 4

## 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.

ONE OF TWO

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#### II. APPLICANT INFORMATION: (owner of property)

NAME: ABBIE T. MILLER

ADDRESS: 2720 Alta View Drive

Birmingham, AL 35243

MAILING ADDRESS (if different from above) \_\_\_\_\_

PHONE NUMBER: Home \_\_\_\_\_ Office 879 3400

NAME OF REPRESENTING ATTORNEY OR OTHER AGENT: \_\_\_\_\_

Gene W. Gray, Jr. (205) 879-3400

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P1115-62//28-28-4-3-14  
2720 Alta View Drive  
Rezone from JC E1 to VH E2  
Brad & Molly Ainsworth  
JC E1

P&Z Application  
Page 5

III. ACTION REQUESTED

Request that the above described property be zoned/rezoned

From: Jefferson County E-1

To: Vestavia Hills E-2

For the intended purpose of: annexation into Vestavia Hills and continue

as a single family residence

*(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.)

2720 Alta View Drive 35243

Legal Description attached as Exhibit "A"

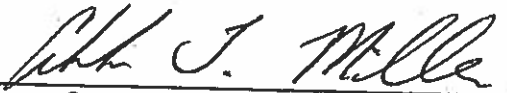
Property size: \_\_\_\_\_ feet X \_\_\_\_\_ feet. Acres: \_\_\_\_\_

V. INFORMATION ATTACHED:

Attached Checklist complete with all required information.

Application fees submitted.

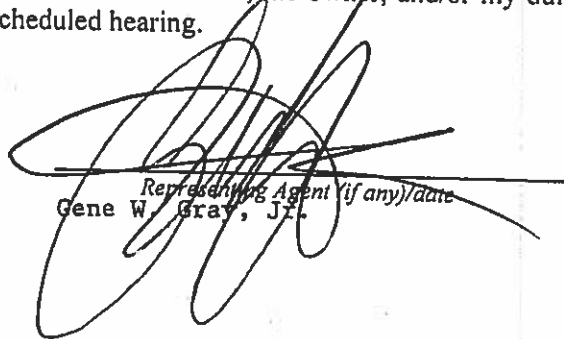
VI. I do hereby declare the above statements are true and that I, the owner, and/or my duly appointed representative will be at the scheduled hearing.



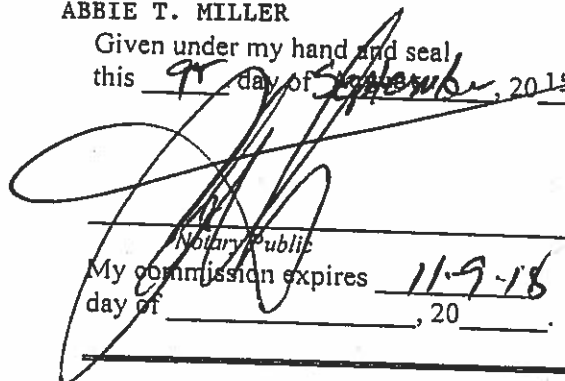
Owner Signature/Date

ABBIE T. MILLER

Given under my hand and seal  
this 9<sup>th</sup> day of September, 2015.



Representing Agent (if any)/date  
Gene W. Gray, Jr.



Notary Public

My commission expires 11-9-18  
day of \_\_\_\_\_, 20\_\_\_\_.

**ORDINANCE NUMBER 2619**

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

**WHEREAS**, on the 14th day of September, 2015, a petition was presented to the City Council of the City of Vestavia Hills, Alabama, proposing the annexation of certain property to the City of Vestavia Hills, Alabama, under the provisions of Act 32 of the Special Session on the Alabama Legislature of 1964; and

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

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

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

4670 Caldwell Mill Road  
Brooks and Elisabeth Souders, Owner(s)

More particularly described as follows:

Begin at the SW corner of the SE ¼ of the NW ¼ of Section 34, Township 18 South, Range 2 West; thence run East along the South line of said 1/4-1/4 line for a distance of 650.87 feet to the Point of Beginning; thence continue along the last described course for a distance of 390.47 feet to the centerline of Old Caldwell Mill Road; thence turn 100 degrees 14' 23" left and run Northwesterly along centerline of said Old Caldwell Road for distance of 121.69 feet; thence turn 89 degrees 01' 18" left and run Southwesterly for a distance of 146.88 feet; thence turn 12 degrees 54' 02" right and run Northwesterly for a distance of 175.76 feet to the centerline of a branch; thence turn 61 degrees 58' 34" left and run



Southwesterly along centerline of said branch for a distance of 29.13 feet; thence turn 9 degrees 45' 11" left and continue Southwesterly along centerline of said branch a distance of 88.89 feet to the Point of Beginning. Situated in Jefferson County Alabama (Birmingham Division).

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

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

**ADOPTING and APPROVED** this the 28th day of December, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

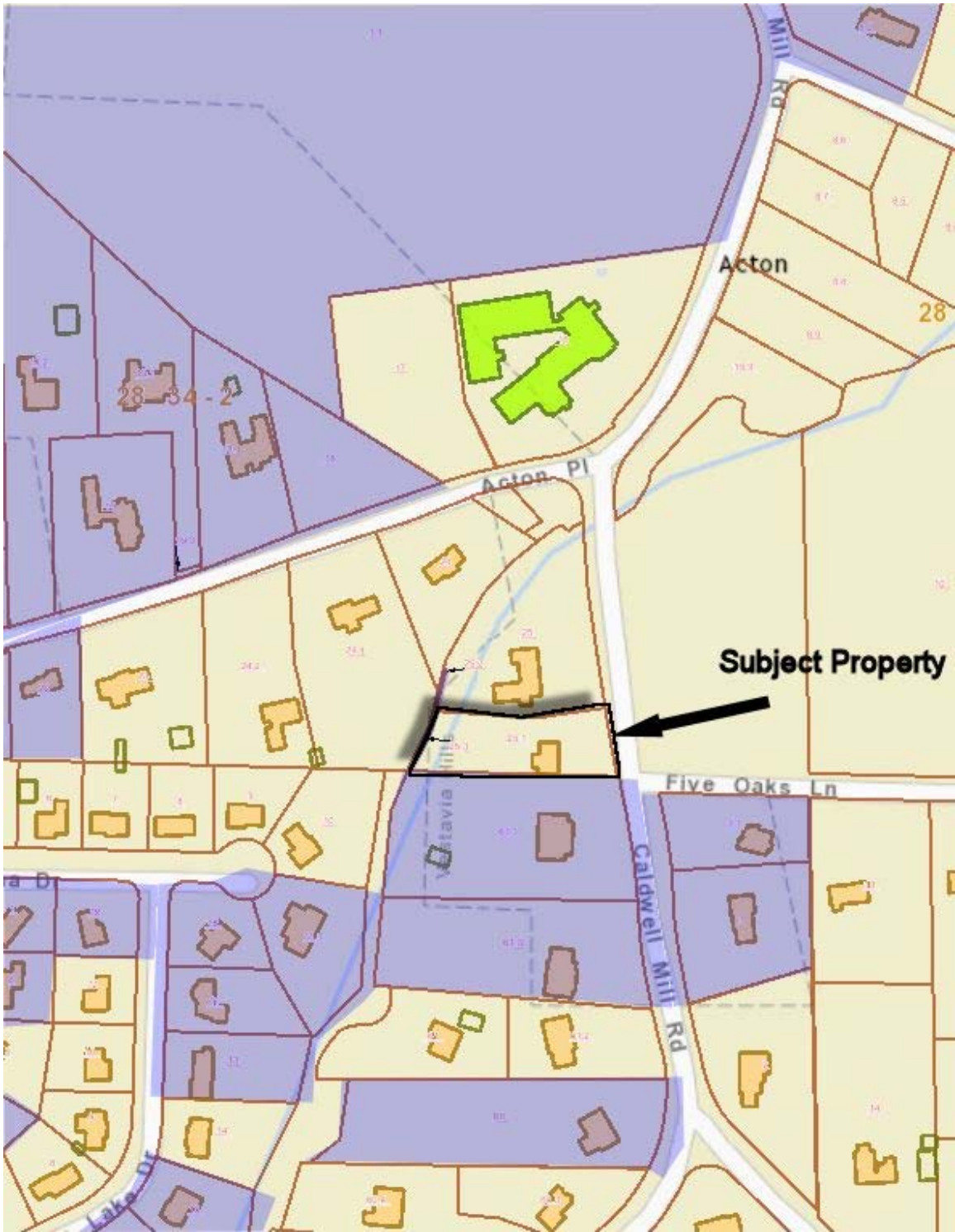
Rebecca Leavings  
City Clerk

**CERTIFICATION:**

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2619 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 28th day of December, 2015, as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, 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



**Annexation Committee Petition Review**

Property: 4670 Caldwell Mill Road

Owners: Brooks and Elisabeth Souders

Date: 8-25-15

1. The property in question is contiguous to the city limits.  
Yes  No  Comments: \_\_\_\_\_  
\_\_\_\_\_
2. The land use of the petitioned property is compatible with land use in the area.  
Yes  No  Comments: \_\_\_\_\_  
\_\_\_\_\_
3. The property being petitioned is noted in the September 2006 Annexation Policy Task Force Report as an area of interest to the city for annexation.  
Yes  No  Comments \_\_\_\_\_  
\_\_\_\_\_
4. Streets and drainage structures are in substantial compliance with city regulations and building codes, and in good condition at the time of the annexation.  
Yes  No  Comments \_\_\_\_\_  
\_\_\_\_\_
5. Individual household has a Jefferson or Shelby County Tax Assessor minimum market value of 365,000. Meets city criteria: Yes  No   
Comment: \_\_\_\_\_
6. This street has fewer than 100% of the individual properties within the limits of the city  
Yes  No   
Number of total homes 9 Number in city 5
7. Fire dues pursuant to Act #604 of the State of Alabama, and any other assessments on the property shall be the responsibility of the property owner, and their payment proven to the city.  
Agreed to by petitioner: Yes  No  Comment \_\_\_\_\_  
\_\_\_\_\_

Property: 4670 Caldwell Mill Rd

8. A non-refundable administrative fee of \$100 has been paid to the city. Furthermore, voluntary contributions, including an application fee, of \$ \_\_\_\_\_ will be paid to offset costs associated with the annexation.  
Yes  No \_\_\_\_\_ Comment \_\_\_\_\_

9. Property is free and clear of hazardous waste, debris and materials.  
Yes  No \_\_\_\_\_ Comment \_\_\_\_\_

10. Are there any concerns from city departments?  
Yes \_\_\_\_\_ No  Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. Information on children: Number in family 3; Plan to enroll in VH schools Yes \_\_\_\_\_ No  Comments: \_\_\_\_\_  
\_\_\_\_\_

Other Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

  
\_\_\_\_\_  
George Pierce  
Chairman

**EXHIBIT "C"**

**CITY OF VESTAVIA HILLS**  
*Department Review of Proposed Annexation*  
*(To Be completed by City Staff)*

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The following properties have requested to be annexed into the City. Please review this request and then forward your comments to the City Clerk as soon as is reasonably possible.

Location: 4670 Caldwell Mill Road

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**Engineering:** Date: \_\_\_\_\_ Initials: \_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_

*4670 Caldwell Mill Road – no concerns noted; pavement in good condition.*

**Public Services:** Date: \_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_

**Police Department:** Date: 8-7-15 Initials: 

Comments: \_\_\_\_\_  
\_\_\_\_\_

**Fire Department:** Date: 8/12/15 Initials: (SK)

Comments: \_\_\_\_\_  
\_\_\_\_\_

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**PARCEL #:** 28 00 34 2 000 025.001  
**OWNER:** SOUDERS BROOKS B & ELISABETH C  
**ADDRESS:** 4670 CALDWELL MILL RD BIRMINGHAM AL 35243  
**LOCATION:** 4670 CALDWELL MILL RD AL 35243

[ 111-B0 ] Baths: 2.5 H/C Sqft: 2,108  
 18-040.0 Bed Rooms: 3 Land Sch: A116  
 Land: 116,600 Imp: 191,900 Total: 308,500  
 Acres: 0.000 Sales Info: 05/07/2014  
**\$365,000**

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

Tax Year : 2015

SUMMARY    LAND    BUILDINGS    SALES    PHOTOGRAPHS    MAPS

**SUMMARY**

**ASSESSMENT**

PROPERTY CLASS: 3      OVER 65 CODE:  
 EXEMPT CODE: 2-2      DISABILITY CODE:  
 MUN CODE: 01 COUNTY      HS YEAR: 2015  
 SCHOOL DIST:      EXM OVERRIDE AMT: \$0.00  
 OVR ASD VALUE: \$0.00      TOTAL MILLAGE: 50.1

CLASS USE:  
 FOREST ACRES: 0      TAX SALE:  
 PREV YEAR VALUE: \$304,900.00      BOE VALUE: 0

**VALUE**

LAND VALUE 10%      \$116,640  
 LAND VALUE 20%      \$0  
 CURRENT USE VALUE [DEACTIVATED]      \$0

CLASS 2

CLASS 3  
 BLDG 001      111      \$191,900

TOTAL MARKET VALUE [APPR. VALUE: \$308,500]: \$308,540

Assesment Override:

MARKET VALUE:

CU VALUE:

PENALTY:

ASSESSED VALUE:

**DEEDS**

**INSTRUMENT NUMBER**

[201413-5274](#)  
[200312-8371](#)  
[200010-6526](#)

**DATE**

5/7/2014  
 08/24/2000  
 08/24/2000

**PAYMENT INFO**

**PAY DATE    TAX YEAR    PAID BY      AMOUNT**

PAY DATE	TAX YEAR	PAID BY	AMOUNT
12/5/2014	2014	LERETA	\$1,480.05
1/11/2014	2013	-	\$1,480.05
1/16/2013	2012	HACKNEY LEIGH M	\$1,479.56
20111231	2011	***	\$1,497.60
20101231	2010	***	\$1,491.07
20091231	2009	***	\$1,491.07
20081231	2008	***	\$1,518.13
20071231	2007	***	\$1,513.12
20061231	2006	***	\$1,477.04
20051231	2005	***	\$1,206.50
20041231	2004	***	\$1,129.86
20031231	2003	***	\$1,139.26
20021231	2002	***	\$998.49
20011213	2001	***	\$998.49
20001231	2000	***	\$945.49
19991208	1999	***	\$945.49
19981108	1998	***	\$774.24
19971127	1997	***	\$774.24
19961021	1996	***	\$769.24



STATE OF ALABAMA

JEFFERSON COUNTY

PETITION FOR ANNEXATION TO THE  
CITY OF VESTAVIA HILLS, ALABAMA

Date of Petition: 7/31/15

To the Honorable Mayor and City Council of the City of Vestavia Hills, Alabama:

We, the undersigned owners of the properties set out in red outline in Exhibit "A" attached hereto, which properties are contiguous to the City limits of the City of Vestavia Hills, Alabama, under the authority of Act No. 32 of the Special Session of the Alabama Legislature of 1964, do hereby petition the City of Vestavia Hills, Alabama, that the properties set out in red outline in Exhibit "A" attached, situated in JEFFERSON County, Alabama, be annexed to the City of Vestavia Hills, Alabama. The metes and bounds description of the boundary of the property of the undersigned proposed to be annexed is also set out on said Exhibit "A" and a map showing in red the property proposed for annexation by this petition is also attached and made a part hereof.

The undersigned petitioners do further petition that the Honorable Mayor and City Council of the City of Vestavia Hills, Alabama, set a date for the hearing of this petition and any objections in writing to the petition or protest, on a date certain and that no less than ninety (90) days before said date certain for said hearing on this petition, that a notice of said hearing along with this petition be published in a newspaper of general circulation in Jefferson County, Alabama.

We, the undersigned petitioners do also ask that the Honorable Mayor and City Council of the City of Vestavia Hills, Alabama, do all things necessary and requisite to comply with the terms of Act No. 32 of the Special Session of the Alabama Legislature of 1964.



**EXHIBIT "A"**

LOT: \_\_\_\_\_

BLOCK: \_\_\_\_\_

SURVEY: \_\_\_\_\_

RECORDED IN MAP BOOK 201413, PAGE 5274 IN THE  
PROBATE OFFICE OF JEFFERSON COUNTY, ALABAMA.

COUNTY ZONING: JEFFERSON

COMPATIBLE CITY ZONING: \_\_\_\_\_

LEGAL DESCRIPTION (METES AND BOUNDS):

brooks.souders@emc.com

243-4343 (c)

970-0005 (h)

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals, or caused these presents to be executed by their duly authorized representatives, with full authority.

<u>SIGNATURE(S)</u>	<u>DESCRIPTION OF PROPERTY</u>
<u>Brooks B. Sanders</u>	Lot _____ Block _____ Survey _____
<u>Elizabeth Sanders</u>	Lot _____ Block _____ Survey _____
_____	Lot _____ Block _____ Survey _____

(Use reverse side hereof for additional signatures and property descriptions, if needed).

STATE OF ALABAMA

JEFFERSON COUNTY

Brooks Sanders being duly sworn says: I am one of the persons who signed the above petition, and I certify that said petition contains the signatures of all the owners of the described property.

Brooks B. Sanders  
Signature of Certifier

Subscribed and sworn before me this the 31<sup>st</sup> day of July, 2015.

Kay Russom  
Notary Public

My commission expires: November 18, 2016



EXHIBIT "B"

**VESTAVIA HILLS BOARD OF EDUCATION**

1204 Montgomery Highway  
Vestavia Hills AL 35216

(To be completed by the City)

Date of Annexation Petition \_\_\_\_\_ Action Taken: Grant \_\_\_\_\_  
Deny \_\_\_\_\_  
Resolution: Date: \_\_\_\_\_ Number: \_\_\_\_\_  
Overnight Ordinance: Date: \_\_\_\_\_ Number: \_\_\_\_\_  
90 Day Final Ordinance: Date: \_\_\_\_\_ Number: \_\_\_\_\_

(To be completed by Homeowner)

Name(s) of Homeowner(s): Brooks + Elisabeth Souders

Address: 4670 Caldwell Mill Road

City: Birmingham State: AL Zip: 35243

Information on Children:

Plan to Enroll In  
Vestavia Hills School?

	Name(s)	Age	School Grade	Yes	No
1.	Brooks Souders Jr	12			X
2.	Jake Souders	9			X
3.	Mary Katherine Souders	6			X
4.					
5.					
6.					

Approximate date for enrolling students in Vestavia Hills City Schools if above response is "yes": \_\_\_\_\_

**ORDINANCE NUMBER 2620**

**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 JEFFERSON COUNTY E-2 TO VESTAVIA HILLS R-1**

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

4670 Caldwell Mill Road  
Brooks and Elisabeth Souders, Owner(s)

More particularly described as follows:

Begin at the SW corner of the SE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of Section 34, Township 18 South, Range 2 West; thence run East along the South line of said  $\frac{1}{4}$ - $\frac{1}{4}$  line for a distance of 650.87 feet to the Point of Beginning; thence continue along the last described course for a distance of 390.47 feet to the centerline of Old Caldwell Mill Road; thence turn 100 degrees 14' 23" left and run Northwesterly along centerline of said Old Caldwell Road for distance of 121.69 feet; thence turn 89 degrees 01' 18" left and run Southwesterly for a distance of 146.88 feet; thence turn 12 degrees 54' 02" right and run Northwesterly for a distance of 175.76 feet to the centerline of a branch; thence turn 61 degrees 58' 34" left and run Southwesterly along centerline of said branch for a distance of 29.13 feet; thence turn 9 degrees 45' 11" left and continue Southwesterly along centerline of said branch a distance of 88.89 feet to the Point of Beginning. Situated in Jefferson County Alabama (Birmingham Division).

**APPROVED and ADOPTED** this the 28<sup>th</sup> day of December, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

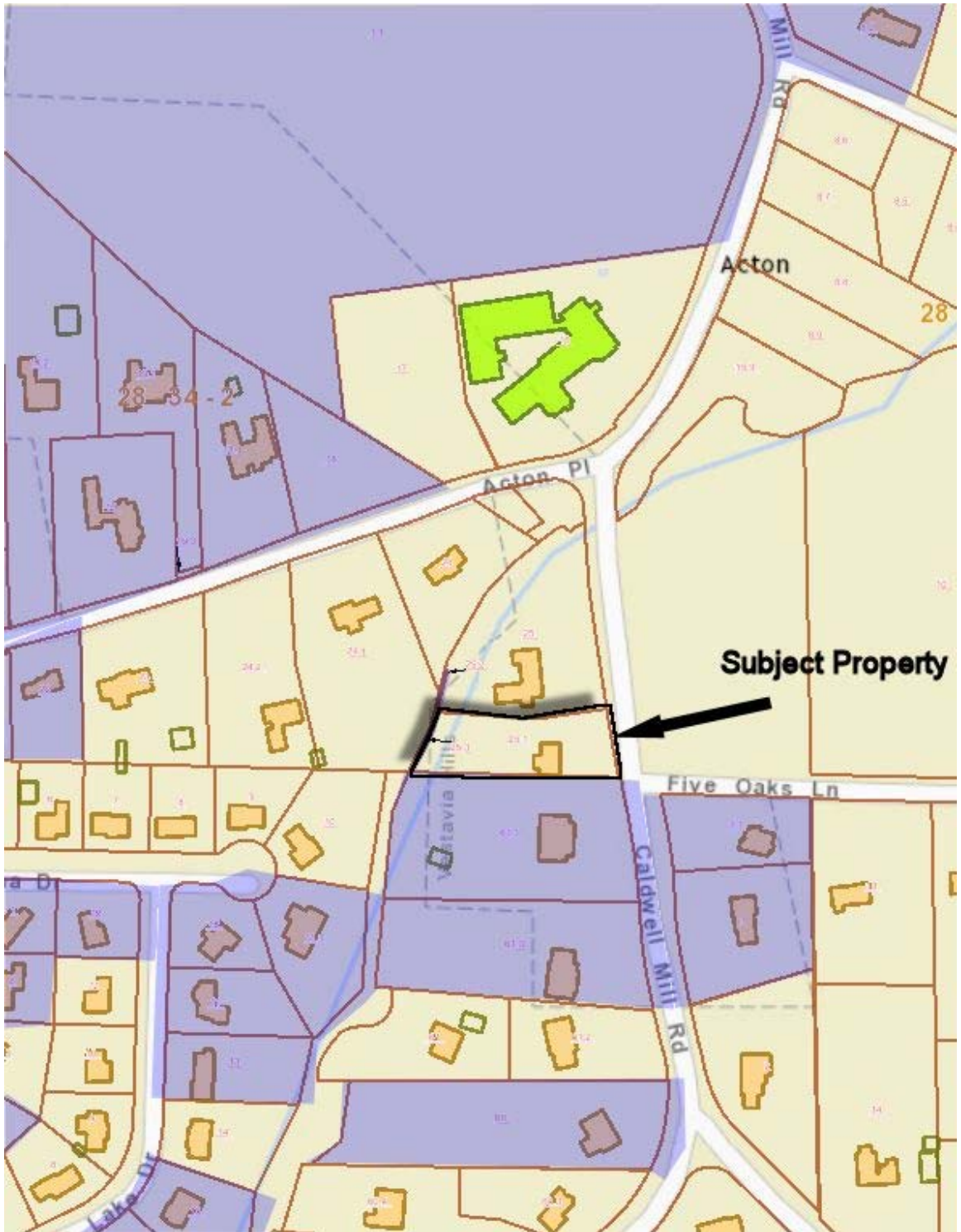
Rebecca Leavings  
City Clerk

**CERTIFICATION:**

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2620 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 28<sup>th</sup> day of December, 2015 as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Library in the Forest, New Merkle House and Vestavia Hills Recreational Center this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Rebecca Leavings  
City Clerk



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

Date: NOVEMBER 12, 2015

- **CASE:** P-1115-64
- **REQUESTED ACTION:** Jefferson County E-2 to Vestavia Hills R-1
- **ADDRESS/LOCATION:** 4670 Caldwell Mill Rd.
- **APPLICANT/OWNER:** Brooks Sounders
- **GENERAL DISCUSSION:** Property was annexed overnight by City Council on 9/14/15 with the passage of Ordinance 2591. Applicant is requesting the compatible rezoning as part of the annexation process.
- **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:** 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. Gilchrist made a motion to recommend rezoning approval of 4670 Caldwell Mill Rd. from Jefferson County E-2 to Vestavia Hills R-1 For The Purpose Of Annexation. Second was by Mr. Burrell. Motion was carried on a roll call; vote as follows:

Mr. Goodwin – yes  
Mr. Gilchrist – yes  
Mr. Wolfe – yes  
Mr. Brooks – yes  
Motion carried.

Mr. Burrell – yes  
Mr. Sharp – yes  
Mr. Visintainer – yes  
Mr. Larson – yes



## 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.**

---

#### II. APPLICANT INFORMATION: (owner of property)

NAME: Brooks Souders

ADDRESS: 4670 Caldwell Mill Road

Vestavia, AL 35243

MAILING ADDRESS (if different from above) \_\_\_\_\_

PHONE NUMBER: Home 205-970-0005 Office 205-243-4343

NAME OF REPRESENTING ATTORNEY OR OTHER AGENT: \_\_\_\_\_

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**III. ACTION REQUESTE**

Request that the above described property be zoned/rezoned

From: Jeff Co E-2

To: VH R-1

For the intended purpose of: Rezone for annexation into Vestavia Hills from Jefferson County

*(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.)**

4670 Caldwell Mill Road

Vestavia, AL 35243

Property size: 650 feet X 390 feet. Acres: .90

**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.

Brooks B Souders  
Owner Signature/Date

\_\_\_\_\_  
Representing Agent (if any)/date

Given under my hand and seal  
this 6 day of October, 2015.

Kay Russon  
Notary Public

My commission expires \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_.

My Commission Expires  
November 18, 2016



**ORDINANCE NUMBER 2621**

**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-1 TO VESTAVIA HILLS O-1**

**BE IT ORDAINED** by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Vestavia Hills R-1 (low density residential district) to Vestavia Hills O-1 (office district):

3112 Blue Lake Drive  
Lot 5, Topfield Subdivision  
HD Holdings, LLC, Owner(s)

**BE IT FURTHER ORDAINED**, that said zoning is conditioned upon successful recordation of a resurvey to allow shared parking between properties as shown in attached detail.

**APPROVED and ADOPTED** this the 28<sup>th</sup> day of December, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

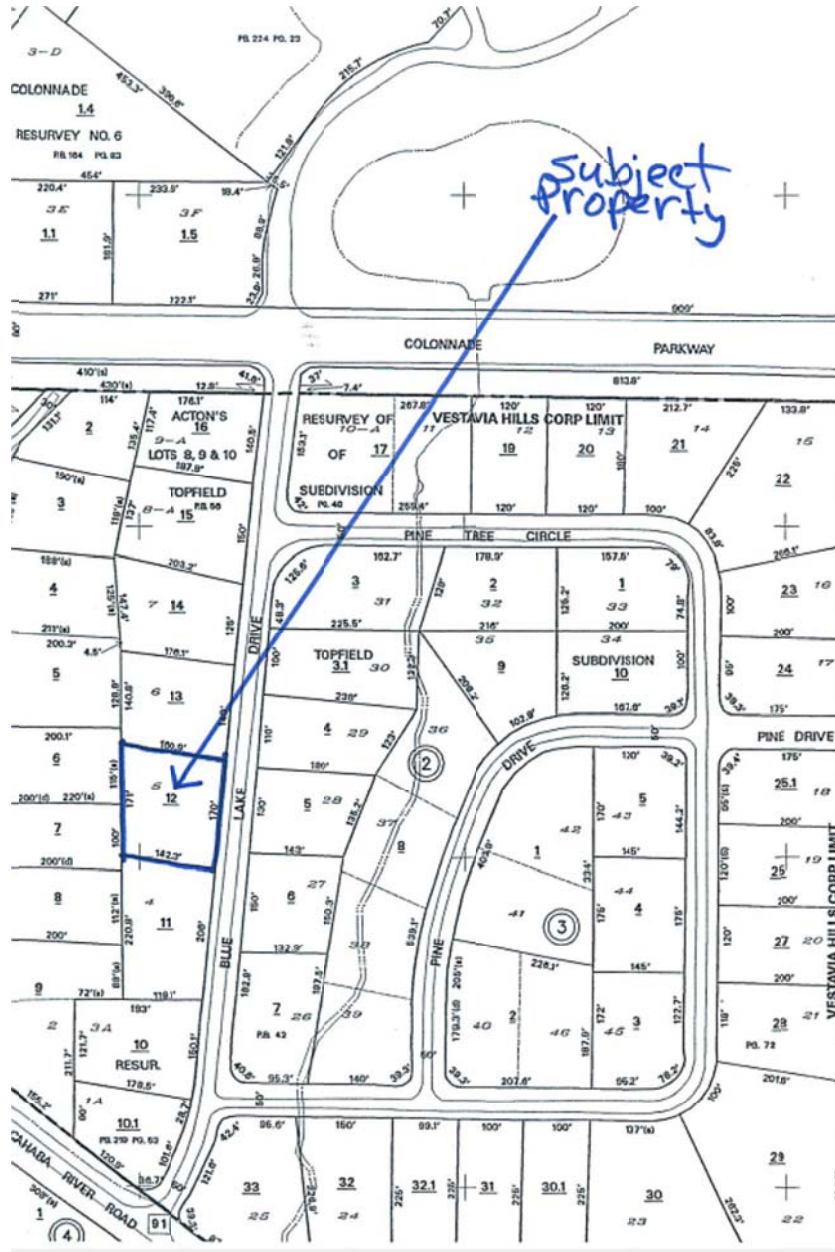
Rebecca Leavings  
City Clerk

**CERTIFICATION:**

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2621 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 28<sup>th</sup> day of December, 2015 as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Library in the Forest, New Merkle House and Vestavia Hills Recreational Center this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

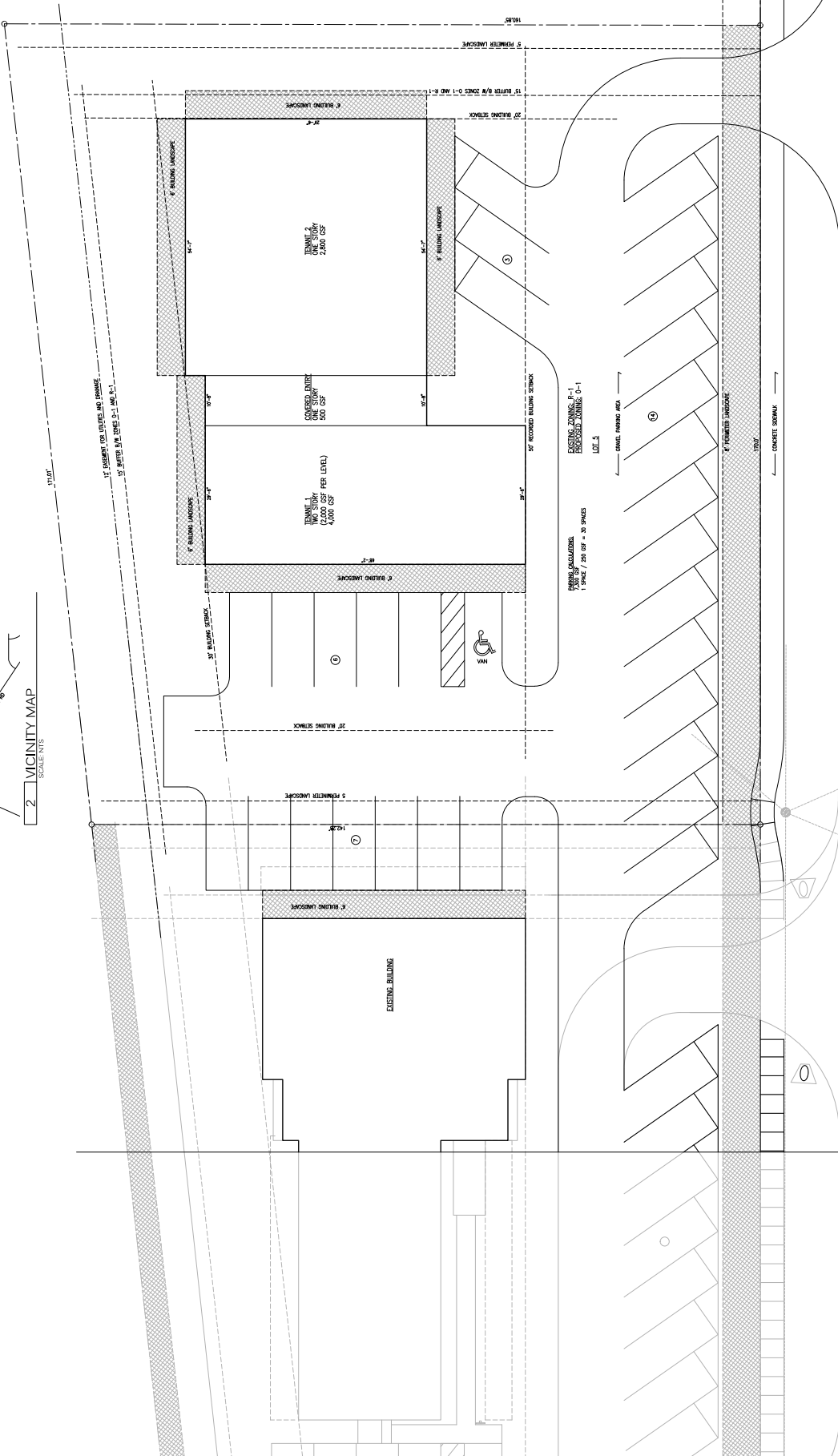
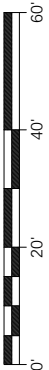
Rebecca Leavings  
City Clerk





1 SITE PLAN SCALE 1/8" = 1'-0"

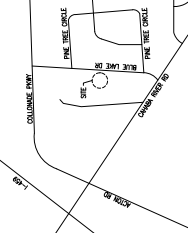
BLUE LAKE DRIVE 50' R/W



EXISTING ZONING: R-1  
PROPOSED ZONING: O-1  
LOT 5

PARKING CALCULATIONS:  
1 CAR / 200 CSF = 30 SPACES

2 VICINITY MAP SCALE NTS



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

Date: NOVEMBER 12, 2015

- **CASE:** P-1115-66
- **REQUESTED ACTION:** Rezoning Vestavia Hills R-1 Vestavia Hills O-1
- **ADDRESS/LOCATION:** 3112 Blue Lake Dr.
- **APPLICANT/OWNER:** HD Holdings, LLC
- **REPRESENTING AGENT:** Chad Bryant
- **GENERAL DISCUSSION:** Property is on Blue Lake Dr., and immediately adjacent to another property zoned O-1. Applicant is seeking rezoning to build an office building with two tenants. Tenant 1 would be in two story building and be 4,000 square feet. Tenant 2 would be 1 story 28,000 square feet. The building setbacks and buffering meet the minimum for an O-1 zoning. A preliminary landscape plan is attached.  
The lot and building will be under the same ownership as the lot to the south and will share parking and driveway access. Both lots will be resurveyed into 1 lot at the completion of zoning.
- **CAHABA HEIGHTS COMMUNITY PLAN:** The request is consistent with the Cahaba Heights Community Plan for retail/mixed use. Additionally, the property directly to the south at 3108 Blue Lake Dr. is already zoned O-1.
- **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:** Zoning contingent on resurvey being approved and recorded.
  2. **City Engineer Review:** No problems noted.
  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 rezoning approval of Rezoning for 3112 Blue Lake Dr. from Vestavia Hills R-1 to Vestavia Hills O-1 For The Purpose Of Retail And Office Development with the following condition:

1. Rezoning contingent upon resurvey being approved and recorded.

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

Mr. Goodwin – yes  
Mr. Gilchrist – yes  
Mr. Wolfe – yes  
Mr. Brooks – yes  
Motion carried.

Mr. Burrell – yes  
Mr. Sharp – yes  
Mr. Visintainer – yes  
Mr. Larson – yes





**III. ACTION REQUESTED**

Request that the above described property be zoned/rezoned

From: VH R-1 ✓ok

To: VH O-1

For the intended purpose of: LIGHT COMMERCIAL 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\*\*

**IV. PROPERTY DESCRIPTION: (address, legal, etc.)**

3112 BLUE LAKE DRIVE

Property size: 170 feet X 150 feet. Acres: .58

**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.

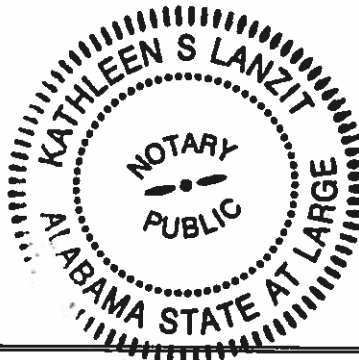
[Signature]  
Owner Signature/Date

\_\_\_\_\_  
Representing Agent (if any)/date












Given under my hand and seal  
this 6 day of October, 2015.

[Signature]  
Notary Public

My commission expires 04  
day of October, 2016.



