

ORDINANCE NUMBER 3139

AN ORDINANCE AUTHORIZING AND DIRECTING THE CONVEYANCE BY THE CITY OF VESTAVIA HILLS, ALABAMA OF THE REAL ESTATE AND IMPROVEMENTS SITUATED AT 1973 MERRYVALE ROAD IN THE CITY OF VESTAVIA HILLS, ALABAMA, COMMONLY REFERRED TO AS “THE OLD COMMUNITY CIVIC CENTER” (AS MORE PARTICULARLY DESCRIBED BELOW) TO THE BOARD OF EDUCATION OF THE CITY OF VESTAVIA HILLS, ALABAMA.

THIS ORDINANCE NUMBER 3139 is approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 12th day of December, 2022.

WITNESSETH THESE RECITALS:

WHEREAS, on December 29, 1960, the City of Vestavia Hills, Alabama, a municipal corporation, (“City”) purchased an unimproved parcel of real estate consisting of approximately 31.7± acres, which was ultimately named “Wald Park property” by virtue of the deed filed in the office of the Judge of Probate of Jefferson County, Alabama on April 10, 1961 and recorded at Deed 6590, Page 182; and

WHEREAS, the deed contained certain restrictive covenants that limited the use of the Wald Park property to a public park, a park community center, a civic center, a library building, a museum and similar municipal buildings for a period of fifty (50) years; and

WHEREAS, the City has heretofore used the Wald Park property for public park and recreational purposes, specifically including, but not limited to, athletic fields and facilities, swimming pool, public community civic center, public library, office for the Vestavia Hills Chamber of Commerce and other public park and recreational purposes; and

WHEREAS, approximately 2.27± acres of the Wald Park property were not conducive for park and recreational purposes simply because of the topography, location and size and was used by the City for the operation of a City Shop and Public Works facility; and

WHEREAS, the Board of Education of the City of Vestavia Hills, Alabama (“Board”) was established by the City on April 30, 1970 upon the approval and adoption of Resolution Number 285 on that date; and

WHEREAS, in 1975, the Board, because of increased enrollment, needed to build a new elementary school, but had no property to build on and lacked funds to buy the required property; and

WHEREAS, Edna Wald and Mildred Wald signed a document on April 13, 1976 entitled “Partial Release and Amendment to Restrictive Covenant,” which was filed in the office of the Judge of Probate of Jefferson County, Alabama on April 20, 1976 and recorded at Real 1289, Page 222, which said document released the restrictive covenants to the extent necessary to allow a school to be built on a portion (3.71± acres) of the Wald Park property; and

WHEREAS, on May 17, 1976, the City conveyed to the Board a part of the Wald Park property consisting of approximately 3.71± acres by virtue of that certain deed filed in the office of the Judge of Probate of Jefferson County, Alabama on May 26, 1976 and recorded at Real 1303, Page 369; and

WHEREAS, the Board built West Elementary School on the 3.71± acre site and has operated the school thereon since completion of the construction; and

WHEREAS, the restrictive covenants limiting the use of the Wald Park property for a period of fifty (50) years expired on to-wit, April 10, 2011; and

WHEREAS, in early 2016, the City vacated the 2.27± acre parcel and moved its City Shop and Public Works Department to another location; and

WHEREAS, the City had the 2.27± acre parcel resurveyed into:

Lot A and Lot B according to the Survey of Wald Park Survey No. 1, as recorded in Map Book 249, Page 28, in the Probate Office of Jefferson County, Alabama; and

WHEREAS, on May 31, 2017, the City purchased from Store Capital Acquisitions, LLC, by virtue of that certain Special Warranty Deed filed in the office of the Judge of Probate of Jefferson County, Alabama on June 8, 2017 and recorded at Instrument #2017057813, Pages 1-5, the real estate situated at 1090 Montgomery Highway (commonly referred to as the “Gold’s Gym” property) next door to the Vestavia Hills Municipal Center, which said property is more particularly described as follows:

Parcel I: Lot 2 and Lot 3, according to the Survey of CVS Vestavia, as recorded in Map Book 213, Page 31, in the Probate Office of Jefferson County, Alabama.

Parcel II: A nonexclusive easement for ingress and egress as set out in the Access Easement Agreement as recorded in Instrument No. 200408/8594 and assigned by Instrument No. 200602/6382; and A perpetual easement for the construction and maintenance of a sign as set out in the agreement recorded in Instrument No. 200408/8593 and assigned by Instrument No. 200602/6381; and

WHEREAS, the City purchased the above-described Gold's Gym property for the purpose of developing and constructing a new Vestavia Hills Civic Center consisting of approximately one hundred thousand (100,000) square feet of space for public use by the citizens; and

WHEREAS, the City sold Lot A and Lot B according to the Survey of Wald Park Survey No. 1, as recorded in Map Book 249, Page 28, to HCI Vestavia I, LLC by virtue of those Statutory Warranty Deeds dated January 31, 2019, filed in the office of the Judge of Probate of Jefferson County, Alabama on February 1, 2019 and recorded at Instrument #2019009120, Pages 1-9 (Lot A) and Instrument #2019009124, Pages 1-9 (Lot B); and

