

**Vestavia Hills
City Council Agenda
February 9, 2015
5:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – Sheila Phillips, Superintendent, Vestavia Hills City Schools
4. Pledge Of Allegiance
5. Announcements and Guest Recognition
6. City Manager’s Report
7. Councilors’ Reports
8. Financial Reports – George Sawaya, Asst. Treasurer
9. Approval of Minutes – January 26, 2015 (Regular Meeting)

Old Business

10. Ordinance Number 2553 – An Ordinance Amending Section 6-16 Of The Vestavia Hills Code Of Ordinances, Republished 2013 Entitled “Codes Adopted;” To Repeal Ordinance Number 2013 And Adopting The 2015 International Fire Prevention Code For The City Of Vestavia Hills, Alabama
11. Ordinance Number 2554 – An Ordinance Accepting The Cahaba Heights Village Plan, Being The 2015 Amendment To The 2008 Cahaba Heights Community Plan

New Business

12. Resolution Number 4677 - A Resolution Accepting A Bid For A Cardiac Monitor/Defibrillator For The City Of Vestavia Hills Fire Department
13. Resolution Number 4678 - A Resolution Declaring Personal Property As Surplus And Authorizing The City Manager To Sell And/Or Dispose Of Said Equipment
14. Resolution Number 4679 – A Resolution Urging The University Of Alabama System Board Of Trustees And The University Of Alabama At Birmingham President To Reconsider The Discontinuation Of The Athletic Programs That Were Recently Cancelled At The University Of Alabama At Birmingham

New Business (Requesting Unanimous Consent)

First Reading (No Action Taken At This Meeting)

15. Ordinance Number 2555 - An Ordinance Authorizing The City Manager To Enter Into A Purchase/Sale Agreement For Real Estate Located On Old Columbiana Road
16. Citizens Comments
17. Motion For Adjournment

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

JANUARY 26, 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 Deputy City Clerk called the roll with the following:

MEMBERS PRESENT:

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

OTHER OFFICIALS PRESENT:

Jeff Downes, City Manager
Patrick H. Boone, City Attorney
Wendy Appling, Deputy City Clerk
Melvin Turner, Finance Director
George Sawaya, Deputy Treasurer
Brian Gilham, Police Lieutenant
Jim St. John, Fire Chief
Terry Ray, Deputy Fire Chief
Marvin Green, Deputy Fire Chief

Invocation was given by Anna Curry Gualano, Vestavia Hills Library Board, followed by the Pledge of Allegiance by Blake Brewer, Troop 21, Bluff Park, and Ben Swearingen, Troop 4, Vestavia Hills United Methodist Church.

ANNOUNCEMENTS, GUEST RECOGNITION, CANDIDATES

- Mr. Ammons welcomed Linda Parker, former Chairperson of the Chamber of Commerce, to the meeting.
- The Mayor welcomed the following Boy Scouts to the meeting:
 - Blake Brewer, Troop 21, Bluff Park
 - Ben Swearingen, Troop 4, Vestavia Hills United Methodist Church
 - Luke Walker, Troop 4, Vestavia Hills United Methodist Church
 - Stephen Mims, Troop 4, Vestavia Hills United Methodist Church
 - Konnor Knopf, Troop 4, Vestavia Hills United Methodist Church
 - Duncan Smith, Troop 4, Vestavia Hills United Methodist Church

- Colin Harris, Troop 4, Vestavia Hills United Methodist Church
- Grant Langston, Troop 4, Vestavia Hills United Methodist Church
- Nick Velezis, Troop 4, Vestavia Hills United Methodist Church
- Noah Williams, Troop 4, Vestavia Hills United Methodist Church
- Alec Albright, Troop 4, Vestavia Hills United Methodist Church
- Alec Bidner, Troop 4, Vestavia Hills United Methodist Church
- Graham Moore, Troop 4, Vestavia Hills United Methodist Church
- Thomas Sturdivant, Troop 4, Vestavia Hills United Methodist Church
- Christian Rhodes, Troop 4, Vestavia Hills United Methodist Church
- Dean Little, Troop 4, Vestavia Hills United Methodist Church
- William Heidepriem, Troop 96, Rocky Ridge Cumberland Presbyterian Church

CITY MANAGER REPORT

- Mr. Downes announced that Vestavia Hills has been selected as the safest city in Alabama. He is very proud of the community and the Police Department.
- Mr. Downes asked Lt. Gilham to address the Council.
 - Lt. Gilham presented tips for Internet safety using Craigslist due to recent events:
 - Take precautions
 - Go with more than one person
 - Meet at a police station
 - Look at the time of day the person wants to meet

Mr. Ammons stated that the City has some of the best educated officers and that Lt. Gilham just came back from an 11 week FBI program.

- Mr. Downes stated that several projects have been completed recently, including:
 - 3 fields in Wald Park have been improved and renovated
 - Daniel Corporation will be hiring a contractor this week and work will begin next week for the mass grading at Patchwork Farms
 - Erosion control measures near Sprouts and America's First Credit Union
 - Installation of trees at the interchange

COUNCILOR REPORTS

- Mr. Ammons provided an update on the Healthy Living Project.

FINANCIAL REPORTS

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

APPROVAL OF MINUTES

The minutes of January 12, 2015 (Regular Meeting), were presented for approval.