### Future Land Use

- |  |   |  |
|--|---|--|
|  Low-Density Residential    |  Retail/Mixed Use  |  Institutional        |
|  Medium-Density Residential |  Limited Mixed Use |  Parks and Open Space |
|  High-Density Residential   |  Planned Mixed Use |  |
|  Birmingham                 |  Jefferson County  |  Mountain Brook       |

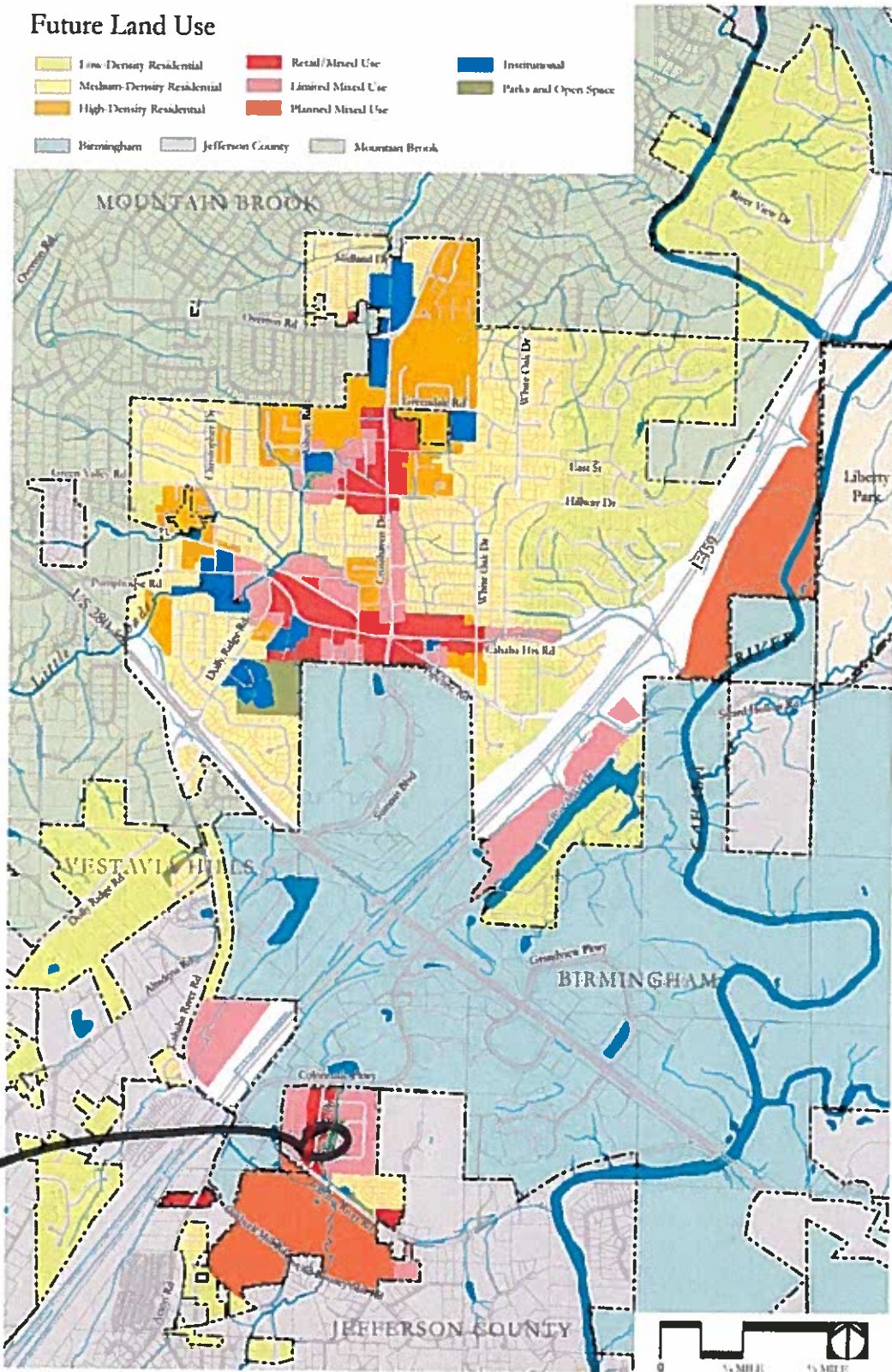


Figure 4: Future Land Use Map

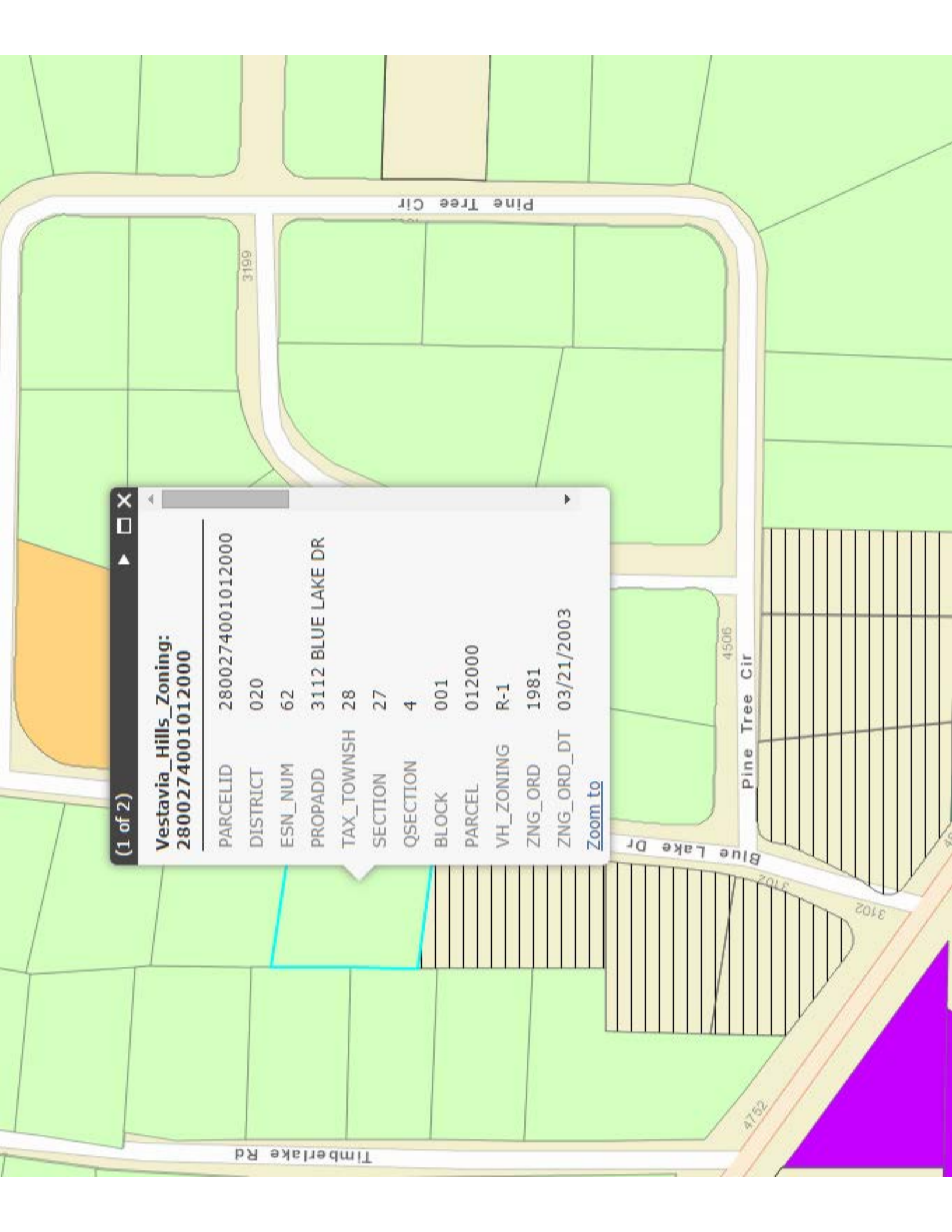


(1 of 2)

**Vestavia\_Hills\_Zoning:  
2800274001012000**

PARCELID	2800274001012000
DISTRICT	020
ESN_NUM	62
PROPADD	3112 BLUE LAKE DR
TAX_TOWNSH	28
SECTION	27
QSECTION	4
BLOCK	001
PARCEL	012000
VH_ZONING	R-1
ZNG_ORD	1981
ZNG_ORD_DT	03/21/2003

[Zoom to](#)



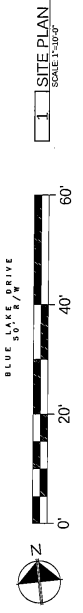
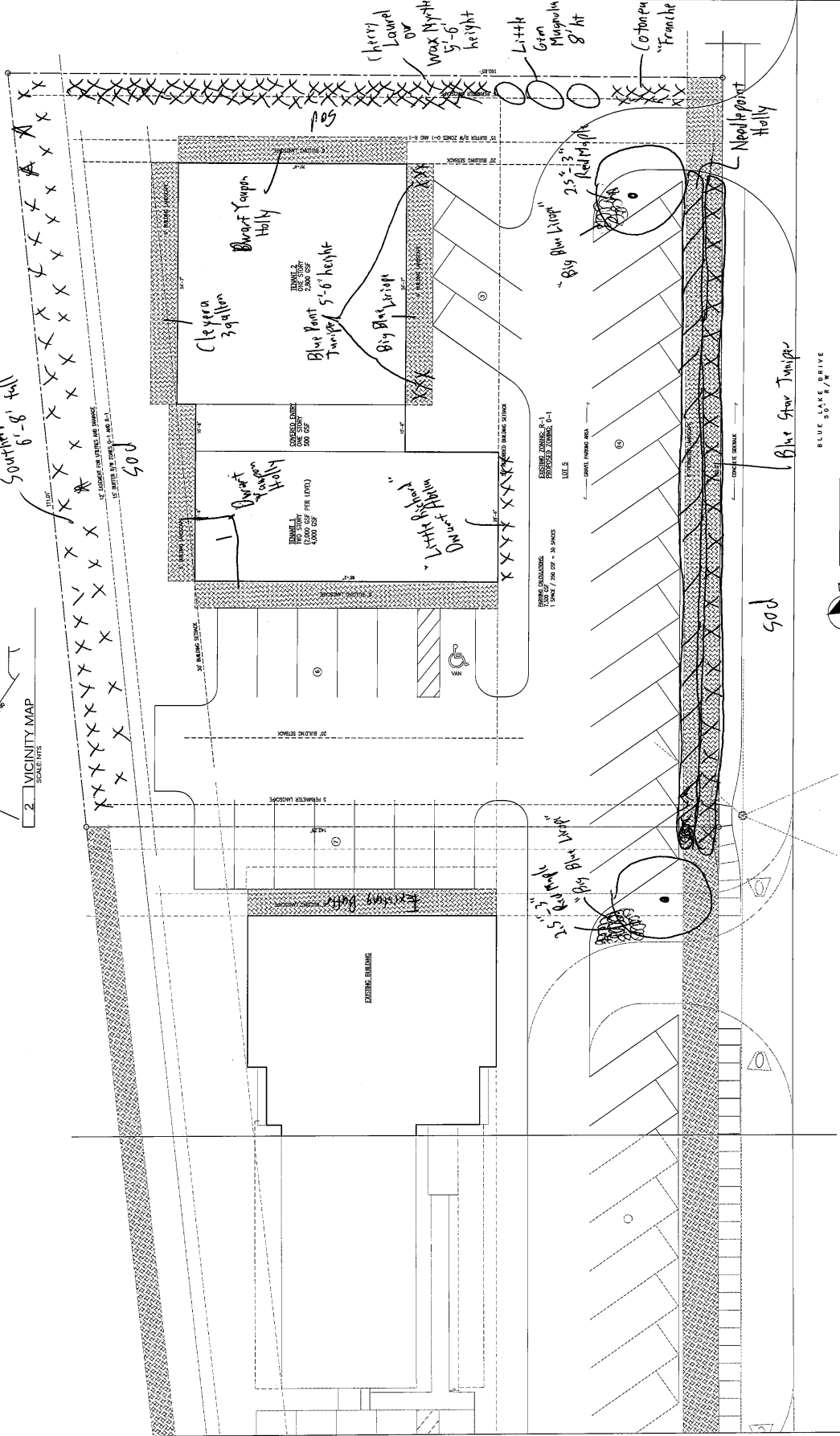


NO.	REVISION	DATE

HARRIS DOYLE HOMES  
 NEW OFFICE BUILDING FOR  
 3112 BLUE LAKE DRIVE, VESTAVIA HILLS, ALABAMA, 35243



2 VICINITY MAP  
 SCALE: NTS



BLUE LAKE DRIVE  
 SCALE: 1/8" = 1'-0"

SITE PLAN  
 SCALE: 1/8" = 1'-0"

**ORDINANCE NUMBER 2622**

**AN ORDINANCE GRANTING A CONDITIONAL USE APPROVAL FOR THE INTENDED PURPOSE OF RAISING AND HOUSING URBAN HENS**

**WHEREAS**, on December 13, 2010 the City Council of the City of Vestavia Hills, Alabama approved and adopted Ordinance Number 2331 entitled the Vestavia Hills Zoning Code and establishing a conditional use approval for certain uses not permissible by right in zoning classifications; and

**WHEREAS**, on October 5, 2015, April and Ginger Aaron-Brush submitted an application for conditional use approval to raise a maximum of six (6) hens on their property located at 2565 Mountain Woods Drive, Lot 16, Mountain Woods Park, 2<sup>nd</sup> Addition, Vestavia Hills, Alabama; and

**WHEREAS**, the property located at at 2565 Mountain Woods Drive, Lot 16, Mountain Woods Park, 2<sup>nd</sup> Addition is presently zoned Vestavia Hills R-2 (medium density residential district); and

**WHEREAS**, Table 5 of the Vestavia Hills Zoning Code sets forth the permissible uses within an R-2 classification; and

**WHEREAS**, the Vestavia Hills Planning and Zoning Commission at its regular meeting of November 12, 2015 voted to recommend approval of the request as presented, with certain stipulations as detailed below:

1. No more than six (6) hens may be allowed on property at any time;
2. Coop shall be permanent and not relocated on the property;
3. No roosters may be kept on premises;
4. Hens and/or eggs shall not be used for commercial purposes and

**WHEREAS**, a copy of said application dated October 5, 2015 is attached and hereby incorporated into this Ordinance Number 2622.

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

1. Conditional Use Approval is hereby approved for April and Ginger Aaron-Brush, for use of the property located at 2565 Mountain Woods Drive, Lot 16,

Mountain Woods Park, 2<sup>nd</sup> Addition to raise and house chickens with the following conditions:

- a. No more than six (6) hens may be allowed on property at any time;
  - b. Coop shall be permanent and not relocated on the property;
  - c. No roosters may be kept on premises;
  - d. Hens and/or eggs shall not be used for commercial purposes and
2. This conditional use approval is location and owner specific and if April and Ginger Aaron-Brush shall ever vacate the premises said conditional use shall be considered null and void;
  3. If April or Ginger Aaron-Brush vacate the conditional use by not raising any hens for a period of more than one (1) year, said conditional use is considered null and void; and
  4. If April or Ginger Aaron-Brush experiences any predators lured by said hens, they shall notify the Vestavia Hills Police Department immediately.

**ADOPTED and APPROVED** this the 28<sup>th</sup> day of December, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**CERTIFICATION:**

I, Rebecca Leavings, as Acting City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2622 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 28<sup>th</sup> day of December, 2015 as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Library in the Forest, New Merkle House and Vestavia Hills Recreational Center this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Rebecca Leavings  
City Clerk

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

Date: NOVEMBER 12, 2015

- **CASE:** P-1115-63
- **REQUESTED ACTION:** Conditional Use Approval for six backyard chickens
- **ADDRESS/LOCATION:** 2565 Mountain Woods Dr.
- **APPLICANT/OWNER:** April & Ginger Aaron-Brush
- **REPRESENTING AGENT:**
- **GENERAL DISCUSSION:** The applicants seek to raise up to six urban hens in their back yard in a permanent coop. The applicants originally had covenants preventing fowl but had that restriction removed. A site plan and nullification agreement is attached.
- **VESTAVIA HILLS COMPREHENSIVE PLAN:** This request is consistent with the Comprehensive Plan for medium density residential.
- **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 add the following conditions:
    - A. No more than six (6) hens may be allowed;
    - B. Coop must be permanent;
    - C. No roosters may be kept;
    - D. Hens or eggs may not be used for commercial purposes.
  2. **City Engineer Review:** I have reviewed this application and have no issues with this request.
  3. **City Fire Marshal Review:** No problems noted.



4. **Building Safety Review:** I have reviewed the application and I have no issues with this request.

**MOTION** Mr. Visintainer made a motion to recommend approval of Conditional Use Approval for For Six (6) Backyard Chickens Located At 2565 Mountain Woods Dr. with the following conditions:

1. No more than six (6) hens may be allowed;
2. Coop must be permanent and screened from the road;
3. No roosters may be kept; and
4. Hens or eggs may not be used for commercial purposes

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

Mr. Goodwin – yes  
Mr. Gilchrist – yes  
Mr. Wolfe – yes  
Mr. Brooks – yes  
Motion carried.

Mr. Burrell – yes  
Mr. Sharp – yes  
Mr. Visintainer – yes  
Mr. Larson – yes

**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.**

**II. APPLICANT INFORMATION: (owner of property)**

NAME: April and Ginger Aaron-Brush

ADDRESS: 2565 Mountain Woods Drive  
Vestavia Hills, Alabama 35216

MAILING ADDRESS (if different from above) same

PHONE NUMBER: Home 205-567-6991 Office 205-567-6991

NAME OF REPRESENTING ATTORNEY OR OTHER AGENT: n/a

2015 OCT - 5 P M 2015

P1115-63//29-25-4-2-40  
2565 Mountain Woods Drive  
Condition Use for raising 6 chickens  
April & Ginger Aaron-Brush  
R2

**III. ACTION REQUESTED**

Request that the above described property be approved conditional use approval pursuant to Section \_\_\_\_\_ of the Vestavia Hills Zoning Code.

Current Zoning of Property: R-2

Requested Conditional use For the intended purpose of: raising backyard (6) chickens  
no roosters

(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.)**

Lot 16, according to the Survey of Second Addition to Mountain Woods Park, as recorded

in Map Book 38, page 63, in the Probate Office of Jefferson County, Alabama.

Property size: 125 feet X 304 feet. Acres: .8+

**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.

April S. Arnold 10-5-15  
Owner Signature/Date

Representing Agent (if any)/date

Given under my hand and seal  
this 5<sup>th</sup> day of October, 20 15.

Neva Haynes Lester  
Notary Public

My commission expires 4<sup>th</sup>  
day of August, 20 18.

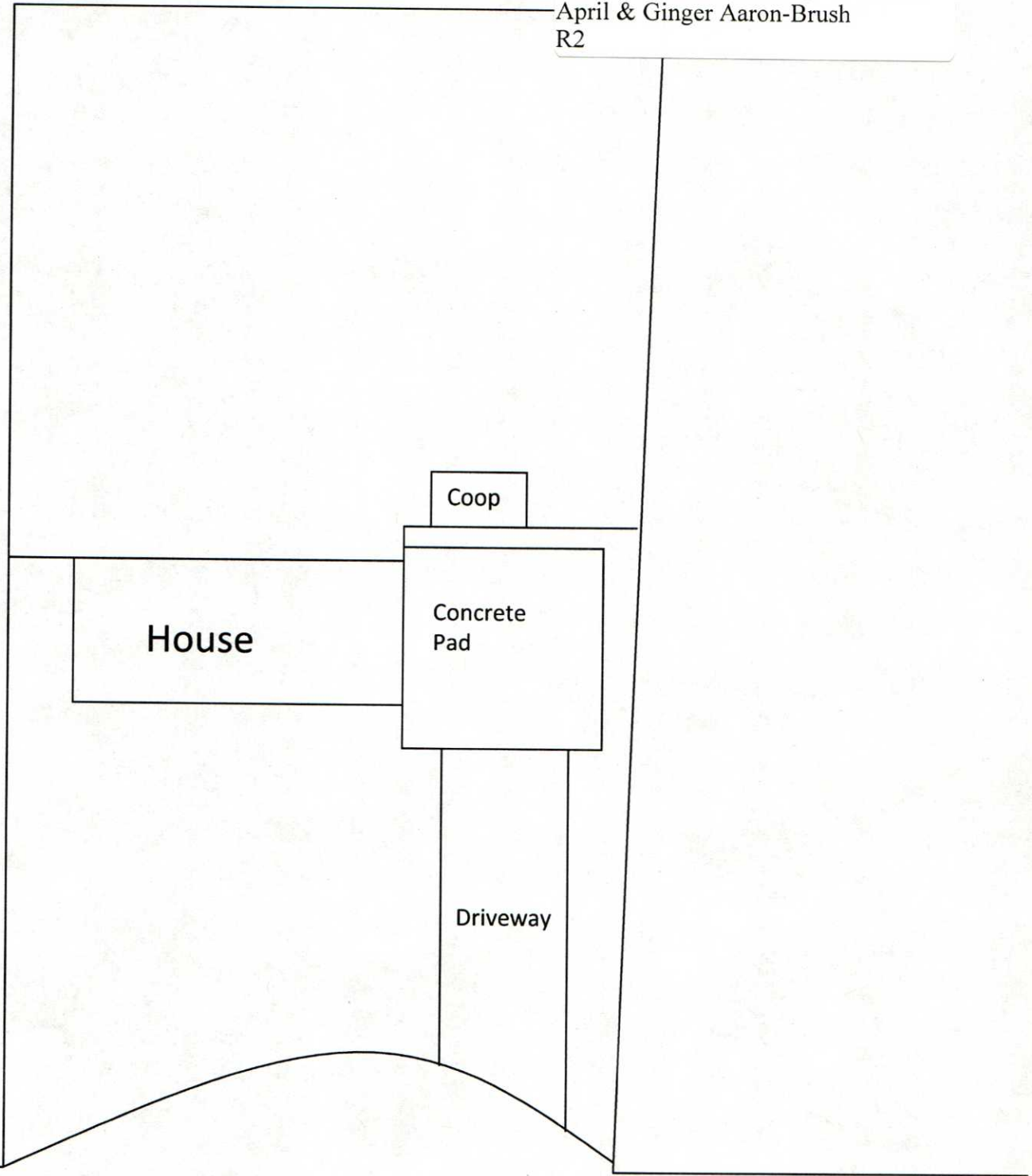
My Commission  
Expires 8/4/18





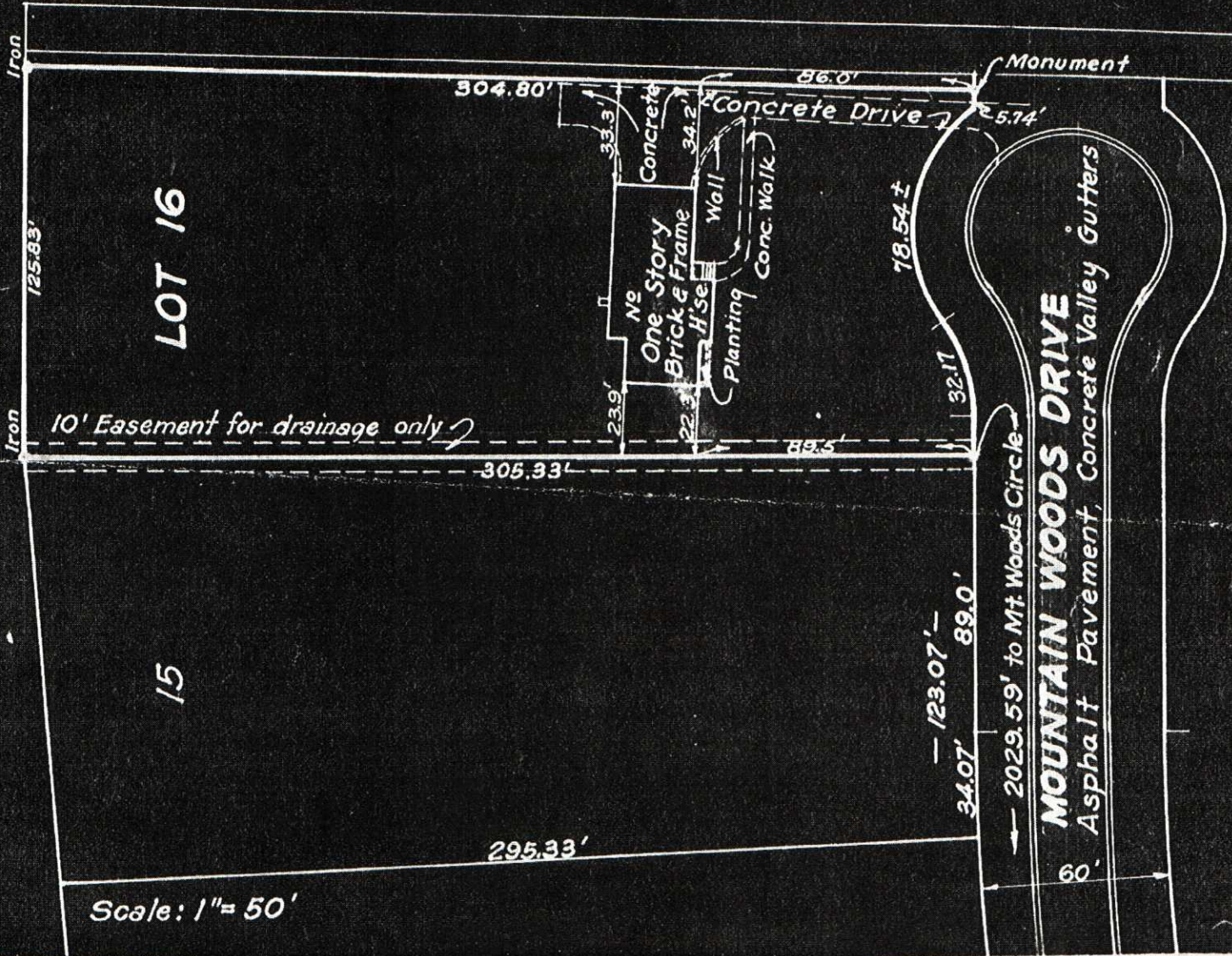


P1115-63//29-25-4-2-40  
2565 Mountain Woods Drive  
Condition Use for raising 6 chickens  
April & Ginger Aaron-Brush  
R2



Mountain Woods Drive





STATE OF ALABAMA  
JEFFERSON COUNTY

I, J.M. Keel, a Registered Surveyor of Birmingham, Alabama, hereby certify the foregoing to be a true and correct map or plat of Lot 16, according to the map and survey of 2nd. Addition to Mountain Woods Park as recorded in Map Book 38, Page 63, in the Probate Office of Jefferson County that the building now erected on said lot is within the lines of same; that the picture shows the residence erected thereon; that there are no encroachments from adjoining properties and that the correct street address is.

No. Mountain Woods Drive, Shades Mountain, R.F.D., B'ham, Alabama



PATENT NO. 2484412

According to my survey this the 22nd day of November, 1950

MR. JOE BYNUM, ATTY.  
Charles Kessler (Residence).

Job No. 9959

J.M. Keel, Reg. No. 610  
Phone 4-1284





NULLIFICATION OF RESTRICTON

Come the undersigned, a majority of the owners of lots in the Survey of the Second Addition to Mountain Woods Park, a map of which is recorded in Map Book 38, Page 63, in the Office of the Judge of Probate of Jefferson County, Alabama and vote to change Restriction 8, Adoption of Restrictions, recorded in Deed Book 5075 at page 416, in the Office of the Judge of Probate for Jefferson County, to whatever extent it may continue to exist after abandonment, by voiding said Restriction 8 entirely, and authorize recording of this vote in the Office of the Judge of Probate of Jefferson County, Alabama, indicating affirmative votes in favor of its nullification by signatures below, which attest not only to nullification, but also to ownership of lots designated with signatures below. The undersigned appoint April S. Aaron-Brush, co-owner of Lot 16, according to the Survey of Second Addition to Mountain Woods Park to canvass and record votes until a majority of the owners of lots in the Survey of the Second Addition to Mountain Woods Park has been attained and record same with her verification thereof.

Brush in Person

<u>April S. Aaron-Brush</u>	Lot No. <u>16</u>	Date: <u>9-14-15</u>
<u>Mike Shirley</u>	Lot No. <u>13</u>	Date: <u>9-18-15</u>
<u>William McHenry</u>	Lot No. <u>24</u>	Date: <u>9-19-15</u>
<u>Cardyn Beal</u>	Lot No. <u>15</u>	Date: <u>9-19-15</u>
<u>Lee</u>	Lot No. <u>15</u>	Date: <u>9-19-15</u>
<u>Wanda</u>	Lot No. <u>5</u>	Date: <u>9-22-15</u>
<u>Ryan</u>	Lot No. <u>10</u>	Date: <u>9-23-15</u>
<u>Lee</u>	Lot No. <u>21</u>	Date: <u>9-23-15</u>
<u>Mary Ann</u>	Lot No. <u>8</u>	Date: <u>9-27-15</u>
<u>Paul</u>	Lot No. <u>7</u>	Date: <u>9-27-15</u>
<u>Ray</u>	Lot No. <u>2</u>	Date: <u>9-27-15</u>
<u>Hazel</u>	Lot No. <u>22</u>	Date: <u>9-27-15</u>
<u>John M. Hyman</u>	Lot No. <u>9</u>	Date: <u>9-27-15</u>
<u>Lee</u>	Lot No. <u>9</u>	Date: <u>9-27-15</u>
<u>Evelyn</u>	Lot No. <u>19</u>	Date: <u>9-29-15</u>
<u>David</u>	Lot No. <u>23</u>	Date: <u>9-30-15</u>
<u>Bob</u>	Lot No. <u>28</u>	Date: <u>10-1-15</u>
<u>Ann</u>	Lot No. <u>28</u>	Date: <u>10-1-15</u>
_____	Lot No. _____	Date: _____
_____	Lot No. _____	Date: _____

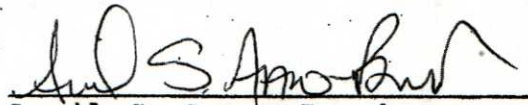
P1115-63/29-25-4-2-40  
2565 Mountain Woods Drive  
Condition Use for raising 6 chickens  
April & Ginger Aaron-Brush  
R2




STATE OF ALABAMA  
JEFFERSON COUNTY

Before me, a Notary Public in and for said County and State, personally appeared April S. Aaron-Brush who, being known to me and informed of the contents hereof and first duly sworn, deposes and says that she is the same April S. Aaron-Brush described by the above captioned instrument, Nullification of Restriction, and voluntarily states that on the dates entered above she canvassed and obtained from the majority of then-owners of the lots indicated by their signatures that it was agreed by their votes, so indicated, that the entirety of Restriction 8, Adoption of Restrictions, recorded in Deed Book 5075, at page 416 in the Office of the Judge of Probate for Jefferson County, to whatever extent it may continue to exist after abandonment, is nullified.

Mountain Woods PARK 2nd Ed.

  
April S. Aaron-Brush

Sworn and subscribed before me, a Notary Public in and for said County and State this 5<sup>th</sup> day of October, 2015.

  
Notary Public

My commission expires:

9/22/18

20151005000997560 2/2  
Bk: LR201515 Pg: 25211  
Jefferson County, Alabama  
10/05/2015 03:43:03 PM REST  
Fee - \$19.00

Total of Fees and Taxes-\$19.00  
SCOTTK



Subject Parcel

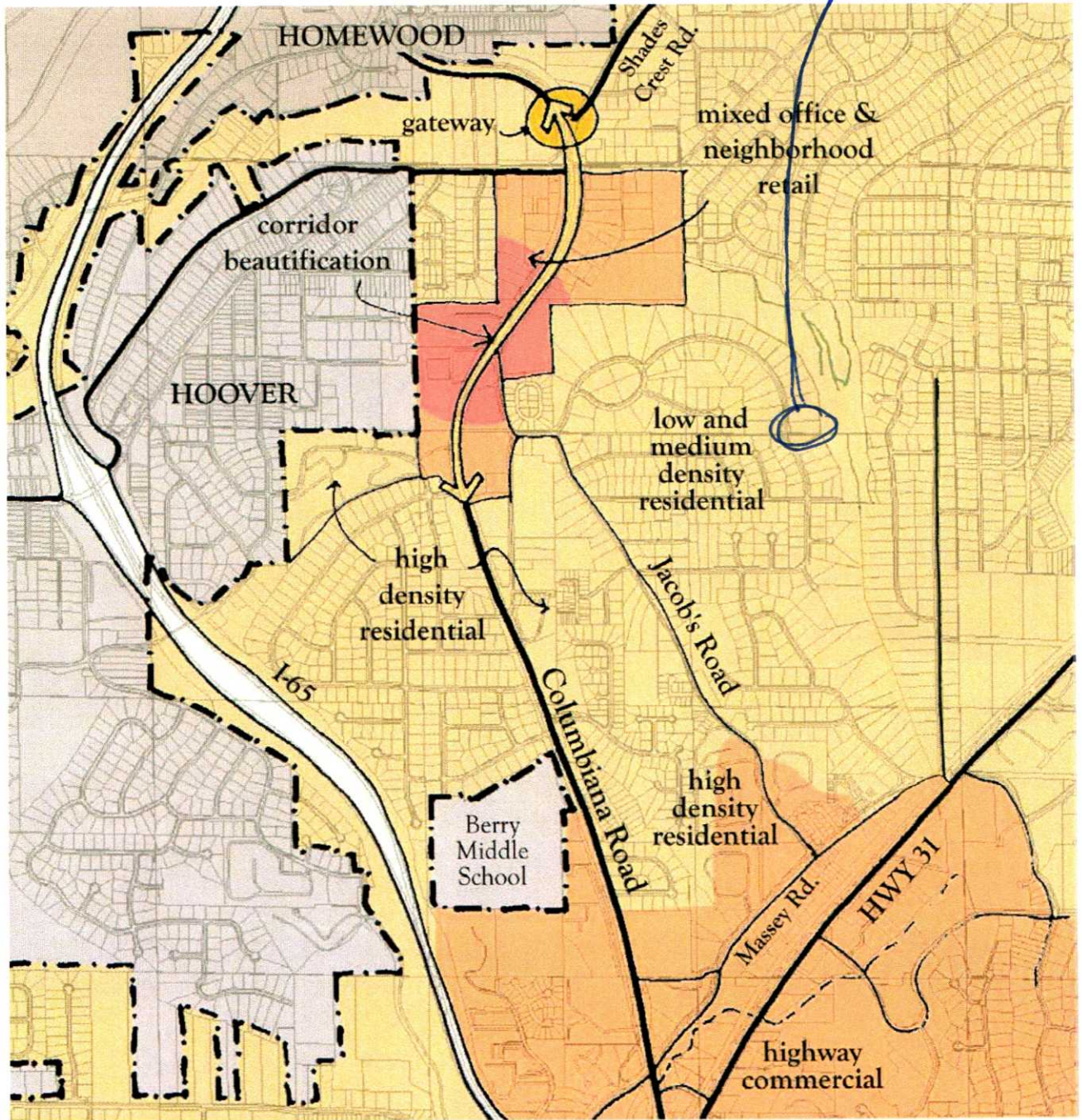
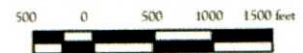


Figure 20: Columbiana Road  
Land Use Analysis

- Neighborhood - primarily low / medium density single-family residential areas with higher densities near village center(s). Other uses may include schools, places of worship, recreational areas, and open space.
- Village Center - mixed use centers with highest densities in core areas. Mix of uses should include retail and service businesses, professional offices, high density residential areas, institutions, recreation areas, and public spaces.
- Commercial Core - primarily high density, retail and service business areas with professional offices and multi-family residences on upper floors or on periphery. Other uses may include institutions and public space.
- Gateways and Nodes - Gateways are entryways into the community or village enhanced with consistent signage, landscaping, and other elements. Nodes are sites, such as transit stops, where public spaces, signage, and other public design elements should be considered.
- Professional Offices - primarily professional office uses. Density should vary according to surroundings. Other uses may include retail and services (supporting offices and employees), places of worship, public spaces, and open space.
- Recreation and Open Space - public and private recreation facilities and preserved natural spaces. Recreation facilities may be active, passive or combined. Open spaces are areas preserved in a natural state and may include passive recreational uses.
- Trailheads - Trailheads are public sites along a trail, where bike racks, seating, parking, and public amenities are provided for trail users.
- Schools - School facilities administered by the Vestavia Hills School System.



**ORDINANCE NUMBER 2623**

**AN ORDINANCE GRANTING A CONDITIONAL USE APPROVAL FOR THE INTENDED PURPOSE OF CONSTRUCTION OF A GUEST HOUSE**

**WHEREAS**, on December 13, 2010 the City Council of the City of Vestavia Hills, Alabama approved and adopted Ordinance Number 2331 entitled the Vestavia Hills Zoning Code and establishing a conditional use approval for certain uses not permissible by right in zoning classifications; and

**WHEREAS**, on September 30, 2015, David B. Delozier submitted an application for conditional use approval to construct a guest house on his property located at 1793 Shades Crest Road, Vestavia Hills, Alabama; and

**WHEREAS**, the property located at 1793 Shades Crest Road is presently zoned Vestavia Hills R-2 (medium density residential district); and

**WHEREAS**, Table 5 of the Vestavia Hills Zoning Code sets forth the permissible uses within an R-2 classification; and

**WHEREAS**, the Vestavia Hills Planning and Zoning Commission at its regular meeting of November 12, 2015 voted to recommend approval of the request as presented, with certain stipulations as detailed below:

1. Guest House cannot be leased separately nor utilized by any individual of a different family as defined in the City's Zoning Ordinance; and

**WHEREAS**, a copy of said application dated September 30, 2015 is attached and hereby incorporated into this Ordinance Number 2623.

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

1. Conditional Use Approval is hereby approved for David Delozier, for construction of a guest house at 1793 Shades Crest Road with the following conditions:
  - a. Guest House cannot be leased separately nor utilized by any individual of a different family as defined in the City's Zoning Ordinance and

- b. If David Delozier vacates the conditional use by significant destruction and/or deterioration of the house and no reconstruction for a period of one (1) year, said conditional use is considered null and void.

**ADOPTED and APPROVED** this the 28<sup>th</sup> day of December, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**CERTIFICATION:**

I, Rebecca Leavings, as Acting City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2623 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 28<sup>th</sup> day of December, 2015 as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Library in the Forest, New Merkle House and Vestavia Hills Recreational Center this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Rebecca Leavings  
City Clerk



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

Date: NOVEMBER 12, 2015

- **CASE:** P-1115-58
- **REQUESTED ACTION:** Conditional Use Approval for a guest house
- **ADDRESS/LOCATION:** 1793 Shades Crest Rd.
- **APPLICANT/OWNER:** David B. Delozier
- **REPRESENTING AGENT:**
- **GENERAL DISCUSSION:** The applicant seeks to rebuild a burned guest house in rear of the property. The applicants originally received a variance for the same request in May of 2007. However, the BZA approval has lapsed and the zoning code has changed. Guest houses are a permitted use in an E-2 zoning. A site and building plan is attached.
- **VESTAVIA HILLS COMPREHENSIVE PLAN:** This request is consistent with the Comprehensive Plan for medium density residential provided the guest house is not leased separately from the main structure.
- **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 add the following conditions:
    - A. Guest house cannot be separately leased.
  2. **City Engineer Review:** I have reviewed this application and have no issues with this request.
  3. **City Fire Marshal Review:** No problems noted.
  4. **Building Safety Review:** I have reviewed the application and I have no issues with this request.

**MOTION** Mr. Visintainer made a motion to recommend approval of Conditional Use Approval for a guest house at 1793 Shades Crest Rd. with the following conditions:

1. Guest house cannot be separately leased.

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

Mr. Goodwin – yes

Mr. Gilchrist – yes

Mr. Wolfe – yes

Mr. Brooks – yes

Motion carried.