WHEREAS, Lot A and Lot B as described above have been developed for commercial purposes; and

WHEREAS, on February 4, 2019, the City Manager of the City and the Superintendent of the Board recommended a *Memorandum of Understanding for Shared Facility Use, Land Planning and Funding Between the City and the Board* (MOU); and

WHEREAS, on February 25, 2019, the City Council approved and adopted Ordinance Number 2829, which authorized and directed the execution and delivery of the MOU by and between the City and Board; and

WHEREAS, on February 25, 2019, the Board approved and adopted a resolution, which authorized and directed the execution and delivery of the MOU by and between the City and the Board; and

WHEREAS, the City and Board engaged Arrington Engineering to resurvey the Wald Park property on November 16, 2020; and

WHEREAS, the Wald Park Survey No. 2 was filed in the office of the Judge of Probate on December 22, 2020 and recorded at Instrument #2020146003, Book 254, Page 44; and

WHEREAS, a copy of said Resurvey is attached hereto, marked as Exhibit 1 and is incorporated into this Ordinance Number 3139 by reference as though set out fully herein; and

WHEREAS, the lots in the Wald Park Survey No. 2 filed in the office of the Judge of Probate of Jefferson County, Alabama on December 22, 2020 and recorded at Instrument #2020146003, BK: 254, Page 44, are owned and presently used as follows:

<u>Lot No.</u>	<u>Owner</u>	<u>Acreage</u>	<u>Use</u>
1	City	20.89	Park and Athletic Facilities

2	City	7.13	Park and Athletic Facilities
3	City	4.60	Old Community Civic Center
4	Board	3.71	West Elementary School; and

WHEREAS, the development and construction of the new Vestavia Hills Civic Center has been completed and an Open House was held on November 29, 2022 with the facility scheduled to have a ribbon cutting ceremony and be open for public use shortly after January 1, 2023; and

WHEREAS, the legal description of the Old Community Civic Center is:

Lot 3 in Wald Park Survey No. 2 filed in the office of the Judge of Probate of Jefferson County, Alabama on December 22, 2020 and recorded at Instrument #2020146003, Bk: 254, Page 44; and

WHEREAS, the City has no public need for the Old Community Civic Center now that the new Civic Center facility has been completed; and

WHEREAS, the Board does have a public need for the Old Community Civic Center; and

WHEREAS, the City finds and determines that it will promote the general health, prosperity and welfare of the citizens of the City of Vestavia Hills by conveying title to the Old Community Civic Center property to the Board for public use; and

WHEREAS, the conveyance of the Old Community Civic Center property by the City to the Board will be consistent with the MOU approved by both the City and the Board on February 25, 2019; and

WHEREAS, the City finds and determines that it is in the public interest and a public purpose to donate the Old Community Civic Center property to the Board; and

WHEREAS, Title 11-47-20, *Code of Alabama, 1975*, provides in words and figures as follows:

“§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”; and

WHEREAS, the City Council, by the approval and adoption of this Ordinance Number 3139 in compliance with Title 11-47-20, *Code of Alabama, 1975*, finds and determines that the Old Community Civic Center property (Lot 3) is no longer needed by the City for public or municipal purposes and that it furthers the public interest and welfare for the City to convey by gift said property to the Board by the execution and delivery of a Statutory Warranty Deed, a copy of which is attached hereto, marked as Exhibit 2 and incorporated herein by reference.

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

1. The recitals set forth in the premises above are hereby incorporated into this ordinance by reference as though set out fully herein.

2. The following Exhibits are attached hereto and incorporated into this Ordinance Number 3139 by reference as though set out fully herein:

<u>Exhibit Number</u>	<u>Description</u>
Exhibit 1	Resurvey
Exhibit 2	Statutory Warranty Deed

3. The City Council of the City of Vestavia Hills, Alabama finds and determines that the property commonly referred to as the “Old Community Civic Center” property and more particularly described as Lot 3 in Wald Park Survey No. 2 filed in the office of the Judge of Probate of Jefferson County, Alabama on December 22, 2020 and recorded at Instrument #2020146003, Bk: 254, Page 44, is no longer needed for public or municipal purposes as required by Title 11-47-20, *Code of Alabama, 1975*.

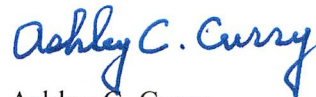
4. The City Manager and Mayor are hereby authorized and directed to execute and deliver the Statutory Warranty Deed (Exhibit 2) conveying the property described in section 3 above, to the Board of Education of the City of Vestavia Hills, Alabama and to take any and all other actions necessary to complete the conveyance as aforesaid.

5. 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.

6. 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.

7. The provisions of this Ordinance Number 3139 shall become effective immediately upon the passage, approval and adoption thereof by the City Council of the City of Vestavia Hills, Alabama and the publication and/or posting thereof as required by Alabama law.

ORDAINED, APPROVED, ADOPTED, DONE and ORDERED on this the 12th day of December, 2022.