MOTION Motion to dispense with the reading of the minutes of January 12, 2015 (Regular Meeting) and approve them with the correction that the date is 2015 in lieu of 2014 was by Mr. Ammons and second by Mr. Henley.
Roll call vote as follows:

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

OLD BUSINESS

RESOLUTION NUMBER 4675

Resolution Number 4675 – A Resolution Authorizing The Purchase of Radio Equipment From E-911 Funds

MOTION Motion to approve Resolution Number 4675 was by Mr. Ammons and second was by Mr. Henley.

Mr. Downes explained that this resolution will allow the purchase of equipment for the Police and Fire Departments from the special fund.

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

Roll call vote as follows:

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

ORDINANCE NUMBER 2552

Ordinance Number 2552 – Conditional Use Approval For Home Occupation – 702 Hampden Place Circle; Lisa Eaker, Owner

MOTION Motion to approve Ordinance Number 2552 was by Mr. Henley and second was by Mr. Sharp.

Mr. Downes explained that this will be a conditional use approval to allow for a home occupation.

Lisa Eaker was present in regard to this request.

The Mayor opened the floor for a public hearing.

Mr. Donald Harwall, 1357 Willoughby Road, stated that he feels the conditional use should be denied.

Mr. Boone explained why she has to ask the Council for the conditional approval.

Ms. Eaker explained her request and how she would like to operate in the City.

Mr. Sharp stated that the Planning and Zoning Commission heard the request and voted unanimously for approval of the conditional use.

There being no one else to address the Council concerning this request, he closed the floor and asked for the question.

Roll call vote as follows:

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

RESOLUTION NUMBER 4676

Resolution Number 4676 – A Resolution Changing The Date Of The Regularly Scheduled Council Meeting For May 25, 2015 To May 28, 2015 In Observance Of Memorial Day

MOTION Motion to approve Resolution Number 4676 was by Mr. Henley and second was by Mr. Pierce.

Mr. Downes explained the resolution changes the date of the regular scheduled meeting in May.

Roll call vote as follows:

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

NEW BUSINESS

There was no new business.

NEW BUSINESS (REQUESTING UNANIMOUS CONSENT)

There was no new business requesting unanimous consent.

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 February 9, 2015 at 5 PM.

- Ordinance Number 2553 – An Ordinance Amending Section 6-16 Of The Vestavia Hills Code Of Ordinances, Republished 2013 Entitled “Codes Adopted;” To Repeal Ordinance Number 2013 And Adopting The 2015 International Fire Prevention Code For The City Of Vestavia Hills, Alabama
- Ordinance Number 2554 – An Ordinance Accepting The Cahaba Heights Village Plan, Being The 2015 Amendment To The 2008 Cahaba Heights Community Plan

CITIZENS COMMENTS

Donald Harwell, 1357 Willoughby Road, stated that he could not campaign in Liberty Park at the last Municipal Election. He stated the Police told him that he needed to leave the property. The Courts have upheld that you can campaign anywhere and he would like to be able to campaign in Liberty Park.

Mayor Zaragoza stated that Liberty Park is private property and the owners give permission to be on the property and if they do not allow you to be on their property then the Police will ask you to leave.

MOTION Motion to adjourn was by Mr. Pierce and second was by Mr. Ammons.
Meeting adjourned at 5:37 PM.

Alberto C. Zaragoza, Jr.
Mayor

Attested by:

Wendy Appling
Deputy City Clerk

ORDINANCE NUMBER 2553

AN ORDINANCE TO AMEND SECTION 6-16, VESTAVIA HILLS CODE OF ORDINANCES, REPUBLISHED 2013 ENTITLED “CODES ADOPTED;” TO REPEAL ORDINANCE NUMBER 2031 AND ADOPTING THE 2015 INTERNATIONAL FIRE PREVENTION CODE FOR THE CITY OF VESTAVIA HILLS, ALABAMA

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

SECTION 1. That the 2015 International Fire Prevention Code, with officially approved revisions and changes as detailed in “Exhibit A,” a copy of which is attached to and incorporated into this Ordinance Number 2553 as though written fully thereIN and thereto, said revised Code is hereby adopted by reference and incorporated as is set out and fully herein.

SECTION 2. Ordinance Number 2031 and any Ordinance or parts of Ordinances in conflict with the provisions contained herein are hereby repealed.

This ordinance shall become effective immediately following publishing/posting as required by Alabama law.

APPROVED and ADOPTED this the 9th day of February, 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 # 2553 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 26th day of January, 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

101.1 Title. These regulations shall be known as the *Fire Code* of the City of Vestavia Hills, hereinafter referred to as “this code.”

108 Delete section 108 in its entirety (including sections 108.1 through 108.3 thereunder) and replace with the following:

108 Board of Appeals

108.1 General. Appeals of orders, decisions, and determinations made by the fire official related to the application and interpretation of this code shall be heard by the Vestavia Hills Board of Zoning Adjustment pursuant to and according to the appeal procedures set forth therein. Appeals shall be filed with the City Clerk’s Office within twenty (20) days following the date of the decision of the code official for which appeal is sought.

108.2 Limitations on Authority. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equally good or better form of construction is proposed.

109.4 Delete section 109.4 in its entirety (subsection 109.4.1 shall not be affected by this deletion and shall remain a part of the Fire Code adopted by the City of Vestavia Hills) and replace with the following:

109.4 Violation penalties. Persons who shall violate a provision of the Fire Code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the Fire Code Official, or of a permit or certificate used under provisions of the Fire Code, shall be guilty of an offense against the City of Vestavia Hills punishable as provided in Section 1-5 of the *Municipal Code of the City Vestavia Hills*. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

111.4 Delete section 111.4 in its entirety and replace with the following:

111.4 Failure to Comply. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be punished by fine as set forth Section 1-5 of the *Municipal Code of the City of Vestavia Hills, Alabama*.