Mr. Burrell – yes

Mr. Sharp – yes

Mr. Visintainer – yes

Mr. Larson – yes

**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.**

**II. APPLICANT INFORMATION: (owner of property)**

NAME: DAVID B. DELOZIER

ADDRESS: 1793 SHADES CREST ROAD  
VESTAVIA HILLS, AL 35216

MAILING ADDRESS (if different from above) NA

PHONE NUMBER: Home (205) 822-4270 Office (205) 368-4514

NAME OF REPRESENTING ATTORNEY OR OTHER AGENT: \_\_\_\_\_

2015 SEP 30 P 3:11

**III. ACTION REQUESTED**

Request that the above described property be approved conditional use approval pursuant to Section \_\_\_\_\_ of the Vestavia Hills Zoning Code.

Current Zoning of Property: R-2

Requested Conditional use For the intended purpose of: building guesthouse

(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.)**

\_\_\_\_\_  
\_\_\_\_\_

Property size: \_\_\_\_\_ feet X \_\_\_\_\_ feet. Acres: \_\_\_\_\_

**V. INFORMATION ATTACHED:**

Attached Checklist complete with all required information.

Application fees submitted.

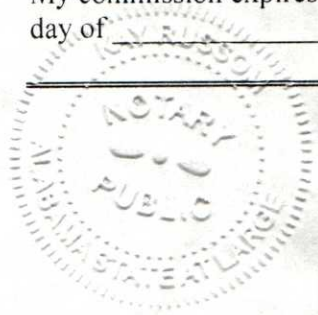
**VI.** I do hereby declare the above statements are true and that I, the owner, and/or my duly appointed representative will be at the scheduled hearing.

David B. Delozier  
Owner Signature/Date

\_\_\_\_\_  
Representing Agent (if any)/date

Given under my hand and seal  
this 30<sup>th</sup> day of September 2015.

Kay Russon  
Notary Public  
My Commission Expires November 18, 2016  
day of \_\_\_\_\_, 20\_\_\_\_.





David. B. And Catherine DeLozier, 1793 Shades Crest Road, Vestavia Hills, AL 35216 ~ (205) 822-4270 ~ (205)368-4516 cell



Original guest house as it appeared in April 2007 when we purchased it; it was approved for demolition and reconstruction by the Zoning Board in May 2007



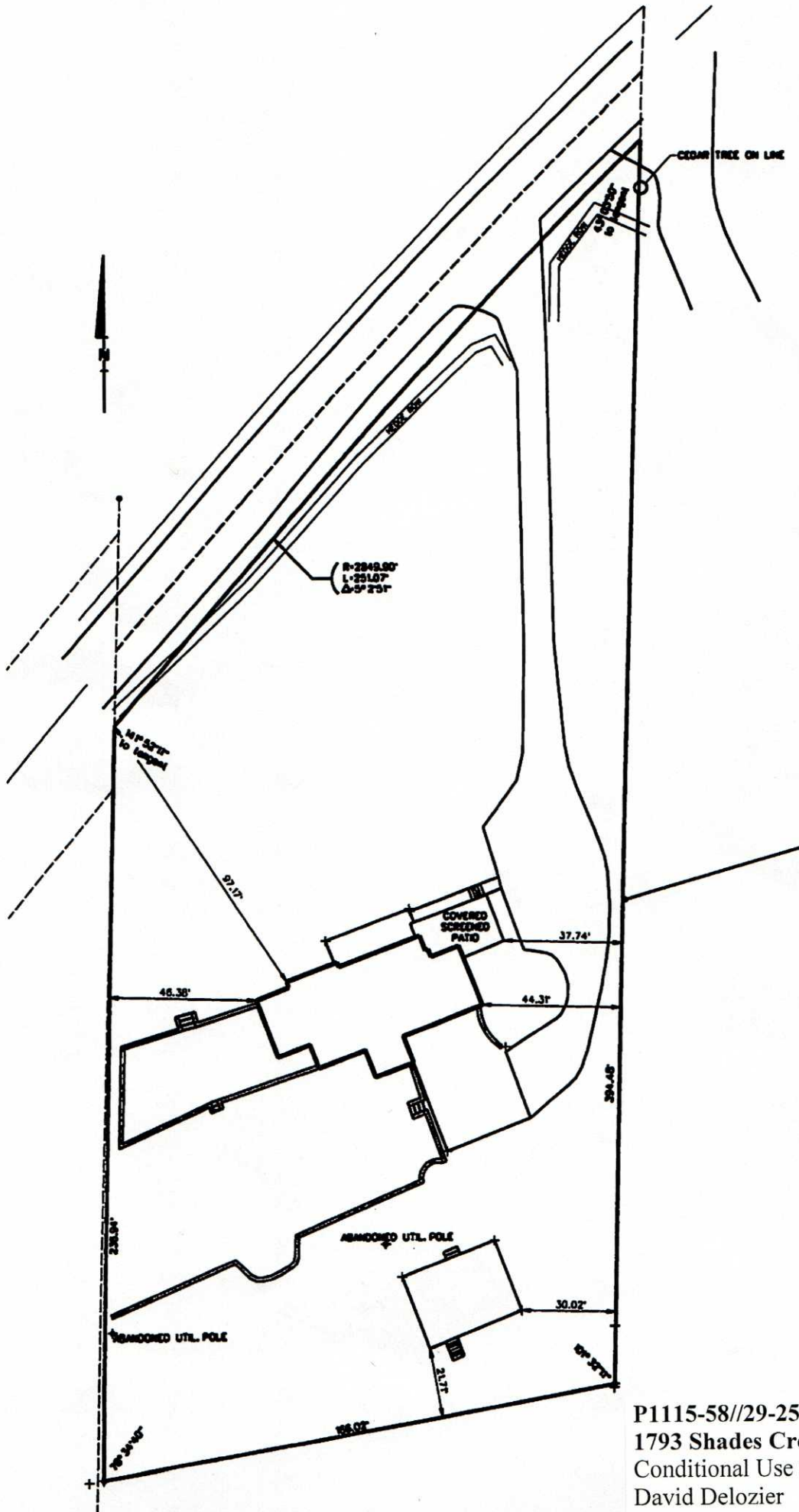
The foundation and chimney as they appear today, September 2015



Proposed structure to occupy identical footprint of original guest house, using existing foundation and chimney

**P1115-58//29-25-1-3-7**  
**1793 Shades Crest Rd.**  
Conditional Use to build guest home  
David DeLozier R2





P1115-58//29-25-1-3-7  
 1793 Shades Crest Rd.  
 Conditional Use to build guest home  
 David Delozier R2

P1115-58//29-25-1-3-7

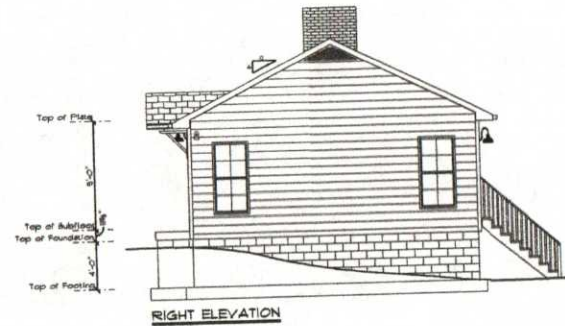
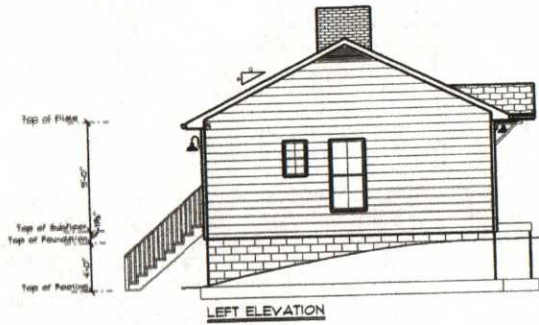
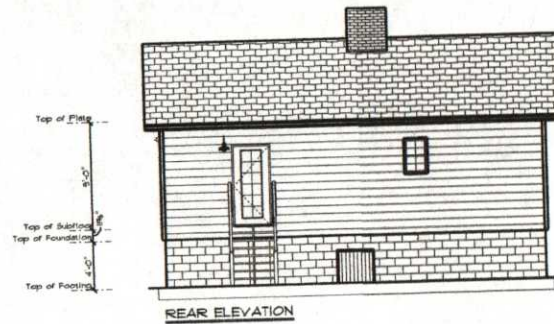
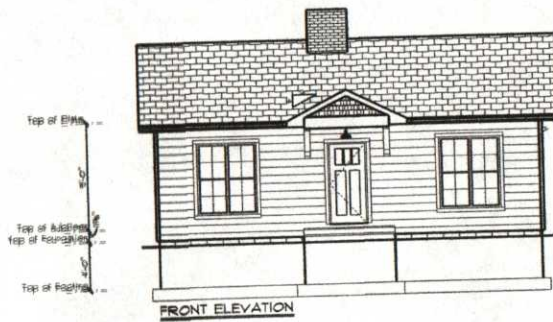
1793 Shades Crest Rd.

Conditional Use to build guest home

David DeLozier

R2

STUDIO/GUEST HOUSE  
1793 SHADES CREST ROAD  
VESTAVIA HILLS, AL 35216



BARRY DELOZIER (205) 368-4516 - BARRY@SOWOWME.COM

1

**ORDINANCE NUMBER 2624**

**AN ORDINANCE GRANTING A CONDITIONAL USE APPROVAL FOR THE INTENDED PURPOSE OF CONSTRUCTION OF FRONT SECURITY FENCE/SECURITY GATE**

**WHEREAS**, on December 13, 2010 the City Council of the City of Vestavia Hills, Alabama approved and adopted Ordinance Number 2331 entitled the Vestavia Hills Zoning Code and establishing a conditional use approval for certain uses not permissible by right in zoning classifications; and

**WHEREAS**, on October 1, 2015, Phylis and John Smith submitted an application for conditional use approval to construct a front security fence and security gates on their properties located at 1836 and 1842 Shades Crest Road; Lots 1 & 2, Bradshaw Addition to Vestavia, Vestavia Hills, Alabama; and

**WHEREAS**, the properties located at 1836 and 1842 Shades Crest Road; Lots 1 & 2, Bradshaw Addition to Vestavia is presently zoned Vestavia Hills R-1 (low density residential district); and

**WHEREAS**, Table 5 of the Vestavia Hills Zoning Code sets forth the permissible uses within an R-2 classification; and

**WHEREAS**, the Vestavia Hills Planning and Zoning Commission at its regular meeting of November 12, 2015 voted to recommend approval of the request as presented, with certain stipulations as detailed below:

1. Conditional Use Approval is hereby approved for Phylis and John Smith, for construction of front security fence and security gates at 1836 and 1842 Shades Crest Road; Lots 1 & 2, Bradshaw Addition to Vestavia with the following conditions:
  - a. That the residential properties must be a lot of record recorded in the Office of the Judge of Probate; and
  - b. The fence and gates shall be construed so as to be open, ornamental and decorative in style and constructed of finished stone, masonry and/or metal. Said fencing located within the front yard setback shall exclude wood and/or chain link fencing; and

- c. Said fencing shall be located a minimum of 2' inside the front lot line of a minimum of 5' from any public improvements, within the right-of-way whichever is greater. Said location shall be approved by the City Planner and/or City Engineer in order to mitigate adverse effects to the subject or adjacent properties. NOTE: All public improvements, including utilities, shall be designated on required drawings in the form of a survey and certified by an engineer and/or surveyor licensed by the State of Alabama; and
- d. Said security gate shall be set back a minimum of 40' from the edge of pavement or at least 2' inside the private property line, whichever is greater; and
- e. A Knox switch/switches shall be installed and the gate shall be a proper width in order to allow access for emergency vehicles and shall be approved by the Fire Marshal prior to permitting; and
- f. If the owner of either 1836 and 1842 Shades Crest Road; Lots 1 & 2, Bradshaw Addition to Vestavia vacates the conditional use by tearing down and not reconstructing said fence/gates for a period of more than one (1) year, said conditional use is considered null and void; and

**WHEREAS**, a copy of said application dated October 1, 2015 is attached and hereby incorporated into this Ordinance Number 2624.

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

- 2. Conditional Use Approval is hereby approved for Phylis and John Smith, for construction of front security fence and security gates at 1836 and 1842 Shades Crest Road; Lots 1 & 2, Bradshaw Addition to Vestavia with the following conditions:
  - g. That the residential properties must be a lot of record recorded in the Office of the Judge of Probate; and
  - h. The fence and gates shall be constructed so as to be open, ornamental and decorative in style and constructed of finished stone, masonry

and/or metal. Said fencing located within the front yard setback shall exclude wood and/or chain link fencing; and

- i. Said fencing shall be located a minimum of 2' inside the front lot line of a minimum of 5' from any public improvements, within the right-of-way, whichever is greater. Said location shall be approved by the City Planner and/or City Engineer in order to mitigate adverse effects to the subject or adjacent properties. NOTE: All public improvements, including utilities, shall be designated on required drawings in the form of a survey and certified by an engineer and/or surveyor licensed by the State of Alabama; and
- j. Said security gate shall be set back minimum 40' from the edge of pavement or at least 2' inside the private property line, whichever is greater; and
- k. A Knox switch/switches shall be installed and gate shall be a proper width in order to allow access for emergency vehicles and shall be approved by the Fire Marshal prior to permitting; and
- l. If the owner of either 1836 and 1842 Shades Crest Road; Lots 1 & 2, Bradshaw Addition to Vestavia vacates the conditional use by tearing down and not reconstructing said fence/gates for a period of more than one (1) year, said conditional use is considered null and void.

**ADOPTED and APPROVED** this the 28<sup>th</sup> day of December, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**CERTIFICATION:**

I, Rebecca Leavings, as Acting City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2624 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 28<sup>th</sup> day of December, 2015 as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Library in the Forest, New Merkle House and Vestavia Hills Recreational Center this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Rebecca Leavings  
City Clerk

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

Date: NOVEMBER 12, 2015

- **CASE:** P-1115-65
- **REQUESTED ACTION:** Conditional Use Approval for For A Fence With Gates
- **ADDRESS/LOCATION:** 1836 & 1842 Shades Crest Rd.
- **APPLICANT/OWNER:** Phylis C. Smith and John Taylor Smith
- **GENERAL DISCUSSION:** The applicants are seeking to build a gated fence along two lots on Shades Crest Rd. Applicant is requesting the fence for additional security. They have attached an explanation letter and site plans.

The zoning ordinance requires that lots must meet the following conditions:

- a. The residential property must be a lot of record recorded in the Office of the Judge of Probate; and
- b. The recorded lot must consist of a minimum one (1) acre of property; and
- c. The primary residential unit constructed upon the property must be located a minimum 100' from the front lot line; and
- d. The fence and gate shall be constructed so as to be open, ornamental and decorative in style and constructed of finished stone, masonry and/or metal. Said fencing located within the front yard setback shall exclude wood and/or chain link fencing; and
- e. Said fencing shall be located a minimum of 2' inside the front lot line or a minimum of 5' from any public improvements, within the right-of-way, whichever is greater. Said location shall be approved by the City Planner and/or City Engineer in order to mitigate adverse effects to the subject or adjacent properties. NOTE: All public improvements, including utilities, shall be designated on required drawings in the form of a survey and certified by an Engineer and/or Surveyor licensed by the State of Alabama; and
- f. Said security gate shall be set back minimum 40' from the edge of pavement or at least 2' inside of the private property line, whichever is greater; and
- g. A Knox switch/switches shall be installed and gate shall be at proper width in order to allow access for emergency vehicles and shall be approved by Fire Marshall prior to permitting.

Lot 1 fails to meet the requirement for requirement “c” and Lot 2 fails to meet the requirement for “b”. All other requirements must be met.

The property is zoned R-1.



- **VESTAVIA HILLS COMPREHENSIVE PLAN:** This request is consistent with the plan for low/medium density residential.
- **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:**

2. **City Engineer Review:** Will require detailed survey at time of permit to ensure fence is off ROW.
3. **City Fire Marshal Review:** Knox box must be installed.
4. **Building Safety Review:** I have reviewed the application and I have no issues with this request.

**MOTION** Mr. Visintainer made a motion to recommend approval of Conditional Use Approval for a fence with gates at 1836 & 1842 Shades Crest Rd.. with the following conditions:

1. The residential property must be a lot of record recorded in the Office of the Judge of Probate; and
2. The fence and gate shall be constructed so as to be open, ornamental and decorative in style and constructed of finished stone, masonry and/or metal. Said fencing located within the front yard setback shall exclude wood and/or chain link fencing; and
3. Said fencing shall be located a minimum of 2' inside the front lot line or a minimum of 5' from any public improvements, within the right-of-way, whichever is greater. Said location shall be approved by the City Planner and/or City Engineer in order to mitigate adverse effects to the subject or adjacent properties. NOTE: All public improvements, including utilities, shall be designated on required drawings in the form of a survey and certified by an Engineer and/or Surveyor licensed by the State of Alabama; and
4. Said security gate shall be set back minimum 40' from the edge of pavement or at least 2' inside of the private property line, whichever is greater; and

5. A Knox switch/switches shall be installed and gate shall be at proper width in order to allow access for emergency vehicles and shall be approved by Fire Marshall prior to permitting.

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

Mr. Goodwin – no  
Mr. Gilchrist – yes  
Mr. Wolfe – yes  
Mr. Brooks – yes  
Motion carried.

Mr. Burrell – yes  
Mr. Sharp – yes  
Mr. Visintainer – yes  
Mr. Larson – yes

P1115-65//29-24-4-1-24  
1836 & 1842 Shades Crest Rd.  
Conditional Use for a fence with  
gates  
Phylis & John Smith

R1

# 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.**

#### II. APPLICANT INFORMATION: (owner of property)

NAME: JOHN TAYLOR SMITH

ADDRESS: 1836 SHADES CREST ROAD

MAILING ADDRESS (if different from above) \_\_\_\_\_

PHONE NUMBER: CELL Home 205-966-7714 Office \_\_\_\_\_

NAME OF REPRESENTING ATTORNEY OR OTHER AGENT: SELF

**III. ACTION REQUESTED**

Request that the above described property be approved conditional use approval pursuant to Section 4.5.3.7 of the Vestavia Hills Zoning Code.

Current Zoning of Property: R-1

Requested Conditional use For the intended purpose of: ERECTING A 4'6" FENCE (HEIGHT)

ALONG SHADES CREST FRONTAGE/ALONG WITH GATES IN CONCENT WITH LOT 2 .

(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.)**

1836 SHADES CREST ROAD, LOT 1 BRADSHAW ADDITION TO VESTAVIA

CURBSETY, NEW RESIDENTIAL HOME COMPLETED IN JULY 2015

Property size: IRR feet X 32,944 feet. Acres: .76 AC

**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.

John T Smith 10/5/15  
Owner Signature/Date

N/A  
Representing Agent (if any)/date

Given under my hand and seal  
this 5 day of October, 2015.

Misti Cow Fuller  
Notary Public

My commission expires 22  
day of July, 2017.



P1115-65//29-24-4-1-24  
1836 & 1842 Shades Crest Rd.  
Conditional Use for a fence with  
gates  
Phylis & John Smith

R1

# 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.
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- (5) Appropriate plats and maps with proper legal description shall accompany this application. **Please refer to attached checklist.**

#### II. APPLICANT INFORMATION: (owner of property)

NAME: PHYLIS C. SMITH

ADDRESS: 1831 28TH AVE SO. # 400  
HOMEWOOD, AL 35209

MAILING ADDRESS (if different from above) \_\_\_\_\_

PHONE NUMBER: <sup>CELL</sup> Home 529-6170 Office \_\_\_\_\_  
541-6025

NAME OF REPRESENTING ATTORNEY OR OTHER AGENT: N/A

2015 OCT - 1 P 2:01

**III. ACTION REQUESTED**

Request that the above described property be approved conditional use approval pursuant to Section 4.5.3.7 of the Vestavia Hills Zoning Code.

Current Zoning of Property: R-1

Requested Conditional use For the intended purpose of: ERECTING A 4'6" FENCE (HEIGHT)

ALONG SHADES CREST FRONTAGE ALONG WITH GATES IN CONCERT WITH LOT 1.

(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.)**

1842 SHADES CREST ROAD, LOT 2 BRADSHAW ADDITION TO VESTAVIA  
CONVEY, RESIDENTIAL HOUSE UNDER CONSTRUCTION WITH DELIVERY OCT 25.

Property size: 1.12 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.

Phylis C. Smith  
Owner Signature/Date

N/A

Representing Agent (if any)/date

Given under my hand and seal  
this 5 day of October, 2015.

[Signature]  
Notary Public

My commission expires \_\_\_\_\_ MY COMMISSION EXPIRES JANUARY 15, 2019  
day of \_\_\_\_\_, 20\_\_\_\_.



P1115-65//29-24-4-1-24  
1836 & 1842 Shades Crest Rd.  
Conditional Use for a fence with  
gates  
Phylis & John Smith

R1

October 7, 2015

**HAND DELIVERED**

Rebecca Leavings  
City Clerk  
City of Vestavia Hills, AL 35216

Rebecca:

Please accept the attached application(s) for Conditional Use to be submitted to Planning and Zoning this month. Per our discussion, the application is joint between John Taylor Smith, owner of Lot 1, and Phylis C. Smith, owner of Lot 2. The request is made to provide adequate security for both properties. Shades Crest is a heavily traveled, transient/cut-through road, and both houses are easily accessible based on the configuration of the lots and the movement of the road. It is my understanding we do not meet the criteria (different for both lots) relating to size of lot and distance from ROW. To be clear, this was a subdivision of a 2.25 acre lot that would have allowed us to move the houses around in size and distance, but we were unaware of the requirements. Actually, we made the best decision for us and our neighbors to place the houses where they currently are.

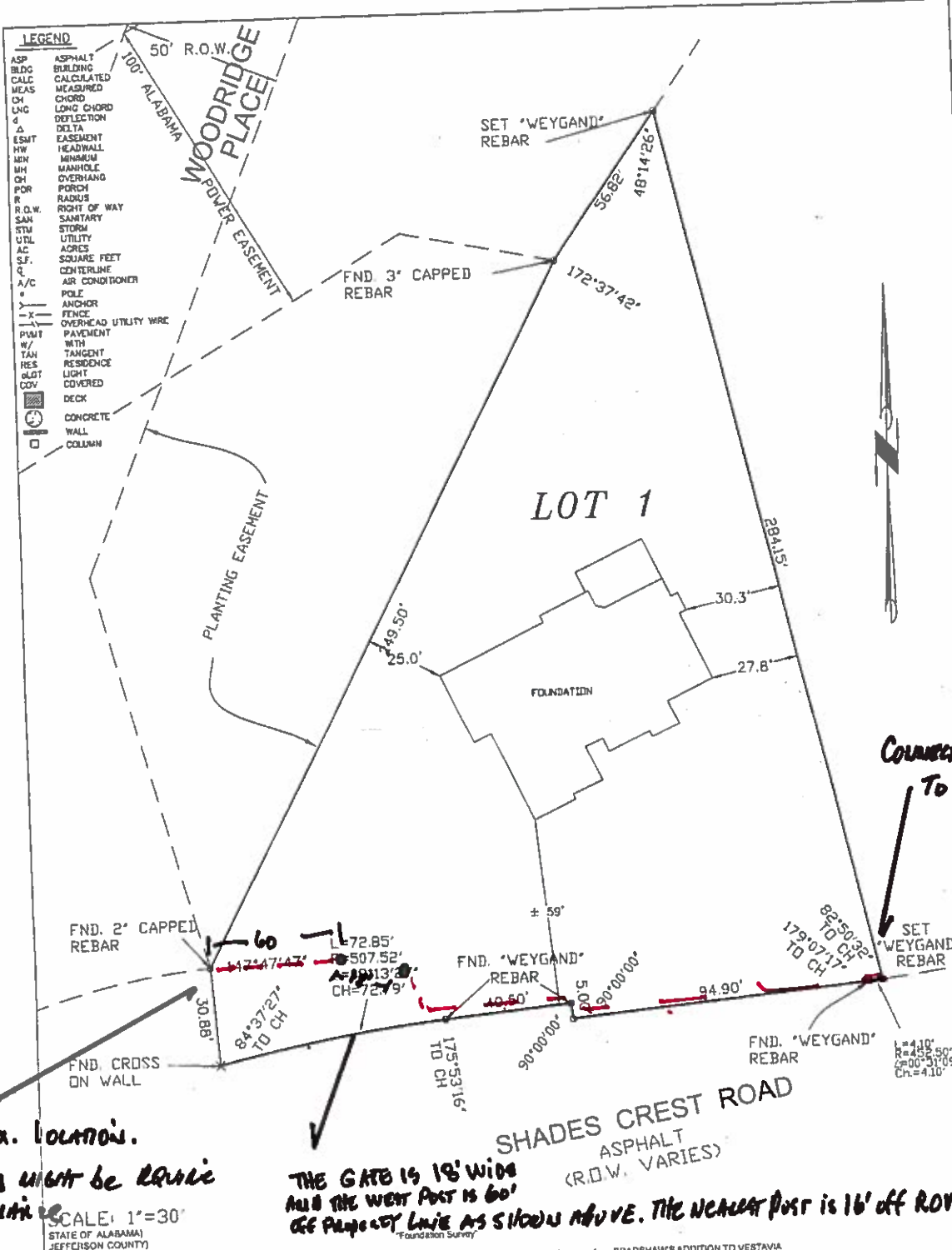
I would be happy to discuss any questions you may have and thank you for assisting us.

Regards,

J. Taylor Smith  
Phylis C. Smith

Attachment





**LEGEND**

ASP	ASPHALT
BLDG	BUILDING
CALC	CALCULATED
MEAS	MEASURED
CH	CHORD
LNG	LONG CHORD
Δ	DEFLECTION
ESMT	EASEMENT
HW	HEADWALL
MIN	MINIMUM
MH	MANHOLE
OH	OVERHANG
POR	PORCH
R	RADIUS
R.O.W.	RIGHT OF WAY
SAN	SANITARY
STM	STORM
UTL	UTILITY
AC	ACRES
S.F.	SQUARE FEET
CL	CENTERLINE
A/C	AIR CONDITIONER
*	POLE
-X-	ANCHOR
-X-	FENCE
-X-	OVERHEAD UTILITY WIRE
P/MT	PAVEMENT
W/	WITH
TAN	TANGENT
RES	RESIDENCE
S/LT	SUBT
COV	COVERED
[Symbol]	DECK
[Symbol]	CONCRETE WALL
[Symbol]	COLUMN

*Fencing is approx. location.  
Field verification might be require  
due to ROW variation*

*THE GATE IS 18' WIDE  
AND THE WEST POST IS 60'  
OFF PROPERTY LINE AS SHOWN ABOVE. THE NEAREST POST IS 16' OFF ROW*

SCALE: 1"=30'  
STATE OF ALABAMA  
JEFFERSON COUNTY

I, Ray Weygand, a Registered Land Surveyor, hereby certify to the purchaser of this property at this time, that I have surveyed Lot 1, BRADSHAW'S ADDITION TO VESTAVIA, as recorded in Map Volume 732, Page 68, in the Office of the Judge of Probate, Jefferson County, Alabama; that there are no rights-of-way, easements or joint driveways over or across said land visible on the surface except as shown; that there are no encroachments on said lot except as shown and that encroachments are located as shown above. I hereby state that all parts of this survey and drawing have been completed in accordance with the current requirements of the Standards of Practice for Surveying in the State of Alabama to the best of my knowledge, information and belief, according to my survey of DECEMBER 11, 2014.  
Survey invalid if not sealed in red

*[Signature]*  
Ray Weygand, Reg. L.S. #24973  
168 Currier Road, Homewood, AL 35209  
Phone: (205) 942-0085 Fax: (205) 947-0087  
Copyright ©



Note: (a) No title search of the public records has been performed by this firm and land shown hereon was not abstracted for easements and/or rights-of-way, recorded or unrecorded. The parcel shown hereon is subject to setbacks, easements, zoning, and restrictions that may be found in the public records of said county and/or city. (b) All bearings and/or angles, are derived from a deed record map and actual unless otherwise noted. (c) Underground portions of foundations, footings, and/or other underground structures, utilities, cameras and/or pipes were not located unless otherwise noted. We do not look for underground sewers or flip manhole covers. (d) The shown north arrow is based on deed/record map. (e) This survey is not transferable and is only good for 8 years and only good to the person or persons that pay for it at time of survey. (f) Easements not shown on record map are not shown above.



1.05

Sign in

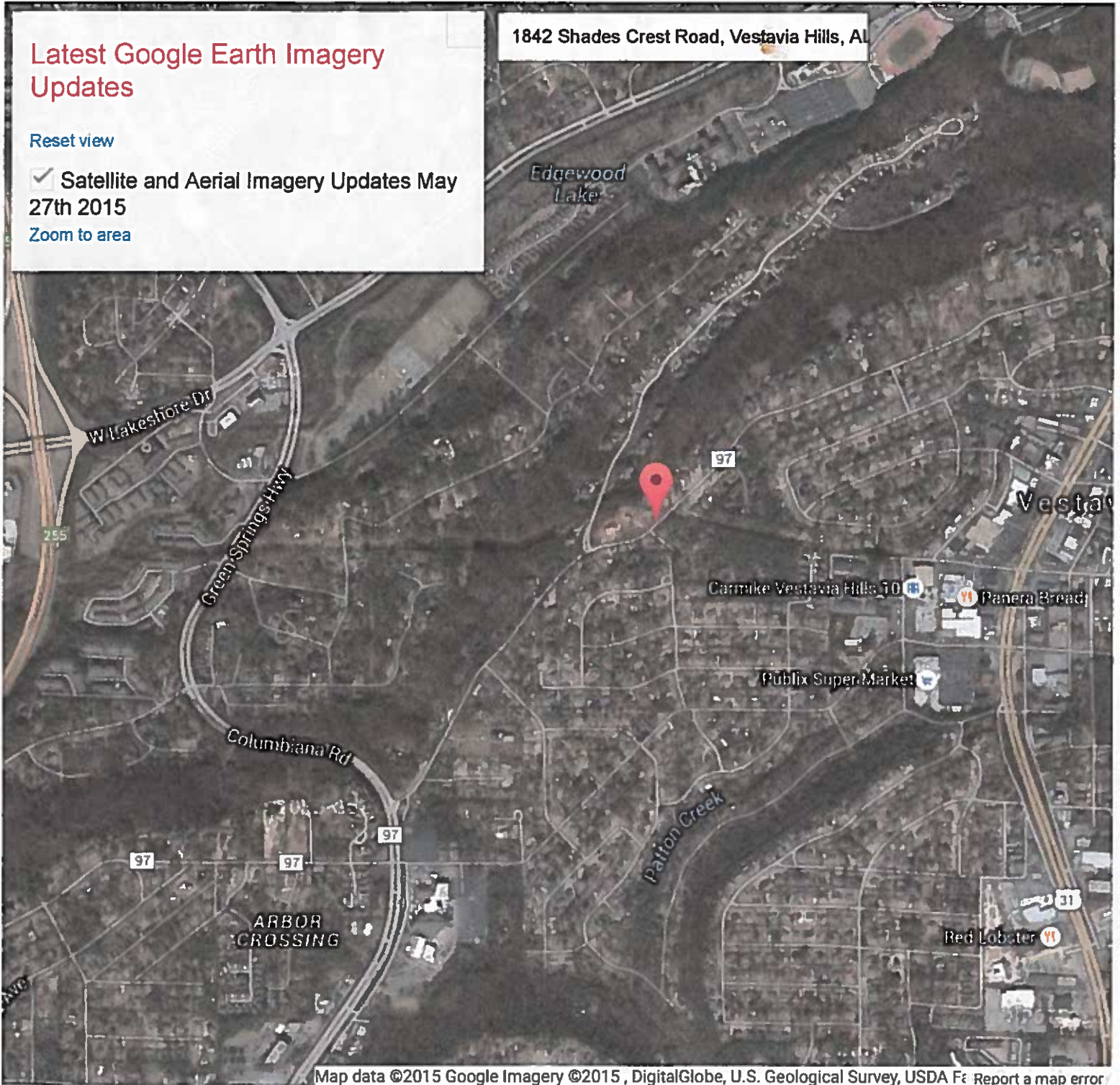
### Latest Google Earth Imagery Updates

Reset view

Satellite and Aerial Imagery Updates May 27th 2015

Zoom to area

1842 Shades Crest Road, Vestavia Hills, AL



Map data ©2015 Google Imagery ©2015, DigitalGlobe, U.S. Geological Survey, USDA Forest Service Report a map error

P1115-65//29-24-4-1-24  
 1836 & 1842 Shades Crest Rd.  
 Conditional Use for a fence with gates  
 Phylis & John Smith R1

Google Maps Engine



Zof8

10-6-15

Sign in

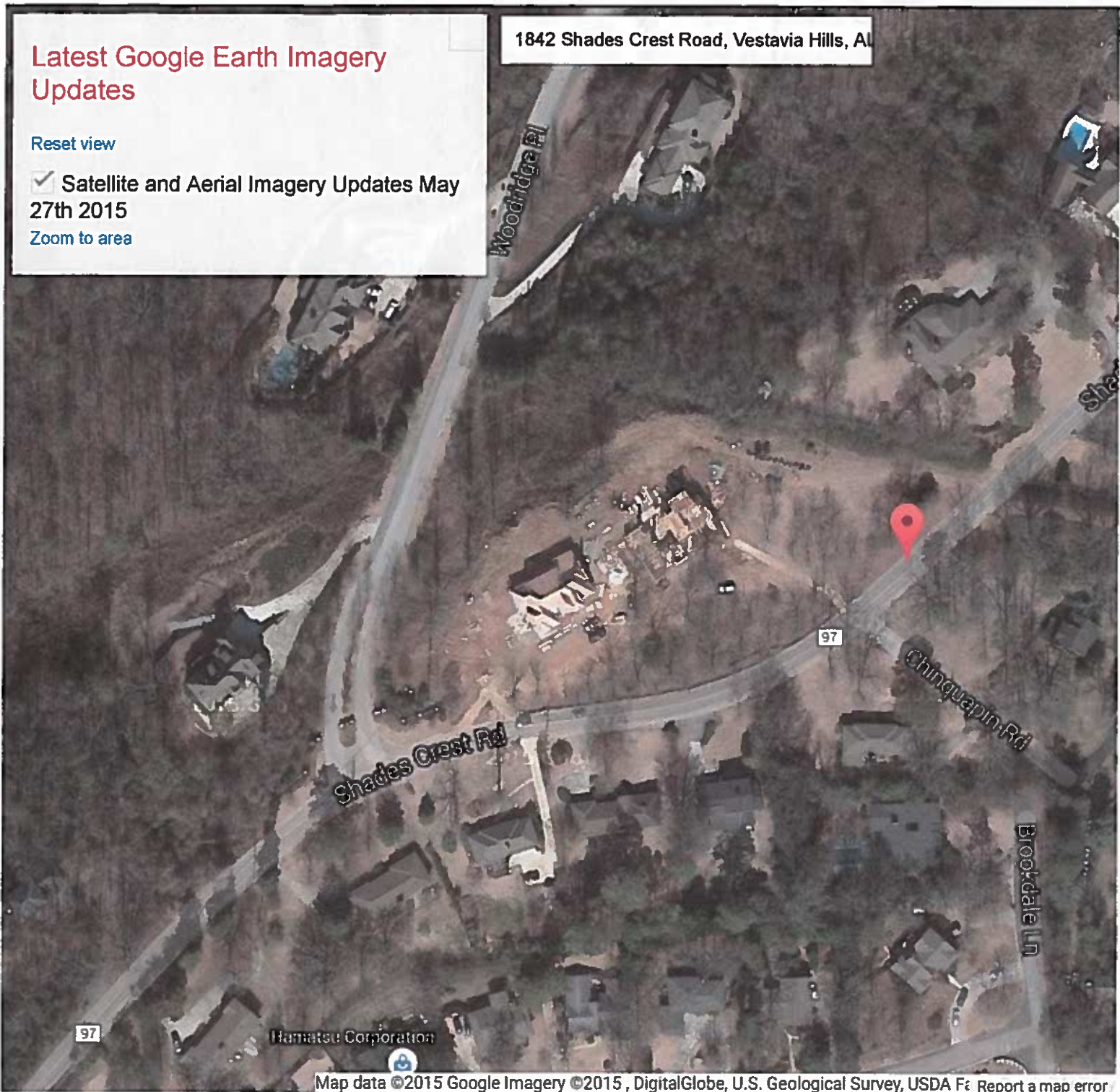
### Latest Google Earth Imagery Updates

Reset view

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1842 Shades Crest Road, Vestavia Hills, AL



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**ORDINANCE NUMBER 2625**

**AN ORDINANCE AUTHORIZING AND DIRECTING THE SALE OF REAL ESTATE, MORE PARTICULARLY DESCRIBED AS 1280 MONTGOMERY HIGHWAY, VESTAVIA HILLS, ALABAMA.**

**THIS ORDINANCE NUMBER 2625** is approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 28<sup>th</sup> day of December, 2015.

**WITNESSETH THESE RECITALS:**

**WHEREAS**, Title 11-40-1, *Code of Alabama, 1975*, declares municipalities corporate and gives them the power to contract and be contracted with; and

**WHEREAS**, Title 11-43-56, *Code of Alabama, 1975*, provides that the City Council shall have the management and control of the finances and all of the property, real and personal, belonging to the City; and

**WHEREAS**, Title 11-47-20, *Code of Alabama, 1975*, provides that the City Council may, by ordinance to be entered in its minutes, direct the disposal of any real property not needed for public or municipal purposes and direct the Mayor to make title thereto, and a conveyance made by the Mayor in accordance with such ordinance invests the grantee with the title of the municipality; and

**WHEREAS**, Title 11-43A-28, *Code of Alabama, 1975*, provides that the City Manager shall be the head of the administrative branch of the government of the City of Vestavia Hills and shall be responsible to the City Council for the proper administration of all municipal affairs; and

**WHEREAS**, Title 11-43A-48, *Code of Alabama, 1975*, provides that all contracts for the City of Vestavia Hills shall be made and approved by ordinance and signed in the name of the City of Vestavia Hills by the mayor and countersigned by the city manager; and

**WHEREAS**, Title 11-45-8(b), *Code of Alabama, 1975*, provides that if an ordinance is published by posting, then in such event said ordinance shall take effect five days thereafter; and

**WHEREAS**, the City of Vestavia Hills, Alabama (“City”) is the owner of real property situated in the City of Vestavia Hills, Jefferson County, Alabama, which said

**WHEREAS**, the City of Vestavia Hills, Alabama (“City”) is the owner of real property situated in the City of Vestavia Hills, Jefferson County, Alabama, which said real estate shall hereinafter be referred to as the “subject property” and is more particularly described as follows:

Public Works/City Shop Facility located at 1280 Montgomery Highway;  
2.34 acres, more or less; and

**WHEREAS**, BAMA Custard, LLC, organized in the State of Kansas and qualified to do business in the State of Alabama (“Purchaser”), has requested that the City declare said property as surplus and offer for sale to the Purchaser; and

**WHEREAS**, the City finds and determines that it is willing to accept the offer by BAMA Custard, LLC; for an amount equivalent to One Million, Two-Hundred Thousand Dollars (\$1,200,000) pursuant to the terms and conditions detailed in an Agreement for Purchase and Sale of Real Estate (“Agreement”); a copy of which is marked as Exhibit A, attached to and incorporated into this Ordinance Number 2625 as though written fully therein; and

**WHEREAS**, the City Council of the City of Vestavia Hills, Alabama finds and determines that the subject property is not needed for municipal or public purposes; and

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

1. The subject property is found and determined to not be needed for public or municipal purposes by the City of Vestavia Hills and is hereby declared as surplus property all in accordance with the requirements of Title 11-47-20, *Code of Alabama, 1975*.