Ashley C. Curry
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 # 3139 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 19th day of December, 2022, as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, Vestavia Hills New Merkle House and Vestavia Hills Recreational Center this the 23rd day of Dec, 2022.



Rebecca Leavings
City Clerk

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

TELEPHONE (205) 324-2018

FACSIMILE (205) 324-2295

E-Mail: patrickboone@bellsouth.net

December 9, 2022

By Electronic Mail

City Clerk Rebecca Leavings
Vestavia Hills Municipal Center
1032 Montgomery Highway
Vestavia Hills, Alabama 35216

In Re: Ordinance Number 3139
City Conveyance of Old Community Civic Center to Board

Dear Becky:

On February 25, 2019, the City (by Ordinance Number 2829) and the Board (by resolution) approved and adopted a Memorandum of Understanding for Shared Facility Use, Land Planning and Funding between the City and the Board (MOU). Among other things, the MOU provides that the City shall convey to the Board the Old Community Civic Center property.

Consistent with the MOU, I have prepared and forward you Ordinance Number 3139, including Exhibit 1 (Resurvey) and Exhibit 2 (Statutory Warranty Deed). The City Council approved Ordinance Number 2829 on February 25, 2019, which authorized and directed the conveyance. Therefore, I assume that the matter will appear on Monday's agenda for unanimous consent for immediate consideration.

In anticipation of that action, I have dated the Ordinance and Statutory Warranty Deed on December 12, 2022. If Mayor Ashley C. Curry and City Manager Jeffrey D. Downes sign the Statutory Warranty Deed following the meeting next Monday, then in such event I will file the deed for record on Tuesday morning, December 13, 2022. Gail is sending you the ordinance and Statutory Warranty Deed in "Word" format.

Please call me if you have any questions.

Sincerely,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

Enclosures

cc: City Manager Jeffrey D. Downes (by e-mail)

SEND TAX NOTICE TO:

The Board of Education of the
City of Vestavia Hills, Alabama
1204 Montgomery Highway
Vestavia Hills, Alabama 35216

Note: The real property described in this deed is exempted from all ad valorem taxes by virtue of Amendment 373(k) of the *Constitution of Alabama* and Title 40-9-1, *Code of Alabama, 1975*

This instrument was prepared by:
Patrick H. Boone, Attorney at Law
705 New South Federal Savings Building
215 Richard Arrington, Jr. Boulevard North
Birmingham, Alabama 35203-3720

STATE OF ALABAMA

JEFFERSON COUNTY

STATUTORY WARRANTY DEED

THIS STATUTORY WARRANTY DEED is executed by The City of Vestavia Hills, Alabama, a municipal corporation (hereinafter referred to as "City"), as Grantor, and delivered to The Board of Education of the City of Vestavia Hills, Alabama (hereinafter referred to as "Board"), as Grantee, on this the 12th day of December, 2022.

KNOW ALL MEN BY THESE PRESENTS, that in consideration of the execution and delivery of a Memorandum of Understanding for Shared Facility Use, Land Planning and Funding Between the City and the Board, dated on February 4, 2019, in hand approved, executed and delivered by Grantor to Grantee on February 25, 2019 and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged by Grantee, the said Grantor does by these presents, grant, bargain, gift and convey unto Grantee that certain real property (the "Property") situated in Jefferson County, Alabama which is more particularly described as follows:

Lot 3 in Wald Park Survey No. 2 filed in the office of the Judge of Probate of Jefferson County, Alabama on December 22, 2020 and recorded at Instrument #2020146003, Bk: 254, Page 44; and

This conveyance is made subject to all existing restrictions, set-back lines, right of ways, limitations, easements, exceptions, reservations, mortgages if any, releases, mineral and mining rights, covenants and other matters of record. No examination of title was made. No title opinion was rendered.

EXHIBIT 2

And the Grantor covenants and agrees to and with Grantee, that Grantor has not done or suffered to be done anything whereby the above-described property is or may be in any manner encumbered or charged and that the Grantor will warrant and defend the above-described property against all persons lawfully claiming or to claim the same by, through or under the Grantor.

TO HAVE AND TO HOLD the said above-described property unto the said Grantee, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining and unto its successors and assigns forever.

IN WITNESS WHEREOF, Grantor by its Mayor and City Manager, who are authorized to execute this conveyance, hereto set their signatures and seals, on this the 12th day of December, 2022.

THE CITY OF VESTAVIA HILLS, ALABAMA

By Ashley C. Curry
Ashley C. Curry
Mayor

By _____
Jeffrey D. Downes
City Manager

ATTEST:

By _____

STATE OF ALABAMA

JEFFERSON COUNTY

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public, in and for said County in said State, hereby certify that Ashley C. Curry, whose name as Mayor of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing conveyance, 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 City of Vestavia Hills, Alabama.

Given under my hand and official seal this 12th day of December, 2022.

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 conveyance, 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 City of Vestavia Hills, Alabama.

Given under my hand and official seal this 12th day of December, 2022.

Notary Public

My Commission Expires:

SEAL