1103.5.1 Group A-2 Delete this section in its entirety without replacement.

The geographic limits referred to in certain sections of the 2015 International Fire Code are hereby established as follows:

5704.2.9.6.1 Limits in which the storage of class I and class II flammable liquids in above ground tanks outside of buildings is prohibited is as specified in the Fire Code and its referenced documents and is limited to the first fire district if all related requirements of the Fire Code and its referenced documents are met and meet approval of the Fire Marshal.

5706.2.4.4 Limits in which the storage of class I and class II flammable liquids in above ground tanks is prohibited is as specified in the Fire Code and its referenced documents and is limited to the first fire district if all related requirements of the Fire Code and its referenced documents are met and meet approval of the Fire Marshal.

5806.2 Limits in which the storage of flammable cryogenic fluids in stationary containers is prohibited as specified in the Fire Code and its referenced documents and is limited to the first district if all related requirements of the Fire Code and its referenced documents are met and meet the approval of the Fire Marshal.

6104.2. Limits in which the storage of liquefied petroleum gas is restricted for the protection of heavily populated or congested areas is as specified in the Fire Code and its referenced documents and meet the approval of the Fire Marshal.

ORDINANCE NUMBER 2554

**AN ORDINANCE TO ACCEPT THE CITY OF VESTAVIA HILLS
CAHABA HEIGHTS VILLAGE PLAN BEING THE 2015 AMENDMENT
TO THE 2008 CAHABA HEIGHTS COMMUNITY PLAN**

WHEREAS, pursuant to Section 11-52-8 of the *Code of Alabama, 1975*, it shall be the function and duty of the City of Vestavia Hills Planning and Zoning Commission to make and adopt a master plan for the physical development of Vestavia Hills, Alabama, and;

WHEREAS, the City of Vestavia Hills Planning and Zoning Commission has made a careful study of the comprehensive plan prepared and submitted by the Cahaba Heights Charrette Committee headed by Cheryl Morgan, FAIA; and;

WHEREAS, the City of Vestavia Hills Planning and Zoning unanimously approved a resolution to adopt the Cahaba Heights Village Plan being the 2015 Amendment to the 2008 Cahaba Heights Community Plan (the “Plan”) designated as a “living document which will serve as a guide for the City of Vestavia Hills Planning and Zoning Commission, and which can be amended, extended or added to from time to time as changing conditions may require”; and

WHEREAS, the City Council of the City of Vestavia Hills, Alabama has studied and reviewed the Plan and concurs with the Vestavia Hills Planning and Zoning Commission in determining that the document meets the general requirement of guiding and accomplishing a coordinated, adjusted and harmonious development of a portion of the Cahaba Heights area of the City of Vestavia Hills and its environs which will, in accordance with present and future needs, best promote health, safety, morals, order, convenience, prosperity and general welfare as well as efficiency and economy in the process of development, and;

WHEREAS, the Plan is a living document which will serve as a guide for the City of Vestavia Hills Planning and Zoning Commission as well as other city entities, and which can be amended, extended or added to from time to time as changing conditions may require.

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

1. The planning document entitled “City of Vestavia Hills Cahaba Heights Village Plan being the 2015 Amendment to the 2008 Cahaba Heights Community Plan” and all official maps pertaining thereto, as amended, are hereby accepted the 9th day of February, 2015; and
2. That the City Clerk be and is hereby directed to publish this Ordinance in accordance with the requirements of the law; and
3. Said Ordinance shall become effective upon the adoption and approval of this Ordinance in accordance with the provisions of law.

DONE, ORDERED and APPROVED this the 9th day of February, 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 # 2554 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 9th day of February, 2015, 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 _____ day of _____, 2015.

Rebecca Leavings
City Clerk

RESOLUTION NUMBER 4677

A RESOLUTION ACCEPTING A BID FOR A PORTABLE CARDIAC MONITOR/DEFIBRILLATOR FOR THE CITY OF VESTAVIA HILLS FIRE DEPARTMENT

WHEREAS, on December 8, 2014 at 10:00 a.m. the City of Vestavia Hills publicly read aloud bids submitted for a portable cardiac monitor/defibrillator; and

WHEREAS, a detail of said bids is marked as Exhibit A and attached and incorporated in this Resolution Number 4677 as though written fully therein; and

WHEREAS, the Fire Chief has reviewed the bids and recommended acceptance of the bid submitted by Physio-Control as detailed in Exhibit B; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to follow 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 Physio-Control as detailed in Exhibit A attached and recommended by the Fire Chief is hereby accepted; and
2. This Resolution Number 4677 shall become effective immediately upon adoption and approval.

DONE, ORDERED, ADOPTED and APPROVED this the 9th day of February, 2015.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

Exhibit A

BID SUMMARY

BID-2014-14

BID: Portable Cardiac Monitor/Defibrillator

BID OPENED: December 8, 2014
10:00 AM

PEOPLE PRESENT FOR BID OPENING

1. Rebecca Leavings, City Clerk
2. Terry Ray, Asst. Fire Chief
3. Phillip Barnes, VHFD

NINE BIDS SENT OUT

ONE BID RECEIVED BEFORE BID OPENING

- | | | |
|----|------------------------|-------------|
| 1. | Physio-Control | \$34,400.15 |
| 2. | Zoll Medical | Declined |
| 3. | Sunbelt Fire Equipment | Declined |

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

**JAMES R. ST. JOHN
FIRE CHIEF**

MEMORANDUM

TO: Jeff Downes, City Manager
FROM: Jim St. John, Fire Chief
DATE: January 22, 2015
RE: Cardiac Monitor/Defibrillator Bid Recommendation

Nine invitations for bids were sent out to purchase a cardiac monitor/defibrillator with FY2015 Capital Purchase funds. We received one bid from Physio-Control for \$34,400.05. Zoll Medical and Sunbelt Fire Equipment responded and declined to bid. The remaining bid invitations were unanswered. Physio-Control's bid also included a \$3,500.00 trade-in value on an older unit which will not be supported after 2015. The total cost then, is \$30,900.05 which is within budget.