2. The Mayor and City Manager are hereby authorized and directed to execute and deliver all documents required to close said sale for and on behalf of the City of Vestavia Hills, Alabama pursuant to the terms and conditions as detailed in the attached Exhibit A; and

3. A copy of said real estate closing documents, along with said payment, will be submitted upon closing and kept on file in the office of the City Clerk of the City of Vestavia Hills, Alabama for inspection by members of the general public.

4. Upon approval, adoption and enactment of this Ordinance Number 2625 the Mayor and City Manager are hereby authorized and directed to take any and all legal action necessary to close the sale of the subject property all in accordance with the terms, provisions and conditions previously described.

5. This Ordinance shall become effective upon its approval, adoption, enactment and publication by posting as set forth in Title 11-45-8(b), *Code of Alabama, 1975*.

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

**DONE, ORDERED, APPROVED and ADOPTED** this the 28<sup>th</sup> day of December, 2015.

CITY OF VESTAVIA HILLS, ALABAMA

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

ATTESTED BY:

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



**CERTIFICATION:**

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2625 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 28<sup>th</sup> day of December, 2015 as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills New Merkle House, Vestavia Hills Civic Center and Vestavia Hills Library in the Forest this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Rebecca Leavings  
City Clerk

**STATE OF ALABAMA**

**JEFFERSON COUNTY**

**AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE**

**THIS AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE** (“the Agreement”), is hereby made and entered into as of the \_\_\_ day of December, 2015 by and between the City of Vestavia Hills, Alabama, an Alabama municipal corporation (hereinafter referred to as “Seller”), and BAMA Custard, LLC, organized in the State of Kansas and qualified to do business in the State of Alabama (hereinafter referred to as “Purchaser”).

**WITNESS THESE RECITALS:**

**WHEREAS**, the Seller owns a tract of land consisting of approximately 2.34 acres, more or less, situated at 1280 Montgomery Highway in the City of Vestavia Hills, Jefferson County, Alabama, more particularly described in Section 2 below (hereinafter referred to as “Property”); and

**WHEREAS**, Purchaser has made an offer to purchase the Property for the purchase price set forth in Section 3 below; and

**WHEREAS**, Title 11-47-20, *Code of Alabama, 1975*, provides that the City Council may, by ordinance to be entered on its minutes, direct the disposal of any real property not needed for public or municipal purposes and direct the Mayor to make title thereto, and a conveyance made by the Mayor in accordance with such ordinance invests the grantee with the title of the municipality; and

**WHEREAS**, Title 11-43A-28, *Code of Alabama, 1975*, provides that the City Manager shall be the head of the administrative branch of the government of the City of Vestavia Hills and shall be responsible to the City Council for the proper administration of all municipal affairs; and

**WHEREAS**, Title 11-43A-48, *Code of Alabama, 1975*, provides that all contracts for the City of Vestavia Hills shall be made and approved by ordinance and signed in the name of the City of Vestavia Hills by the Mayor and countersigned by the City Manager; and

**WHEREAS**, Title 11-45-8(b), *Code of Alabama, 1975*, provides that if an ordinance is published by posting, then in such event said ordinance shall take effect five days thereafter; and

**WHEREAS**, on the \_\_\_\_\_ day of December, 2015, the City Council of the City of Vestavia Hills, Alabama enacted Ordinance Number \_\_\_\_\_ finding and determining that the Property is not needed for public or municipal purposes and that the Mayor and City Manager are authorized and directed to execute and deliver this Agreement for Purchase and Sale of Real Estate and any and all other legal documents necessary to close the sale pursuant to the terms, provisions and conditions of said Agreement.

Agreement for Purchase and Sale of Real Estate  
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**NOW, THEREFORE**, in consideration of the premises, the mutual covenants hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, Seller and Purchaser hereby mutually covenant and agree as follows:

1. **PURCHASE AND SALE.** For and in consideration of One and No/100 Dollars (\$1.00) in hand paid by Purchaser to Seller and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Seller, Seller agrees to sell and Purchaser agrees to purchase all (and not less than all) of the Property for the Purchase Price (as defined below) and on the terms and conditions hereinafter set forth.

2. **PROPERTY.** The Property is situated at 1280 Montgomery Highway in the City of Vestavia Hills, Jefferson County, Alabama and consists of approximately 2.34 acres more or less. The Property is presently used by the Seller as a public works facility and is commonly referred to as the "City Shop" property. The legal description of the Property to be conveyed by Seller to Purchaser shall be determined by the survey as required by Section 7 of this Agreement.

3. **PURCHASE PRICE.** The purchase price for all of the Property shall be One Million Two Hundred Thousand and No/100 Dollars (\$1,200,000.00) (the "Purchase Price").

4. **PAYMENT OF PURCHASE PRICE.** The payment of the Purchase Price shall be paid by the Purchaser to the Seller as follows:

A. **EARNEST MONEY ("THE EARNEST MONEY"):** Earnest Money in the amount of Twenty Thousand Dollars (\$20,000.00) shall be paid by Purchaser concurrently with the execution and delivery of this Agreement. The Earnest Money shall be paid to Land Title Company of Alabama, Inc. ("title company"), 600 – 20<sup>th</sup> Street North in the City of Birmingham, Alabama 35203.

The title company shall deposit said earnest money in an interest-bearing account and pay the same to the Seller at closing.

B. **CASH ON CLOSING THIS SALE:** The entire remaining balance of the Purchase Price shall be paid to Seller by Purchaser in cash or immediately available funds at closing.

5. **CLOSING AND CLOSING DATE.** Subject to the terms, provisions and conditions of this Agreement, the closing of the sale and purchase of the Property (the "Closing") shall occur on or before the date that is fifteen (15) days after the expiration of the Approval Period or earlier at Purchaser's election, as hereinafter defined (the "Closing Date").

6. **CONVEYANCE.** Seller agrees to convey the Property to Purchaser by statutory warranty deed (the "Deed") at the Closing, subject to the Permitted Exceptions (as herein defined).

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7. **SURVEY.** Within thirty (30) days after the Effective Date, Seller, at Seller's expense, shall cause to be prepared by a surveyor selected by Seller (the "Surveyor") a boundary survey of the Property (the "Survey") and shall provide a copy of the Survey to Purchaser. The legal description as prepared by the Surveyor shall be the legal description of the Property used in the Deed described in paragraph 6 above and the Title Policy described in paragraph 8 hereof.

8. **TITLE INSURANCE.** Seller shall, within thirty (30) days after the Effective Date, secure a title commitment (the "Title Commitment") naming Purchaser as the proposed insured on a Chicago Title Insurance Company Standard Form Owners Policy issued by Land Title Company of Alabama, Inc. as agent for Chicago Title Insurance Company (the "Title Agent") for the Property described in Section 2 hereof in the amount of the Purchase Price (the "Title Policy") subject to the following permitted exceptions (a) easements, covenants and other encumbrances of record, (b) mineral and mining rights not owned by Seller, (c) matters that would be disclosed by a current survey of the Property.

9. **SELLER'S RESPONSIBILITIES.**

A. **ZONING AND ZONING CLASSIFICATION:**

1. **Contract Zoning:** Contract zoning is prohibited in Alabama. In *Haas v. City of Mobile*, 265 So.2d 564 (Ala.1972), the Supreme Court adopted the definition of contract zoning from an article entitled "Zoning by Contract with Property Owner" by Ralph W. Crolley and C. McKim Norton, 133 New York Law Journal 4 (1955), as follows:

"The principal involved may be simply stated. A municipality has no power to make any agreement or deal which will in any way control or embarrass its legislative powers and duties. Neither the police power of the state itself nor that delegated by it to a municipality is subject to limitation by private contract; nor is the exercise of such power to be alienated, surrendered or limited by any agreement or choice. Zoning of property by a municipality being legislative in character cannot be bargained or sold. The rezoning of a parcel of property by a municipality based in any way upon an offer or agreement by an owner of property is inconsistent with, and disruptive of, a comprehensive zoning plan."

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**B. PURCHASER'S INTENDED USE OF PROPERTY:** The Purchaser intends to use the Property for a 10,100 square foot ± multi-tenant building, which will include a 3,700 square foot Freddy's Frozen Custard & Steakburgers with drive-through, along with space for additional restaurant and other retail shops to be approved by Seller in writing.

**C. PRESENT ZONING CLASSIFICATION:** The Property is presently zoned Institutional pursuant to the *City of Vestavia Hills Zoning Code*, which does not permit the Property to be used for restaurants and retail shops.

**D. B-2 GENERAL BUSINESS DISTRICT:** The City of Vestavia Hills Zoning Ordinance Number 2331 in Section 6.4.1 (Table 6) permits the operation of a restaurant and retail shops in a district zoned B-2 (General Business District).

**E. REZONING APPLICATION:** The Seller shall, within ten (10) days after the Effective Date of this Agreement, apply for a B-2 zoning classification, which will allow the Property to be used for a restaurant and retail shops.

**F. APPLICATION FOR GENERAL BUSINESS B-2 DISTRICT ZONING CLASSIFICATION:** Purchaser covenants and agrees, if requested by Seller, to join with Seller in the execution of a B-2 Zoning Application and Development Plan for the Property subjecting the same to a B-2 zoning classification so long as such zoning will allow the Property to be used for Purchaser's intended uses of a 3,700 square foot Freddy's Frozen Custard & Steakburgers with drive-through along with space (approximately 6,400 square feet for additional restaurant/retail shops).

**G. AUTOMATIC CANCELLATION AND TERMINATION:** If the City has not zoned or rezoned the Property so as to permit said Property to be used for a restaurant use within ninety (90) days of the effective date of this Agreement, then in such event this Agreement shall automatically be cancelled and terminated and the Earnest Money heretofore paid by Purchaser and accrued interest shall be refunded in full.

**H. NO CONTRACT ZONING:** Nothing contained herein shall be construed as contract zoning by and between the City of Vestavia Hills, Alabama, as Seller, and Bama Custard, LLC, as Purchaser.

**I. RESURVEY AND FINAL PLAT MAP:** This sale is subject to and contingent upon the Vestavia Hills Planning and Zoning Commission approving a resurvey and final plat map of the Property prior to the expiration of the Inspection Period. The plat shall be designed by Purchaser. Both Seller and Purchaser expressly agree:

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(i) that the Vestavia Hills Planning and Zoning Commission shall approve or disapprove the requested plat within thirty (30) days after submission and a public hearing on the matter as required by Title 11-52-32, *Code of Alabama, 1975*; and

(ii) that the Supreme Court of Alabama decided the case of *Smith v. City of Mobile*, 374 So.2d 305, in 1979 and held that a Planning and Zoning Commission must approve a plat if the plat meets all of the requirements of the City Subdivision Regulations.

The cost of said resurvey shall be paid by Seller. If the Vestavia Hills Planning and Zoning Commission fails or refuses to approve a resurvey and final plat map by said deadline, then in such event this Agreement shall automatically terminate and the Earnest Money and any accrued interest shall be refunded in its entirety to Purchaser.

**J. RESTRICTIVE COVENANTS LIMITING USE OF PROPERTY TO PUBLIC PURPOSES:** Seller shall provide to Purchaser within ninety (90) days following the Effective Date a written legal opinion from the City Attorney, that the restrictive covenants appearing in the Deed, dated December 29, 1960, which said Deed was filed in the office of the Judge of Probate of Jefferson County, Alabama on April 10, 1961 and recorded at Deed 6590, Page 182, limiting the use of the Property to only public purposes has now expired and is no longer in full force and effect. If the City Attorney has not written such opinion and delivered a copy thereof to Purchaser within ninety (90) days following the effective date of this Agreement, then in such event this Agreement shall automatically be cancelled and terminated and the Earnest Money and any accrued interest shall be returned to Purchaser.

**K. NOTICE OF LIMITATION OF USE:** Seller shall use its best efforts to cause the limitation of use of the Property to public outdoor recreation uses as described in that Notice of Limitation of Use filed in the office of the Judge of Probate of Jefferson County, Alabama on August 27, 1979 and recorded at Real 1806, Page 437, be neutralized and released from the Property so that the said Property may be developed by the Purchaser for its intended use described above. If the Seller is unsuccessful in neutralizing and having said limitation of use released from the Property within ninety (90) days from the Effective Date of this Agreement, then in such event this Agreement shall be cancelled, terminated and the Earnest Money and any accrued interest shall be refunded in its entirety to the Purchaser.

**L. NEW PUBLIC WORKS FACILITY:** As of the date of the execution and delivery of this Agreement, the Seller is in the process of seeking those approvals necessary to relocate the Public Works and City Shop Facilities to a location in the Liberty Park community section of the City of Vestavia Hills. If the Seller is unable to obtain any and all approvals necessary to relocate said Public Works and City Shop Facilities within ninety (90) days following the effective date of this Agreement, then in such event the Seller shall have the right to cancel and terminate this Agreement and the Earnest Money and any accrued interest shall be returned to the Purchaser.

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10. **INSPECTIONS:** Purchaser, or Purchaser's representatives, shall have the right to enter the Property for the purpose of inspection of the same, and/or making boundary line and topographical surveys of the same, and/or making soil tests thereon, and/or in general observing and investigating the condition of the Property. Purchaser agrees to indemnify Seller from and against any liability that results from Purchaser performing any of its inspections as provided herein, and such indemnity shall survive any termination of this Agreement.

11. **INSPECTION PERIOD:** Purchaser shall have a period of forty-five (45) days following the rezoning of the Property to a B-2 (General Business District) ("Inspection Period") to determine, either personally or through or with a representative of Purchaser's choosing, any and all conditions of the Property (including without limitation the condition of all improvements thereon) material to Purchaser's decision to purchase the Property. The determination shall include, without limitation, Purchaser satisfying itself as to title matters, soil testing, survey matters, structural matters, zoning matters, subdivision regulations, engineering and site planning, environmental matters, specifically including, but not limited to Phase I ESA, existing contracts and financial matters affecting the Property, all soil, landscaping and other physical conditions of the Property, availability and sufficient quantities of all utilities, and all additional matters that Purchaser believes relevant, in its sole and absolute discretion, in determining whether or not to purchase the Property. Purchaser, at Purchaser's sole discretion, for any reason or no reason, shall have the right and option to cancel this Agreement by giving written notice of termination to Seller no later than the last day of the Inspection Period, in which the right and option to cancel this Agreement by giving written notice of termination to Seller no later than the last day of the Inspection Period, in which event this Agreement shall be of no further force or effect except for any indemnity or other obligations that expressly survive, and the Earnest Money shall be refunded to Purchaser. If Purchaser cancels and terminates this Agreement prior to the expiration of the Inspection Period, then in such event the Earnest Money shall be refunded by the Seller to Purchaser in full.

12. **APPROVAL PERIOD:** Purchaser shall have up to one hundred twenty (120) days following the Inspection Period to obtain governmental site plan approval for Purchaser's intended use of the Property, including drive-through facility, and to obtain appraisal satisfactory to Purchaser and its lender. Purchaser shall have one thirty (30) day extension during which Purchaser shall have the right to terminate the Agreement with full refund of Earnest Money and accrued interest to Purchaser. Purchaser shall regularly inform Seller as to the progress of such approvals. If site does not appraise for the contract amount, then Purchaser may either terminate the Purchase Agreement and recover the Earnest Money deposit, re-negotiate the Sales Price or waive this condition and proceed with closing.

13. **ENVIRONMENTAL CONCERNS:** Seller has no actual knowledge that the Property has in the past been used or is presently used for the handling, storage, manufacturing, refining, transportation or disposal of "toxic material", "hazardous substances" or "hazardous waste". The terms "hazardous waste", "hazardous substances" and "toxic material" include, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes,



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hazardous or toxic substances or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC §960, et seq.), the Hazardous Materials Transportation Act, as amended (42 USC §1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 USC §9601, et seq.), the regulations adopted and publications promulgated pursuant to the foregoing and any other federal, state or local environmental law, ordinance, rule or regulation. Furthermore, Seller has not received a summons, citation, directive, letter or other communication, written or oral, from any governmental authority as to any of the above environmental concerns. Notwithstanding the above, Purchaser acknowledges that the Seller has used the Property for the operation of the City of Vestavia Hills, Alabama Public Works and City Shop facilities.

**14. CONDITION OF PROPERTY:** Purchaser acknowledges and agrees that:

A. Seller has not made and does not make any covenant, representation of warranty, either expressed or implied, regarding the physical condition of the Property or any portion thereof, the suitability of the Property for any particular purpose or use whatsoever, utility availability for the Property, whether the Property is subject to surface or subsurface contamination by toxic or hazardous waste or with respect to any other matters affecting the Property or Purchaser's contemplated use thereof;

B. Purchaser has been given the absolute and unfettered right during the Inspection Period to conduct such Inspections of the Property as Purchaser, in its sole discretion, may determine necessary in order to satisfy itself of all conditions and other aspects of the Property; and

C. Purchaser has available to it such resources, expertise, consultants and advisors so that it can make a sound and reasonable judgment as to the condition of the Property as well as to all economic conditions, suitability requirements and all other matters affecting the use, development and ownership of the Property. Purchaser acknowledges and agrees that the Property is to be sold and conveyed to, and accepted by, Purchaser in its present condition, "AS IS, WHERE IS AND WITH ALL FAULTS," and Purchaser hereby assumes the risk that adverse physical characteristics and existing conditions may have not been revealed by the Inspections.

**15. EXISTING DOCUMENTS, SURVEY AND TITLE INSURANCE:** Within ten (10) days following the Effective Date of this Agreement, the Seller agrees to provide Purchaser, at Seller's expense, and no later than 5:00 p.m. (Birmingham, Alabama time) on said date copies of all existing surveys, existing title insurance policies, existing environmental reports, and other documentation in any way relating to the Property that are in the possession of the Seller or the Seller's agents.

**16. CLOSING COSTS:** The Closing shall be held at the City of Vestavia Hills Municipal Center. The closing attorney shall be Patrick H. Boone.

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A. **CLOSING COSTS FOR SELLER:** The Seller shall pay the following costs:

- (1) Title insurance premium.
- (2) Real estate broker's fee described in Section 20 below.
- (3) Legal fee to Seller's attorney.
- (4) Cost of surveying the Property.

B. **CLOSING COSTS FOR PURCHASER:** The Purchaser shall pay the following closing costs:

- (1) The fee for recording the deed.
- (2) Legal fee to Purchaser's attorney.
- (3) Cost of due diligence.
- (4) Financing costs.
- (5) Cost incurred for site plan approval.

17. **TAXES:** The Property is exempt from ad valorem taxes and there shall be no proration of ad valorem taxes for the Property at the Closing.

18. **ASSIGNMENT:** Purchaser may not assign this Agreement or any of its rights hereunder without the express written consent of Seller. Any assignment in violation of the restriction on assignment in this Section 18 shall be void and of no force and effect. Notwithstanding the foregoing, Purchaser may assign all of its rights hereunder to a wholly owned subsidiary of Purchaser. In no event shall Purchaser be released from its duties and obligations hereunder unless expressly released in writing by Seller.

19. **POSSESSION:** Possession of the Property shall be given on the Closing Date.

20. **BROKER:**

A. **PURCHASER:** The Purchaser is represented in this contemplated transaction by SRS Real Estate Partners and Seller shall be responsible for paying the real estate broker/agent commission to said SRS Real Estate Partners in the amount of five percent (5%) of the Purchase Price.

B. **SELLER:** The Seller is represented in this contemplated transaction by Retail Specialists, LLC and Seller shall be responsible for paying said Retail Specialists, LLC pursuant to the Listing Agreement, dated April 6, 2015, by and between Seller and Retail Specialists, LLC.

21. **NOTICES:** All notices and demands to be given or made hereunder shall be in writing and shall be given by (i) personal or hand delivery, (ii) nationally recognized express overnight delivery service (with charges therefor prepaid, or (iii) certified or registered mail, return receipt requested (with postage therefor prepaid). Notices shall be deemed received upon (a) receipt,

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if hand or personally delivered, (b) the next business day after the notice has been deposited with a nationally recognized express overnight delivery service, or (the third business day after the notice has been deposited with the United States Postal Service. Notices shall be provided to the parties at the follow addresses:

**IF TO SELLER:**

City of Vestavia Hills, Alabama  
1032 Montgomery Highway  
Vestavia Hills, Alabama 35216  
Attention: Alberto C. Zaragoza, Jr., Mayor  
Fax (205) 978-0189  
Email: [bzaragoza@vhal.org](mailto:bzaragoza@vhal.org)

and

City of Vestavia Hills, Alabama  
1032 Montgomery Highway  
Vestavia Hills, AL 35216  
Attention Mr. Jeff Downes, City Manager  
Fax (205) 978-0189  
Email: [jdownes@vhal.org](mailto:jdownes@vhal.org)

With copies to:

Patrick H. Boone  
215 Richard Arrington Jr., Blvd. N., Suite 705  
Birmingham, Alabama 35203-3720  
Fax (205) 324-2295  
Email: [patrickboone@bellsouth.net](mailto:patrickboone@bellsouth.net)

**IF TO PURCHASER:**

BAMA Custard, LLC  
916 North Maxwell Street  
McPherson, Kansas 67640  
Attention:  
Fax: (205)  
Email:

With a copy to:

Fax:  
Email:

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**IF TO TITLE COMPANY:** Land Title Company of Alabama  
600 North 20<sup>th</sup> Street, Suite 100  
Birmingham, Alabama 35203  
Attention:  
Fax: (205) 226-9280  
Email:

Either party hereto may change the address to which it is to receive notice or the representative to whom notice is to be given by written notice to the other part in the manner set forth above.

**22. DEFAULT AND REMEDIES:**

A. In the event that Seller shall fail to consummate the transaction as contemplated herein for any reason other than Purchaser's default, then Purchaser may, as its sole and exclusive remedy, either (i) enforce this Agreement and the purchase and sale transaction contemplated herein by specific performance or (ii) terminate this Agreement, whereupon the Earnest Money paid to Seller and accrued interest shall be promptly returned to Purchaser, this Agreement shall be deemed cancelled and terminated and, except for the indemnification obligations of Purchaser set forth in Section 10 above, neither party shall have any further obligation or liability to the other hereunder. Purchaser hereby expressly waives any right to seek or obtain any monetary judgment or damages against Seller in the event of any default hereunder by Seller and acknowledges and agrees that no other damages, rights or remedies shall be collectible, enforceable or available to Purchaser.

B. If, at any time after the expiration of the Inspection Period, Purchaser shall fail to perform its obligation to close the transaction contemplated herein for any reason other than Seller's default, then the Earnest Money shall be delivered to Seller as liquidated damages in which event this Agreement shall automatically be deemed terminated and cancelled and, except for the indemnification obligations of Purchaser set forth in Section 10 above, neither party shall have any further obligation or liability to the other hereunder. Because of the difficulty, inconvenience and uncertainty of ascertaining actual damages, no other damages, rights or remedies shall in any case be collectible, enforceable or available to Seller and Seller agrees to accept and retain the Earnest Money as its total damages and relief hereunder in the event Purchaser fails to close the purchase and sale transaction contemplated herein.

C. Both Seller and Purchaser contemplate that Purchaser will incur due diligence expenses for permitting and/or site plan approval (the "costs") during the Inspection Period set forth in Section 11 hereof and the approval period as set forth in Section 12 hereof. If this Agreement is cancelled and terminated by Seller for any of the following reasons, then in such event Seller shall not be liable to Purchaser for the reimbursement of any portion or all of said costs:

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(i) The failure of Seller, within ninety (90) days following the effective date, to have the limitation of use filed in the office of the Judge of Probate of Jefferson County, Alabama on August 27, 1979 and recorded at Real 1806, Page 437 be removed, released and/or neutralized so as to enable Purchaser to use the Property for restaurant and other retail businesses; or

(ii) If the Property is not rezoned, within ninety (90) days following the effective date, to a zoning classification that will allow Purchaser to use the Property for development and operation of a restaurant and/or other retail businesses; or

(iii) If the Vestavia Hills Planning and Zoning Commission finds and determines that the Application for Resurvey and plat map does not meet the requirements of the Rules and Regulations of the City of Vestavia Hills Zoning Regulations and, within ninety (90) days following the effective date, denies the said Application for Resurvey and plat map as designed by Purchaser; or

(iv) If the Seller, within ninety (90) days following the effective date, fails for any reason whatsoever to obtain any and all approvals necessary for the relocation, construction and operation of a Public Works and City Shop Facility in a location situated in the Liberty Park community of the City of Vestavia Hills, Alabama.

Should any of the events described in this Section 22-C(i), (ii), (iii) and (iv) occur, then in such event this Agreement shall automatically be cancelled and terminated and any and all Earnest Money plus accrued interest shall be returned to Purchaser.

However, if Seller fails to close the sale of this Property pursuant to this Agreement for any other reason and through no fault of Purchaser, then in such event Seller shall be liable to Purchaser for the payment of said costs up to Seventy-five Thousand Dollars (\$75,000.00); provided, however, that the costs were necessarily incurred and further that the Purchaser provide Seller with evidence of prior payment by Purchaser.

Anything contained in this Agreement to the contrary notwithstanding, the Seller and Purchaser agree that if this sale closes and Seller conveys title to Purchaser pursuant to this Agreement, then in such event Seller shall not be obligated for the payment of any portion or all of said costs.

Agreement for Purchase and Sale of Real Estate  
Page 12

**23. MISCELLANEOUS**

**A. GOVERNING LAW:** This Agreement and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of Alabama. The jurisdiction and venue for the resolution of any dispute shall be in Jefferson County, Alabama.

**B. BINDING AGREEMENT:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

**C. SURVIVAL:** All representations and warranties of this Agreement shall survive the Closing, as shall any covenants for performance after Closing.

**D. TIME OF THE ESSENCE:** Time is of the essence of this Agreement.

**E. NO WAIVER:** The failure of either party to exercise any rights under this Agreement shall not constitute a waiver of any right, nor excuse the other party's full performance. No express waiver of any matter shall affect any other matter under this Agreement. Express waivers are only effective if in writing.

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

**G. SEVERABILITY:** In case of any of the provisions of this Agreement shall for any reason be held invalid, illegal or unenforceable by any court of competent jurisdiction in any respect, the remaining provisions shall remain in effect and the Agreement be performed in a fair and equitable manner as to any uncertainties arising from the unenforceable provisions.

**H. DATES:** If any date provided in this Agreement falls on a Saturday, Sunday or holiday, the date shall be the next business day.

**I. EXECUTION IN COUNTERPARTS:** This Agreement may be executed simultaneously in any number of counterparts, each of which shall be an original, but all of which shall constitute but one and the same instrument.

**J. ENTIRE AGREEMENT:** This written Agreement contains the entire agreement between the parties, incorporating all prior agreements, and may only be amended in writing executed by both parties.

Agreement for Purchase and Sale of Real Estate  
Page 13

**K. EFFECTIVE DATE:** The effective date of this Agreement is the sixth (6<sup>th</sup>) day following the posting (in accordance with Title 11-45-8(b), *Code of Alabama, 1975*) of the ordinance authorizing and directing the execution and delivery of this Agreement and the closing of the sale all in accordance with the terms, provisions and conditions thereof.

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

**SELLER:** THE CITY OF VESTAVIA HILLS, ALABAMA  
an Alabama municipal corporation

By \_\_\_\_\_  
Alberto C. Zaragoza, Jr.  
Its Mayor

By \_\_\_\_\_  
Jeffrey D. Downes  
Its City Manager

ATTESTED:

By \_\_\_\_\_

**PURCHASER:** BAMA CUSTARD, LLC  
a Kansas limited liability company

By \_\_\_\_\_  
Its \_\_\_\_\_

ATTESTED:

By \_\_\_\_\_



Agreement for Purchase and Sale of Real Estate  
Page 14

**STATE OF ALABAMA  
JEFFERSON COUNTY**

**ACKNOWLEDGMENT**

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

Given under my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
SEAL

**STATE OF ALABAMA  
JEFFERSON COUNTY**

**ACKNOWLEDGMENT**

I, the undersigned authority, a Notary Public, in and for said County, in said State, hereby certify that Jeffrey D. Downes, whose name as City Manager of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing Agreement for Purchase and Sale of Real Estate, and who is known to me, acknowledged before me on this day that being informed of the contents of the Agreement, he in his capacity as such and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama on the day the same bears date.

Given under my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
SEAL

Agreement for Purchase and Sale of Real Estate  
Page 15

**STATE OF ALABAMA**  
**JEFFERSON COUNTY**

**ACKNOWLEDGMENT**

I, the undersigned authority, a Notary Public, in and for said County, in said State, hereby certify that \_\_\_\_\_, whose name as \_\_\_\_\_ of BAMA Custard, LLC, a Kansas limited liability, is signed to the foregoing Agreement for Purchase and Sale of Real Estate, and who is known to me, acknowledged before me on this day that being informed of the contents of the Agreement, (s)he in his/her capacity as such and with full authority, executed the same voluntarily for and as the act of said BAMA Custard, LLC on the day the same bears date.

Given under my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
SEAL

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 1, 2015

By Hand Delivery

City Manager Jeffrey D. Downes  
Vestavia Hills Municipal Center  
1032 Montgomery Highway  
Vestavia Hills, Alabama 35216

In Re: Agreement for Purchase and Sale of City Shop Real Estate

Dear Mr. Downes:

Enclosed is preliminary draft of Agreement by and between the City of Vestavia Hills, Alabama ("Seller") and BAMA Custard, LLC ("Purchaser") regarding the sale and purchase of the City Shop property situated at 1280 Montgomery Highway in the City of Vestavia Hills, Alabama for and in consideration of \$1,200,000.00.

It is my understanding that an ordinance authorizing the execution and delivery of the Agreement will be introduced for first reading at the December 14, 2015 regularly scheduled meeting of the City Council. I recommend that you and I meet after you have had an opportunity to read the Agreement for the purpose of deciding upon any necessary additions, deletions, changes and/or corrections before submitting it for consideration by the City Council.

As you know, certain laws apply to a municipality when it decides to sell real estate that do not apply to a private property owner. I have mentioned some of those laws in the proposed Agreement.

In my opinion, it would be helpful to the attorney representing the Purchaser to have a quick reference to the legal authorities cited in the Agreement. Therefore, I am enclosing copies of the following:

1. Title 11-47-20, *Code of Alabama, 1975.*
2. Title 11-43A-28, *Code of Alabama, 1975.*
3. Title 11-43A-48, *Code of Alabama, 1975.*

December 1, 2015

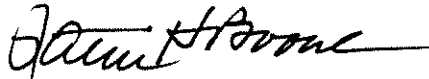
Page 2

4. Title 11-45-8(b), *Code of Alabama, 1975*.
5. The case of *Haas v. City of Mobile*, 265 So.2d 564, decided by the Supreme Court of Alabama in 1972.
6. Table 6 for Section 6.4.1 of Vestavia Hills Zoning Code Ordinance 2331.
7. Title 11-52-32, *Code of Alabama, 1975*.
8. The case of *Smith v. City of Mobile*, 374 So.2d 305 (1979).
9. Deed, dated December 29, 1960, which said deed was filed in the office of the Judge of Probate of Jefferson County, Alabama on April 10, 1961 and recorded at Deed 6590, Page 182.
10. Limitation of Use filed in the office of the Judge of Probate of Jefferson County, Alabama on August 27, 1979 and recorded at Real 1806, Page 437.

I suggest that copies of these legal authorities be submitted to the Purchaser along with the ordinance and Agreement if approved on December 14, 2015.

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

Sincerely,



Patrick H. Boone  
Vestavia Hills City Attorney

PHB:gp  
Enclosures

## NOTES TO DECISIONS

**Liability.**

Where plaintiff was injured while in the city art museum, the museum is not liable because the operation of the museum is not for the special benefit or profit of the corporate entity, but is for

the common good of all and is in the exercise of the sovereign power for the benefit of all citizens, and is therefore, in the exercise of a governmental function. *Parr v. Birmingham*, 264 Ala. 224, 85 So. 2d 888, 1955 Ala. LEXIS 749 (1955).

**§ 11-47-17. Weights and measures.**

The council or other governing body of any town or city may provide public scales and an inspection of weights and measures and may provide punishment for persons, firms and corporations using fraudulent weights and measures.

**Cross references.** — Weights and measures, generally, § 8-16-1 et seq.

**§ 11-47-18. Street lighting, sprinkling and cleaning.**

The council or other governing body of any town or city may provide for lighting, sprinkling and cleaning the streets by contract or otherwise.

## NOTES TO DECISIONS

**Cited in** *Cunningham v. City of Attalla*, 918 So. 2d 119, 2005 Ala. Civ. App. LEXIS 364 (Civ. App. 2005).

**§ 11-47-19. Public grounds, parks and boulevards.**

The council or other governing body of any town or city may establish, lay out and improve public grounds, parks and boulevards and regulate the same and may provide music and other exhibitions for the amusement of the inhabitants.

## NOTES TO DECISIONS

**Intent.**  
When applicable.

subsequent cannot be ingrafted on a deed conveying a fee-simple title. *Nearhos v. Mobile*, 257 Ala. 161, 57 So. 2d 819, 1952 Ala. LEXIS 166 (1952).

**Intent.**

Where a city is granted fee simple title to property subject to condemnation proceedings for the purpose of creating a park, the grantors have no grounds for relief when the city later changes its mind and conveys the fee simple title to a rail road company; in the absence of fraud, a parol condition

**When applicable.**

The laying of a public road through park property is clearly a general municipal undertaking, or "public purpose," of the city. *Bradley v. Trussville*, 527 So. 2d 1303, 1988 Ala. Civ. App. LEXIS 60 (Civ. App. 1988).

**§ 11-47-20. Unneeded real property; disposition.**

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

## NOTES TO DECISIONS

Authority of city.  
Authority of municipality.  
Requirements.  
Illustrative cases.  
Miscellaneous.

Cited.

**Authority of city.**

This section did not confer upon the city power and authority to convey to a private individual or

chapter except that no resolution or ordinance of a general and permanent nature and an ordinance granting a franchise shall be adopted except by a vote of a majority of the whole number elected to the council. No resolution or ordinance granting any franchise, appropriating any money for any purpose, providing for any public improvements, any regulation concerning the public health, or of any other general permanent nature shall be enacted except at a regular public meeting of the council or an adjournment thereof. Every ordinance introduced shall be in writing and read in full unless in accordance with the rules of procedure theretofore adopted before any vote thereon shall be taken and the yeas and nays shall be recorded. A record of the proceedings of every meeting of the council shall be taken and prepared by the municipal clerk and the records of the proceedings of the meeting shall, when approved by the council, be signed by the mayor and the clerk and entered in the journal. The journal shall be kept available for inspection by all persons at all reasonable times. No ordinance of permanent operation shall be passed at the meeting in which it was introduced except by unanimous consent of all members of the council present and such unanimous consent shall be shown by the yeas and nays votes entered upon the minutes of said meeting, provided, however, that if all members of the council present vote for the passage of the ordinance and their names are entered on the record as voting in favor thereof, it shall be construed as giving unanimous consent to the action taken upon such ordinance at the meeting at which it is introduced. Publication of ordinances shall be had as provided in section 11-45-8.

**History.** Acts 1982, No. 82-517.

#### § 11-43A-25. Franchise ordinances.

No ordinance granting to any person, firm or corporation of any franchise, lease of right to use the streets, public highways, thoroughfares or public property of the city shall take effect and be enforced until 30 days after final enactment of same by the council and publication of said ordinance as provided by law which publication shall be made at the expense of the person, firm or corporation applying for said grant.

**History.** Acts 1982, No. 82-517.

#### § 11-43A-26. Codes.

The council may provide for the revision and codification of its ordinances and permanent resolutions or for the adoption of a code or codes.

**History.** Acts 1982, No. 82-517.

#### § 11-43A-27. Accounting.

The council shall each month make available in the office of the city manager a detailed statement of all receipts and expenses of the municipality and a summary of its proceedings during the preceding month and at the end of each year the council shall cause a full and complete examination of all the books and accounts of the municipality to be made by a qualified public accountant and shall cause the results of such examination to be published in pamphlet form, copies of which shall be placed in the office of the city manager, the office of municipal clerk and in the public library to be open for inspection by all persons.

**History.** Acts 1982, No. 82-517; Acts 1988, No. 88-568.

#### § 11-43A-28. City manager; qualifications and duties.

The city manager shall be chosen by the council solely on the basis of his executive and administrative qualifications with special reference to his actual experience in, or his knowledge of, accepted practice in respect to the duties of his office as



hereinafter set forth. At the time of his appointment, he may but need not be a resident of the municipality or state, but during his tenure of office he shall reside within the municipality.

The city manager shall be the head of the administrative branch of the municipal government. He shall be responsible to the council for the proper administration of all affairs of the municipality and, subject to the provisions of any civil service or merit system law applicable to such municipality and except as otherwise provided herein, he shall have power and shall be required to:

(1) Enforce all laws and ordinances;

(2) Appoint and, when necessary for the good of the service, remove all officers and employees of the municipality except as otherwise provided by this chapter and except as he may authorize the head of a department or office to appoint and remove subordinates in such department or office; provided that he shall not appoint or remove officers and employees of:

a. Any library board of the municipality;

b. Any board of the municipality having control over any park, recreation facility, fair or exhibit;

c. Any municipally owned public utility and any municipally owned service enterprise, including inter alia, electric, gas and water boards, agencies, etc.;

d. Any school board of the municipality;

e. Any hospital board of the municipality;

f. Any airport board of the municipality;

g. Any housing authority;

h. Any city plumbers or electricians boards;

i. Any planning board of the municipality;

j. Any zoning board of the municipality;

(3) Exercise administrative supervision and control over all officers, employees, offices, departments, boards and agencies created by this chapter or hereafter created by the council, except those enumerated in paragraphs a. to j. of subdivision (2) inclusive, set out above in this section, and except those otherwise given independent status; and subject to any civil service or merit system law in effect in such municipality;

(4) Keep the council fully advised as to the financial conditions and needs of the municipality; to prepare and submit a budget proposal annually to the council and be responsible for its administration after its adoption; to prepare and submit, as of the end of the fiscal year, a complete report on the financial and administrative activities of the municipality for such year;

(5) Recommend to the council such actions as he may deem desirable;

(6) Prepare and submit to the council such reports as may be required of him;

(7) Perform such other duties as may be prescribed by this chapter or required of him by ordinance or by resolution of the council not inconsistent with this chapter.

To perform his duties during his temporary absence or temporary disability, the manager may designate by letter filed with the city clerk a qualified administrative officer of the municipality. In the event of failure of the manager to make such designation, the council may by resolution appoint a qualified administrative officer of the municipality to perform the duties of the manager until he shall return or his disability shall cease.

History. Acts 1982, No. 82-517.

§ 11-43A-29. Fiscal year — Budgets.

The fiscal year of the municipality shall begin on the first day of each October in each year and shall end on the last day of each September. Such fiscal year shall also constitute the budget and accounting year. As used in this chapter the term "budget year" shall mean the fiscal year for which any particular budget is adopted and in which it is administered.

The city manager, at least 45 days prior to the beginning of each budget year shall submit to the council a budget proposal, with explanations. The council shall adopt

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agencies, etc., and any board, authority, agency, etc., given such independent status, as the same may apply and be in effect at the time when such municipality shall elect to be governed by the provisions of this chapter, shall continue in full force and effect and without interruption or change as to the establishment or conduct of any such authority, board or agency, until otherwise provided by law.

History. Acts 1982, No. 82-517.

**§ 11-43A-43. When provisions take effect.**

For all purposes the provisions of this chapter shall become applicable to said municipality at the time when the first council of such municipality elected under the provisions hereof takes office and qualifies.

History. Acts 1982, No. 82-517.

**§ 11-43A-44. Continuation of ordinances and resolutions.**

All ordinances and resolutions of the municipality in effect at the time of adoption by the municipality of the council-manager form of government herein set up shall continue in effect unless and until changed or repealed by the council.

History. Acts 1982, No. 82-517.

**§ 11-43A-45. Discrimination prohibited.**

No person shall be appointed to or removed from, or in any way favored or discriminated against with respect to any municipal position or appointive municipal administrative office because of race, sex, political or religious opinions or affiliations.

History. Acts 1982, No. 82-517.

**§ 11-43A-46. Attendance by officers at council meetings.**

The city manager, the heads of all departments, and such other officers of the municipality as may be designated by the council, shall be entitled to attend meetings of the council, but shall have no vote therein. The city manager shall have the right to take part in the discussion of all matters coming before the council, and the directors and other officers shall be entitled to take part in all discussions of the council relating to their respective offices, departments, boards or agencies. The city manager shall be notified of any special or adjourned meetings.

History. Acts 1982, No. 82-517.

**§ 11-43A-47. Investigations of municipal affairs.**

The council, the city manager, or any person or committee authorized by either of them, shall have the power to inquire into the conduct of any office, department, board or agency or officer of the municipality. Either of them may make investigations of municipal affairs and may compel the production of books, papers and other evidence for that purpose.

History. Acts 1982, No. 82-517.

**§ 11-43A-48. Contracts.**

No contract involving the payment of money out of the appropriation of more than one year shall be made for a period of more than five years, nor shall any such contract be valid unless made or approved by ordinance, and signed in the name of the municipality by the mayor and countersigned by the manager.

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COUNTIES AND MUNICIPAL CORPORATIONS

§ 11-45-8

§ 11-45-1.1. Handguns. (Repealed)

Repealed: Acts 2013, No. 13-283, § 9, effective August 1, 2013.

§ 11-45-8. Recordation — Publication — Adoption of technical codes by reference.

(a) All ordinances shall as soon as practicable after their passage be recorded in a book kept for that purpose and be authenticated by the signature of the clerk.

(b)(1) All ordinances of a general or permanent nature, except as provided in subdivision (2) and in subsection (d) of this section, shall be published in some newspaper of general circulation published in the municipality, but if no such newspaper is published in the municipality such ordinances may be published by posting a copy of the ordinance in three public places within the municipality, one of which shall be at the mayor's office in the city or town. In the event there is no newspaper published in the municipality and there is a newspaper published in the county in which the municipality is located having general circulation in the municipality, at the option of the governing body of such municipality the ordinance may be published in that newspaper. In towns having a population of less than 2,000 inhabitants as shown by the 1950 federal census, the governing body of such town shall have the option of publication of the ordinance by posting as above provided or in a newspaper published in the town or in the county having a general circulation in the town.

(2) All ordinances of a general and permanent nature relating to planning or zoning or the licensing or franchising of businesses, as an alternative to the publishing requirements of subdivision (1), may be published in a synopsis form in some newspaper of general circulation published in the municipality provided that the synopsis, at a minimum, includes the following information:

- a. A summary of the purpose and effect of the ordinance.
- b. If the ordinance relates to planning or zoning, a general description of the property or properties affected by the ordinance including the common name by which the property or properties are known and the substance of the ordinance.
- c. If the ordinance relates to the licensing of businesses or the granting of a franchise, the categories of businesses affected by the ordinance and the substance of the ordinance.
- d. The date upon which the ordinance was passed and, if different from the date of publication, the effective date of the ordinance.
- e. A statement that a copy of the full ordinance may be obtained from the office of the city or town clerk during normal business hours.

(3) When the ordinance or notice of the substance of an ordinance is published in the newspaper it shall take effect from and after the time it shall first appear therein, and when published by posting it shall take effect five days thereafter. When an ordinance is published by posting, the

§ 11-45-8

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ORDINANCES AND RESOLUTIONS

§ 11-45-8

municipality shall take reasonable steps to maintain the posting for not less than 30 days. In addition, if the municipality maintains an Internet website, the municipality, at a minimum, shall include a copy of the ordinance or notice of the substance of an ordinance on its website for 30 days.

(4) Immediately following the record of any ordinance, the clerk shall append a certificate stating therein the time and manner of publication, which certificate shall be presumptive of the facts stated therein.

(5) All ordinances or notices of the substance of an ordinance granting a franchise shall be published at the expense of the party or parties to whom the franchise is granted.

(c) Ordinances may adopt by reference thereto, without setting the same out at length in the ordinance, rules, and regulations which have been printed as a code in book or pamphlet form for any of the following:

- (1) The construction, erection, alteration, or improvement of buildings.
- (2) Installation of plumbing or plumbing fixtures.
- (3) Installation of electric wiring or lighting fixtures.
- (4) Installation of gas or gas fixtures.
- (5) Fire prevention.
- (6) Health and sanitation.
- (7) Milk and milk products.
- (8) Parks.
- (9) Airports.
- (10) Waterworks and sewers.
- (11) Traffic.
- (12) Mechanical.
- (13) Swimming pools.
- (14) Housing.
- (15) Standard code for elimination and repair of unsafe buildings.
- (16) Other like codes.

If, before adopting the code in book or pamphlet form, the governing body of the city or town shall by resolution hold a public hearing of which there shall be at least 15 days' notice of the time, place, and purpose of the hearing by publication of the resolution once a week for two successive weeks or by posting notices of the hearing for the length of time, as the case may be, under subsection (b) of this section, the resolution shall provide that not less than three copies of the code shall be filed for not less than 15 days prior to the holding of the public meeting for use and examination by the public in the office of the city or town clerk.

Amendments to such rules or regulations adopted as a code thereafter shall be adopted by ordinances published as provided in subsection (b) of this section.

(d) The following shall not be deemed ordinances of a general or permanent nature requiring publication:

- (1) Ordinances authorizing or ratifying contracts with public utilities for utility services for a specified term.
- (2) Ordinances authorizing the issuance or sale or security of bonds, debentures, notes, warrants and other obligations, whether full faith and



§ 11-45-9

## COUNTIES AND MUNICIPAL CORPORATIONS

§ 11-45-9

credit obligations or payable from general revenues or special taxes or from revenues of a utility or other property of a municipality.

(e) The provisions of this section shall not apply to the adoption of a code for the revision and codification of the ordinances of a municipality and the adoption of such code by ordinances as provided in Section 11-45-7.

**HISTORY:**

Acts 1987, No. 87-668; Acts 2011, No. 11-618, § 1, Sept. 1, 2011.

copy of the ordinance" for "copies thereof," and deleted "post office or the" preceding "mayor's office"; added (b)(2); added "or notice of the substance of an ordinance" or variants in (b)(3) and (b)(5); added the last two sentences of (b)(3); added "any of the following" in the introductory language of (c); and made stylistic changes.

**2011 amendments.**

The 2011 amendment, effective September 1, 2011, added the (b)(1) and (b)(3) through (b)(5) designations; in the first sentence of (b)(1), added "subdivision (2) and in," substituted "a

**NOTES TO DECISIONS****Illustrative cases.**

Only county commissions and municipalities have the power to adopt general residential construction and building codes, but the state fire marshal may adopt residential construction and building codes relating to fire prevention and protection applicable statewide that

supersede the municipal and county codes to the extent they are inconsistent with the code adopted by the state fire marshal. *Ridnour v. Brownlow Homebuilders, Inc.*, 100 So. 3d 554, 2012 Ala. Civ. App. LEXIS 69 (Ala. Civ. App. 2012), reh'g denied, 2012 Ala. Civ. App. LEXIS 326 (Ala. Civ. App. Apr. 18, 2012).

**§ 11-45-9. Penalties for ordinance violations.**

(a) Municipal ordinances may provide penalties of fines, imprisonment, hard labor, or one or more of such penalties for violation of ordinances.

(b) Except as otherwise provided in this section, no fine shall exceed five hundred dollars (\$500), and no sentence of imprisonment or hard labor shall exceed six months.

(c) In the enforcement of the penalties prescribed in Section 32-5A-191, the fine shall not exceed five thousand dollars (\$5,000) and the sentence of imprisonment or hard labor shall not exceed one year.

(d) Notwithstanding any other provision of law, the maximum fine for every person either convicted for violating any of the following misdemeanor offenses adopted as a municipal ordinance violation or adjudicated as a youthful offender shall be one thousand dollars (\$1,000):

- (1) Criminal mischief in the second degree, Section 13A-7-22.
- (2) Criminal mischief in the third degree, Section 13A-7-23.
- (3) Theft of property in the third degree, Section 13A-8-5.
- (4) Theft of lost property in the third degree, Section 13A-8-9.
- (5) Theft of services in the third degree, Section 13A-8-10.3.
- (6) Receiving stolen property in the third degree, Section 13A-8-19.
- (7) Tampering with availability of gas, electricity, or water, Section 13A-8-23.
- (8) Possession of traffic sign; notification; destruction, defacement, etc., of traffic sign or traffic control device; defacement of public building or property, Section 13A-8-71 and Section 13A-8-72.
- (9) Offenses against intellectual property, Section 13A-8-102.

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The foregoing opinion was prepared by Thomas S. Lawson, Supernumerary Associate Justice, and adopted by the Court as its opinion.

Affirmed.

HEFLIN, C. J., and MERRILL, COLEMAN, HARWOOD and MADDOX, JJ., concur.



265 So.2d 564

George A. HAAS et al.

v.

CITY OF MOBILE et al.

1 Div. 699.

Supreme Court of Alabama.

Aug. 10, 1972.

Declaratory judgment proceeding seeking to have declared void and unconstitutional a certain zoning ordinance. The Circuit Court, in Equity, Mobile County, William D. Bolling, J., upheld the ordinance, and appeal was taken. The Supreme Court, Heflin, C. J., upheld, inter alia, that zoning ordinance which provided, inter alia, that the ordinance was subject to reservation of a right-of-way for a parkway, and that a second means of ingress and egress should be provided to the proposed parkway, was not invalid on grounds that such constituted "contract zoning," since such requirements were reasonable measures in light of anticipated traffic considerations.

Affirmed.

Coleman, J., dissented.

#### 1. Zoning ⇨68

A zoning ordinance may place upon a property owner reasonable restrictions and requirements in the use of the zoned property.

#### 2. Zoning ⇨6

Zoning is a legislative act, which rests on the exercise of the police powers of a municipality.

#### 3. Zoning ⇨61

Zoning ordinance which provided, inter alia, that the ordinance was subject to reservation of a right-of-way for a parkway, and that a second means of ingress and egress should be provided to the proposed parkway, was not invalid on grounds that such constituted "contract zoning," since such requirements were reasonable measures in light of anticipated traffic considerations.

#### 4. Zoning ⇨167

Fact that location of access road across tract which was rezoned was undetermined did not invalidate zoning ordinance, where adjoining property owners were not in position to be injured by such vagueness, indefiniteness and uncertainty; only those owning an interest in the tract which was being rezoned could be damaged, since only their lands would be affected by an adverse location of the access road.

#### 5. Zoning ⇨162

Where an existing comprehensive plan is in effect, no amendment thereto can be attacked as being "spot" zoning.

#### 6. Zoning ⇨162

Size of tract involved in rezoning, which totaled 12.25 acres, together with other nonconforming land uses in immediate vicinity, proximity of such land to a mall, and the adjacent proposed parkway, militated against charge that zoning ordinance amounted to "spot" zoning.

#### 7. Zoning ⇨101

Where record was replete with testimony both for and against proposed zoning, enactment of zoning ordinance was fairly debatable and thus was not invalid as being arbitrary.

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**HAAS v. CITY OF MOBILE**

Cite as 289 Ala. 16

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**8. Zoning** ⇨131

Requirements of statute stating that every motion, resolution or ordinance introduced at a meeting should be reduced to writing and read before any vote thereon should be taken, were satisfied where zoning ordinance was reduced to writing and read in its entirety on October 6, 1970 meeting, so that parliamentary motion to adopt the ordinance, made at meeting on October 13, 1970, did not have to be reduced to writing and read to fulfill the statutory requirements. Code of Ala., Tit. 37, § 98.

Diamond & Lattof, Mobile, for appellants.

A municipality has no authority to amend a zoning ordinance subject to a collateral deed or agreement to be executed between the city and the property owner. *Hartnett v. Austin*, (Fla.), 93 So.2d 86; *Baylis v. Mayor & City Council of City of Baltimore*, 219 Md. 164, 148 A.2d 429; *Treadway v. City of Rockford*, 24 Ill.2d 488, 182 N.E.2d 219; *Lewis v. City of Jackson, Miss.*, 184 So.2d 384; *Yokley on Zoning Law and Practice*, 3rd Ed., Vol. 1, Sec. 7-8; *The Law of Zoning and Planning by Rathkopf*, (Vol. 3, 74-12, 74-13, 74-15, 74-16). An ordinance amending a zoning ordinance must be clear, precise, definite and certain in its terms and the determination of whether property covered by the amendment has a new zoning classification must not be left to the uncertainty of proof by extrinsic evidence. *Johnson v. City of Huntsville*, 249 Ala. 36, 29 So.2d 342; *Thomas v. Wingard*, 250 Ala. 390, 34 So.2d 606; *Pentecostal Holiness Church v. Dunn*, 248 Ala. 314, 27 So.2d 561; *McQuillen on Municipal Corporations*, Sec. 15.24. An ordinance amending a zoning ordinance is void if the ordinance is clearly arbitrary and unreasonable and amounts to but an arbitrary fiat. *Grayson v. City of Birmingham*, 277 Ala. 522, 173 So.2d 67; *McQuillen on Municipal Corporations*, Sec. 25, 83. Every motion adopted by the City Commission of the City of Mobile must be reduced to writing and read before any vote

thereon shall be taken, and any motion not so adopted is void. Code of Alabama, Re-comp. 1958, Title 37, Sec. 98; *Thompson v. Wingard*, 250 Ala. 390, 34 So.2d 606.

*Armbrecht, Jackson & DeMouy and Broox G. Holmes and Thomas M. Ammons, III, Mobile*, for appellee, *Baldwin Development Corp.*

*John L. Lawler, Mobile*, for appellee, *City of Mobile*.

A zoning ordinance may place reasonable restrictions upon the use of zoned property. *Walls v. City of Guntersville*, 253 Ala. 480, 45 So.2d 468; *Southern Rock Prod. Co. v. Bd. of Zoning Adjustment*, 282 Ala. 186, 210 So.2d 419; *Jefferson County v. Birmingham*, 256 Ala. 436, 55 So.2d 196; *Roberson v. City of Montgomery*, 285 Ala. 421, 233 So.2d 69; *Hartnett v. Austin*, (Fla.), 93 So.2d 86; *Baylis v. Mayor & City Council of City of Baltimore*, 219 Md. 164, 148 A.2d 429 (1959); *Treadway v. City of Rockford*, 24 Ill.2d 488, 182 N.E.2d 219 (1962); *Lewis v. City of Jackson*, 184 So.2d 384 (Miss.1966); *Yokley, Zoning Law and Practice*, Vol. I, § 7-8; *Rathkopf, The Law of Zoning and Planning*, Vol. 3, 74-12, 74-13, 74-15, 74-16. A zoning ordinance which vests reasonable discretion in municipal officials as to the requirements of use of zoned property is not invalid as being vague or indefinite. *Walls v. City of Guntersville*, 253 Ala. 480, 45 So.2d 468; 37 Am.Jur., *Municipal Corporations*, § 170, p. 799; *Johnson v. City of Huntsville*, 249 Ala. 36, 29 So.2d 342; *Thompson v. Wingard*, 250 Ala. 390, 34 So.2d 606; *Pentecostal Holiness Church v. Dunn*, 248 Ala. 314, 27 So.2d 561. A zoning ordinance recommended by a planning commission after extensive investigation and hearings, and adopted by the city commission after further hearings cannot be said to be arbitrary or unreasonable when there were substantial factors favoring its adoption. *Episcopal Foundation of Jefferson Co. v. Williams*, 281 Ala. 363, 202 So.2d 726; *Grayson v. City of Birmingham*, 277 Ala. 522, 173 So.2d 67; *Hadacheck v. Sebastian*, 239 U.S. 394, 36 S.Ct. 143, 60 L.Ed. 348; *Waters v. City of Birmingham*, 282 Ala.



104, 200 So.2d 388; *Cudd v. City of Home-wood*, 284 Ala. 268, 224 So.2d 626; *Shell Oil Co. v. Edwards*, 263 Ala. 4, 81 So.2d 535. A motion to adopt an ordinance need not be reduced to writing and read before being voted on where the ordinance itself is reduced to writing and read before being voted on. Code of Ala., Tit. 37, § 98; *State v. Calumet & Hecla Consol. Copper Co.*, 259 Ala. 225, 66 So.2d 726. A motion requesting a vote on an ordinance which has been read and reduced to writing at a commission meeting need not be reduced to writing and read before a vote thereon. Code of Alabama, 1940 (Recompiled 1958), Title 37, § 98.

HEFLIN, Chief Justice

Appellants-complainants George A. Haas, Robert E. Finch and Dr. C. Adrien Bodet bring this appeal from an adverse decree to their declaratory judgment action in which appellee-respondents City of Mobile, John K. Collings and Alletta Turner, and appellee-intervenor Baldwin Development Corporation, were parties in the Circuit Court of Mobile County, in Equity. The bill of complaint sought to declare void and unconstitutional Zoning Ordinance No. 80-142, which amended The Zoning Ordinance of the City of Mobile by rezoning a 12.25 acre tract of wooded land within a R-A (Residence-Agriculture) district to a R-3 (Multiple-Family-Residence) district so that luxury type apartment buildings could be built.

Appellants-complainants George A. Haas, Robert E. Finch and Dr. C. Adrien Bodet are owners of residences in the neighborhood of the 12.25 acre tract. Appellee-respondent John K. Collings is the owner of the 12.25 acre tract and appellee-respondent Alletta Turner holds a vendor's lien on that land. Baldwin Development Corporation obtained an option on the 12.25 acre tract from Collings and intervened in the proceeding below. The Attorney General of the State of Alabama was served and filed a waiver as to future notice. Hereinafter the appellants-complainants will be

referred to as appellants, and where the term "appellees" is used it will include John K. Collings, Alletta Turner, Baldwin Development Corporation and the City of Mobile.

The 12.25 acre tract is the middle portion of a rectangularly shaped tract of land, which apparently was approximately 40 acres in size, bounded on the north by Old Grant Street, on the east by Cottage Hill Road, on the south by Eslava Creek and on the west by Sage Avenue. In the neighborhood to this 12.25 acre tract there are residential areas, a private swimming pool, commercial areas, a church and one tract which had been previously rezoned R-3.

Appellants are owners of residential property, located both on the eastern portion of the large rectangularly shaped tract and in the residential sections to the north of Old Grant Street directly across from the 12.25 acre tract. The residences range in value from \$30,000 to \$100,000.

The general area was zoned R-1 (best residential classification), however, the swimming pool had been granted a variance, the commercial buildings had been favored with variances, and some of the property had been rezoned to R-3 on a previous occasion. The 12.25 acre tract originally was zoned R-1 but in 1967 was rezoned to R-A.

Efforts to rezone the 12.25 acre tract from R-A to R-3 began with an application filed with the Zoning Administrator who, based upon studies of the area, location, traffic consideration, etc., recommended to the Planning Commission that the land be rezoned. The Planning Commission held two public meetings where extensive discussion and argument occurred on the proposed rezoning. The Planning Commission's recommendation to the City Commission was in favor of amending the zoning ordinance with a condition that a second means of ingress and egress to the property be made by opening the proposed apartment complex to be built on the 12.25 acre tract to the proposed Eslava Creek

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## HAAS v. CITY OF MOBILE

Cite as 289 Ala. 16

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Parkway. A planning consultant also recommended approval. After hearing considerable debate by persons for and against the proposed rezoning, the Mobile City Commission unanimously approved the rezoning.

According to the "Major Street Plan" of the City of Mobile, the proposed Eslava Creek Parkway will be one of the major highways connecting Airport Boulevard with Cedar Point Road and Mobile Bay Parkway. Some construction of said Eslava Creek Parkway has already begun in close proximity of the 12.25 acre tract.

Ordinance No. 80-142 provided, among other things, the following:

"\* \* \* and further provided, however, that no lot or parcel of land hereinabove described shall be used for any use allowed in a R-3 district until all of the conditions set forth below have been complied with: subject to reservation of the right-of-way for Eslava Creek Parkway and that a second means of ingress and egress to the proposed Eslava Creek Parkway be provided."

The Chancellor decreed that Zoning Ordinance 80-142 was valid and constitutional. From such decree the appellants have perfected their appeal.

The first contention raised by the appellants is that Ordinance No. 80-142 is void because the conditions precedent to the use of the property require a reservation of the right-of-way for Eslava Creek Parkway and a second means of ingress and egress to the proposed Eslava Creek Parkway in the area reclassified. The appellants contend that a municipality has no authority to amend a zoning ordinance subject to a collateral agreement (or a collateral deed) to be executed between the city and the property owner because such constitutes "contract zoning".

In support of their position appellants rely upon Hartnett v. Austin (Fla.), 93 So. 2d 86; Baylis v. City of Baltimore, 219 Md. 164, 148 A.2d 429; Treadway v. City of

Rockford, 24 Ill.2d 488, 182 N.E.2d 219; and Lewis v. City of Jackson (Miss.), 184 So.2d 384.

In an article entitled, "Zoning by Contract. With Property Owner", by Ralph W. Crolly and C. McKim Norton, 133 New York Law Journal 4 (1955), "contract zoning" is defined as follows:

"The principle involved may be simply stated. A municipality has no power to make any agreement or deal which will in any way control or embarrass its legislative powers and duties. Neither the police power of the state itself nor that delegated by it to a municipality is subject to limitation by private contract; nor is the exercise of such power to be alienated, surrendered or limited by any agreement or device. Zoning of properties by a municipality being legislative in character cannot be bargained or sold. The rezoning of a parcel of property by a municipality based in any way upon an offer or agreement by an owner of property is inconsistent with, and disruptive of, a comprehensive zoning plan."

[1] On the other hand, it is well established that a zoning ordinance may place upon a property owner reasonable restrictions and requirements in the use of the zoned property and this court has expressly approved such restrictions and requirements. Walls v. City of Guntersville, 253 Ala. 480, 45 So.2d 468; Southern Rock Products Co. v. Board of Zoning Adjustment, 282 Ala. 186, 210 So.2d 419. See also Sections 774, 776 and 777 of Title 37 of the Code of Alabama, 1940.

The precise question of the validity of the requirement of landowner dedication for highways, streets and alleys as a prerequisite for zoning applicability has been treated in three jurisdictions: Kansas—Arkenberg v. City of Topeka, 197 Kan. 731, 421 P.2d 213; and Hudson Oil Company of Missouri, Inc. v. City of Wichita, 193 Kan. 623, 396 P.2d 271; Washington—State ex rel. Myhre v. City of Spokane, 70 Wash.2d 207, 422 P.2d 790; and California—Scrut-

ton v. County of Sacramento, 275 Cal.App. 2d 412, 79 Cal.Rptr. 872.<sup>1</sup> Each of these jurisdictions holds that imposing the condition of dedication for rights-of-way is a valid exercise of police power where utilized to meet the increase in traffic congestion and minimize this annoyance of the change from single residence to the new land use.

[2] It is well established in our jurisdiction that zoning is a legislative act, *Ball v. Jones*, 272 Ala. 305, 132 So.2d 120, which rests on the exercise of police powers of a municipality, *Fleetwood Development Corp. v. City of Vestavia Hills*, 282 Ala. 439, 212 So.2d 693.

The appellant's position is that "contract zoning" is proved because of a letter from John K. Collings addressed to Commissioner Lambert Mims, dated February 25, 1971 (subsequent to the filing of the action in the court below), which states as follows:

"This will confirm my telegram of February 24, 1971, regarding Zoning Ordinance No. 80-142, adopted October 13, 1970.

"It is clearly understood and intended on my part that the right-of-way for Es-lava Creek Parkway will be dedicated to the City of Mobile as agreed upon at a previous meeting with you."

[3] However, the letter is subject to a different interpretation. It could be inter-

1. Requirements involving dedications in these cases are as follows: *Arkenberg*—"a ten foot right-of-way along Gage Boulevard", 421 P.2d at 218; *Hudson Oil*—"10-foot strip of land along the North edge of the proposed subdivision for an East-West service or access road along the South side of Kellog Avenue", 396 P.2d at 272; *Myhre*—"certain of its land for the widening of the adjacent streets within the city engineer's right-of-way plan for the area . . . to acquire and convey to the city, without cost, additional street area (if any) needed for traffic safety . . . to be constructed at no cost to the City the necessary curbs, sidewalks, drainage, pavement, channelization and street lighting'."

preted as being a written confirmation that this property owner intends to comply with one of the requirements of conditions of the ordinance. Such letter can hardly be determinative of pre-adoption negotiations of "contract zoning" since it is dated more than four months after the adoption of the ordinance and the date of the "previous meeting" between Commissioner Mims and tract-owner Collings mentioned in the letter is not established by any evidence. No other evidence concerning the telegram appears in the record. The trial court heard the evidence ore tenus and is in a better position to make the factual determination of whether these zoning requirements were reasonable measures in light of anticipated traffic considerations or mandatory contractual prerequisites which might control or embarrass the legislative prerogatives of the city.

In the case under review the landowner is agreeable to the land dedication requirements of the ordinance. This court wants it clearly understood that this holding should not be construed as authority for a trial court to uphold unacceptable requirements of a zoning ordinance which attempts to pre-empt condemnation proceedings for that issue is not presented in this case.

Next, the appellants contend that the amending ordinance is vague, indefinite and uncertain in its terms. This attack is directed towards the portion of the ordinance which requires a reservation of

422 P.2d at 795; *Scrutton*—"a 10-foot right-of-way for widening Whitney Avenue and improve it with pavement, sidewalk, curbs and gutters; that on the east edge of her property she dedicate a 27-foot strip to form the west half of Foster Way; that she join an assessment district which would improve the west half of Foster Way with paving, sidewalk, curbs and gutters." 275 Cal.App.2d at 415, 79 Cal.Rptr. at 875.

These cases have been cited to show treatment of this issue in other jurisdictions; however, this court does not approve or disapprove of the holdings of these cases under like factual situations because such is not before this court at this time.

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right-of-way for Eslava Creek Parkway and a means of ingress and egress to said proposed parkway.

The appellants contend since dimensions of the right-of-way for Eslava Creek Parkway are not spelled out with exactness that this constitutes unconstitutional vagueness and uncertainty. There was testimony from James T. Chapman, Assistant City Engineer for the City of Mobile, that the location of a corridor for this parkway had been determined and was shown on maps which were introduced as exhibits. A copy of the city's Major Street Plan, which reflected the general location of said parkway, was introduced as an exhibit. There was evidence that a portion of the parkway had been completed in the vicinity of the subject property. Mr. Chapman stated the present drawing of the right-of-way shows a 90-foot width but the width might vary following a survey and that it could be 80 feet or 100 feet as it crossed the 12.25 acre tract instead of 90 feet.

Next, the appellants contend that the location for the second means of ingress and egress across the 12.25 acre tract is undetermined. There was testimony that the City had not yet determined the exact location, but that it would be of the standard width of 27 feet after the exact location had been determined by surveys.

[4] Assuming arguendo that vagueness, indefiniteness and uncertainty exist as to the actual metes and bounds description of Eslava Creek Parkway, and the location of the ingress and egress road across the 12.25 acre tract to Eslava Creek Parkway, it seems to this court that the appellants are not in a position to be injured by such vagueness, indefiniteness and uncertainty. Only those owning an interest in the 12.25 acre tract could be damaged since only their lands will be affected by an adverse location of the access road or an enlarged dimension of Eslava Creek Parkway's right-of-way. These property owners, obviously, do not object to the terms of the ordinance. The requirement of the reser-

vation of a right-of-way for a second means of ingress and egress to Eslava Creek Parkway benefits the appellants rather than injures them. If such access road to Eslava Creek Parkway was not required, then traffic, obviously, would increase on existing roadways following the occupancy of the proposed apartments. If vagueness, uncertainty and indefiniteness exist, such is related only to locations on the 12.25 acre tract.

[5,6] Appellant's third contention is that the ordinance is void in that it is arbitrary, unreasonable and amounts to an arbitrary fiat. The basic contention is that this ordinance constitutes "spot" zoning. This court has long condemned "spot" or "piece-meal" zoning, where the facts show municipal officials have attempted partial zoning of a municipality. *Chapman v. City of Troy*, 241 Ala. 637, 4 So.2d 1; *Johnson v. City of Huntsville*, 249 Ala. 36, 29 So.2d 342. Recent decisions have limited condemnation of "spot" or "piecemeal" zoning to the situation where there has been no comprehensive plan. See *Shell Oil Company v. Edwards*, 263 Ala. 4, 81 So.2d 535 and *Episcopal Foundation of Jefferson County v. Williams*, 281 Ala. 363, 202 So.2d 726, which recites the proposition that where an existing comprehensive plan is in effect, no amendment thereto can be attacked as being "spot" zoning. These decisions place this jurisdiction in a unique position regarding the issue of "spot" zoning. The majority position is that rezoning of a small tract of land out of harmony and in conflict with a comprehensive plan may constitute "spot" zoning. See 1 E. Yokely, *Zoning Law and Practice*, § 8-3, at 363, (3rd ed. 1965), and cases annotated at note 6. But even if this court followed the majority view, the rezoning of the parcel in question does not amount to "spot" zoning when the comprehensive plan of Mobile is so considered. Its size (12.25 acres), the other nonconforming land uses in the immediate vicinity, the proximity to Bel Air Mall, and the adjacent proposed parkway militate against the charge of "spot" zoning.



The test for whether an ordinance is arbitrary is well established in our jurisdiction in *Waters v. City of Birmingham*, 282 Ala. 104, 108, 209 So.2d 388, 391:

" \* \* \* if the adoption of the ordinance raises questions upon which reasonable differences may exist in view of all the circumstances, and the wisdom of the ordinance is *fairly debatable*, then the action of a municipal governing body in adopting the ordinance will not be deemed arbitrary, a court being unwilling under such circumstances to substitute its judgment for that of the municipal governing body acting in a legislative capacity. \* \* \* " (Citations omitted) (Emphasis supplied).

The above selected portion of *Waters* was quoted in *Cudd v. City of Homewood*, 284 Ala. 268, 224 So.2d 625.

[7] The record is replete with testimony both for and against the proposed zoning. In light of the rule restated in *Waters* and followed in *Cudd*, the court finds the enacting of this ordinance was fairly debatable, and as such is not invalid as being arbitrary.

[8] Appellants' fourth contention is that the city did not follow statutory procedure in enacting the ordinance since the motion to adopt the ordinance was not reduced to writing and read before the vote was taken thereon. If such motion had been reduced to writing it would have probably appeared as follows: "I move that Ordinance 80-142 be adopted."

This question involves interpretation of Section 98 of Title 37, Code of Alabama, 1940, which states in salient part:

" \* \* \* Every motion, resolution or ordinance introduced at any and every such meeting shall be reduced to writing and read before any vote thereon shall be taken; and the yeas and nays thereon shall be recorded. \* \* \* "

The record shows that the ordinance was reduced to writing and read in its entirety at the October 6, 1970 meeting. Then

at the October 13, 1970 meeting with the minutes containing the ordinance being before the City Commission, there was debate on the ordinance, and after much discussion Commissioner Mims orally moved the ordinance be adopted. It was seconded and unanimously carried. The vote was then recorded.

Upon these facts this court is convinced that the requirements of the statute were met when the ordinance was reduced to writing and read at the October 6th meeting. The intent of the statute is clearly that substantive matters, whether motions, resolutions or ordinances, should be reduced to writing and read before action is taken on them. Where the substantive matter appears in writing and is read to the city commissioners, the parliamentary motion to adopt need not be reduced to writing and read to fulfill the statutory requirements of § 98 of Title 37, Code of Alabama, 1940.

Affirmed.

MERRILL, HARWOOD, BLOODWORTH, MADDUX, McCALL and SOMERVILLE, JJ., concur.

COLEMAN, J., dissents.



265 So.2d 569

James A. SIMPSON et al.

v.

James L. VAN RYZIN, individually, etc.

3 Div. 499.

Supreme Court of Alabama.

Aug. 10, 1972.

Bill of complaint for declaratory judgment. The Circuit Court of Montgomery County in Equity, Emmet, J., entered de-

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Ordinance Number 2331  
Vestavia Hills Zoning Code

Table 6 Use Regulations for Non-Residential Districts								
USES/DISTRICTS	A	B-1	B-1.2	B-2	B-3	O-1	O-2	INST
Gas Station, §7.2			C	Y	Y			
Hardware Store		L	L	Y	Y			
Home Improvement Center				Y	Y			
Kenel, §7.6	Y				C			
Laundromat			Y	Y	Y			
Laundry and Dry Cleaning, Retail		Y	Y	Y	Y	Y	Y	
Laundry, Industrial				C	C			
Liquor Lounge		C	C	C	C			
Maintenance Service				C	C			
Medical Clinic			L	Y	Y	Y	Y	Y
Medical Support Service			L	Y	Y	Y	Y	Y
Personal Service		L	L	Y	Y			
Produce Market	Y	Y	Y	Y	Y			
Restaurant, Fast Food		L	L	Y	Y			
Restaurant, Standard		L	L	Y	Y			
Retail, General, Enclosed				Y	Y			
Retail, General, Unenclosed				C	Y			
Retail, Neighborhood		L	L	L	L			
Services, Neighborhood		L	L	L	L			
Service Station, §7.2			C	Y	Y			
Studio, Artist		Y	Y	Y	Y			
Veterinary Hospital, §7.6				C	C			
<b>OTHER</b>								
Airport					C			
Cemetery	C							C
Construction Service					C			
Country Club	C							
Heliport					C		C	C
Landfill					C			
Manufacturing, Light					C			
Mixed Use, General			L					
Mixed Use, Live-Work			L					
Parks, Gardens, Playgrounds	Y	Y	Y	Y	Y			Y
Recreation, Indoor				Y	Y			
Recreation, Outdoor				C	C			Y
Rehabilitation Facility					C			Y
Research Laboratory					C		C	
Salvage Yard					C		C	
Storage, Mini-warehouse, §7.5				C	C			
Storage, Outdoor					C			
Telecommunications Facilities, §7.9	C	C	C	C	C	C	C	C
Warehousing, Wholesale, Distribution				C	C			
<p>Y – The use is permitted by right.  L – Permitted to limits set by district regulations  SE – Special Exception Use, requires approval by BZA (see §12.3). May also be subject to district limitations.  C – Conditional Use, requires approval by the Council (see §13.3). May also be subject to district limitations.  A use not listed may be requested for approval as a Conditional Use per §13.3.  A use followed by a numeric cross-reference is subject to Use-Specific Regulations in Article 7.  A blank cell indicates that the use is not permitted.</p>								



§ 11-52-32

COUNTIES AND MUNICIPAL CORPORATIONS

§ 11-52-32

(d) The municipal planning commission of any Class 1 city may elect no fewer than three and no more than five persons who are members of the municipal planning commission to serve while members thereof and at the pleasure of the municipal planning commission as a committee to approve or disapprove in the name of the municipal planning commission any plat presented to the municipal planning commission. Should any committee member so elected by the municipal planning commission be unable for any reason to serve at any time as a member of the committee or should a vacancy occur at any time on the committee, the chair of the municipal planning commission shall appoint another member thereof to serve as a member of the committee until such time as the replaced member of the committee shall resume his or her duties or until the municipal planning commission shall fill the vacancy by electing another of its members to serve on the committee. The committee shall be governed by all the provisions of this article applicable to municipal planning commissions in regard to the approval or disapproval of any plat and to all regulations adopted by the municipal planning commission in regard thereto not inconsistent with the provisions of this article. Any plat submitted to the committee shall be considered as if submitted to the municipal planning commission, and any approval or disapproval of any plat by the committee shall be as if the same were approved or disapproved by the municipal planning commission; provided, however, that any party aggrieved by any decision of the committee, within 15 days thereafter, may appeal therefrom to the full municipal planning commission of the municipality by filing with the municipal planning commission a written notice of appeal specifying the decision from which the appeal is taken. In the case of an appeal, the committee shall cause a transcript of all papers and documents filed with the committee in connection with the matter involved in the appeal to be certified to the municipal planning commission to which the appeal is taken and the municipal planning commission, within 45 days from the taking of the appeal, in accordance with the reasonable regulations as it may from time to time adopt, shall make an investigation as it deems proper and either affirm the decision of the committee or render the decision as in the judgment of the municipal planning commission should have been rendered by the committee.