Based upon Physio-Control's bid meeting specifications and being within the budgeted amount, I recommend the Physio-Control bid of \$30,900.05 with trade-in be accepted.

tr

RESOLUTION NUMBER 4678

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

WITNESSETH THESE RECITALS

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

WHEREAS, the Fire Chief has determined that the property described in Exhibit A is no longer of value to the City and would be better utilized as a trade-in on a new LifePak 15 and has indicated a recommendation for the trade-in as described in Exhibit A; and

WHEREAS, the Mayor and City Council feel it would be in the best public interest to accept the recommendation of the Fire Chief that said property would be better utilized as a trade-in on a new LifePak 15 and has indicated a recommendation for the trade-in as described in Exhibit A.

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

1. The property described in the attached Exhibit A is declared as surplus and no longer needed for public purposes; and
2. Fire Chief is hereby authorized to trade said property in for credit toward the purchase of a new LifePak 15 in order to dispose of the above-referenced surplus personal property in order to obtain the best resale value of said vehicles; and
3. This Resolution Number 4678 shall become effective immediately upon adoption and approval.

DONE, ORDERED, APPROVED and ADOPTED on this the 9th day of February, 2015.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

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

**JAMES R. ST. JOHN
FIRE CHIEF**

MEMORANDUM

TO: Jeff Downes, City Manager
FROM: Jim St. John, Fire Chief
DATE: January 22, 2015
RE: Surplus Monitor/Defibrillator

I recommend that a Physio-Control LifePak 12, Model # VLP12-02-003264 and Serial # 13881909 monitor/defibrillator be declared surplus to use as a trade-in on a new LifePak 15. This is one of the oldest units and in the poorest condition. Additionally, Physio-Control has stated that the LifePak 12s will not be supported after 2015 and has offered a \$3,500.00 credit as a trade-in toward the purchase of a new LifePak 15.

tr

RESOLUTION NUMBER 4679

A RESOLUTION URGING THE UNIVERSITY OF ALABAMA SYSTEM BOARD OF TRUSTEES AND THE UNIVERSITY OF ALABAMA AT BIRMINGHAM PRESIDENT TO RECONSIDER THE DISCONTINUATION OF THE ATHLETIC PROGRAMS THAT WERE RECENTLY CANCELLED AT THE UNIVERSITY OF ALABAMA AT BIRMINGHAM

WHEREAS, the economic impact of The University of Alabama at Birmingham benefits, in a positive way, not only the City of Birmingham, but the surrounding municipalities, including the City of Vestavia Hills; and

WHEREAS, several citizens of the City of Vestavia Hills, attend, have attended or work at The University of Alabama at Birmingham; and

WHEREAS, the Mayor and City Council of the City of Vestavia Hills, Alabama, believe in the values of the community which athletics provide to the college environment and experience.

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

1. The Mayor and City Council of the City of Vestavia Hills and many of its citizens urge the University of Alabama System Board of Trustees (“Trustees”) and The University of Alabama of Birmingham President (“President”) to reconsider the discontinuation of the athletic programs that were recently cancelled; and
2. The Mayor and City Council also encourage the Trustees and the President to be more transparent in their decision making that not only affects the University, but the municipalities that support athletics and academics at The University of Alabama at Birmingham; and
3. This Resolution Number shall become effective immediately upon adoption and approval.

ADOPTED and **APPROVED** this the 9th day of February, 2015.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

ORDINANCE NUMBER 2555

**AN ORDINANCE AUTHORIZING AND DIRECTING THE
PURCHASING AND CLOSING OF THE SALE OF REAL ESTATE**

THIS ORDINANCE NUMBER 2555 is considered, approved, enacted and adopted on this the 23rd day of February, 2015.

WITNESSETH THESE RECITALS

WHEREAS, municipalities in Alabama have the legal authority to acquire real estate by purchase pursuant to Title 11-40-1, *Code of Alabama, 1975*; and

WHEREAS, the City Council (the “City Council”) of the City of Vestavia Hills, Alabama, a municipal corporation (the “City”) finds and determines that the purchase by the City of the hereinafter described real property (the “Property”) will promote the health, safety and general welfare of the City; and

WHEREAS, Title 11-47-5, *Code of Alabama, 1975*, reads as follows:

“Contracts entered into by a municipality shall be in writing, signed and executed in the name of the city or town by the officers authorized to make the same and by the party contracting. In cases not otherwise directed by law or ordinance, such contracts shall be entered into and executed by the mayor in the name of the city or town and all obligations for the payment of money by the municipality, except for bonds and interest coupons, shall be attested by the clerk. This section shall not be construed to cover purchases for the ordinary needs of the municipality;” and

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

1. PROMOTION OF PUBLIC WELFARE: The City Council (the “City Council”) of the City of Vestavia Hills, Alabama, a municipal corporation (the “City”) finds and determines that the purchase by the City of the hereinafter described real property and improvements located at 2221 Old Columbiana Road (the “Property”) will promote the health, safety and general welfare of the City.