**HISTORY:**

Acts 1988, 1st Ex. Sess., No. 88-923; Acts 2012, No. 12-297, § 1, Oct. 1, 2012.

**2012 amendments.**

The 2012 amendment, effective October 1, 2012, substituted "the municipal planning commission" for "the commission" or variants throughout the section; substituted "Except where the development of a subdivision within the territorial jurisdiction of a municipal planning commission is regulated by the county

commission pursuant to Section 11-52-30, the municipal planning commission" for "The planning commission" in the first sentence of (a); in the first sentence of (c), substituted "The municipal planning commission" for "The planning commission" and "governing body of the municipality" for "council"; in (d), substituted "the municipal planning commission" for "such planning commission" in the third sentence and substituted "full municipal planning commission" for "full planning commission" in the fourth sentence; and made stylistic changes.

§ 11-52-3

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§ 11-52-33.

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§ 11-52-32

§ 11-52-33

PLANNING, ZONING, AND SUBDIVISIONS

§ 11-52-33

NOTES TO DECISIONS

Analysis

Disapproval.  
Illustrative cases.

Disapproval.

Planning commission cannot exercise its authority to regulate subdivisions in a way that contravenes other laws; even if a municipal planning commission has the authority to institute a moratorium on subdivision-plat applications, it may not use that authority without regard for the public welfare, to prevent the development of the private property of one individual. *Lee v. Houser*, 2013 Ala. LEXIS 125 (Ala. Sept. 27, 2013).

Illustrative cases.

Trial court did not err in denying a motion for a judgment as a matter of law filed by a town and its planning commission because the com-

mission could not adopt a moratorium on the approval of subdivisions; a town and its planning commission may not institute a moratorium, lawful or otherwise, solely to disregard their statutory duty to evaluate a particular plat application that has no apparent flaws without a reasonable "public welfare" explanation. *Lee v. Houser*, 2013 Ala. LEXIS 125 (Ala. Sept. 27, 2013).

In an action alleging negligent failure to consider or approve a subdivision-plat application, the evidence of tortious activity was sufficient to submit a question to the jury because it supported a finding that the planning commission used this provision as a sword for attacking the application; a town may not institute a moratorium solely to disregard the statutory duty to evaluate a particular plat application that has no apparent flaws, without a reasonable public welfare explanation. *Lee v. Houser*, 2013 Ala. LEXIS 185 (Ala. Dec. 20, 2013).

§ 11-52-33. Transfer or sale of land prior to plat approval.

(a) Where the regulation of a subdivision development is the responsibility of the municipal planning commission, if the owner or agent of the owner of any land located within a subdivision conveys, transfers, or sells any land by reference to or exhibition of or by other use of a plat of a subdivision before the plat has been approved by the appropriate commission, department, or agency of any municipality requiring such approval and recorded or filed in the office of the appropriate county probate office, the owner or agent shall forfeit and pay a penalty of one hundred dollars (\$100) for each lot or parcel so transferred, and the description of the lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from the penalties or from the remedies provided in this section.

(b) The municipality may enjoin the conveyance, transfer, or sale by a civil action for injunction brought in any court of competent jurisdiction or may recover the same penalty provided in this section by a civil action in any court of competent jurisdiction.

(c) Where the county commission is responsible for regulation of subdivision development within the territorial jurisdiction of a municipal planning commission, enforcement of the subdivision regulations of the county shall be as provided in Chapter 24, and any penalties assessed against a developer for failure to comply with the subdivision regulations of the county shall be as provided therein.

(d) Nothing in this section shall impair, impede, or prohibit any person or entity from entering into any otherwise valid and enforceable contract for the purchase or sale of any lot within any proposed subdivision prior to its approval.

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## SMITH v. CITY OF MOBILE

Ala. 305

Cite as, Ala., 374 So.2d 305

227, 342 N.E.2d 619 (1976). This standard would allow extension of builder-vendor liability to varying lengths of time, dependent upon the nature of the defect, and whether the implied warranty could be reasonably expected to apply. Alabama has yet to have any case law specifying how long this warranty is to remain in effect after the sale of a new house. The better view is that, in the absence of a statute, the limit of liability is governed by reasonableness. Thus, whether the defect was discovered within a "reasonable" period would be a jury question. In no event, however, would the time limitation within which to file suit for implied warranty extend beyond the period allowed for filing suit on an express warranty (six years). § 6-2-34, Code 1975.

[15-17] For laches to run, the appellants must have failed to do something which equity would have required them to do. *Hinesley v. Davidson*, 335 So.2d 380 (Ala. 1976). The doctrine does not apply in the absence of knowledge or sufficient information to put the party on notice. *Duncan v. Johnson*, 338 So.2d 1243 (Ala. 1976). Additionally, mere delay, in the absence of culpability as shown by special facts, is not sufficient to invoke laches when the action is not barred by the statute of limitations. *Lipscomb v. Tucker*, 294 Ala. 246, 314 So.2d 840 (1975).

[18] In the instant case there is the initial question as to whether the complaint is barred by the statute of limitations; in other words, when did appellants discover the defect, and, hence, the fraud? Until this finding is made, laches would not be apparent from the face of the complaint.

For the reasons stated, the judgment of the court dismissing the complaint as to the counts in implied warranty is reversed and the cause is remanded to allow the appellants to amend their pleadings if they can to show the date they claim they discovered the defect and the fraud, and for further proceedings not inconsistent with this opinion.

REVERSED AND REMANDED.

TORBERT, C. J., and BLOODWORTH, FAULKNER, JONES, ALMON, SHORES, EMBRY and BEATTY, JJ., concur.



Arthur SMITH, III

v.

CITY OF MOBILE, a Municipal Corp.  
et al.

77-779.

Supreme Court of Alabama.

Aug. 31, 1979.

Property owner filed petition for writ of mandamus asking that city planning commission be compelled to issue certificate of approval for proposed resubdivision of lot. After leave to intervene was granted to adjoining landowner, the Circuit Court, Mobile County, Braxton L. Kittrell, Jr., J., entered order denying the petition and dismissed the case with prejudice, and the property owner appealed. The Supreme Court, Shores, J., held that: (1) action of city planning commission in disapproving proposed resubdivision of lot on grounds that it was "out of character with other lots in the area" was unrelated to conformance of the proposed resubdivision with regulations of the commission, and such disapproval exceeded authority vested in the commission by statutes, and thus such disapproval was improper, and (2) mandamus would issue to require approval by city planning commission of proposed resubdivision.

Reversed and remanded with directions.

#### 1. Zoning and Planning ⇌ 232

Statutes or ordinances which impose restrictions on use of private property are

to be strictly construed and their scope cannot be extended to include limitations not therein included or prescribed.

## 2. Zoning and Planning ⇌ 234

Once planning commission has properly exercised its authority in drafting ordinances regulating subdivision development, it is bound by such ordinances.

## 3. Zoning and Planning ⇌ 193

Action of city planning commission in disapproving proposed resubdivision of lot on grounds that it was "out of character with other lots in the area" was unrelated to conformance of the proposed resubdivision with regulations of the commission, and such disapproval exceeded authority vested in the commission by statutes, and thus such disapproval was improper. Code of Ala. 1975, §§ 11-52-30 et seq., 11-52-31.

## 4. Mandamus ⇌ 87

Mandamus would issue to require approval by city planning commission of proposed resubdivision of lot where the commission denied approval of the proposed resubdivision three times on ground unrelated to conformance of the proposed resubdivision with regulations of the commission and in manner that exceeded authority vested in the commission by statute, and where no contention was made by the commission that the plan was in violation of any other ordinances.

J. H. Fernandez of McFadden, Riley & Parker, Mobile, for appellant.

William R. Lauten, Mobile, for City of Mobile and Mobile City Planning Commission.

John N. Leach, Jr., Mobile, for appellee-intervenor, Ruby D. Twitty.

SHORES, Justice.

This case involves the proposed resubdivision of a lot located in the old Springhill area of Mobile. The lot is owned by Mrs. Tula Fearn; suit was brought by her son-in-law, Arthur Smith, III, who is purchaser of the lot under contract. Mr. Smith proposes to divide the property into three ir-

regular shaped lots on which townhouses would be built. The dimensions of the lots would exceed the minimum area requirements set out in the Planning Commission regulations.

The surrounding neighborhood is an old one, with many large lots, narrow, winding roads, abundant shrubbery and trees. In recent years, some of the original lots have been subdivided, much in the manner here contemplated. The extent to which such development has taken place is a matter of dispute.

The proposed subdivision, named Arden Court, was first presented to the Planning Commission on November 3, 1977. After the statutorily required public hearing was held, approval was denied on the grounds that "the lots would be out of character with the other lots in the area." Minutes of the public hearings reveal substantial neighborhood opposition to the proposed plans. Concern was voiced over the increase in traffic that would result from subdivision and the proximity of the lots to a public grammar school. Neighbors also objected that the proposed lots would be out of character with the neighborhood. Application for approval was twice renewed, the plat having undergone minor revisions in the interim, and each time was denied on the identical grounds.

Following this triple rebuff, Smith filed a petition for a writ of mandamus in the Circuit Court of Mobile County, asking that the Mobile City Planning Commission be compelled to issue a certificate of approval for Arden Court. Leave to intervene was granted Ruby Twitty, an adjoining landowner, and a hearing was held, following which the trial court denied the petition and dismissed the case with prejudice. This appeal followed.

Appellant contends that the criteria utilized by the Planning Commission in turning down his proposal were not within its statutory grant of authority and were contrary to the regulations adopted by the Planning Commission itself; further, that the Commission's action denied him his

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## SMITH v. CITY OF MOBILE

Ala. 307

Cite as, Ala., 374 So.2d 305

rights under the Due Process and Equal Protection Clauses of the United States Constitution, and his rights under the Constitution of this State. He also alleges a failure on the part of the Commission to act within the time and manner prescribed by law.

The City argues that disapproval of subdivision plans on the grounds that they would be "out of character with other lots in the area" is authorized by Section V(D)(1) of the Planning Commission Subdivision Regulations. That section provides that:

"The size, width, depth, shape and orientation of lots and the minimum building setback lines shall be appropriate to the location of the subdivision and the type of development and use contemplated. Every lot shall contain a suitable building site."

The City also contends that the Planning Commission is granted substantial discretion by the enabling statute in approving or disapproving subdivisions, and may properly take into consideration such factors as neighborhood opinion and aesthetics.

We agree with appellant that the Planning Commission's action in disapproving Arden Court exceeded the authority vested in the Commission by statute.

Although Alabama's subdivision control statute, Code 1975, § 11-52-30, et seq., has but infrequently been the subject of litigation, it has been held that "The authority of the Planning Commission to exercise control over subdivision of lands within the municipality is derived from the legislature. [Citation Omitted] It is authorized to adopt regulations not inconsistent with the statutes. . . ." *Boulder Corp. v. Vann*, 345 So.2d 272, 275 (Ala.1977).

[1] Since the Planning Commission's power to regulate subdivisions is derived from the statute, it follows that it cannot use that power to further goals not designated by that statute. As the Court of Appeals of Maryland stated in a case similar to this one, ". . . Municipal agencies can exercise only so much of the police power as may be expressly granted or nec-

essarily implied. . . . The power delegated to the Commission to formulate and publish rules and regulations is not a blank check; it cannot make *ad hoc* decisions which deny to a citizen the right to use his land lawfully." *Baltimore Planning Com'n v. Victor Development Co.*, 261 Md. 387, 275 A.2d 478, 481 (1971). Statutes or ordinances which impose restrictions on the use of private property are strictly construed and their scope cannot be extended to include limitations not therein included or prescribed. E. C. Yokley, *The Law of Subdivisions*, § 53 (1963 and Supp.1979), citing *Knutson v. State*, 239 Ind. 656, 157 N.E.2d 469 (1959), affirmed on rehearing, 160 N.E.2d 200 (1959). See, also: *Boxell v. Planning Com'n of City of Maumee*, 10 Ohio App.2d 25, 225 N.E.2d 610 (1967).

[2] Once a planning commission has properly exercised its authority in drafting ordinances regulating subdivision development, it is bound by those ordinances. In *Boulder Corp. v. Vann*, supra at 275, this court held that ". . . In exercising its function approving or disapproving any particular subdivision plat, the Commission acts in an administrative capacity, and is bound by any limitations on its authority contained in the legislation authorizing it to act, as well as any restrictions contained in its own regulations." (Emphasis Added) Yokley, supra, § 52, states that a planning commission has ". . . no discretion or choice but to approve a subdivision which conforms to the regulations." Courts of other jurisdictions have agreed. The Supreme Judicial Court of Massachusetts stated, in interpreting that state's subdivision control law, that there is ". . . no indication that planning boards were to have freedom to disapprove plans which comply with applicable standards merely because the board feels general public considerations make such actions desirable. . . ." *Pieper v. Planning Board of Southborough*, 340 Mass. 157, 163 N.E.2d 14, 18 (1959). Similarly in *Baltimore Planning Com'n v. Victor Development Co.*, supra 275 A.2d at 482, it was noted that ". . . Consistently it has been held that, unless the sub-

mitted plan clearly fails to comply with the appropriate legislative regulations, the board in question must grant its approval. . . .” Further, “. . . Mandamus will lie to compel the approval of a subdivision plan where a council, vested with the authority to approve, gives reasons for its refusal to approve that are unrelated to the question of conformance of the plan with applicable ordinances.” Yokley, *supra*, § 53, citing *Kling v. City Council of Newport Beach*, 155 Cal.App.2d 309, 317 P.2d 708 (1957). In that case, approval had been denied by the planning commission because the proposed subdivision, though in compliance with city ordinances, was to be located in a scenic neighborhood with many large lots, and surrounding landowners objected that the development would be aesthetically discordant.

Mandamus is also appropriate where all applicable ordinances have been complied with, and the proposal is denied because adjacent property owners object. “. . . . Neighboring property owners do not possess the right to impose, for their own special benefit, restrictions upon the lawful use of a tract of land. . . .” Yokley, *supra*, § 54.

Regulations enacted by the planning commission must be of general application and set forth sufficient standards to give applicants notice of what is required of them. Powell, *Law of Real Property*, Chapter 79, “Subdivision Control,” 866. As stated by the Court of Appeals of Alabama:

“Municipal ordinances, placing restrictions upon lawful conduct, or the lawful use of property, must, in order to be valid, specify the rules and conditions to be observed in such conduct of business, and must admit of the exercise of the privilege by all citizens alike who will comply with such rules and conditions, and must not admit of the exercise, or of an opportunity for the exercise, of any arbitrary discrimination by the municipal authorities between citizens who will so comply.” *Longshore v. City of Montgomery*, 22 Ala.App. 620, 622, 119 So. 599, 600 (1928).

*Longshore* held invalid a zoning ordinance which required property owners to secure the consent of their neighbors before a permit to build would be issued. See, also: *Swann v. City of Graysville*, 367 So.2d 952, 954 (Ala.1979), wherein it was held that a municipality’s “. . . power of control and regulation . . . may not be exercised in an arbitrary or discriminatory manner. To apply . . . [an] ordinance dissimilarly to those similarly situated is a denial of equal protection of law. . . .”

The Supreme Judicial Court of Massachusetts has likewise stated:

“. . . The subdivision control law attaches such importance to planning board regulations as to indicate to us that they should be comprehensive, *reasonably definite*, and carefully drafted, so that owners may know in advance what is or may be required of them and what standards and procedures will be applied to them. Without such regulations, the purposes of the law may easily be frustrated.

“. . . [These] regulations deal with the matters here in issue in terms . . . too vague and general to inform owners about the standards which they must meet. . . .” (Emphasis Added) *Castle Estates, Inc. v. Park & Planning Board of Medfield*, 344 Mass. 329, 182 N.E.2d 540, 545, 545 (1962).

Similarly, Yokley, *supra*, § 54 (Supp.1979), states:

“Where a subdivision plan is disapproved, valid reasons must be given for such action. Where reasons for disapproving a subdivision plan, or a development plan, are vague and uncertain in meaning, and provide no information to a developer to enable him to know wherein the plan failed to meet the requirements of the regulations, it has been held that such action operates to deprive a developer of his property without due process of law. If a plan fails in any respect to conform to the regulations it becomes the duty and obligation of the approving authority to so indicate. A city council, vested with authority to approve a plan, may not disregard the regulations and

## SMITH v. CITY OF MOBILE

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substitute its pure discretion for a discretion controlled by fixed standards applying to all cases of a like nature." Citing *RK Dev. Corp. v. Norwalk*, 156 Conn. 369, 242 A.2d 781 (1968).

The Planning Commission's authority to adopt regulations governing the subdivision of land is set out in Code 1975, § 11-52-31. The Commission is empowered to adopt regulations which provide:

" . . . for the proper arrangement of streets in relation to other existing or planned streets and to the master plan, for adequate and convenient open spaces for traffic, utilities, access of fire-fighting apparatus, recreation, light and air and for the avoidance of congestion of population, including minimum width and area of lots. Such regulations may include provisions as to the extent to which streets and other ways shall be graded and improved and to which water and sewer and other utility mains, piping or other facilities shall be installed as a condition precedent to the approval of the plat. . . ." (§ 11-52-31, supra)

Pursuant to this authorization, the Mobile City Planning Commission has enacted subdivision control ordinances. Section V(D) of those ordinances sets out the requirements which individual lots in a subdivision must meet. In addition to specific criteria regarding minimum lot size, maximum depth, position of lots in relation to streets, etc., the requirements of Section V(D)(1) are set out, supra.

To construe the provisions of Section V(D)(1), as appellees urge, as being synonymous with "out of character with other lots in the area" would be to ignore the specific criteria which follow it and vest a discretion in the Planning Commission which is unguided by uniform standards, and capable of arbitrary application. This we decline to do. If, as the City contends, the statute allows the Planning Commission to take into account aesthetic factors, the exercise of that discretion must be guided and limited by clearly drawn standards which can be uniformly applied and which give reasonable notice to applicants of requirements

with which they must comply to obtain approval.

[3, 4] The Planning Commission's denial of approval of Arden Court on the grounds that it was "out of character with other lots in the area" was unrelated to its conformance with the Planning Commission's own regulations and exceeded its statutory grant of power. In such a case, mandamus will issue to require the approval of the subdivision. *Yokley*, supra, § 53. See, also, cases cited above. In general, a plaintiff must demonstrate complete compliance with all requirements in connection with his or her plan before he or she will be entitled to a writ of mandamus. *Yokley*, supra (Supp.1979, § 53). No contention was made by the Planning Commission that Arthur Smith's plan is in violation of any ordinances other than Section V(D)(1). The plan was presented to the Commission on three separate occasions and three public hearings were held. After each such hearing, the application was denied on the sole ground that the lots would be "out of character."

The judgment of the trial court is reversed and the cause remanded for the issuance of the writ of mandamus directing the Planning Commission to approve the appellant's subdivision plan.

REVERSED AND REMANDED WITH DIRECTIONS.

TORBERT, C. J., and MADDOX, JONES and BEATTY, JJ., concur.





500/4 30-18-20

X



That part of the southeast corner of the S&T of the 30th section 30, township 18 South, range 2 West, and that part of the North half of the East 1/2 section 31, township 18 South, range 2 West, which are more particularly described by name and bounds as follows:

PART 1

That part of the S&T of the 30th section 30, township 18 South, range 2 West, and that part of the North half of the East 1/2 section 31, township 18 South, range 2 West, which are more particularly described by name and bounds as follows:

182-4596

Handwritten signature or initials.

STATE OF ALABAMA  
JEFFERSON COUNTY

6590-182

0-2-22

Roller form book



Enfile 31-18-201

Begin at the northeast corner of the NE 1/4 of the NE 1/4 of section 31, and run thence easterly along the north line thereof, for a distance of 16.20 feet, to a point on the easterly line of the Old Montgomery Highway, thence turn an angle of 124° 53' 10" to the right and run southerly along the easterly line of said way, thence turn an angle of 42° 17' 10" to the right of way, for a distance of 42.74 feet, to the point of beginning of the tract here described; from the point of beginning of the tract here described, run westerly along the easterly line of said way, and along the same course last described for a distance of 108.23 feet to the point of a curve turning to the left, said curve having a radius of 137.70 feet and subtending a central angle of 52° 19' 40", run thence southerly and along the arc of said curve and along the easterly line of said right of way for a distance of 127.87 feet to the point of compound curvature with a curve having a radius of 1254.43 feet and subtending a central angle of 22° 30", thence run southerly and along the northerly line of the right of way of the Old Montgomery Highway, for a distance of 272.78 feet to the end of said curve, thence continue south-

That part of the North Half of Section 31, Township 18 South, Range 2 West, situated in Jefferson County, Alabama, more particularly described as follows:

PARCEL 2

For a distance of 28.28 feet thence turn an angle of 24° 11' to the right and run southerly along the easterly line of said Highway, for a distance of 141.11 feet to the point of a curve turning to the right, said curve having a radius of 212.01 feet and subtending a central angle of 2° 32' and 18" run thence southerly along the arc of said curve for a distance of 211.88 feet thence turn an angle of 80° to the right from the tangent of said curve and run westerly along the line of said right of way for a distance of 20 feet, to a point on a curve, said curve having a radius of 272.01 feet subtending a central angle of 4° 23' and 24" and whose tangent forms an angle of 90° to the left with the last above described course when produced through said point of intersection, thence southerly along the arc of said curve and along the easterly line of said Highway right of way for a distance of 282.47 feet, thence turn an angle of 9° 12' and 30" to the right from the tangent to said curve at said point and run generally for a distance of 1022.84 feet to a point in the easterly line of the Old Montgomery Highway, thence turn an angle of 110° 4' and 10" to the right and run northerly along the easterly line of the right of way of the Old Montgomery Highway, for a distance of 443.74 feet, more or less, to the point of beginning, excluding mineral and mining rights not owned by the grantors as the law of the execution of this deed.

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DEED 6590-185

not be used during said period as a site for any city hall, jail, school or fire station.

For a period of fifty years from the date of this deed Parcel 2 shall not be used for any purpose other than the following purposes: as a site for municipal buildings or other reasonable municipal purposes.

It is expressly agreed that one of the considerations for the execution of this deed by the grantors, at and for the price herein specified, is the imposition upon said Parcels 1 and 2 of the restrictions hereinabove prescribed, which said restrictions the grantors have required in view of their ownership of other realty contiguous to the two parcels hereby conveyed.

It is agreed by and between the grantors and the grantee that so long as any portion of Parcel 1 is used for park purposes the portion of said Parcel 1 so used shall be named Wald Park in memory and honor of the grantors' father.

We, the said grantors, Edna Wald, Mildred Wald and Edna Wald, as Guardian of Pearl W. Marcuse, do for ourselves, our heirs, executors and administrators, covenant with the said City of Vestavia Hills and its assigns that we, the said undersigned grantors, are lawfully seized in fee simple of the said Parcels of land above described (excepting mineral and mining rights not owned by the grantors at the time of the execution of this deed) and that the said Parcels are free from all encumbrances, and that we have a good right to sell and convey the same as aforesaid, and that we will, and our heirs, executors and administrators shall warrant and defend the same to the said City of Vestavia Hills and its assigns forever against the lawful claims of all persons.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 29 day of December, 1980.

Edna Wald (SEAL)  
Edna Wald

Mildred Wald (SEAL)  
Mildred Wald

Edna Wald as Guardian of Pearl W. Marcuse (SEAL)  
Edna Wald, as Guardian of Pearl W. Marcuse.

NO TAX COLLECTED

*[Handwritten signature]*

STATE OF ALABAMA  
NOTARY PUBLIC  
No. 06590  
APR 11 11 41 AM '80  
I, *[Signature]*  
do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the records of the office of the Notary Public.



Notary Public

day of *[illegible]*, 1980.  
Given under my hand and official seal this 19th day of *[illegible]*, 1980.  
the same voluntarily on the day the same date,  
the conveyance, she, in her capacity as such guardian, executed  
before me on this day that, being informed of the contents of  
to the foregoing conveyance and who is known to me, acknowledged  
said, whose name as guardian of Pearl A. Marcus, is signed  
in and for said County in said State, hereby certify that said  
is a Notary Public



Notary Public

day of *[illegible]*, 1980.  
Given under my hand and official seal this 19th day of *[illegible]*, 1980.  
they executed the same voluntarily on the day the same date,  
this day that, being informed of the contents of the conveyance,  
conveyance, and who are known to me, acknowledged before me on  
said and said said said, whose names are signed to the foregoing  
in and for said County in said State, hereby certify that said  
is a Notary Public

06590 186

STATE OF ALABAMA,  
JEFFERSON COUNTY.

06590 186



That part of the SE1/4 of the SMI/4 of Section 30, Township 18 South, Range 2 West, and that part of the North 1/2 of the NMI/4 of Section 31, Township 18 South, Range 2 West, situated in Jefferson County, Alabama, all more particularly described by metes and bounds as follows:

Begin at the Northwest corner of the NE1/4 of the said Section 31 and run thence eastwardly along the north line thereof, for a distance of 16.20' to a point on the easterly line of the Old Montgomery Highway, thence turn an angle of 124°53'10" to the right and run southwardly along the easterly line of said right of way, for a distance of 443.74', to the point of beginning of the tract here described, from the point of said right of way and along the same course last described for a distance of 109.73' to the point of a curve turning to the left, said curve having a radius of 137.70' and subtending a central angle of 55°19'40", run thence southwardly and along the arc of said curve and along the easterly line of said right of way for a distance of 132.97' to the point of compound curvature with a curve having a radius of 1254.43' and subtending a central angle of 120°27'30", thence in a southeasterly direction along the arc of said Highway, for a distance of 272.76' to the end of said curve, thence continue southeasterly along the northerly line of said curve, thence continue along the northerly line of said curve, thence eastwardly along the arc of said curve and along the northerly line of said curve, thence eastwardly along the arc of said curve and along the northerly line of said curve, thence continue eastwardly along a tangent to said curve and along said right of way for a distance of 23.13' to the point of a curve turning to the left, said curve having a radius of 1482.65' and subtending a central angle of 50°19'00", thence along the arc of said curve and along the northerly line of said curve, thence continue eastwardly along a distance of 17.58' to the end of said curve, thence continue eastwardly along a tangent to said curve and along the northerly line of said curve turning to the right, for a distance of 134.00' to the point of a curve turning to the right, said curve having a radius of 516.82' and subtending a central angle of 100°19'00", thence continue along the northerly line of said right of way and along the arc of said curve for a

Pursuant to the requirements of the United States Department of Interior, the real property described hereinbelow situated in Jefferson County, Alabama, is hereby restricted and limited as follows:

The real property, described hereinbelow, has been developed with Federal financial assistance provided by the Heritage Conservation and Recreation Service (formerly the Bureau of Outdoor Recreation) of the Department of the Interior in accordance with the Land and Water Conservation Fund Act of 1965, as amended, 16 U.S.C. 4601-5, et. seq. (1970 ed.). Pursuant to a requirement of that law, this property may not be converted to other than public outdoor recreation uses, whether by transfer, sale, or in any other manner, without the express written approval of the Secretary of the Interior. By law, the Secretary shall approve such conversion only if he finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan, and only upon such conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location.

The real property situated in Jefferson County, Alabama, which is being limited by this Notice of Limitation of Use is legally described as follows:

NOTICE OF LIMITATION OF USE

FILE 1866 PAGE 437

STATE OF ALABAMA  
JEFFERSON COUNTY

*General Restriction on Wild Park*

NOTARY PUBLIC  
STATE OF ALABAMA  
REAL 1806 PAGE 437  
AUG 27 4 11 PM '79  
JUDGE OF PROBATE

*[Signature]*  
Notary Public

I, the undersigned, a Notary Public in and for said County and said State, hereby certify that Jack O. Grace, whose name as Mayor of the City of Vestavia Hills, a municipal corporation, is signed to the foregoing Notice of Limitation of Use and who is known to me, acknowledged before me on this day that being informed of the contents of the conveyance, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said corporation.

STATE OF ALABAMA )  
JEFFERSON COUNTY )

*[Signature]*  
Helma K. Moon, City Clerk

ATTEST:

*[Signature]*  
BY: Jack O. Grace, Mayor

CITY OF VESTAVIA HILLS, ALABAMA

DONE and EXECUTED and LIMITED this 24th day of August, 1979.

distance of 93.06' to the end of said curve, then continue southeast-wardly along the tangent to said curve and along the northerly line of said right of way for a distance of 64.68' to the point of curve of a curve to the right, said curve having a radius of 269.48' and subtending a central angle of 23°07'00", then continue southeastwardly along the arc of said curve and along the northerly line of said right of way, for a distance of 108.72' to the end of said curve; then continue southeast-wardly along the tangent to said curve and along the northerly line of said right of way for a distance of 19.23' to the point of intersection with the westernly line of the right of way of U.S. Highway #31, as presently laid out and constructed, said point being on a curve having a radius of 3154.18', subtending a central angle of 22°50'30" and whose tangent forms an angle of 13°10'50" to the left with the last above described course when extended eastwardly through said point of intersection, run thence northerly along the arc of said curve and the westernly line of said right of way, for a distance of 1257.45' to the point of compound curvature with a curve having a radius of 2172.01' and subtending a central angle of 201°4'28", then in a northerly direction along the arc of said curve and along the westernly line of said right of way for a distance of 84.96' to a point, then turn an angle of 107°05'11" to the left from the tangent of the last above described curve and run in a southwestwardly direction for a distance of 469.35' to a point, then turn an angle of 54°46'00" to the right and run in a northwest-wardly direction for a distance of 250.41' to a point, then turn an angle of 20°20'45" to the right and run in a northwestwardly direction for a distance of 150.00' to a point on the easterly line of the Old Montgomery Highway, thence turn an angle of 117°58'06" to the left and run southwardly along the easterly line of said right of way for a distance of 278.55' to the point of beginning.

REAL 1806 PAGE 438

Notice of Limitation of Use



## **RESOLUTION NUMBER 4778**

### **A RESOLUTION AUTHORIZING THE CITY MANAGER TO TAKE ALL ACTIONS NECESSARY TO SECURE REPAIRS TO THE WALD PARK SWIMMING POOL**

**WHEREAS**, sealed bids were invited to be opened and read publicly in the Council Chambers of the Vestavia Hills Municipal Center on March 17, 2015 for repairs and resurfacing of the Wald Park Swimming Pool; and

**WHEREAS**, no bids were submitted so, in an Interoffice Memorandum dated October 28, 2015, the Director of Public Services advised that his department would negotiate with various vendors for said project; a copy of which is marked as Exhibit A, attached to and incorporated into this Resolution Number 4778 as though written fully therein; and

**WHEREAS**, the Public Services Director in an email to the City Manager dated November 19, 2015 detailed three quotes to complete said repairs/resurfacing and recommended the acceptance of the proposal from Clearwater Pools in an amount not to exceed \$116,400; a copy of which is marked as Exhibit B, attached to and incorporated into this Resolution Number 4778 as though written fully therein; and

**WHEREAS**, the City Manager concurs with the Public Services Director's recommendation and recommends acceptance of the proposal as submitted by Clearwater Pools and detailed in the attached Exhibit B; and

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

**NOW, THEREFORE, 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 take all actions necessary to secure the repairs/resurfacing as detailed in the proposal from Clearwater Pools in an amount not to exceed \$116,000; and
2. Funding for said repairs will be derived from the Capital Projects Fund; and
3. This Resolution Number 4778 shall become effective immediately upon adoption and approval.

**ADOPTED and APPROVED** this the 28<sup>th</sup> day of December, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**Vestavia Hills Public Service  
1973 Merryvale Road  
Vestavia Hills, Al 35216**

**INTEROFFICE MEMO**

**Date:** October 28, 2015

**TO:** Rebecca Leavings  
City Clerk

**From:** Brian C. Davis  
Director of Public Service

**RE:** Resurfacing of the Wald Park Pool

On February 17, 2015, the Department of Public Services sent invitations to bid the resurfacing of the Wald Park Pool to be opened on March 17, 2017. There were no bids submitted on the opening date.

It is my understanding that we can now negotiate with any vendor to get a quote for resurfacing. Your guidance would be appreciated.

Please include w/

Council Agenda for  
a 1st Read on 14<sup>th</sup>

JAD/12-1-15

**Jeff Downes**

**From:** Brian Davis  
**Sent:** Thursday, November 19, 2015 2:42 PM  
**To:** Jeff Downes  
**Cc:** Jason Burnett  
**Subject:** Swimming Pool  
**Attachments:** Wald Park Pool resurface.docx

Jeff, please see attached proposal from Clearwater Pools. The amount is for a complete "chip down" of all three pools and resurface. As you may recall, we requested bids for this work last summer, and we received zero bids.

Based on Mr. Boone's opinion with input from Becky, I asked Jason to get estimates from three companies. Below are the amounts that were quoted:

Clearwater Pools  
\$116,400.00

Elite Pools  
\$156,000.00

Hollywood Pools  
\$179,595.00

The work will take approximately 60-75 days, and we would like to have it completed by April 1, if possible.

If you would like for us to have a pool "expert" at a work session to discuss with the council, or simply a meeting with you, we can arrange that.

Thank you for your consideration on this matter. Please let me know if you have any additional questions.

*"The pessimist sees difficulty in every opportunity. The optimist sees opportunity in every difficulty."  
Winston Churchill*



**Brian C. Davis, Director**  
Department of Public Services  
P 205 978 0150 | vhal.org  
Vestavia Hills

## PROPOSAL

Clearwater Pools Inc.  
2169 Pelham Parkway  
Pelham,Al 35124  
205-988-5982  
www.clearwateralabama.com

Wald Park Pool  
Swimming pool resurface  
Vestavia Hills AL

10/30/2015

Large Pool Interior: 10,270 surface feet(walls and floor), Large baby pool:575 surface feet and small baby pool 160 surface feet.

Complete chip down: This process removes all previous coatings from pool and returns Pools back to the original gunite.

Remove all existing marcite and Diamond brite surface from interior of pool.

Expose original gunite surface removing racing lane tile and targets.

Cut all cracks in gunite shell(walls and floor) and apply Red guard and NTP 1 caulking with Epoxy bond and bonding agent on surface.

Pressure test main drain plumbing and seal drain pods

Install new lane tile and targets. 50 meter and 25 yard with targets

Install new Diamond Brite plaster over entire surface.

Replace tile and coping on both baby pools.

Seal under stainless steel gutter system

Clean surface, fill pool and balance water.      Total              \$116,400.00

This process completion time would be 60-75 days

*All work installed according JCHD recommendations*

*All work is guaranteed to be as specified and according to Manufacturers recommendation. All work to be completed in a workmanlike manner. Any changes must be in writing. Clearwater Construction Co. is an Alabama licensed General Contractor and carries both workman compensation and general liability insurance.*

**RESOLUTION NUMBER 4779**

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT WITH ALABAMA DEPARTMENT OF TRANSPORTATION FOR PRELIMINARY ENGINEERING AGREEMENT PROJECT STPBH-3715(), PROJECT REFERENCE NUMBER 100063244 FOR ROADWAY AND INTERSECTION IMPROVEMENTS ON CAHABA RIVER ROAD FROM SR-38 (US-280) TO KEY DRIVE IN CITY OF VESTAVIA HILLS**

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

1. That the City enters into an Agreement Number with the State of Alabama, acting by and through the Alabama Department of Transportation for:  
Preliminary Engineering Agreement Project STPBH-3715(), Project Reference Number 100063244 for Roadway and Intersection Improvements on Cahaba River Road from SR-38 (US-280) to Key Drive in City of Vestavia Hills.
2. That the Agreement be executed in the name of the City, by the City Manager and the Mayor, for and on its behalf; and
3. That the Agreement be attested by the City Clerk and the Seal of the City affixed thereto.

**BE IT FURTHER RESOLVED** that this Resolution Number 4779 shall be conditioned upon successful approval and completion of the execution of the Agreement by all parties and that upon the completion of the execution of the Agreement by all parties, that a copy of such Agreement be kept on file by the City Clerk.

**ADOPTED and APPROVED** this the 28<sup>th</sup> day of December, 2015.

Alberto C. Zaragoza, Jr  
Mayor



ATTESTED BY:

Rebecca Leavings  
City Clerk

CERTIFICATION:

I, the undersigned qualified and acting clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true copy of a Resolution passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the 28<sup>th</sup> day of December, 2015, and that such Resolution is on file in the City Clerk's office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

---

City Clerk

SEAL

Preliminary Cost Estimate  
**Cahaba River Road Improvements (from US 280 to Key Drive)**  
 Vestavia Hills, Alabama | Birmingham, Alabama  
 Mountain Brook, Alabama | Jefferson County, Alabama

Project Segment / Owner	Length of Segment (FT)	% of Ownership	Construction (CN)		Utility Relocation (UT)		Right of Way (ROW)		Total Project Cost	
			Total Cost	20% Match	Total Cost	20% Match	Total Cost	20% Match	Total Cost	20% Match
<b>US 280 to Acton Road (Resurfacing Only)</b>	<b>6659.29</b>	<b>100%</b>	<b>\$775,388</b>	<b>\$155,078</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$775,388</b>	<b>\$155,078</b>
Vestavia Hills	1503.46	23%	\$175,058	\$35,012	\$0	\$0	\$0	\$0	\$175,058	\$35,012
Jefferson County	4211.29	63%	\$490,350	\$98,070	\$0	\$0	\$0	\$0	\$490,350	\$98,070
Birmingham	0	0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Mt. Brook	944.54	14%	\$109,979	\$21,996	\$0	\$0	\$0	\$0	\$109,979	\$21,996
<b>Acton Road to Hospital (Widening / Resurfacing)</b>	<b>7338.09</b>	<b>100%</b>	<b>\$3,943,781</b>	<b>\$788,756</b>	<b>\$1,250,000</b>	<b>\$250,000</b>	<b>\$1,000,000</b>	<b>\$200,000</b>	<b>\$6,193,781</b>	<b>\$1,238,756</b>
Vestavia Hills	3127.96	43%	\$1,681,090	\$336,218	\$532,829	\$106,566	\$426,264	\$85,253	\$2,640,183	\$528,037
Jefferson County	2218.22	30%	\$1,192,160	\$238,432	\$377,861	\$75,572	\$302,288	\$60,458	\$1,872,309	\$374,462
Birmingham	1891.91	27%	\$1,070,532	\$214,106	\$339,310	\$67,862	\$271,448	\$54,290	\$1,681,290	\$336,258
Mt. Brook	0	0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Hospital to Key Drive (Resurfacing Only)</b>	<b>3704.13</b>	<b>100%</b>	<b>\$467,906</b>	<b>\$93,581</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$467,906</b>	<b>\$93,581</b>
Vestavia Hills	0	0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Jefferson County	0	0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Birmingham	3704.13	100%	\$467,906	\$93,581	\$0	\$0	\$0	\$0	\$467,906	\$93,581
Mt. Brook	0	0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total</b>	<b>17701.51</b>	<b>100%</b>	<b>\$5,187,075</b>	<b>\$1,037,415</b>	<b>\$1,250,000</b>	<b>\$250,000</b>	<b>\$1,000,000</b>	<b>\$200,000</b>	<b>\$7,437,075</b>	<b>\$1,487,415</b>
Vestavia Hills	4631.42	26%	\$1,856,148	\$371,230	\$532,829	\$106,566	\$426,264	\$85,253	\$2,815,241	\$563,048
Jefferson County	6429.51	36%	\$1,682,509	\$336,502	\$377,861	\$75,572	\$302,288	\$60,458	\$2,362,658	\$472,532
Birmingham	5696.04	32%	\$1,669,111	\$333,812	\$339,310	\$67,862	\$271,448	\$54,290	\$2,279,869	\$455,874
Mt. Brook	944.54	5%	\$109,979	\$21,996	\$0	\$0	\$0	\$0	\$109,979	\$21,996



Birmingham, AL



**Municipality**

- Birmingham
- Jefferson County
- Mt. Brook
- Vestavia Hills

Number	Length of Segment	Municipalities
1	533.51	Mt. Brook
2	968.04	Vestavia Hills
3	601.48	Mt. Brook
4	126.66	Vestavia Hills
5	4415.14	Jefferson County
6	711.9	Vestavia Hills
7	646.82	Jefferson County
8	1371.24	Birmingham
9	3748.63	Vestavia Hills
10	976.36	Birmingham
11	164.84	Jefferson County
12	40.34	Birmingham
13	2492.7	Jefferson County
14	4440.1	Birmingham

Total Distance	Municipalities
7719.5	Jefferson County
6826.05	Birmingham
5555.23	Vestavia Hills
1134.98	Mt. Brook



**ALABAMA**  
**DEPARTMENT OF TRANSPORTATION**

EAST CENTRAL REGION



*Bentley*  
Governor



*John R. Cooper*  
Transportation Director

**OFFICE OF REGIONAL ENGINEER**

100 CORPORATE PARKWAY  
SUITE 450  
HOOVER, AL 35242  
P.O. BOX 382348  
BIRMINGHAM, AL 35238-2348  
TELEPHONE: (205) 327-4962

January 8, 2015

The Honorable Alberto Zaragoza, Jr.  
Mayor, City of Vestavia Hills  
City Hall  
513 Montgomery Highway  
Vestavia Hills, Alabama 35216

RE: Jefferson County  
Project Number: STPBH-3715( )  
[Proj. Ref. No. – 100063244]  
Roadway and Intersection Improvements  
on Cahaba River Road from SR-38 (US-  
280) to Key Drive in the City of Vestavia  
Hills

Dear Mayor Zaragoza:

I have enclosed the original Preliminary Engineering Agreement (and one copy) between the State of Alabama and the City of Vestavia Hills, Alabama for the above referenced project.

This Agreement is submitted to the City for approval. After execution by the City Council, please return the original document and the copy, with original signature and the City Seal affixed to both to this office for further handing. A certified resolution, which authorizes the Mayor to sign the Agreement, affixed with the City seal should be included with the original Agreement, as well as with the copy.

If I can supply you with any additional information or clarify any point contained herein, please feel free to contact me at your convenience.

Sincerely,

DeJarvis Leonard, P.E.  
East Central Region Engineer

DL/LAT/SFPB

Enclosure

C: Mrs. Sandra F. P. Bonner  
File w/Enc.



# ALABAMA DEPARTMENT OF TRANSPORTATION

1409 Coliseum Boulevard, Montgomery, Alabama 36110  
P. O. Box 303050, Montgomery, Alabama 36130-3050



**Robert Bentley**  
Governor

December 18, 2014

**John R. Cooper**  
Transportation Director

Mr. DeJarvis Leonard, P. E.  
East Central Region Engineer  
240 Highway 280  
Alabama Department of Transportation  
P. O. Box 1179  
Alexander City, AL 35011-1179

RE: Preliminary Engineering Agreement  
Project STPBH-3715 ( )  
Project Reference Number 100063244  
Roadway and Intersection Improvements on Cahaba  
River Road from SR-38 (US-280) to Key Drive  
in the City of Vestavia Hills  
Jefferson County



Dear Mr. Leonard:

Enclosed is the original Agreement (and one copy) between the State and the City of Vestavia Hills for Project STPBH-3715 ( ), which provides a preliminary engineering program for roadway and intersection improvements on Cahaba River Road from SR-38 (US-280) to Key Drive in the City of Vestavia Hills, Alabama.

Please review this Agreement and, if it is in order, present the original and copy to the City for approval. After execution by the mayor, please return the original document and the copy with original signatures to this office for further handling. A certified resolution affixed with the City seal which authorizes the mayor to sign the Agreement, should be included with the original Agreement as well as with the copy. Also, the City seal should be affixed to both signed Agreements.

If you have any questions concerning this Agreement, please call Jim Doolin at (334) 242-6097.

Sincerely,

Robert J. Jilla  
Multimodal Transportation Engineer



BY: *for Emanuel C. Oranika*  
Dr. Emmanuel C. Oranika  
Metropolitan Transportation Planning Administrator

RJJ: ECO/JD/db  
Enclosures

**AGREEMENT  
FOR  
PRELIMINARY ENGINEERING**

**BETWEEN THE STATE OF ALABAMA** 14 DEC 16 #11:54  
**AND**  
**THE CITY OF VESTAVIA HILLS, ALABAMA**

**Project STPBH-3715 ( )  
Project Reference Number 100063244  
Roadway and Intersection Improvements on Cahaba  
River Road from SR-38 (US-280) to Key Drive  
in the City of Vestavia Hills**

THIS AGREEMENT is made and entered into by and between the State of Alabama, acting by and through the Alabama Department of Transportation, hereinafter referred to as STATE; and the City of Vestavia Hills, Alabama, hereinafter referred to as CITY; in cooperation with the United States Department of Transportation, Federal Highway Administration, hereinafter referred to as the FHWA; and

WHEREAS, a Transportation Improvement Program has been developed for the Birmingham Urbanized Area and certain transportation improvements and priorities are listed therein; and

WHEREAS, it is in the public interest for the STATE and the CITY to cooperate toward the implementation of the Transportation Improvement Program; and

WHEREAS, the STATE and the CITY desire to cooperate in a preliminary design engineering program for roadway and intersection improvements on Cahaba River Road from SR-38 (US-280) to Key Drive in the City of Vestavia Hills.

NOW, THEREFORE, the parties hereto, for, and in consideration of the premises stated herein do hereby mutually promise, stipulate, and agree as follows:

- (1) The CITY will perform or have performed all services required to fulfill the purposes of this Agreement. The East Central Region of the Department of Transportation will be the





lead agency for the STATE relative to the work under this Agreement and will be point of contact for the CITY.

- (2) This Agreement will cover only the preliminary engineering phase of the work.
- (3) The preliminary engineering phase is hereby defined as that work necessary to advance the development of the Project through construction authorization by the FHWA. The preliminary engineering will be performed by or for the CITY and will include all environmental studies and documentation required by FHWA.
- (4) Funding for this Agreement is subject to availability of Federal Aid funds at the time of authorization by FHWA.
- (5) The project will be financed, when eligible for Federal participation, on the basis of 80 percent Federal funds and 20 percent CITY funds. The estimated cost and participation by the various parties is as follows:

	Total Estimated <u>Cost</u>	Estimated Federal <u>Funds</u>	Estimated CITY <u>Funds</u>
Preliminary Engineering	<u>\$648,385</u>	<u>\$518,708</u>	<u>\$129,677</u>
TOTAL	\$648,385	\$518,708	\$129,677

It is understood that the above is an estimate only, and in the event the final cost exceeds the estimate, the CITY will be responsible for its proportional share of the final cost.

- (6) The STATE will assist the CITY in any public involvement action that may be required.
- (7) The CITY will invoice the STATE for the Federal share of the preliminary engineering costs not more frequently than monthly. Requests for reimbursements will be made on forms provided by the STATE and submitted through the East Central Region Engineer for payment.

- (8) Invoices for any phase of work performed by the CITY under the terms of this Agreement will be submitted within twelve (12) months after the completion and acceptance by the STATE of the work. Any invoices submitted after this twelve-month period will not be eligible for payment.
- (9) Any cost for work not eligible for Federal participation will be financed 100 percent by the CITY, which payment will be reflected in the final audit.
- (10) The CITY agrees that in the event the FHWA determines, due to rules and/or regulations of FHWA (including but not limited to delay of the projects, or delay of projects contemplated to be developed and accomplished in sequence to the current projects) that the Federal funds expended on this Project must be refunded to the FHWA, the CITY will reimburse and pay to the STATE a sum of money equal to the total amount of STATE and Federal funds expended under this Agreement.
- (11) Any services of the STATE necessary to carry out the intent of this Agreement will be paid as provided for herein.
- (12) The performance of the work covered by this Agreement will be in accordance with the current regulations and requirements of the STATE and FHWA.
- (13) The STATE will provide without cost to the CITY information available from its records that will facilitate the performance of the work.
- (14) It is clearly understood by both parties that the STATE does not commit any STATE or Federal funds beyond those mentioned herein and that a separate agreement will be required for the construction of the proposed improvement.
- (15) A final audit will be made of all project records after the completion of the project and a copy will be furnished to the Department of Examiners of Public Accounts, in accordance with Act 1994, No. 94-414. A final financial settlement will be made between the parties as reflected by the final audit and this Agreement.

- (16) The CITY will be responsible at all times for all of the work performed under this Agreement and, the CITY will protect, defend, indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, the officials, officers, and employees, in both their official and individual capacities, and their agents and/or assigns, from and against any and all action, damages, claims, loss, liabilities, attorney's fees or expense whatsoever or any amount paid in compromise thereof arising out of or connected with the work performed under this Agreement.
- (17) By entering into this Agreement, the CITY is not an agent of the STATE, its officers, employees, agents or assigns. The CITY is an independent entity from the STATE and nothing in this Agreement creates an agency relationship between the parties.
- (18) By signing this contract, the contracting parties affirm, for the duration of the Agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.
- (19) The terms of this Agreement may be modified by supplemental agreement duly executed by the parties hereto.
- (20) This Agreement will remain in effect, unless otherwise terminated by either party upon the delivery of a thirty (30) day notice of termination.
- (21) Nothing will be construed under the terms of this Agreement by the STATE or the CITY that will cause any conflict with Section 23-1-63, Code of Alabama (7/24<sup>th</sup> Law).
- (22) Exhibits M and N are attached and hereby made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto cause this Agreement to be executed by those officers, officials, and persons thereunto duly authorized, and the Agreement is deemed to be dated and to be effective on the date stated hereinafter as the date of the approval of the Governor of Alabama.

SEAL

ATTEST:

CITY OF VESTAVIA HILLS, ALABAMA

\_\_\_\_\_  
City Clerk (Signature)

By: \_\_\_\_\_  
Mayor (Signature)

\_\_\_\_\_  
Type name of Clerk

\_\_\_\_\_  
Type name of Mayor

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Chief Counsel, Jim R. Ippolito, Jr. *Jim R. Ippolito, Jr.*

RECOMMENDED FOR APPROVAL:

\_\_\_\_\_  
East Central Regional Engineer, DeJarvis Leonard, P. E.

\_\_\_\_\_  
Multimodal Transportation Engineer,  
Robert J. Jilla

\_\_\_\_\_  
Chief Engineer, Ronald L. Baldwin, P. E.

**STATE OF ALABAMA  
ACTING BY AND THROUGH THE  
ALABAMA DEPARTMENT OF TRANSPORTATION**

\_\_\_\_\_  
Transportation Director, John R. Cooper

The foregoing Agreement is hereby approved by the Governor of the State of Alabama  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
**GOVERNOR OF ALABAMA, ROBERT BENTLEY**



7/18/90

**Exhibit M****CERTIFICATION**

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

07/01/2002

## EXHIBIT N

### FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this agreement shall contravene any statute or Constitutional provision of amendment, either now in effect or which may, during the course of this agreement, be enacted, then the conflicting provision in the agreement shall be deemed null and void.

### TERMINATION DUE TO INSUFFICIENT FUNDS

If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.

In the event of proration of the fund from which payment under this agreement is to be made, agreement will be subject to termination.

### ADR CLAUSE

For any and all disputes arising under the terms of this contract, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation by and through the Attorney General Office of Administrative Hearings or where appropriate, private mediators.



RESOLUTION NUMBER \_\_\_\_\_

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

1. That the City enters into an Agreement Number with the State of Alabama, acting by and through the Alabama Department of Transportation for:

Preliminary Engineering Agreement Project STPBH-3715( ), Project Reference Number 100063244 for Roadway and Intersection Improvements on Cahaba River Road from SR-38(US-280) to Key Drive in the City of Vestavia Hills.

2. That the Agreement be executed in the name of the City, by the Mayor, for and on its behalf:
3. That the Agreement be attested by the City Clerk and the seal of the City affixed thereto.

BE IT FURTHER RESOLVED, that upon the completion of the execution of the Agreement by all parties that a copy of such Agreement be kept on file by the City Clerk.

Passed, adopted and approved this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

ATTESTED:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor, City of Vestavia Hills

I, the undersigned qualified and acting clerk of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and that such resolution is on file in the City Clerk's office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
City Clerk

**RESOLUTION NUMBER 4780**

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT WITH ALABAMA DEPARTMENT OF TRANSPORTATION FOR RIGHT-OF-WAY ACQUISITION PROGRAM FOR PROJECT STPBH-3715(), PROJECT REFERENCE NUMBER 100063245 FOR ROADWAY AND INTERSECTION IMPROVEMENTS ON CAHABA RIVER ROAD FROM SR-38 (US-280) TO KEY DRIVE IN CITY OF VESTAVIA HILLS**

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

1. That the City enters into an Agreement Number with the State of Alabama, acting by and through the Alabama Department of Transportation for:  
Right-of-Way Acquisition Program for Project STPBH-3715(), Project Reference Number 100063245 for Roadway and Intersection Improvements on Cahaba River Road from SR-38 (US-280) to Key Drive in City of Vestavia Hills; which Agreement is before this Council.
2. That the Agreement be executed in the name of the City, by the City Manager and the Mayor, for and on its behalf; and
3. That the Agreement be attested by the City Clerk and the Seal of the City affixed thereto.

**BE IT FURTHER RESOLVED** that this Resolution Number 4780 shall be conditioned upon successful approval and completion of the execution of the Agreement by all parties and that upon the completion of the execution of the Agreement by all parties, that a copy of such Agreement be kept on file by the City Clerk.

**ADOPTED and APPROVED** this the 28<sup>th</sup> day of December, 2015.

Alberto C. Zaragoza, Jr  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

CERTIFICATION:

I, the undersigned qualified and acting clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true copy of a Resolution passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the 28<sup>th</sup> day of December, 2015, and that such Resolution is on file in the City Clerk's office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

---

City Clerk

SEAL

**ALABAMA**  
**DEPARTMENT OF TRANSPORTATION**  
EAST CENTRAL REGION



*Bentley*  
Governor

OFFICE OF REGIONAL ENGINEER  
100 CORPORATE PARKWAY  
SUITE 450  
HOOVER, AL 35242  
P.O. BOX 382348  
BIRMINGHAM, AL 35238-2348  
TELEPHONE: (205) 327-4962



*John R. Cooper*  
Transportation Director

January 8, 2015

The Honorable Alberto Zaragoza, Jr.  
Mayor, City of Vestavia Hills  
City Hall  
513 Montgomery Highway  
Vestavia Hills, Alabama 35216

RE: Jefferson County  
Project Number: STPBH-3715( )  
[Proj. Ref. No. – 100063245]  
Roadway and Intersection Improvements  
on Cahaba River Road from SR-38 (US-  
280) to Key Drive in the City of Vestavia  
Hills

Dear Mayor Zaragoza:

I have enclosed the original Right-of-Way Agreement (and one copy) between the State of Alabama and the City of Vestavia Hills, Alabama for the above referenced project.

This Agreement is submitted to the City for approval. After execution by the City Council, please return the original document and the copy, with original signature and the City Seal affixed to both to this office for further handing. A certified resolution, which authorizes the Mayor to sign the Agreement, affixed with the City seal should be included with the original Agreement, as well as with the copy.

If I can supply you with any additional information or clarify any point contained herein, please feel free to contact me at your convenience.

Sincerely,

DeJarvis Leonard, P.E.  
East Central Region Engineer

DL/LAT/SFPB

Enclosure

C: Mrs. Sandra F. P. Bonner  
File w/Enc.



# ALABAMA DEPARTMENT OF TRANSPORTATION

1409 Coliseum Boulevard, Montgomery, Alabama 36110  
P. O. Box 303050, Montgomery, Alabama 36130-3050



December 18, 2014

**Robert Bentley**  
Governor

**John R. Cooper**  
Transportation Director

Mr. DeJarvis Leonard, P. E.  
East Central Region Engineer  
240 Highway 280  
Alabama Department of Transportation  
P. O. Box 1179  
Alexander City, AL 35011-1179

RE: Right-of-Way Agreement  
Project STPBH-3715 ( )  
Project Reference Number 100063245  
Roadway and Intersection Improvements on Cahaba  
River Road from SR-38 (US-280) to Key Drive  
in the City of Vestavia Hills  
Jefferson County



Dear Mr. Leonard:

Enclosed is the original Agreement (and one copy) between the State and the City of Vestavia Hills for Project STPBH-3715 ( ), which provides a right-of-way acquisition program for roadway and intersection improvements on Cahaba River Road from SR-38 (US-280) to Key Drive in the City of Vestavia Hills, Alabama.

Please review this Agreement and, if it is in order, present the original and copy to the City for approval. After execution by the mayor, please return the original document and the copy with original signatures to this office for further handling. A certified resolution affixed with the City seal which authorizes the mayor to sign the Agreement, should be included with the original Agreement as well as with the copy. Also, the City seal should be affixed to both signed Agreements.

If you have any questions concerning this Agreement, please call Jim Doolin at (334) 242-6097.

Sincerely,

Robert J. Jilla  
Multimodal Transportation Engineer

*for (copy) Doolin*  
BY: \_\_\_\_\_  
Dr. Emmanuel C. Oranika  
Metropolitan Transportation Planning Administrator

RJJ: ECO/JD/db  
Enclosures

**AGREEMENT  
FOR  
RIGHT-OF-WAY ACQUISITION**

**BETWEEN THE STATE OF ALABAMA  
AND  
THE CITY OF VESTAVIA HILLS, ALABAMA**

**Project STPBH-3715 ( )  
Project Reference Number 100063245  
Roadway and Intersection Improvements on  
Cahaba River Road from SR-38 (US-280) to Key Drive  
in the City of Vestavia Hills**

14 DEC 16 PM 8:33

THIS AGREEMENT is made and entered into by and between the State of Alabama, acting by and through the Alabama Department of Transportation, hereinafter referred to as STATE; and the City of Vestavia Hills, Alabama, hereinafter referred to as CITY; in cooperation with the United States Department of Transportation, Federal Highway Administration, hereinafter referred to as the FHWA; and

WHEREAS, a Transportation Improvement Program has been developed for the Birmingham Urbanized Area and certain transportation improvements and priorities are listed therein; and

WHEREAS, it is in the public interest for the STATE and the CITY to cooperate toward the implementation of the Transportation Improvement Program; and

WHEREAS, the STATE and CITY desire to cooperate in a right-of-way acquisition program for roadway and intersection improvements on Cahaba River Road from SR-38 (US-280) to Key Drive in the City of Vestavia Hills.

NOW, THEREFORE, the parties hereto, for, and in consideration of the premises stated herein do hereby mutually promise, stipulate, and agree as follows:

- (1) This Agreement will cover only the right-of-way acquisition phase of the work.



- (2) The right-of-way purchased under terms of this Agreement will be acquired by the CITY and in accordance with current regulations of the STATE and FHWA. The CITY will adhere to all STATE and FHWA regulations pertaining to the Acquisition of ROW and will coordinate their activities with the East Central Region Acquisition Manager for guidance. The property will be acquired in the name of the CITY with any condemnation or other legal proceedings being performed by the CITY.
- (3) The CITY shall follow all Federal regulations related to the Management, Leasing, and Disposal of right-of-way, uneconomic remnants and excess right-of-way as found in CFR 23 §710 Subpart D. Any change in access control, disposal of excess right-of-way, and uneconomic remnants shall be approved by ALDOT. Proceeds from Leases and Disposals shall be credited to the Project or to the Title 23 Collector Account.
- (4) Funding for this Agreement is subject to availability of Federal Aid funds at the time of authorization by FHWA. Any deficiency in Federal Aid, or overrun in the Project costs will be borne by the CITY. In the event of an under run in the Project costs, the amount of Federal Aid funds will be 80 percent of eligible costs.
- (5) This Project will be administered by the CITY and all costs will be financed, when eligible for Federal participation, on the basis of 80 percent Federal funds and 20 percent CITY funds. The estimated cost and participation by the various parties are as follows:

	<u>Total Estimated</u>	<u>Estimated Federal Funds</u>	<u>Estimated CITY Funds</u>
Right-of-way acquisition	<u>\$1,000,000</u>	<u>\$800,000</u>	<u>\$200,000</u>
TOTAL	\$1,000,000	\$800,000	\$200,000

It is understood that the above is an estimate only, and in the event the final cost exceeds the estimate, the CITY will be responsible for its proportional share.

- (6) Any cost for work not eligible for Federal reimbursement will be financed 100 percent by the CITY, which payment will be reflected in the final audit.
- (7) The CITY agrees that in the event the FHWA determines, due to rules and/or regulations of FHWA (including but not limited to delay of the projects, or delay of projects contemplated to be developed and accomplished in sequence to the current projects) that Federal funds expended on this Project must be refunded to the FHWA, the CITY will reimburse and pay to the STATE a sum of money equal to the total amount of STATE and Federal funds expended under this Agreement.
- (8) The CITY will invoice the STATE for the Federal share of right-of-way acquisition costs not more frequently than monthly. Requests for reimbursements will be made on forms provided by the STATE and submitted through the East Central Region Engineer for payment.
- (9) Invoices for any phase of work performed by the CITY under the terms of this Agreement will be submitted within twelve (12) months after completion and acceptance by the STATE of the work. Any invoices submitted after this twelve-month period will not be eligible for payment.
- (10) The performance of the work covered by this Agreement will be in accordance with the current regulations and requirements of the STATE and FHWA.
- (11) The STATE will assist the CITY, if necessary, in any public involvement actions that may be required.
- (12) The STATE will provide without cost to the CITY, information available from its records that will facilitate the performance of the work.

- (13) It is clearly understood by the parties that the STATE does not commit any STATE or Federal funds beyond those mentioned herein and that a separate Agreement will be required for the construction of the proposed improvement.
- (14) A final audit will be made of all Project records after completion of the Project and a copy will be furnished to the Department of Examiners of Public Accounts, in accordance with Act 1994, No. 94-414. A final financial settlement will be made between the parties as reflected by the audit and this Agreement.
- (15) The CITY will be responsible at all times for all of the work performed under this Agreement and, the CITY will protect, defend, indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, the officials, officers, and employees, in both their official and individual capacities, and their agents and/or assigns, from and against any and all action, damages, claims, loss, liabilities, attorney's fees or expense whatsoever or any amount paid in compromise thereof arising out of or connected with the work performed under this Agreement.
- (16) By entering into this Agreement, the CITY is not an agent of the STATE, its officers, employees, agents or assigns. The CITY is an independent entity from the STATE and nothing in this Agreement creates an agency relationship between the parties.
- (17) By signing this contract, the contracting parties affirm, for the duration of the Agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

- (18) The terms of this Agreement may be modified by supplemental agreement duly executed by the parties hereto.
- (19) This Agreement will remain in effect, unless otherwise terminated by either party upon the delivery of a thirty (30) day notice of termination.
- (20) Nothing will be construed under the terms of this Agreement by the STATE or the CITY that will cause any conflict with Section 23-1-63, Code of Alabama (7/24<sup>th</sup> Law).
- (21) Exhibits M and N are attached and hereby made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto cause this Agreement to be executed by those officers, officials, and persons thereunto duly authorized, and the Agreement is deemed to be dated and to be effective on the date stated hereinafter as the date of approval of the Governor of Alabama.

SEAL

ATTEST:

CITY OF VESTAVIA HILLS, ALABAMA

\_\_\_\_\_  
City Clerk (Signature)

BY: \_\_\_\_\_  
Mayor (Signature)

\_\_\_\_\_  
Type name of Clerk

\_\_\_\_\_  
Type name of Mayor

APPROVED AS TO FORM:

BY:   
Chief Counsel, Jim R. Ippolito, Jr.

RECOMMENDED FOR APPROVAL:

\_\_\_\_\_  
East Central Regional Engineer, DeJarvis Leonard, P. E.

\_\_\_\_\_  
Multimodal Transportation Engineer,  
Robert J. Jilla

\_\_\_\_\_  
Chief Engineer, Ronald L. Baldwin, P. E.

STATE OF ALABAMA  
ACTING BY AND THROUGH THE  
ALABAMA DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
Transportation Director, John R. Cooper

The foregoing Agreement is hereby approved by the Governor of the State of Alabama  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
GOVERNOR OF ALABAMA, ROBERT BENTLEY



7/18/90

Exhibit M

**CERTIFICATION**

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.



07/01/2002

## EXHIBIT N

### FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this agreement shall contravene any statute or Constitutional provision of amendment, either now in effect or which may, during the course of this agreement, be enacted, then the conflicting provision in the agreement shall be deemed null and void.

### TERMINATION DUE TO INSUFFICIENT FUNDS

If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.

In the event of proration of the fund from which payment under this agreement is to be made, agreement will be subject to termination.

### ADR CLAUSE

For any and all disputes arising under the terms of this contract, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation by and through the Attorney General Office of Administrative Hearings or where appropriate, private mediators.

RESOLUTION NUMBER \_\_\_\_\_

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

1. That the City enters into an Agreement with the State of Alabama, acting by and through the Alabama Department of Transportation for:

Right-of-Way Acquisition Program for Project STPBH-3715 ( ), Project Reference Number 100063245 for roadway and intersection improvements on Cahaba River Road from SR-38 (US-280) to Key Drive in the City of Vestavia Hills; which Agreement is before this Council.

2. That the Agreement be executed in the name of the City, by its Mayor, for and on its behalf.
3. That the Agreement be attested by the City Clerk and the seal of the City affixed thereto.

BE IT FURTHER RESOLVED, that upon the completion of the execution of the Agreement by all parties, that a copy of such Agreement be kept on file by the City Clerk.

Passed, adopted and approved this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

ATTESTED:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

I, the undersigned qualified and acting clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, and that such resolution is on file in the City Clerk's office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
City Clerk

## **RESOLUTION NUMBER 4781**

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT WITH ALABAMA DEPARTMENT OF TRANSPORTATION FOR UTILITY AND CONSTRUCTION AGREEMENT FOR PROJECT STPBH-3715(), PROJECT REFERENCE NUMBER 100063246 AND 100063247 FOR ROADWAY AND INTERSECTION IMPROVEMENTS ON CAHABA RIVER ROAD FROM SR-38 (US-280) TO KEY DRIVE IN CITY OF VESTAVIA HILLS**

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

1. That the City enters into an Agreement Number with the State of Alabama, acting by and through the Alabama Department of Transportation for:  

Utility and Construction Agreement for Project STPBH-3715(), Project Reference Number 100063246 and 100063247 for Roadway and Intersection Improvements on Cahaba River Road from SR-38 (US-280) to Key Drive in City of Vestavia Hills; which Agreement is before this Council.
2. That the Agreement be executed in the name of the City, by the City Manager and the Mayor, for and on its behalf; and
3. That the Agreement be attested by the City Clerk and the Seal of the City affixed thereto.

**BE IT FURTHER RESOLVED** that this Resolution Number 4781 shall be conditioned upon successful approval and completion of the execution of the Agreement by all parties and that upon the completion of the execution of the Agreement by all parties, that a copy of such Agreement be kept on file by the City Clerk.

**ADOPTED and APPROVED** this the 28<sup>th</sup> day of December, 2015.

Alberto C. Zaragoza, Jr  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

CERTIFICATION:

I, the undersigned qualified and acting clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true copy of a Resolution passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the 28<sup>th</sup> day of December, 2015, and that such Resolution is on file in the City Clerk's office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

---

City Clerk

SEAL

**ALABAMA**  
**DEPARTMENT OF TRANSPORTATION**  
EAST CENTRAL REGION



Bentley  
Governor

**OFFICE OF REGIONAL ENGINEER**

100 CORPORATE PARKWAY  
SUITE 450  
HOOVER, AL 35242  
P.O. BOX 382348  
BIRMINGHAM, AL 35238-2348  
TELEPHONE: (205) 327-4962



John R. Cooper  
Transportation Director

January 8, 2015

The Honorable Alberto Zaragoza, Jr.  
Mayor, City of Vestavia Hills  
City Hall  
513 Montgomery Highway  
Vestavia Hills, Alabama 35216

RE: Jefferson County  
Project Number: STPBH-3715()  
[Proj. Ref. No. – 100063246]  
[Proj. Ref. No. – 100063247]  
Roadway and Intersection Improvements  
on Cahaba River Road from SR-38 (US-  
280) to Key Drive in the City of Vestavia  
Hills

Dear Mayor Zaragoza:

I have enclosed the original Utility and Construction Agreement (and one copy) between the State of Alabama and the City of Vestavia Hills, Alabama for the above referenced project.

This Agreement is submitted to the City for approval. After execution by the City Council, please return the original document and the copy, with original signature and the City Seal affixed to both to this office for further handing. A certified resolution, which authorizes the Mayor to sign the Agreement, affixed with the City seal should be included with the original Agreement, as well as with the copy.

If I can supply you with any additional information or clarify any point contained herein, please feel free to contact me at your convenience.

Sincerely,

DeJarvis Leonard, P.E.  
East Central Region Engineer

DL/LAT/SFPB

Enclosure

C: Mrs. Sandra F. P. Bonner  
File w/Enc.



# ALABAMA DEPARTMENT OF TRANSPORTATION

1409 Coliseum Boulevard, Montgomery, Alabama 36110  
P. O. Box 303050, Montgomery, Alabama 36130-3050



Robert Bentley  
Governor

December 18, 2014

John R. Cooper  
Transportation Director

Mr. DeJarvis Leonard, P. E.  
East Central Region Engineer  
240 Highway 280  
Alabama Department of Transportation  
P. O. Box 1179  
Alexander City, AL 35011-1179

RE: Utility and Construction Agreement  
Project STPBH-3715 ( )  
Project Reference Number 100063246  
Project Reference Number 100063247  
Roadway and Intersection Improvements on Cahaba  
River Road from SR-38 (US-280) to Key Drive  
in the City of Vestavia Hills  
Jefferson County



Dear Mr. Leonard:

Enclosed is the original Agreement (and one copy) between the State and the City of Vestavia Hills for Project STPBH-3715 ( ), which provides a utility and construction program for roadway and intersection improvements on Cahaba River Road from SR-38 (US-280) to Key Drive in the City of Vestavia Hills, Alabama.

Please review this Agreement and, if it is in order, present the original and copy to the City for approval. After execution by the mayor, please return the original document and the copy with original signatures to this office for further handling. A certified resolution affixed with the City seal which authorizes the mayor to sign the Agreement, should be included with the original Agreement as well as with the copy. Also, the City seal should be affixed to both signed Agreements.

If you have any questions concerning this Agreement, please call Jim Doolin at (334) 242-6097.



Sincerely,

Robert J. Jilla  
Multimodal Transportation Engineer

BY:   
Dr. Emmanuel C. Oranika  
Metropolitan Transportation Planning Administrator

RJJ: ECO/JD/db  
Enclosures



K15 0426

**AGREEMENT  
FOR  
UTILITY AND CONSTRUCTION**

**BETWEEN THE STATE OF ALABAMA  
AND  
THE CITY OF VESTAVIA HILLS, ALABAMA**

**Project STPBH-3715 ( )  
Project Reference Number 100063246  
Project Reference Number 100063247  
Road and Intersection Improvements on  
Cahaba River Road from SR-38 (US-280) to Key Drive  
in the City of Vestavia Hills**

14 DEC 16 PM 3:33

THIS AGREEMENT is made and entered into by and between the State of Alabama, acting by and through the Alabama Department of Transportation, hereinafter referred to as STATE; and the City of Vestavia Hills, Alabama, hereinafter referred to as CITY; in cooperation with the United States Department of Transportation, Federal Highway Administration, hereinafter referred to as the FHWA; and

WHEREAS, a Transportation Improvement Program has been developed for the Birmingham Urbanized Area and certain transportation improvements and priorities are listed therein; and

WHEREAS, it is in the public interest for the STATE and the CITY to cooperate toward the implementation of the Transportation Improvement Program; and

WHEREAS, the STATE and CITY desire to cooperate in a utility and construction program for roadway and intersection improvements on Cahaba River Road from SR-38 (US-280) to Key Drive in the City of Vestavia Hills.

NOW, THEREFORE, the parties hereto, for, and in consideration of the premises stated herein do hereby mutually promise, stipulate, and agree as follows:



- (1) This Agreement will cover utilities and all aspects of construction for the proposed improvements, including construction engineering and inspection during the course of the work, all in accordance with plans approved by the STATE.
- (2) Funding for this Agreement is subject to availability of Federal Aid funds at the time of authorization by FHWA. Any deficiency in Federal Aid, or overrun in construction costs will be borne by the CITY. In the event of an under run in construction costs, the amount of Federal Aid funds will be 80 percent of eligible costs.
- (3) The Project will be administered by the STATE and all cost will be financed, when eligible for Federal participation, on the basis of 80 percent Federal funds and 20 percent CITY funds. The estimated cost and participation by the various parties are as follows:

	<u>Total Estimated</u>	<u>Estimated Federal Funds</u>	<u>Estimated CITY Funds</u>
Utilities construction, including engineering and inspection	\$1,250,000	\$1,000,000	\$250,000
	<u>\$5,187,075</u>	<u>\$4,149,660</u>	<u>\$1,037,415</u>
TOTAL	\$6,437,075	\$5,149,660	\$1,287,415

It is understood that the above is an estimate only, and in the event the final cost exceeds the estimate, the CITY will be responsible for its proportional share as above noted and the CITY agrees to pay same to STATE; or in the event the cost is less than the estimate, the CITY will receive a refund accordingly from the STATE.

- (4) Any cost for work not eligible for Federal reimbursement will be financed 100 percent by the CITY, which payment will be reflected in the final audit.
- (5) The CITY will coordinate any required adjustments to utilities with the utility company involved in accordance with usual STATE procedures. Any utility expenses involved which are eligible for STATE reimbursement or payment under state law will be

considered as a part of the Project cost and will be paid as provided herein, with the CITY paying its proportional share. The STATE will not be liable for utility expenses which are not eligible for STATE reimbursement or payment under state law.

- (6) The performance of the work covered by this Agreement will be in accordance with the current regulations and requirements of the STATE and FHWA.
- (7) The construction of the improvements will be by contract and the STATE will be responsible for advertisement and receipt of bids and for the award of the contract. Following receipt of bids and prior to the award of the contract, the STATE will invoice the CITY for its prorata share of the estimated construction cost as reflected by the bid of the successful bidder plus engineering and inspection cost, and the CITY will promptly pay this estimated cost before award of the contract. The STATE will not award the contract until it is in receipt of the estimated cost payable by the CITY as reflected by the bid of the successful bidder, plus the engineering and inspection cost.
- (8) Upon completion and acceptance of the work by the STATE, the CITY will assume full responsibility for maintenance of that part of the facility which is not part of the State Highway Maintenance System.
- (9) It is clearly understood by the parties that the STATE does not commit any STATE or Federal funds beyond those mentioned herein.
- (10) The CITY agrees that in the event the FHWA determines, under its rules and/or regulations that Federal funds expended on this Project (including but not limited to delay of the projects, or delay of projects contemplated to be developed and accomplished in sequence to the current projects) must be refunded to the FHWA, the CITY shall

reimburse and pay to the STATE for and on behalf of FHWA, a sum of money equal to the total amount of STATE and Federal funds expended under this Agreement.

- (11) A final audit will be made of all Project records after completion of the Project and a copy will be furnished to the Department of Examiners of Public Accounts, in accordance with Act 1994, No. 94-414. A final financial settlement will be made between the parties as reflected by the audit and this Agreement.
- (12) The CITY will be responsible at all times for all of the work performed under this Agreement and, the CITY will protect, defend, indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, the officials, officers, and employees, in both their official and individual capacities, and their agents and/or assigns, from and against any and all action, damages, claims, loss, liabilities, attorney's fees or expense whatsoever or any amount paid in compromise thereof arising out of or connected with the work performed under this Agreement.
- (13) By entering into this Agreement, the CITY is not an agent of the STATE, its officers, employees, agents or assigns. The CITY is an independent entity from the STATE and nothing in this Agreement creates an agency relationship between the parties.
- (14) By signing this contract, the contracting parties affirm, for the duration of the Agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

- (15) The terms of this Agreement may be modified by supplemental agreement duly executed by the parties hereto.
- (16) This Agreement will remain in effect, unless otherwise terminated by either party upon the delivery of a thirty (30) day notice of termination.
- (17) Nothing will be construed under the terms of this Agreement by the STATE or the CITY that will cause any conflict with Section 23-1-63, Code of Alabama (7/24<sup>th</sup> Law).
- (18) Exhibits M and N are attached and hereby made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto cause this Agreement to be executed by those officers, officials, and persons thereunto duly authorized, and the Agreement is deemed to be dated and to be effective on the date stated hereinafter as the date of approval of the Governor of Alabama.

SEAL

ATTEST:

CITY OF VESTAVIA HILLS, ALABAMA

\_\_\_\_\_  
City Clerk (Signature)

BY: \_\_\_\_\_  
Mayor (Signature)

\_\_\_\_\_  
Type name of Clerk

\_\_\_\_\_  
Type name of Mayor

APPROVED AS TO FORM:

BY: *Jim R. Ippolito*  
Chief Counsel, Jim R. Ippolito, *By RJA*

RECOMMENDED FOR APPROVAL:

\_\_\_\_\_  
East Central Regional Engineer, DeJarvis Leonard, P. E.