2. **CONTRACT FOR PURCHASE OF REAL ESTATE:** The purchasing and closing of the sale of the Property shall be completed all in accordance with the terms, provisions, conditions and limitations of a written General Sales Contract (the “Contract”) ultimately considered for acceptance and approval by the City Council at this regularly scheduled public meeting. The City Manager shall execute and deliver all documents necessary to close the purchase and secure clear title to the Property;

3. **CONTRACT:** A copy of the proposed contract is attached to and incorporated into this Ordinance Number 2555 as though written fully therein.

9. **POSTING OF ORDINANCE NUMBER 2555:** If the City Council approves, enacts and adopts Ordinance Number 2555, as amended, then in such event, said Ordinance shall be posted in three (3) public places within the City as required by Title 11-45-8(b)(1), *Code of Alabama, 1975*.

10. **EFFECTIVE DATE OF ORDINANCE NUMBER 2555:** Ordinance Number 2555 shall become effective five (5) days after posting in accordance with Title 11-45-8(3), *Code of Alabama, 1975*.

11. **CLOSING DATE:** The Real Estate Sales Contract shall be closed after the effective date of Ordinance Number 2555 on a date mutually agreed upon by Seller and Purchaser.

DONE, ORDERED, APPROVED and ADOPTED, this the 23rd day of February, 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 # 2555 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 23rd day of February, 2015 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills New Merkle House, Vestavia Hills Civic Center and Vestavia Hills Library in the Forest this the _____ day of _____, 2015.

Rebecca Leavings
City Clerk

SOUTHPACE PROPERTIES, INC
300 Richard Arrington, Jr. Boulevard, North
Suite 900, Title Building
Birmingham, Alabama 35203
(205-326-2222)

Date: November 24, 2014

GENERAL SALES CONTRACT The Undersigned Purchaser(s) City of Vestavia Hills, whose address is 513 Montgomery Hwy, Vestavia, AL 35216 hereby agrees to purchase and the Undersigned Seller Continental Equity Corporation, whose address is, 2604 Tyne Blvd, Nashville, TN 37215-4616 hereby agrees to sell the following described real estate, together with all improvements, shrubbery, plantings, fixtures and appurtenances, situated in the City of Vestavia Hills County of Jefferson, Alabama, on the terms stated below: Address 2221 Old Columbia Road and described as:

Lot 1 of the Polhemus Addition to Vestavia Hills as recorded in Map Book 223 Page 5 in the Office of the Judge of Probate in Jefferson County, Alabama

1. **THE PURCHASE PRICE:** shall be \$ 850,000.00 which shall be payable as follows:

Earnest Money.....	\$	<u>5,000.00</u>
Cash on closing this sale.....	\$	<u>845,000.00</u>
Total.....	\$	<u>850,000.00</u>

2. **TITLE INSURANCE:** The Seller agrees to furnish the Purchaser within 21 days after the Effective Date a standard owner's title insurance commitment for the issuance of an owner's title insurance policy, issued by a company qualified to insure titles in Alabama in the amount of the purchase price, showing Seller has fee simple title to the Property, together with the documents relating to exceptions to title referred to therein ("Title Commitment"). Purchaser shall notify Seller of any unacceptable liens, encumbrances, restrictions, or other defects or matters ("Title Objections") on or before the expiration of the Inspection Period. In the event that Purchaser fails to notify Seller of any Title Objections within said time period, Purchaser shall be deemed to have accepted such title and all matters contained therein shall be deemed to be "Permitted Encumbrances". In the event that Purchaser does provide Title Objections within said time period, within five (5) days following Purchaser's delivery of the Title Objections, Seller shall elect (by written notice to Purchaser) to cure or decline to correct such Title Objections. If Seller advises Purchaser that Seller is unwilling or unable to correct any or all Title Objections or if Seller fails to respond, within five (5) days thereafter, Purchaser may elect to terminate this Agreement by giving written notice to Seller, at which time the Earnest Money shall be returned to Purchaser. In the event that Purchaser fails to provide such notice during such time, Purchaser shall be deemed to have accepted such title and such matters shall be deemed to be "Permitted Encumbrances". At Closing, Seller shall pay for the owner's title insurance policy ("Owner's Policy") to be issued by the Title Company pursuant to the Title Commitment which shall contain references to the Permitted Encumbrances. In the event both Owner's and Mortgagee's title policies are obtained at the time of closing, the total expense of procuring the two policies will be divided equally between the Seller and the Purchaser provided the mortgagee is not the Seller. Purchaser shall pay for any special endorsements required by Purchaser or Purchaser's lender.

3. **PRORATIONS:** All items customarily prorated and adjusted in connection with the closing of real estate similar to the Property, including all ad valorem taxes, escrow deposits, rents, operating expenses, insurance, and accrued interest on mortgages assumed, if any, are to be prorated between Seller and Purchaser as of the Closing Date, and any advance escrow deposits held by Mortgagees shall be credited to Seller. The cost of recording the deed shall be paid by the Purchaser. UNLESS OTHERWISE AGREED HEREIN, ALL AD VALOREM TAXES EXCEPT MUNICIPAL TAXES ARE PRESUMED TO BE PAID IN ARREARS FOR PURPOSES OF PRORATION; MUNICIPAL TAXES, IF ANY, ARE PRESUMED TO BE PAID IN ADVANCE.

4. **CLOSING & POSSESSION DATES:** The sale shall be closed and the deed delivered on or before 30 days from expiration of the inspection period except the Seller shall have a reasonable length of time within which to perfect title or cure defects in the title to the said property. Possession, subject to any existing leases on the property, is to be given on delivery of the deed unless otherwise agreed to herein.

5. **CONVEYANCE:** The Seller agrees to convey said property to the Purchaser by Statutory warranty deed free of all encumbrances, except for mineral and mining rights not owned by Seller and the "Permitted Encumbrances" and except as otherwise herein set out. Seller and Purchaser agree that any encumbrances not herein excepted or assumed may be cleared at the time of closing from sales proceeds. At closing all existing leases shall be assigned to Purchaser and all lease escrow deposits shall be transferred to Purchaser.

6. **THE COMMISSION PAYABLE IN THIS SALE IS NOT SET BY THE BIRMINGHAM ASSOCIATION OF REALTORS, INC., BUT IS NEGOTIABLE.** In this agreement Seller (Seller/Purchaser) agrees to pay to Southpace Properties, Inc. Broker in this transaction, at closing a total commission in the amount of 3 % of the purchase price. All parties stipulate that there were no other Brokers involved in the transaction.

7. **CONDITION OF PROPERTY:** Property is being sold in its present "as is" condition, including ordinary wear and tear to the closing date. Neither Seller nor any Agent makes any representations or warranties regarding condition of the Property except to the extent expressly and specifically set forth herein. However, if the Property suffers material damage prior to the closing date, and Seller refuses to pay for any repairs reasonably required to restore the Property to a condition at least as good as previously existing, ordinary wear and tear excepted, Purchaser may proceed with the closing or cancel the Agreement and have Earnest Money refunded. Purchaser has the obligation to determine, either personally or through or with a representative of Purchaser's choosing, any and all conditions of the Property material to Purchaser's decision to buy the Property, including without limitation, the condition of the heating, cooling, plumbing and electrical systems and any built-in appliances, and the roof and the basement, including floors; structural condition; subsurface condition; utility and sewer or septic tank availability and condition.

8. **PURCHASER INSPECTION PERIOD:** Within seven (7) days from the date this contract is accepted by all parties, Seller shall deliver to Purchaser all documents in Seller's possession related to title and environmental matters, including any existing title policies, copies of any leases, surveys, environmental reports and the like. Purchaser shall have a period of 4 months from the Effective Date ("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. This determination shall include, without limitation, Purchaser satisfying itself as to title matters, survey matters, structural matters, zoning matters, subdivision restrictions, environmental matters, 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 Contract by giving written notice of termination to Seller no later than the last day of the Inspection Period, in which event this Contract 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. Purchaser shall coordinate all of its testing and investigations and its agents' testing and investigations with Seller in order to insure the least amount of interference with Seller's operations. Purchaser agrees to indemnify and hold Seller harmless against any claims for bodily injury, property damage and mechanics' liens arising out of any actions of Purchaser or its agents or representatives on the Property in the course of such activities. Purchaser also agrees to restore or repair any of the Property damaged or disturbed as a result of Purchaser's exercise of its rights under this Agreement to as near as is reasonably possible the condition that existed immediately prior to the exercise of such rights. Purchaser's obligations to indemnify and hold Seller harmless under this paragraph shall survive Closing and any termination of this Agreement. Purchaser's obligation under this paragraph to restore the Property shall survive any termination of this Agreement, but shall not survive Closing. If Purchaser fails to notify Seller of his intent to cancel prior to the expiration of the Inspection Period then this contingency will be considered removed and the contract shall continue in full force and effect and the Earnest Money will be considered "at risk" and will not be refunded in any event other than a default by Seller.

9. **HAZARDOUS SUBSTANCES:** Seller and Purchaser expressly acknowledge that the Agent(s) have not made an independent investigation or determination with respect to the existence or nonexistence of asbestos, PCB transformers, or other toxic, hazardous or contaminated substances or gases in, on, or about the Property, or for the presence of underground storage tanks. Any such investigation or determination shall be the responsibility of Seller and/or Purchaser and their respective Agent(s) shall not be held responsible therefor.

10. **SELLER WARRANTIES** Seller warrants that unless excepted herein, Seller 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 Seller is the fee owner of the Property or is authorized to execute this document for the fee owner. Seller also represents that, to the best of its knowledge, except as may otherwise be expressly disclosed herein, Seller has not released or disposed of any hazardous or toxic waste, substance or material, including without limitation any asbestos or any oil or pesticides (collectively, "Hazardous Substances"), on or about the Property; has not disposed of or arranged for the disposition of any Hazardous Substances from the Property except in compliance with all applicable federal, state or local laws; and to best of seller's knowledge no Hazardous Substances exist on the Property or about the Property that threaten the Property. Seller makes no warranty that the Property is suitable for any particular purpose, nor that the Property is in compliance with the requirements of the Americans with Disabilities Act. **THESE WARRANTIES SHALL SURVIVE THE DELIVERY OF THE DEED.**