\_\_\_\_\_  
Multimodal Transportation Engineer,  
Robert J. Jilla

\_\_\_\_\_  
Chief Engineer, Ronald L. Baldwin, P. E.

STATE OF ALABAMA  
ACTING BY AND THROUGH THE  
ALABAMA DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
Transportation Director, John R. Cooper

The foregoing Agreement is hereby approved by the Governor of the State of Alabama  
this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
GOVERNOR OF ALABAMA, ROBERT BENTLEY



7/18/90

Exhibit M

**CERTIFICATION**

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

✓

07/01/2002

## EXHIBIT N

### FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this agreement shall contravene any statute or Constitutional provision of amendment, either now in effect or which may, during the course of this agreement, be enacted, then the conflicting provision in the agreement shall be deemed null and void.

### TERMINATION DUE TO INSUFFICIENT FUNDS

If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.

In the event of proration of the fund from which payment under this agreement is to be made, agreement will be subject to termination.

### ADR CLAUSE

For any and all disputes arising under the terms of this contract, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation by and through the Attorney General Office of Administrative Hearings or where appropriate, private mediators.

## **RESOLUTION NUMBER 4782**

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER A MULTI-JURISDICTIONAL AGREEMENT WITH JEFFERSON COUNTY AND THE CITIES OF MOUNTAIN BROOK AND BIRMINGHAM FOR PROJECT NUMBER STPBH-3715() CAHABA RIVER ROAD FROM SR-38 (US 280) TO KEY DRIVE**

**WHEREAS**, Jefferson County and the Cities of Vestavia Hills, Mountain Brook and Birmingham desire to make certain improvements to Cahaba River Road from Highway 280 to Key Drive (Project); and

**WHEREAS**, the Project traverses through all four jurisdictions; and

**WHEREAS**, all four parties desire to divide the costs pursuant to the terms and conditions of a multi-jurisdictional agreement (Agreement), a copy of which is marked as “Exhibit A,” attached to and incorporated into this Resolution Number 4782 as though written fully therein; and

**WHEREAS**, the Mayor and City Council find it is in the best public interest to participate in said Agreement.

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

1. The Mayor and City Manager are hereby authorized to execute and deliver said Agreement as detailed in Exhibit A; and
2. This Resolution Number 4782 is conditioned upon successful execution by all jurisdictions; and
3. This Resolution Number 4782 is effective immediately upon adoption and approval.

**ADOPTED and APPROVED** this the 28<sup>th</sup> day of December, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

JEFFERSON COUNTY

STATE OF ALABAMA

**AGREEMENT**  
**TO**  
**SHARE RESPONSIBILITIES**  
(Joint Services Agreement)

**Various Roadway Improvements on Cahaba River Road**  
**From Highway 280 to Key Drive**

The CITY OF VESTAVIA HILLS, ALABAMA (Vestavia), JEFFERSON COUNTY, ALABAMA (County), the CITY OF BIRMINGHAM, ALABAMA (Birmingham), and the CITY OF MOUNTAIN BROOK, ALABAMA (Mountain Brook), enter into this agreement on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. The provisions of this agreement shall become effective \_\_\_\_\_, 20\_\_\_\_.

**WHEREAS**, Vestavia, the County, Birmingham, and Mountain Brook, desire to make certain improvements to **Cahaba River Road from Highway 280 to Key Drive (Project)**; and

**WHEREAS**, the **Project** traverses through the four jurisdictions, Vestavia, County, Birmingham, and Mountain Brook; and

**WHEREAS**, all four parties desire to divide the Preliminary Engineering costs based on the percentage of the **Project** in each jurisdiction as follows: Vestavia, the County, Birmingham, and Mountain Brook will divide the responsibility as follows: Vestavia responsibility being 26% of the costs, County responsibility being 36% of the costs, Birmingham responsibility being 32% of the costs, and Mountain Brook responsibility being 5% for the costs. Vestavia, the County, Birmingham, and Mountain Brook desire to establish their agreement herewith; and

**WHEREAS**, a copy of the projected preliminary engineering costs as approved by ALDOT is included as an exhibit and represent a not to exceed cost for each entity

**WHEREAS**, the Alabama Legislature adopted Alabama Code §41-16-50(b) which provides in pertinent part, that:

(b) The governing bodies of two or more contracting agencies, as enumerated in subsection (a), or the governing bodies of two or more counties, or the governing bodies of two or more city or county boards of education, may provide, by joint agreement, for the purchase of labor, services, or work, or for the purchase or lease of materials, equipment, supplies, or other personal property for use by their respective agencies. The agreement shall be entered into by similar ordinances, in the case of municipalities, or resolutions, in the case of other contracting agencies, adopted by each of the participating governing bodies, which shall set forth the categories of labor, services, or work, or for the purchase or lease of materials, equipment, supplies, or other personal property to be purchased, the manner of advertising for bids and the awarding of contracts, the method of payment by each participating contracting agency, and other matters deemed necessary to carry out the purposes of the agreement. Each contracting agency's share of expenditures for purchases under any agreement shall be appropriated and paid in the manner set forth in the agreement and in the same manner as for other expenses of the contracting agency. The contracting agencies entering into a joint agreement, as herein permitted, may designate a joint purchasing or bidding agent, and the agent shall comply with

this article. Purchases, contracts, or agreements made pursuant to a joint purchasing or bidding agreement shall be subject to all terms and conditions of this article.

; and

**WHEREAS**, the Alabama Legislature adopted Alabama Code §11-102-1 which provides that:

Except as otherwise provided in this chapter or as otherwise prohibited by law, any county or incorporated municipality of the State of Alabama may enter into a written contract with any one or more counties or incorporated municipalities for the joint exercise of any power or service that state or local law authorizes each or the contracting entities to exercise individually. For purpose of this chapter, it is sufficient if each of the contracting entities has the authority to exercise or perform the power or service which is the subject of the contract regardless of the manner in which the power or service shall be exercised or performed, provided that at least one of the contracting parties has the authority to exercise their power or service in the manner agreed upon by the parties. The joint contract may provide for the power or service to be exercised by one or more entities on behalf of the others or jointly by the entities.

; and

**WHEREAS**, all parties find that it is in the public interest that the parties enter into a joint purchasing/service agreement in accordance with the Alabama Code §41-16-50(b) and §11-102-1, *et seq.*, in order to authorize the City of Vestavia Hills to engage in the purchase of certain services and materials through the competitive bid process for use by the parties, i.e. in order for Vestavia, the County, Birmingham, and Mountain Brook to make certain improvements to **Cahaba River Road from Highway 280 to Key Drive**.

**IN CONSIDERATION OF THE PREMISES** stated herein Vestavia, the County, Birmingham, and Mountain Brook mutually agree as follows:

- I. **PURPOSE:** The Parties agree to jointly undertake to provide for the following improvements to **Cahaba River Road from Highway 280 to Key Drive (Project)**: milling, resurfacing, and other necessary repairs (including storm drains, inlets and road capacity expansion) to the road bed for placement of the final pavement wearing surface.
- II. **RESPONSIBILITIES:** The Parties have authorized this agreement pursuant to similar ordinances passed by Vestavia, Birmingham, and Mountain Brook and a similar resolution passed by the County, adopted by the governing body of each party, which sets forth the categories of labor, services, or work, or for the purchase or lease of materials, equipment, supplies, or other personal property to be purchased, the manner of advertising for bids and the awarding of contracts, the method of payment by each participating contracting agency, and other matters deemed necessary to carry out the purposes of this agreement. The Parties agree to the following:
  - a. Vestavia, the County, Birmingham, and Mountain Brook jointly agree that Goodwyn, Mills, and Cawood (GMC) is an authorized professional services organization authorized to perform services as an ALDOT authorized engineering firm.
  - b. Vestavia, the County, Birmingham, and Mountain Brook agree to the terms of a man day fee proposal for engineering services submitted by GMC and approved by ALDOT.
  - c. The City of Vestavia Hills will enter into a separate agreement with GMC to provide the design and construction plans. Vestavia will invoice the County, Birmingham, and Mountain Brook for their respective share of the consultant fee. The County's share being 36%, Birmingham's share being 32%, and Mountain Brook's share being 5%.



- d. During the corridor study and early stages of engineering performed by GMC, the extent and scope of the required work associated with improvement to Cahaba River Rd will be better determined. This information will then be utilized to better determine the construction, right of way and utility cost share by each entity.
  - e. Due to the use of federal funds, the Alabama Department of Transportation (ALDOT) is designated as the bidding agent and will advertise and accept bids for the construction of the **Project**.
  - f. ALDOT will determine the low bidder and enter into a separate Agreement with the contractor for the construction of the **Project**.
  - g. ALDOT will invoice Vestavia for the required 20% local match for the Project. Vestavia will invoice the County, Birmingham, and Mountain Brook for their respective share of the local match. The share of construction costs shall be mutually agreed by all parties through an amendment of this agreement based upon the extent of work to be constructed in each party's road segment.
  - h. Each party's share of the expenditures for purchases under this agreement shall be appropriated and paid in the manner set forth in this agreement and in the same manner as for other expenses of the entity.
  - i. This agreement shall be subject to all terms and conditions of the applicable Alabama Bid Laws.
- III. TERM: The duration of this contract shall not exceed three years from the date of its final execution of the end of the **Project**, whichever first occurs.
- IV. IMPLEMENTATION: The Parties agree as follows:
- a. Vestavia will assume responsibility for the management of the **Project**.
  - b. Vestavia will provide Construction, Engineering & Inspection (CE&I) during the construction phase of the **Project** with the County, Birmingham, and Mountain Brook providing additional staff for the inspection for the portion of the **Project** within their jurisdiction.
  - c. The parties expressly agree that Vestavia does not assume any risk or future liability, or any future responsibility for any portion of **Cahaba River Road** located within the jurisdictions of the County, Birmingham, or Mountain Brook.
  - d. Except as expressly provided in this agreement, no party for the contract shall have any power to incur any debt which shall become the responsibility of any other contracting party.
  - e. Except as specifically provided in this agreement, the execution of this agreement or the performance of any act pursuant to this provisions of thereof shall not be deemed or construed to have effect of creating between the parties the relationship of principal or agent or of partnership or of joint venture.
  - f. Except as otherwise provided by law and as limited by this agreement between the parties, any entity which contacts to perform or exercise any service or power pursuant to this chapter shall have the full power and authority to act within the jurisdiction of all contracting entities to the extent necessary to carry out the purposes of the contract.
  - g. Each party to this agreement shall adopt all ordinances, resolutions, or policies necessary to authorize the other contracting parties to carry out their contractual duties and responsibilities.

V. IMMIGRATION LAW AND COMPLIANCE:

- a. Parties represent and warrant that they do not knowingly employ, hire for employment, or continue to employ, in Alabama, an “unauthorized alien,” as defined by the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, §31-13-1, *et seq.*, Code of Alabama 1975, as amended (the “Act”).
- b. Parties represent and warrant that they will enroll in the E-Verify program prior to performing any work on the **Project** in Alabama and shall provide documentation establishing that the Party is enrolled in the E-Verify program. During the performance of this Agreement, Parties shall participate in the E-Verify program as required under the terms of the Act and shall verify every employee in Alabama that is required to be verified according to the applicable federal rules and regulations.
- c. Parties agree to comply with all applicable provisions of the Act with respect to its subcontractors by entering into an agreement with or by obtaining an affidavit from such subcontractors providing work for the Party on the **Project** in Alabama, that such subcontractors are in compliance with the Act with respect to their participation in the E-Verify program. Parties represent and warrant that they shall not hire, retain, or contract with any subcontractor to work on the **Project** in Alabama which the Party knows is not in compliance with the Act.
- d. By signing this Contract, the contracting parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

VI. TERMINATION:

- a. Any party hereto may terminate this Agreement at any time by giving thirty (30) days’ notice of the intention to do so to the other parties. Such notice shall be sent to the governing bodies of the other parties.
- b. Upon termination, all unused materials purchased by Vestavia under this agreement shall be returned to Vestavia within thirty (30) days of termination.
- c. Upon termination, the terminating party shall be responsible for any ALDOT cost share that would be demanded as a reimbursement by ALDOT or the Federal Highway Administration.

VII. SEVERABILITY: If any provision of this agreement is declared by a court having jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particular provision held to be invalid.

VIII. GOVERNING LAW: This agreement shall be governed and construed in accordance with the laws of the State of Alabama as interpreted by Alabama Courts.

INWITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representative as reflected below.

**CITY OF VESTAVIA HILLS, ALABAMA**

\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
Alberto C. Zaragoza, Jr., Mayor

ATTEST: \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
Jeffrey Downes, City Manager

ATTEST: \_\_\_\_\_  
City Clerk

**JEFFERSON COUNTY, ALABAMA**

\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
James A. Stephens, President  
Jefferson County Commission

ATTEST: \_\_\_\_\_

**CITY OF BIRMINGHAM, ALABAMA**

\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
William A. Bell, Sr., Mayor

ATTEST: \_\_\_\_\_

**CITY OF MOUNTAIN BROOK, ALABAMA**

\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
Lawrence T. Oden, Mayor

ATTEST:  
\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
Sam Gaston, City Manager

ATTEST:  
\_\_\_\_\_  
City Clerk

DRAFT

**ORDINANCE NUMBER 2626**

**AN ORDINANCE AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER A GENERAL SALES CONTRACT FOR THE PURCHASE OF 0.42 ACRE OF PROPERTY TO BE USED AS A PART OF A PROPOSED ALTERNATE ACCESS TO THE RECREATIONAL FIELDS TO BE CONSTRUCTED AT THE FORMER ALTADENA VALLEY COUNTRY CLUB**

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

1. The Mayor and City Manager are hereby authorized to execute and deliver a general sales contract for the purchase of 0.42 acres +/- of property to be used as a part of a proposed alternate access to the proposed recreational fields at the former Altadena Valley Country Club pursuant to the terms and conditions of a General Sales Contract, a copy of which is marked as "Exhibit A" attached to and incorporated into this Ordinance Number 2626 as though written fully therein; and
2. Funding for said property shall be expensed to the City's Capital Project's Improvement Fund; and
3. This Ordinance Number 2626 shall become effective immediately upon publishing and/or posting as required by Alabama law.

**ADOPTED and APPROVED** this the 28<sup>th</sup> day of December, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

GENERAL SALES CONTRACT

December \_\_\_\_, 2015

The undersigned purchaser, CITY OF VESTAVIA HILLS, ALABAMA ("Purchaser"), hereby agrees to purchase and the undersigned seller, JEFFERSON COUNTY, ALABAMA ("Seller"), hereby agree to sell the following described real estate consisting of approximately 0.42 acres, more or less, together with all improvements, shrubbery, plantings, fixtures and appurtenances (the "Property"), situated in Jefferson County, Alabama, on the terms stated below: SEE EXHIBIT A attached hereto and incorporated herein by reference for drawing depicting the Property.

1. THE PURCHASE PRICE: shall be \$10,000.00 payable as follows:

Earnest Money, receipt of which is hereby acknowledged (the "Earnest Money")..... \$100.00
Cash on closing this sale ..... \$9,900.00

2. TITLE INSURANCE, SURVEY AND ENVIRONMENTAL: Purchaser shall, at its sole cost and expense, obtain (a) a commitment (the "Title Commitment") for the issuance of a title insurance policy (the "Title Policy") in the amount of the Purchase Price with respect to the Property issued by a title insurance company selected by Purchaser, (b) a survey of the Property (the "Survey") from an Alabama licensed land surveyor, which Survey must be approved by Seller on or before the Closing, as hereinafter defined, and (c) an environmental phase I site assessment report of the Property (the "Environmental Report") from an engineering firm selected by Purchaser. Upon approval of the Survey by both Seller and Purchaser, the property description set forth on the approved Survey shall be deemed the legal description of the Property. At the Closing, the Property shall be free and clear of all liens and encumbrances and Seller shall, at Seller's sole cost and expense, cause any liens and encumbrances affecting the Property to be removed on or before the Closing. The Property is sold and is to be conveyed subject to present zoning classification, \_\_\_\_\_, and NOT located in a flood plain.

3. PRORATIONS AND CLOSING COSTS: The Property is exempt from ad valorem taxes and there shall be no prorations at the Closing. Purchaser shall be solely responsible for all costs and expenses relating to the issuance of the Title Commitment, the Title Policy, the Survey and the Title Report. Each party shall be responsible for its own attorneys' fees and expenses.

4. ENTRY: Seller grants to Purchaser, its agents, employees, representatives and contractors the right to enter upon the Property to conduct investigations and inspections of the Property, including, without limitation, the preparation of the Survey and the Environmental Report, prior to the Closing.

5. CLOSING CONDITIONS: The Closing of the transaction contemplated by this Contract is expressly subject to the satisfaction of all of the following conditions (collectively, the "Conditions") on or prior to the Closing:

- (a) Purchaser shall be satisfied, in its sole and absolute discretion, with the Title Commitment, the Survey and the Environmental Report;
(b) Seller shall have approved the Survey; and
(c) Purchaser shall have purchased and acquired from International Park Meisler-Keith, LLC that certain real property situated adjacent to the Property which will be developed as a road providing access to and from Acton Road through the Property to the real property described as "Altadena Valley County Club" lying directly east of the Property, as shown on EXHIBIT A hereto.

If, for any reason, all of the Conditions have not been satisfied by the Closing, then this Contract shall automatically terminate, be deemed cancelled and terminated and of no further force or effect and the Earnest Money shall be refunded to Purchaser.

6. CLOSING & POSSESSION DATES: Subject to the satisfaction of the Conditions, the sale shall be closed (the "Closing") and the deed delivered on or before March 31, 2016; provided, however, that if all of the Conditions are satisfied prior to March 31, 2016, then Purchaser shall have the right to elect to close this transaction at any time upon at least five (5) days prior written notice to Seller. Possession is to be given on delivery of the deed.

7. CONVEYANCE: The Seller agrees to convey the Property to the Purchaser by statutory warranty deed free of all liens and encumbrances. Seller and Purchaser agree that the Property will be conveyed subject to current and future years' ad valorem taxes and assessments and all easements, restrictions, rights-of-way and other matters of record as of the date of this Contract (other than any liens and encumbrances which shall be satisfied by Seller on or prior to the Closing). The legal description for the Property set forth on the Survey approved by both Seller and Purchaser shall be used as the legal description of the Property on the deed. At the Closing, Seller shall execute such documents as may be required by the title company issuing the Title Commitment.

8. BROKERS: NONE.

9. SELLER WARRANTIES: Seller warrants that it has not received notification from any lawful authority regarding any assessments, pending public improvements, repairs, replacements, or alterations to the Property that have not been satisfactorily made. Seller warrants that there is no unpaid indebtedness, mortgages or liens on the Property. These warranties shall survive the delivery of the above deed.



**10. EARNEST MONEY & PURCHASER’S DEFAULT:** Seller shall hold the Earnest Money in trust pending the fulfillment of this Contract. If, for any reason, Purchaser fails to close the transaction contemplated by the Contract other than as a result of the failure of any of the Conditions, then Seller acknowledges and agrees that its sole and exclusive remedy shall be to cancel and terminate the Contract and retain the Earnest Money. Seller does hereby expressly waive any right to seek or obtain any monetary judgment or damages against Purchaser in the event Purchaser fails to close the transaction contemplated by this Contract and acknowledges and agrees that its sole and exclusive remedy in the event of any such default shall be to retain the Earnest Money as liquidated damages.

**11. CONSTRUCTION OF ROAD:** Purchaser covenants and agrees that following the Closing, Purchaser shall construct or cause to be constructed a public roadway over, across and upon the Property substantially in the location as shown on Exhibit A hereto, which roadway shall also be available for use by Seller to provide vehicular access to the remaining real property owned by Seller and designated as “JCES Property “ on Exhibit A.

**12. SEWER EASEMENTS:** Notwithstanding anything provided herein to the contrary, to the extent the Survey indicates that any sanitary sewer lines of Seller are situated on, upon or under any of the Property and such sanitary sewer lines are not subject to existing easement agreements, then at the Closing, Seller and Purchaser shall enter into Seller’s standard form sanitary sewer line easement agreement for any such sewer lines situated on, upon or under any of the Property.

IN WITNESS WHEREOF, Purchaser and Seller have executed this Contract as of the day and year first above written.

**Purchaser:**

**CITY OF VESTAVIA HILLS, ALABAMA**

**By:** \_\_\_\_\_  
**Printed Name:** \_\_\_\_\_  
**Its:** \_\_\_\_\_

**By:** \_\_\_\_\_  
**Printed Name:** \_\_\_\_\_  
**Its:** \_\_\_\_\_

**Seller:**

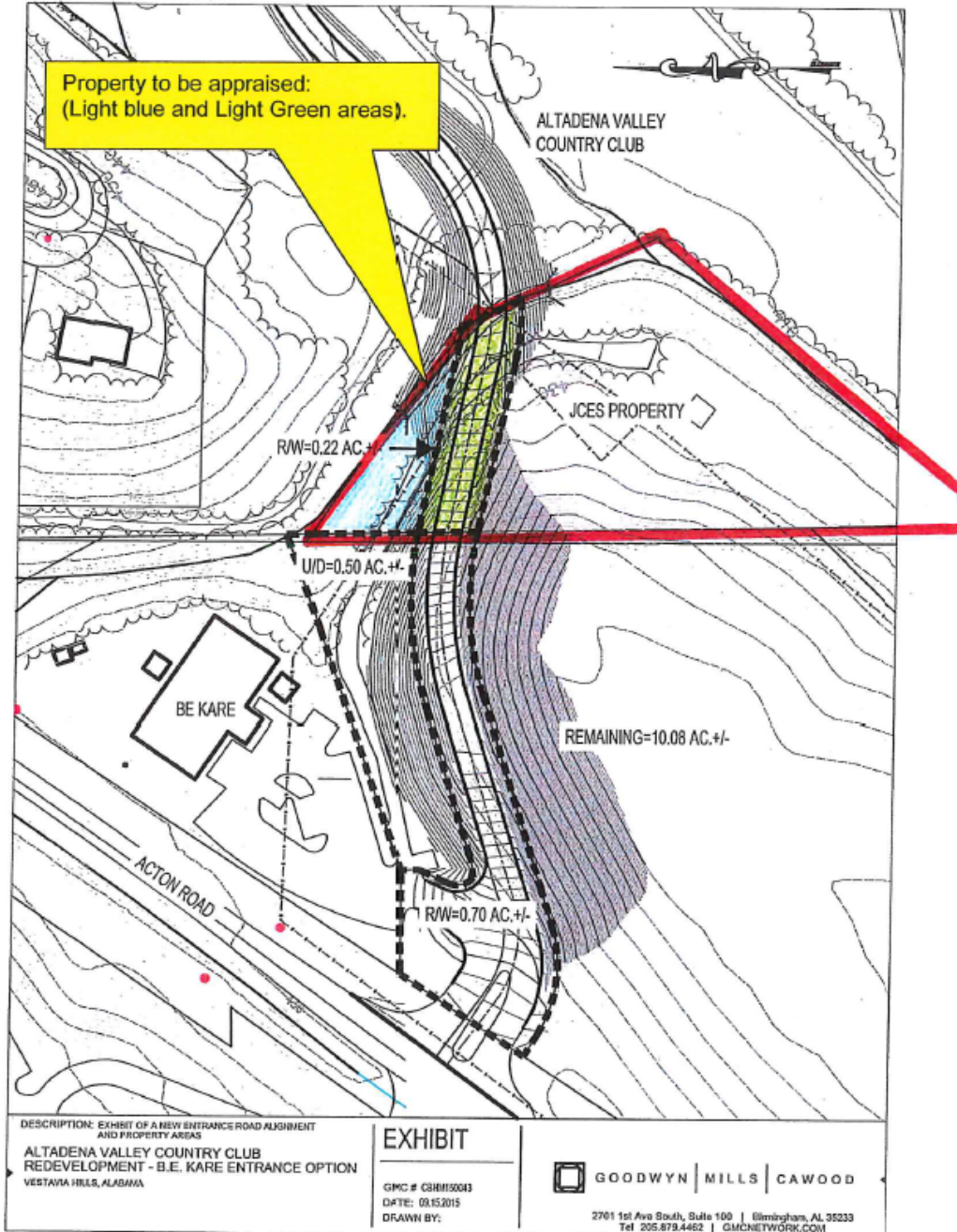
**JEFFERSON COUNTY, ALABAMA**

**By:** \_\_\_\_\_  
**Printed Name:** \_\_\_\_\_  
**Its:** \_\_\_\_\_

**EXHIBIT A**  
**Drawing Indicating Size and Location of Property**

**The “Property” consists of the real property described as “Property to be appraised: (Light blue and Light Green areas)”  
shown on the attached.**

Proposed Road Construction Map of Subject



DESCRIPTION: EXHIBIT OF A NEW ENTRANCE ROAD ALIGNMENT AND PROPERTY AREAS  
 ALTADENA VALLEY COUNTRY CLUB  
 REDEVELOPMENT - B.E. KARE ENTRANCE OPTION  
 VESTAVIA HILLS, ALABAMA

EXHIBIT

GMC # C3H1150043  
 DATE: 09.15.2015  
 DRAWN BY:

GOODWYN | MILLS | CAWOOD

2701 1st Ave South, Suite 100 | Birmingham, AL 35233  
 Tel 205.879.4462 | GMCNETWORK.COM

**ORDINANCE NUMBER 2627**

**AN ORDINANCE AUTHORIZING THE OPERATION OF  
TRANSPORTATION NETWORK COMPANIES (TNCs) IN  
THE CITY OF VESTAVIA HILLS, ALABAMA, TO  
PROVIDE FOR THE PERMITTING, RULES AND  
REGULATIONS FOR SAID TNCs AND TO PROVIDE  
PENALTIES FOR VIOLATION THEREOF**

**THIS ORDINANCE NUMBER 2627** is approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 28<sup>th</sup> day of December, 2015.

**WITNESSETH THESE RECITALS:**

**WHEREAS**, the City Council of the City of Vestavia Hills, Alabama finds and determines that there is a strong demand in the City of Vestavia Hills, Alabama for more transportation options. Competition in the marketplace benefits riders, drivers and cities; and

**WHEREAS**, not only do consumers have more choice and greater access to a safe and reliable ride at their fingertips, drivers have additional economic opportunities and a way to make money on a flexible schedule; and

**WHEREAS**, allowing transportation network companies (TNCs) to operate in the City of Vestavia Hills, Alabama in a safe and convenient manner will best serve the citizens of the City.

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

**SECTION ONE: PURPOSES; AUTHORIZATION:** Transportation network services provide an alternate form of transportation for residents and visitors to the City. The purpose of this Ordinance is to authorize the use of the City's rights-of-way by transportation network company drivers in a manner that is safe, convenient and serves the public welfare.

**SECTION TWO: DEFINITIONS**

**A. TRANSPORTATION NETWORK COMPANY OR TNC:** Transportation network company or TNC shall mean an entity permitted pursuant to Section Three-A of this Ordinance that uses a digital network or software application service to connect passengers to transportation network company services provided by transportation network company drivers. The vehicles used to provide transportation network company services are not motor carriers, express companies, utilities, common carriers, contract carriers, transportation companies,

limousine services, taxicabs or vehicles for hire pursuant to Chapter 37 of the *Code of Alabama, 1975*, for purposes of this Ordinance.

**B. TRANSPORTATION NETWORK COMPANY (TNC) DRIVER:** Transportation network company (TNC) driver shall mean an individual who operates a motor vehicle that is:

- (1) Owned, leased or otherwise authorized for use by the individual;
- (2) Not classified as a taxicab or vehicle-for-hire;
- (3) Used to provide transportation network company services;
- (4) Inspected and insured as required by Sections Eight and Nine of this

Ordinance; and

- (5) Capable of carrying no more than six (6) passengers at the same time.

**C. TRANSPORTATION NETWORK COMPANY (TNC) SERVICES:** Transportation network company (TNC) services shall mean transportation of a passenger between points chosen by the passenger and prearranged with a TNC driver through the use of a TNC digital network or software application. TNC services shall begin when a TNC driver accepts a request for transportation received through the TNC's digital network or software application service, continue while the TNC driver transports the passenger in the TNC driver's vehicle, and end when the passenger exits the TNC driver's vehicle. TNC service is not taxicab or vehicles for hire for purposes of this Ordinance.

**SECTION THREE: TNC PERMIT REQUIRED:**

**A.** A person shall not operate a TNC in the City without first having obtained a permit from the City; however, a person operating a TNC in the City as of the effective date of this Ordinance may continue to operate for a period of thirty (30) days following the effective date of this Ordinance so as to permit the person or entity to obtain a permit from the City pursuant to this section.

**B.** The permit application shall include a description of an identification card that is at a minimum the size of a license plate and that identifies the vehicle displaying it as a vehicle providing services on behalf of the permitted TNC.

**C.** Each applicant for a permit to operate a TNC shall comply with the requirements of this Ordinance and pay an annual fee of Five Hundred and No/100 Dollars (\$500.00) due January 1<sup>st</sup> and last payable without penalty January 31<sup>st</sup> of each year.

D. A TNC permit is a privilege and not a right. A TNC shall be subject to suspension or revocation of its permit for failing to comply with the requirements of this Ordinance.

**SECTION FOUR: AGENT:** The TNC must at all times it operates in the municipal limits of the City of Vestavia Hills, Alabama or its police jurisdiction provide the City with current contact information, including an agent to accept service of process in the state.

**SECTION FIVE: FARE CHARGED FOR SERVICES:** A TNC may charge a fare for the services provided to customers; provided that, if a fare is charged, the TNC shall disclose to customers the fare calculation method on its website or within the software application service. The TNC shall provide customers with the applicable rates being charged and provide customers the option to receive an estimated fare before the customer decides to accept the services offered.

**SECTION SIX: IDENTIFICATION OF TNC VEHICLES AND DRIVERS:**

A. The TNC's software application or website shall provide the potential customer a picture of the TNC driver, and the license plate number of the motor vehicle utilized for providing the TNC service before the customer enters the TNC driver's vehicle. Customers will not be charged for a TNC service if the identification required herein is not available before the customer enters the TNC vehicle.

B. At all times that a TNC driver is in his or her vehicle and either logged into the TNC service or providing TNC services, the vehicle he or she is driving shall prominently display the TNC identification card described in the TNC permit application.

**SECTION SEVEN: RECEIPT:** Within a reasonable period of time following the completion of the trip, a TNC shall transmit a receipt to the passenger that lists:

- A. The origin and destination of the trip;
- B. The total time and distance of the trip; and
- C. An itemization of the total fare paid, if any.

**SECTION EIGHT: TNC DRIVER INSURANCE REQUIREMENTS:**

A. Every TNC and TNC driver under this Ordinance and operated within the City limits of the City of Vestavia Hills, Alabama or police jurisdiction thereof shall be required to carry and maintain in effect the following minimum personal injury and property damage liability insurance:

(1) General liability insurance—Public liability coverage with each of the following limits:

(a) Bodily injury liability:

(i) One Million Dollars (\$1,000,000.00) each person; and

(ii) One Million Dollars (\$1,000,000.00) each occurrence;

and

(b) Property damage liability—One Million Dollars (\$1,000,000.00)

each occurrence; or

(c) In lieu of subparts (1)(a) and (b) hereinabove, bodily injury and

property damage combined with limits of One Million Dollars (\$1,000,000.00) per occurrence.

(2) Comprehensive automobile liability insurance including owned, non-

owned, and hired vehicles with each of the following limits:

(a) Bodily injury liability:

(i) Two Hundred Fifty Thousand Dollars (\$250,000.00) each

person; and

(ii) Five Hundred Thousand Dollar (\$500,000.00) each

occurrence; and

(b) Property damage liability One Hundred Thousand Dollars

(\$100,000.00) each occurrence; or

(c) In lieu of subparts (2)(a) and (b) hereinabove, bodily injury and

property damage combined with limits of Five Hundred Thousand Dollars (\$500,000.00) per

occurrence.

**B.** No permit required by this Ordinance shall be granted to any person to operate any TNC or TNC vehicle upon the streets or elsewhere in the City of Vestavia Hills, Alabama or its police jurisdiction until such person shall have first filed with the City Revenue Department a certificate of the insurance requirements stated in subpart A hereinabove issued to such person by a public liability insurance company authorized to do business in the state.

**C.** The insurance coverage required by this section shall at all times be maintained for the full amount. The certificate of each policy or policies of insurance required by this section to be filed with the City Revenue Department shall contain a clause obligating the company issuing the same to give not less than thirty (30) days' written notice to the City Revenue Department before cancellation thereof. Notice of cancellation shall not relieve the



company issuing such policy or policies of liability insurance for any injury or claim arising before the cancellation becomes effective. The cancellation of any such policy shall have the effect of suspending the permit of such person to operate vehicles for TNC purposes covered thereby until a new policy or policies complying with the provisions of this section is filed with the City Revenue Department.

**D.** Every insurance policy required hereunder shall contain a provision for continuing liability thereunder to the full amount thereof, notwithstanding any recovery thereon, that the liability of the insurer shall not be affected by the insolvency or the bankruptcy of the insured, and that until the policy is cancelled, the insurance company will not be relieved from the liability on account of nonpayment of premium, or any act or omission by the named insured. Such policy of insurance shall further provide for the payment of any and all judgments, up to the limits of such policy, recovered against any person other than the owner, his agent or employee of any such business, who may operate the same with the consent or acquiescence of the owner.

**E.** TNC drivers shall carry proof of the insured required under subsection C at all times that the TNC driver is in his or her vehicle and either logged into the TNC service or providing TNC services. If the insurance is maintained by the TNC such proof of insurance shall, at a minimum, identify the TNC's insurance company, policy number, effective dates of the policy, and instructions for filing a claim. Proof of insurance may be displayed electronically through the TNC's digital platform in accordance with Title 32-7A-6, *Code of Alabama, 1975*.

**SECTION NINE: VEHICLE INSPECTION:** The vehicle used by a TNC driver to provide TNC services shall be kept in good mechanical and clean condition and subject to inspection by the City of Vestavia Hills, the Vestavia Hills Police Department and City Shop.

**SECTION TEN: TNC DRIVER REQUIREMENTS:**

**A.** Prior to permitting an individual to act as a TNC driver on its digital platform, the TNC shall:

(1) Require the individual to submit an application to the TNC, which includes information regarding his or her address, age, driver license, driving history, motor vehicle registration, automobile liability insurance, and other information required by the TNC;

(2) Conduct, or have a third party conduct, a local and national criminal background check for each applicant that shall include:

(a) Multi-state/multi-jurisdiction criminal records locator or other similar commercial nationwide database with validation (primary source search); and

(b) National Sex Offender Registry database.

B. The TNC shall not permit an individual to act as a TNC driver on its digital platform who:

(1) Has had more than three (3) moving violations in the prior three-year period, or one (1) major violation in the prior three-year period (including, but not limited to, attempting to evade the police, reckless driving, or driving on a suspended or revoked license);

(2) Has been convicted, within the last seven (7) years, of driving under the influence of drugs or alcohol, fraud, sexual offenses, use of a motor vehicle to commit a felony, a crime involving property damage, and/or theft, acts of violence, or acts of terror;

(3) Is a match in the National Sex Offender Registry;

(4) Does not possess a valid drivers license;

(5) Does not possess proof of registration for the motor vehicle(s) used to provide TNC services;

(6) Does not possess proof of automobile liability insurance for the motor vehicle(s) used to provide TNC services; or

(7) Is not at least nineteen (19) years of age.

**SECTION ELEVEN: NO STREET HAILS:** A TNC driver shall exclusively accept rides booked through a TNC's digital network or software application service and shall not solicit or accept street hails.

**SECTION TWELVE: NO DISCRIMINATION; ACCESSIBILITY:**

A. The TNC shall adopt a policy of non-discrimination on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation with respect to passengers and potential passengers and notify TNC drivers of such policy.

B. TNC drivers shall comply with all applicable laws regarding nondiscrimination against passengers or potential passengers on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation.

C. TNC drivers shall comply with all applicable laws relating to accommodation of service animals.

D. A TNC shall not impose additional charges for providing services to persons with physical disabilities because of those disabilities.

E. A TNC shall provide passengers an opportunity to indicate whether they require a wheelchair-accessible vehicle. If a TNC cannot arrange a wheelchair accessible TNC service in any instance, it shall direct the passenger to an alternate provider of wheelchair-accessible service, if available.

**SECTION THIRTEEN: RECORDS:** A TNC shall maintain:

A. Individual trip records for at least two (2) years from the date each trip was provided;

B. TNC driver records at least until the two-year anniversary of the date on which a TNC driver's activation on the TNC digital network has ended; and

C. When requested, and no more frequently than on a quarterly basis, the TNC shall allow the City to visually inspect or audit the records of the TNC for purposes of verifying that the TNC is in compliance with the requirements of this Ordinance including, but not limited to, vehicle inspections, proper completion of criminal background checks, and proper insurance. The audit shall take place at a mutually agreed locale in the City. The City does not assume any responsibility for the operations of the TNC, its drivers or any actions or omissions arising in connection with its activities, which, at all times, shall remain the responsibility of the TNC.

**SECTION FOURTEEN: VIOLATIONS AND PENALTIES:** It shall be unlawful to violate any of the terms and provisions of this Ordinance. Any person, firm or corporation violating any of the said terms and provisions of this Ordinance shall, upon conviction, be punished in accordance with Title 11-45-9, *Code of Alabama, 1975*, for a misdemeanor violation for each such offense. Each day any violation of this Ordinance shall continue shall constitute a separate offense.

**SECTION FIFTEEN: SEVERABILITY:** If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Ordinance, which shall continue in full force and effect notwithstanding such holding.

**SECTION SIXTEEN: ARTICLE AND SECTION HEADINGS:** The article and section headings and captions contained herein are included for convenience only, and shall not be considered a part hereof or affect in any manner the construction or interpretation hereof.

**SECTION SEVENTEEN: EFFECTIVE DATE:** This Ordinance Number 2627 shall become effective immediately upon adoption.

**ADOPTED and APPROVED** this the 28<sup>th</sup> day of December, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY

Rebecca Leavings  
City Clerk

**CERTIFICATION OF CITY CLERK**

STATE OF ALABAMA     )  
JEFFERSON COUNTY    )

I, Rebecca Leavings, City Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true and correct copy of an Ordinance duly and legally adopted by the City Council of the City of Vestavia Hills, Alabama, on the 28th day of December, 2015 while in regular session, and the same appears of record in the minute book of said date of said City.

Witness my hand and seal of office this \_\_\_\_\_ day of December, 2015.

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