11. **EARNEST MONEY & PURCHASER'S DEFAULT:** The Seller hereby authorizes the listing Broker Southpace Properties, Inc. the (Escrow Holder") to hold the earnest money in trust for the Seller in its general non-interest bearing escrow account, pending the fulfillment of this Contract. In the event the Purchaser fails to carry out and perform the terms of this agreement the earnest money shall be forfeited as liquidated damages at the option of the Seller, provided the Seller agrees to the cancellation of this Contract. Said earnest money so forfeited shall be divided equally between the Seller and his Broker however Broker will not receive more than the fee that would have been received if the transaction had closed. If this Contract does not close and the earnest money is to be turned over to Seller or refunded to Purchaser pursuant to this Contract, Seller and Purchaser agree to execute a written release to the listing company affirming the proper disposition of the earnest money. If either party unreasonably refuses or fails to tender such written release, and in subsequent proceedings it is ruled the Earnest Money does not belong to them, then they shall be liable for all fees and expenses, including attorney fees, incurred by Listing Broker and/or the other party in connection with their efforts to effect the proper disposition of the earnest money. In the event of a dispute between Seller and Purchaser with respect to the Earnest Money, the Escrow Holder shall be entitled to tender into the registry or custody of any court of competent jurisdiction the Earnest Money, together with such legal proceedings as it deems appropriate, and therefore to be discharged from all further duties under this Agreement. Escrow Agent shall be entitled to deduct or recover from the Earnest Money its court costs, reasonable attorney fees and other out-of-pocket expenses related to this interpleader. Seller and Purchaser agree to indemnify and hold harmless the Escrow Holder against any and all losses, claims, damages, liabilities, and expenses, including without limitation, attorney's fees and expenses, incurred by it in connection with its acceptance of this appointment as Escrow Holder. Purchaser and Seller agree that "Escrow Holder" shall not be required to deposit Purchaser's earnest money check until this Contract has been accepted and signed by all parties. If Purchaser's Earnest Money check is returned by a financial institution as unpaid, Seller shall have the right to void this Agreement and neither party shall have any further obligation to the other.

12. **DISCLAIMER:** Seller and Purchaser acknowledge that they have not relied upon advice or representations of Broker (or Broker's associated salespersons) relative to (i) the legal or tax consequences of this Contract and the sale, purchase or ownership of the Property, (ii) the structural condition of the Property, including condition of the roof and basement; (iii) construction materials; (iv) the nature and operating condition of the electrical, heating, air conditioning, plumbing, water heating systems and appliances; (v) the availability of utilities or sewer service; (vi) the character of the neighborhood; (vii) the investment or resale value of the Property; (viii) the existence of any hazardous or toxic waste, substance, or material, including without limitation any asbestos or any oil or pesticides; (ix) any state of facts which would be disclosed by an accurate survey of the Property; or (x) any other matters affecting their willingness to sell or purchase the Property on the terms and price herein set forth. Seller and Purchaser acknowledge that if such matters are of concern to them in the decision to sell or purchase the Property, they have sought and obtained independent advice relative thereto.

13. **SELECTION OF ATTORNEY:** The parties hereto acknowledge and agree that, if they have agreed to share the fees of a closing attorney hereunder, such fees sharing may involve a potential conflict of interest and they may be required to execute an affidavit at closing acknowledging their recognition and acceptance of same. Each of the parties further acknowledges that he has a right to be represented at all times in connection with this Contract and the closing by an attorney of his own choosing, at his own expense. Any additional fees relating to financing may be allocated to Purchaser, and any additional fees relating to clearing of title may be allocated to Seller.

14. **SURVEY:** Within seven (7) days following the Effective Date, the Seller will furnish Purchaser a copy of any survey of the Property in its possession (or, if more than one, the most current survey), or will advise Purchaser that it has no such survey. The Seller does not warrant the accuracy of any survey so provided. Purchaser at its expense may elect to obtain a current survey. In the event a current survey is obtained, all easements and other matters shown on the survey shall be Permitted Encumbrances unless objected to in writing prior to the end of the Review Period. If no survey is obtained, any easements and other matters that would be disclosed by a current and accurate survey shall be Permitted Encumbrances. Broker recommends the Purchaser obtain an ALTA Survey.

15. **AGENCY DISCLOSURE:**

The Listing Company: Southpace Properties, Inc is: (Two blocks may be checked)

An Agent of the Seller
 An Agent of the Purchaser
 An Agent of the Purchaser and Seller and is acting as a Limited Consensual Dual Agent
 Assisting the Purchaser as a Transaction Broker
 Assisting the Seller as a Transaction Broker

The Selling Company: Southpace Properties, Inc is: (Two blocks may be checked)

An Agent of the Seller
 An Agent of the Purchaser
 An Agent of the Purchaser and Seller and is acting as a Limited Consensual Dual Agent
 Assisting the Purchaser as a Transaction Broker
 Assisting the Seller as a Transaction Broker

Purchaser's Initial _____

Seller's Initial _____

16. **ARBITRATION:** Any controversy or claim arising out of or relating to this Agreement, or the breach hereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Such arbitration shall be held in Birmingham, Alabama. Any party may, without any inconsistency with this Agreement, seek from a court any interim or provisional relief that is necessary to protect the rights of property of such party, pending the establishment of the arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the controversy). Such arbitration and determination shall be final and binding on the parties, and the parties agree to abide by the arbitration findings. Judgment may be entered upon such determination and award in any court having jurisdiction thereof, and the parties agree that no appeals shall be taken there from. The arbitrator shall award to the prevailing party, if any, as determined by the arbitrator, all of its costs and fees in connection with such arbitration, including the arbitrator's fees, administrative fees, travel expenses, out-of-pocket expenses, court costs, witness fees and attorney's fees.

17. **INSURANCE AND RISK OF LOSS:** The Seller will keep in force sufficient hazard insurance on the property to protect all interests until sale is closed and the deed delivered. If the Property is destroyed or materially damaged between the date hereof and the closing, and Seller is unable or unwilling to restore it to its previous condition prior to closing, Purchaser shall have the option of canceling this Agreement and receiving a full refund of the Earnest Money or accepting the Property in its then condition. If Purchaser elects to accept the Property in its damaged condition, any insurance proceeds (for damage to structures, only) otherwise payable to Seller by reason of such damage shall be applied to the balance of the purchase price or otherwise be payable to Purchaser.

18. **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA):** In the closing of this transaction, Seller and Purchaser shall comply with the FIRPTA and the regulations promulgated thereunder by the IRS.

19. **FACSIMILE AND COUNTERPART SIGNATURES:** This agreement may be executed in counterparts and by either party or by both parties by telecopy, electronic scanned email documents or facsimile and shall be binding upon the party so executing it upon receipt by the other party of the signature.

20. **NOTICE:** All notices, demands and/or consents provided for in this Agreement shall be in writing and shall be deemed to have been served on the date mailed by United States registered or certified mail, return receipt requested, with postage prepaid. All such notices and communications

shall be addressed to the parties hereto at the respective addresses set forth at page 1 hereof, or at such other addresses as either may specify to the other in writing. If the parties fax number or email addresses are available notice shall be deemed to have been served when sent by one of these methods

21. ENTIRE AGREEMENT This Agreement constitutes the entire agreement between Purchaser and Seller regarding the Property, and supersedes all prior discussions, negotiations and agreements between Purchaser and Seller, whether oral or written. Neither Purchaser, Seller, Agent nor any other sales agent shall be bound by any understanding, agreement, promise, or representation concerning the Property, expressed or implied, not specified herein. Any further changes or modifications to this Agreement must be in writing and signed by the parties hereto.

22. ADDITIONAL PROVISIONS set forth on any attached Addendum, signed and dated by all parties, are hereby made a part of this Contract.

23. GOVERNING LAW: This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama, without regard to principles governing conflicts of law, except that it is agreed that the provisions of this Agreement relating to arbitration or disputes hereunder shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, and, to the extent not in conflict with the Federal Arbitration Act, by the Commercial Arbitration Rules of the American Arbitration Association.

24. TIME IS OF THE ESSENCE: The Parties agree that time is of the essence of this Agreement.

25. "EFFECTIVE DATE" OF CONTRACT: THE "EFFECTIVE DATE" SHALL BE THE DATE ON WHICH THE SECOND PARTY EXECUTES THIS CONTRACT AS SHOWN ON THE SIGNATURE PAGE OR, IF THE CONTRACT INCLUDES SUBSEQUENT CHANGES SIGNED OR INITIALED AND DATED BY THE PARTIES, THE LATEST SUCH CHANGE AS SO SIGNED OR INITIALED AND DATED.

THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF YOU DO NOT UNDERSTAND THE LEGAL EFFECT OF ANY PART OF THIS CONTRACT, SEEK LEGAL ADVICE BEFORE SIGNING.

SELLER: Continental Equity Corporation

Witness to Seller's Signature(s)

By: _____
Its: _____ DATE

PURCHASER: City of Vestavia Hills

Witness to Purchaser's Signature(s)

By: _____
Its: _____ DATE

Receipt is hereby acknowledged of the earnest money as hereinabove set forth ____ CASH ____ CHECK

Firm: _____

By: _____

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

January 26, 2015

By Hand Delivery

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

In Re: Real Estate Sales Contract by and between Continental Equity Corporation,
as "Seller," and the City of Vestavia Hills, Alabama, as "Purchaser"

Dear Mr. Downes:

On January 22, 2015, you sent to me via electronic mail a copy of the above Real Estate Sales Contract, dated November 24, 2014, by and between Continental Equity Corporation, as "Seller," and the City of Vestavia Hills, Alabama ("Purchaser") with a request that I review the same and furnish you with my written legal opinion. The purpose of this letter is to comply with your request.

If the City decides to purchase this property, then in such event the date on the contract should be changed. Other than that modification, it is my legal opinion that the contract meets the requirements of Alabama law. I have no further recommendations for additions, deletions, changes and/or corrections.

I have no idea whether or not this property is encumbered by any private restrictive covenants. I will not know that unless and until the City decides to approve the contract and buy the property. The title binder will reflect whether or not such private restrictive covenants exist.

I do want to point out Alabama law as set forth below in case the City ever encounters such private restrictive covenants.

January 26, 2015

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EMINENT DOMAIN

Municipalities in Alabama are authorized, pursuant to "The Alabama Eminent Domain Code" set forth in Title 18-1A-1, et seq., *Code of Alabama, 1975*, to take private property for public use by the condemnation procedure.

Alabama law provides that any and all restrictive covenants encumbering land that has been condemned by the city are automatically eliminated by the condemnation proceeding. *Burma Hills Development Company, Inc., a corp., and the City of Mobile v. Marr*, 229 So.2d 776 (1969) and *Dothan Area Chamber of Commerce, Inc. v. Shealy*, 561 So.2d 515 (1990).

The Supreme Court of Alabama held in those two cases that a restrictive covenant or the right to enforce a restrictive covenant does not constitute such a property right, title and interest as requires the payment of compensation for damages to those persons entitled to enforce the restrictions of the said covenants where the restricted land is taken and devoted to public purposes.

The City of Vestavia Hills has condemned property in the past for public use. On May 6, 2002, the City Council approved and adopted Resolution Number 3148 authorizing the City to acquire by eminent domain certain land owned by Inthewoods, LLC.

Please let me know if we need to meet and discuss this matter further.

Very truly yours,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp