PRE-MEETING AGENDA
MOUNTAIN BROOK CITY COUNCIL

CITY HALL PRE-COUNCIL ROOM (A106)
56 CHURCH STREET
MOUNTAIN BROOK, AL 35213

May 9, 2016 6:00PM

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1. **Dangerous Buildings Program-Mark Waggoner of Hand Arendall, LLC (See attached information)**

2. **No Cell Phone Zones around Schools-Dale Wisely, Director of Student Services for the Mountain Brook School System. (See attached information and proposal from Skipper Consultants. This item may be added to the formal agenda.)**

3. **"No Right Turn" sign on Hwy 280 ramp at Cahaba Road in Mountain Brook Village- Mayor Oden (See attached information. This item may be added to the formal agenda.)**

4. **High School parking issues on Ridgecrest Road-Mark Drummond (See attached information. This item may be added to the formal agenda.)**

5. **FY2017 Budget Schedule-Sam Gaston (See attached information.)**

HAND ARENDALL LLC ▪ LAWYERS

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March 18, 2016

PRIVILEGED AND CONFIDENTIAL
VIA HAND DELIVERY
Hon. L. Terry Oden, Mayor
City of Mountain Brook, Alabama
56 Church Street
Mountain Brook, AL 25213

Re: *Dangerous Buildings Program*

Dear Mayor Oden:

Thank you for taking the time to meet with me and my law partner, Ben Goldman, on Thursday to discuss Hand Arendall LLC's Dangerous Building Program. Having heard from you and the other City officials, I believe that this program would be very beneficial for our City.

As you requested, please find enclosed several items that will help you and your Council with your study of our Dangerous Buildings Program. First, I am sending ten copies of the Program's Executive Summary. Second, I am providing a copy of the Ordinance adopted by the City of Cordova, implementing our Program. The form of your Ordinance would vary slightly because Mountain Brook has codified its ordinances, but the substance of the Ordinance would be substantially similar. As we discussed at the meeting and is indicated on Cordova's Ordinance, our firm claims a copyright on our Program materials.

We are looking forward to the opportunity to discuss our Program at an upcoming pre-council meeting. At your convenience, please let me know when you would like to schedule the presentation so that we may reserve the time on our calendars.

As residents of Mountain Brook, Ben and I are proud of our City and proud of the job that our City's representatives are doing. We believe that our Program will offer you another arrow in your quiver to support your ongoing work. If you have any questions concerning the foregoing or the enclosed, please do not hesitate to let me know. I very much appreciate your consideration of this proposal.

Yours very truly,

HAND ARENDALL LLC

Mark

Mark T. Waggoner

MTW/aj
Enclosures

ORDINANCE NUMBER 001-2016

AN ORDINANCE CONCERNING UNSAFE STRUCTURES AND DANGEROUS BUILDINGS.

WHEREAS, within the City of Cordova, Alabama ("the City"), there exists and/or may exist in the future parcels of real property that due to poor design, obsolescence, or neglect, have become unsafe to the extent of becoming public nuisances, and;

WHEREAS, much of this property is vacant or in a state of disrepair and is causing or may cause a blight or blighting influence on the City and the neighborhoods in which the property is located, and;

WHEREAS, such property constitutes a threat to the health, safety, and welfare to the citizens of the City and is an impediment to economic development within the City, and;

WHEREAS, in compliance with Sections 11-40-30 through 11-40-36, inclusive, of the *Code of Alabama* (1975) and in compliance with Sections 11-53B-1 through 11-53B-16, inclusive, of the *Code of Alabama* (1975), the Council of Cordova, Alabama ("the Council") desires to amend its policies and procedures for repairing, moving or demolishing buildings and structures, or parts of buildings and structures, party walls, and foundations when found to be unsafe to the extent of being a public nuisance from any cause; and

WHEREAS, the Council desires that the City employ, alternatively, all tools provided by law to the City for the fixing of costs, creation of liens, making of assessments, and collection of costs associated with repairing, moving or demolishing buildings and structures, or parts of buildings and structures, party walls, and foundations when found to be unsafe to the extent of

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being a public nuisance from any cause, including but not limited to Section 6-5-122 of the *Code of Alabama* (1975), Sections 11-40-30 through 11-40-36, inclusive, of the *Code of Alabama* (1975), Sections 11-47-117 through 11-47-118, inclusive, of the *Code of Alabama* (1975), Section 11-47-131, of the *Code of Alabama* (1975), Sections 11-53-1 through 11-53-4, inclusive, of the *Code of Alabama* (1975), and Sections 11-53B-1 through 11-53B-16, inclusive, of the *Code of Alabama* (1975).

THEREFORE, BE IT NOW ORDAINED by the Council of Cordova, Alabama, as follows:

Section 1. Establishment of Unsafe Structures and Dangerous Buildings Code.

This Ordinance, as amended, shall be referenced as the City's "Unsafe Structures and Dangerous Buildings Code."

Section 2. Duties of Appropriate Municipal Official.

(a) The term "Appropriate Municipal Official" as used in this Ordinance shall mean the City building official, any City building inspections officer or deputy and any other City official or City employee designated by the Mayor as the person to exercise the authority and perform the duties delegated by this Ordinance.

(b) The Appropriate Municipal Official may:

(1) Inspect, or cause to be inspected, semiannually all public buildings, halls, churches, theatres, hotels, tenements, commercial manufacturing or loft buildings for the purpose of determining whether any conditions exist which render any such place a "dangerous building" as defined by this Ordinance;

(2) Inspect any building, wall or structure about which complaints are filed by any person to the effect that a building, wall or structure is, or may be, existing in violation of this Ordinance;

(3) Inspect any building, wall or structure reported (as hereinafter provided for) by the fire department or police department as probably existing in violation of the terms of this Ordinance; and

(4) Perform such other duties as are set forth in this Ordinance.

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(c) The Appropriate Municipal Official is hereby authorized and directed to enforce all of the provisions of this Ordinance. Upon presentation of the proper credentials, the Appropriate Municipal Official may enter any building, structure, part of building or structure, party wall, foundation, or premises for the purpose of inspection, to prevent violation of the provisions of this Ordinance, and/or to carry out an order given pursuant to this Ordinance.

Section 3. Dangerous buildings defined.

Any building, structure, part of building or structure, party wall, or foundation which has any of the following defects may be deemed a "dangerous building":

(1) Those whose interior walls or other vertical structure members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third of its base;

(2) Those which, exclusive of the foundation, show thirty-three (33) percent, or more, of damage or deterioration of one (1) or more supporting members, or fifty (50) percent of damage or deterioration of the non-supporting enclosing or outside walls or covering;

(3) Those which have improperly distributed loads upon the floors or roofs, or in which the same are overloaded, or which have insufficient strength to be reasonably safe for the purpose used;

(4) Those which have been damaged by fire, wind, earthquake, flood, sinkhole, deterioration, neglect, abandonment, vandalism, or any other cause so as to have become dangerous to life, health, property, morals, safety, or general welfare of the public or the occupants;

(5) Those which have become or are so damaged, dilapidated, decayed, unsafe, unsanitary, lacking in maintenance, vermin or rat infested, containing filth or contamination, lacking proper ventilation, lacking sufficient illumination, or which so utterly fail to provide the amenities, essential to decent living that they are unfit for human habitation, or are likely to cause sickness or disease, so as to work injury to the life, health, property, morals, safety, or general welfare of the public or the occupants;

(6) Those having light, air, heating, cooling, and sanitation facilities which are inadequate to protect the life, health, property, morals, safety, or general welfare of the public or the occupants;

(7) Those having inadequate facilities for egress in case of fire or panic, or those having insufficient stairways, elevators, fire escapes, or other means of ingress and egress to and from said building;

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(8) Those which do not provide minimum safeguards to protect or warn occupants in the event of fire;

(9) Those which contain unsafe equipment, including any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers, or other equipment on the premises or within the structure which is in such disrepair or condition that such equipment is a hazard to the life, health, property, morals, safety, or general welfare of the public or the occupants;

(10) Those which are so damaged, decayed, dilapidated, structurally unsafe, or of such fault construction or unstable foundation that partial or complete collapse is possible;

(11) Those which have parts thereof which are so attached that they may fall and damage property or injure the public or the occupants;

(12) Those, or any portion thereof, which are clearly unsafe for their use or occupancy;

(13) Those which are neglected, damaged, dilapidated, unsecured, or abandoned so as to become an attractive nuisance to children who might play in or on the building, structure, part of building or structure, party wall, or foundation to their danger, becomes a harbor for vagrants, criminals, or immoral persons, or enables persons to resort to the building, structure, part of building or structure, party wall, or foundation for committing a nuisance or an unlawful act;

(14) Those which have any portion remaining on a site after the demolition or destruction of the same or whenever the building, structure, part of building or structure, party wall, or foundation is abandoned so as to constitute such building, structure, part of building or structure, party wall, or foundation as an attractive nuisance or hazard to the public;

(15) Those which because of their condition are unsafe, unsanitary, or dangerous to the life, health, property, morals, safety, or general welfare of the public or the occupants; and

(16) Those with a condition or conditions that violate the City's technical codes adopted from time to time if such violation(s) are unsafe to the extent of becoming a public nuisance.

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Section 4. Buildings defined.

For purposes of this Ordinance, the term "building" is deemed to include all structures, appurtenances, improvements, and items on the property, whether or not attached to or apart of the main structure, including, but not limited to, houses, garages, sheds, carports, other accessory structures, pools, as well as any items located therein or on the subject property, including, junk, rubbish, trash, litter, grass and weeds as defined by the City's grass and weed abatement ordinance, junked motor vehicles, and/or any other matter declared a nuisance under existing law.

Section 5. Dangerous buildings constitute nuisances.

All "dangerous buildings" are hereby declared to be public nuisances, and may be repaired, vacated, moved, or demolished as provided by this Ordinance.

Section 6. Standards for repair, move, vacation, or demolition.

The following standards may be followed in substance by the Appropriate Municipal Official in ordering a repair, move, demolition, and/or vacation:

(1) If any building, structure, part of building or structure, party wall, or foundation can reasonably be repaired within a reasonable time and at a reasonable cost relative to the value of the structure so that it will no longer exist in violation of the terms of this Ordinance, it may be ordered to be repaired.

(2) If any building, structure, part of building or structure, party wall, or foundation can reasonably be moved so that it will no longer exist in violation of the terms of this Ordinance, it may be ordered to be moved.

(3) In any case where any building, structure, part of building or structure, party wall, or foundation is substantially damaged or decayed, or deteriorated from its original value or structure (not including the value of the land), it may be demolished, and in all cases where any building, structure, part of building or structure, party wall, or foundation cannot be reasonably repaired so that it will no longer exist in violation of the terms of this Ordinance, it may be demolished. In all cases where any building, structure, part of building or structure, party wall, or foundation is a fire hazard existing in violation of the terms of this Ordinance, it may be demolished.

(4) If any building, structure, part of building or structure, party wall, or foundation is in such condition as to make it dangerous to the life, health, property, morals, safety, or general welfare of the public or the occupants,

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it and/or the entirety or other portion of the premises upon which it is located may be ordered to be vacated.

Where one or more of the standards above may apply, the Appropriate Municipal Official may, in his sole discretion, choose to order any one, any combination, or all of the foregoing remedies.

Section 7. Notice from Appropriate Municipal Official of unsafe condition.

(a) Whenever the Appropriate Municipal Official of the City finds that any building, structure, part of building or structure, party wall, or foundation situated in the City is unsafe to the extent that it is a public nuisance, the Appropriate Municipal Official may, as set forth in this Section, give notice to remedy the unsafe or dangerous condition of the building or structure. The notice shall identify the street address, the legal description, and the parcel identification number of the property where the building, structure, part of building or structure, party wall, or foundation is located. The notice shall set forth in detail the basis for the Appropriate Municipal Official's finding and shall direct the owner or owners to take either of the following actions:

(1) In the case where repair is required, accomplish the specified repairs or improvements within a reasonable time set out in the notice, which time shall not be less than forty-five (45) days of the date of the notice or if the same cannot be repaired within that time to provide the Appropriate Municipal Official with a work plan to accomplish the repairs, which plan shall be submitted within forty-five (45) days of the making of the notice and shall be subject to the approval of the Council.

(2) In the case where a move or demolition is required, move or demolish the building, structure, part of building or structure, party wall, or foundation within a reasonable time set out in the notice, which time shall not be less than forty-five (45) days of the notice.

The notice shall state that, in the event the owner does not comply within the time specified therein, the repairs, the move, or the demolition shall be accomplished by the City and the cost thereof assessed against the property. The repair, move, or demolition must be completed to the Appropriate Municipal Official's satisfaction, or the same may be completed and accomplished by the City and the cost thereof assessed against the property. The notice shall inform the recipients that a public hearing as provided for by Section 8(a) shall be held on the finding of the Appropriate Municipal Official at a date, time, and location specified in the notice.

The Appropriate Municipal Official may also order that any building, structure, or part of building or structure ordered to be repaired, moved, or demolished be vacated along such terms as the Appropriate Municipal Official deems appropriate.

(b) The Appropriate Municipal Official shall give the notice required by Subsection (a) of this Section by all of the following means:

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(1) By certified or registered mail, properly addressed and postage prepaid, to all of the following persons or entities:

i. The person or persons, firm, association, or corporation last assessing the property for state taxes to the address on file in the Walker County Revenue Commissioner's Office;

ii. The record property owner or owners (including any owner or owners of an interest in the property) as shown from a search of the records of the office of the Judge of Probate of Walker County, Alabama, at the owner or owners' last known address and at the address of the subject property;

iii. All mortgagees of record as shown from a search of the records of the office of the Judge of Probate of Walker County, Alabama, to the address set forth in the mortgage or, if no address for the mortgagee is set forth in the mortgage, to the address determined to be the correct address by the Appropriate Municipal Official;

iv. All lien holders of record as shown from a search of the records of the office of the Judge of Probate of Walker County, Alabama, to the address set forth in the statement of lien or, if no address for the lien holder is set forth in the statement of lien, to the address determined to be the correct address by the Appropriate Municipal Official; and

v. Any person who is otherwise known to the Clerk or to the Appropriate Municipal Official to have an interest in the property;

(2) By posting notice of the order, or a copy thereof, within three (3) days of the date of mailing required by Subsection (b)(1) of this Section, at or within three feet of an entrance to the building or structure. If there is no entrance, the notice may be posted at any location on the building or structure; and

(3) By recording notice of the order, or a copy thereof, in the office of the Judge of Probate of Walker County, Alabama, on or before the date of mailing required by Subsection (b)(1) of this Section.

(c) In addition to the required notice provisions in Subsection (b) of this Section, the Appropriate Municipal Official may, in his sole discretion, publish a short form of the notice described in Subsection (a) of this Section in the *Daily Mountain Eagle* or other publication of general circulation in Walker County, Alabama.

(d) In the event that the identity of the record property owner(s) cannot be ascertained after a reasonably diligent search, the Appropriate Municipal Official, in addition to complying

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with the applicable notice provisions in Subsection (b) of this Section, shall issue notice to the unknown property owner(s) by publishing a short form of the notice described in Subsection (a) of this Section in the *Daily Mountain Eagle* or other publication of general circulation in Walker County, Alabama, once a week for four consecutive weeks.

(e) A failure by the Council to act on the findings of the Appropriate Municipal Official within one hundred twenty (120) days from the date of mailing required by Subsection (b)(1) of this Section shall constitute an abdication of the Appropriate Municipal Official's findings. However, this shall in no way prevent the City from reinitiating the proceedings authorized by this Ordinance at any time so long as all the requirements of this Ordinance are satisfied anew. Furthermore, this does not require that the ordered demolition, move, or repairs take place within one hundred twenty (120) days from the date of mailing required by Subsection (b)(1) of this Section.

Section 8. Hearings, appeals, and extensions.

(a) After the time specified in the notice provided for by Section 7(a) but no less than fifty (50) days from the date the notice is given as provided for by Section 7(b)(1), whichever is later, if the owner of any property cited hereunder fails to comply with the notice prescribed, the Council shall hold a public hearing to receive any objections to the finding by the Appropriate Municipal Official that the building or structure is unsafe to the extent of becoming a public nuisance. A written request for a public hearing is not necessary. At the public hearing, the Council shall also receive any written objections to the finding by the Appropriate Municipal Official. Any such written objection must be submitted to the Clerk prior to the start of the Council meeting at which the public hearing is held. No action shall be taken on the finding of the Appropriate Municipal Official until determination thereon is made by the Council.

(b) Upon holding the hearing, the Council may determine whether or not the building or structure is unsafe to the extent that it is a public nuisance. If it is determined by the Council that the building or structure is unsafe to the extent that it is a public nuisance, the Council may take either of the following actions:

(1) In the case where repair is required, order repair of the building at the expense of the City and assess the expenses of the repair on the land on which the building stands or to which it is attached.

(2) In the case where a move or demolition is required, order moving or demolition of the building at the expense of the City and assess the expenses of the move or demolition on the land on which the building stands or to which it is attached.

The Council may also order that any building, structure, or part of building or structure to be repaired, moved, or demolished be vacated along such terms as the Council deems appropriate.

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(c) Any person aggrieved by the decision of the Council at the hearing may, within ten (10) days thereafter, appeal to the Circuit Court of Walker County, Alabama, upon filing with the Clerk of the Circuit Court of Walker County, Alabama, notice of the appeal and bond for security of costs in the form and amount to be approved by the Circuit Clerk. Upon filing of the notice of appeal and approval of the bond, the Circuit Clerk of the court shall serve a copy of the notice of appeal on the Clerk and the appeal shall be docketed in the Circuit Court, and shall be a preferred case therein. The Clerk shall, upon receiving the notice, file with the Circuit Clerk a copy of the findings and determination of the Council in its proceedings. Any trials shall be held without jury upon the determination of the Council that the building or structure is unsafe to the extent that it is a public nuisance.

(d) After twenty (20) days of the decision of the Council, if a repair, move, or demolition is ordered by the Council and if an appeal has not been taken to the Circuit Court as provided for by Subsection 8(c), then the repair, move, or demolition may be accomplished by the City by the use of its own forces, or it may provide by contract for the repair or demolition. In the event that an appeal is taken to the Circuit Court as provided for by Subsection 8(c), once a judgment authorizing a repair, move, or demolition becomes final as provided by law, then the repair, the move, or the demolition may be accomplished by the City by the use of its own forces, or it may provide by contract for the repair, the move, or the demolition.

(e) A failure by the City to accomplish the repair, move, or demolition of a building, structure, part of building or structure, party wall, or foundation within one hundred eighty (180) days of the passage of the resolution ordering the same shall constitute an abdication of the Council's order unless one of the following conditions is satisfied:

(1) An aggrieved party has filed an appeal pursuant to or allegedly pursuant to this Ordinance;

(2) A court of competent jurisdiction has enjoined or otherwise halted the repair, move, or demolition;

(3) All parties identified by the Appropriate Municipal Official pursuant to Section 7(b)(1) have entered into a written agreement allowing for an extended period of time within which the repair, move, or demolition may be accomplished;

(4) All parties identified by the Appropriate Municipal Official pursuant to Section 7(b)(1) have noted at a meeting of the Council their agreement allowing for an extended period of time within which the repair, move, or demolition may be accomplished and the agreement is reflected in the minutes of the Council; or

(5) Further action is taken by the Council as provided by Subsection (f) of this Section.

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(f) If for any reason an ordered repair, move, or demolition cannot be accomplished within one hundred eighty (180) days of the passage of the resolution ordering the same, the Appropriate Municipal Official shall make a report of the same and the length of any desired extension to the Council. The Clerk shall distribute a copy of the report to the members of the Council. The Clerk shall set the report on the proposed extension for a public hearing at a meeting of the Council. The Clerk shall give no less than ten (10) days' notice of the meeting at which the proposed extension is to be considered by certified mail to all persons or entities listed in Section 7(b)(1). Notice shall be deemed complete upon mailing. Any person, firm, or corporation having an interest in the property may be heard at the meeting as to any objection to the proposed extension or the length thereof. Following the public hearing, the Council may adopt a resolution extending the time for the repair, move, or demolition to be accomplished for such period of time as it deems necessary. The Council need not order an extension before the time to complete the repair, move, or demolition expires in order for the extension to be effective, but if the Council desires to extend the time to complete the repair, move, or demolition, then the Council must order the extension no more than sixty (60) days after the expiration of the then existing deadline to complete the repair, move, or demolition. The Council may order repeated extensions if the process set forth in this Subsection is followed for each extension.

(g) Nothing in this Ordinance shall prevent the City from reinitiating the proceedings authorized by this Ordinance at any time so long as all the requirements of this Ordinance are satisfied anew.

(h) The City may sell or otherwise dispose of salvaged materials resulting from any demolition pursuant to this Ordinance.

Section 9. Fixing of costs as final assessment.

(a) Upon repair, move, or demolition of the building or structure, the Appropriate Municipal Official shall make a report to the Council of the cost thereof by tendering a copy of the report to the Clerk. The Clerk shall distribute a copy of the report to the members of the Council. The proceeds of any moneys received from the sale of salvaged materials from the building or structure shall be used or applied against the cost of demolition. The Clerk shall set the report of costs for a public hearing at a meeting of the Council.

(b) The Clerk shall give no less than ten (10) days' notice of the meeting at which the fixing of the costs is to be considered by certified mail to all persons or entities listed in Section 7(b)(1). Notice shall be deemed complete upon mailing.

(c) Any person, firm, or corporation having an interest in the property may be heard at the meeting as to any objection to the fixing of the costs or the amounts thereof.

(d) Following the public hearing, the Council may adopt a resolution fixing the costs which it finds were reasonably incurred in the repair, the move, or the demolition and assessing

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the costs against the lot or lots, parcel or parcels of land upon which the building or structure was located ("the final assessment").

Section 10. Tax lien for the final assessment of a move or demolition.

(a) The final assessment for a move or demolition once made and confirmed by the Council shall constitute a lien on the property for the amount of the final assessment. The lien shall be superior to all other liens on the property except liens for taxes, and shall continue in force until paid. The Clerk shall file a certified copy of the resolution in the office of the Judge of Probate of Walker County, Alabama, and with the Walker County Revenue Commissioner's office. In the case of a final assessment resulting from a move or demolition accomplished pursuant to this Ordinance, upon filing, the Revenue Commissioner of the county shall add the amount of the lien to the ad valorem tax bill on the property and shall collect the amount as if it were a tax and remit the amount to the City.

(b) The City may assess the final assessment of a move or demolition against any lot or lots, parcel or parcels of land purchased by the State of Alabama at any sale for the nonpayment of taxes, and where the assessment is made against the lot or lots, parcel or parcels of land, a subsequent redemption thereof by any person authorized to redeem, or sale thereof by the state, shall not operate to discharge, or in any manner affect the lien of the City for the assessment, but any redemptioner or purchaser at any sale by the state of any lot or lots, parcel or parcels of land upon which an assessment has been levied, whether prior to or subsequent to a sale to the state for the nonpayment of taxes, shall take the same subject to the assessment. The assessment shall then be added to the tax bill of the property, collected as a tax, and remitted to the City.

Section 11. Payment of assessments.

(a) Payment of a final assessment resulting from a move or demolition accomplished pursuant to this Ordinance shall be made in the manner and as provided for the payment of municipal improvement assessments in Section 11-48-48 of the *Code of Alabama* (1975), as the same has heretofore or may hereafter be amended. Upon the property owner's failure to pay the assessment, the officer designated by the City to collect the assessments shall proceed to collect the assessment as provided in Sections 11-48-49 to 11-48-60, inclusive, of the *Code of Alabama* (1975). The City may, in the latter notice, elect to have the Revenue Commissioner collect the assessment by adding the assessment to the tax bill. Upon the election, the Revenue Commissioner shall collect the assessment using all methods available for collecting ad valorem taxes.

(b) Payment of a final assessment resulting from a repair accomplished pursuant to this Ordinance shall be made in the manner and as provided in Section 11-53B-7 of the *Code of Alabama* (1975), as the same has heretofore or may hereafter be amended. Upon the property owner's failure to pay the assessment, the officer designated by the City to collect the assessments shall proceed to collect the assessment as provided in Sections 11-53B-8 to 11-53B-14, inclusive, of the *Code of Alabama* (1975).

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Section 12. Emergency action.

(a) The Appropriate Municipal Official is hereby authorized to initiate the immediate repair, move, or demolition of a building, structure, or portion thereof when in the opinion of the Appropriate Municipal Official such emergency action is required due to imminent danger of structural collapse endangering adjoining property, the public right of way, or human life or health. In the case of emergency action pursuant to this Subsection (a), the Appropriate Municipal Official may promptly cause such building, structure, or portion thereof to be made safe, secured, or removed. For this purpose, the Appropriate Municipal Official may at once enter such structure with such assistance and at such cost as the Appropriate Municipal Official may deem necessary. The Appropriate Municipal Official may vacate adjacent structures and protect the public by appropriate fence or such other means as may be necessary, and for this purpose, the Appropriate Municipal Official may close a public or private way.

(b) Alternatively, the Council is hereby authorized to, by resolution or motion reflected upon the minutes of its proceedings, order the immediate repair, move, or demolition of a building, structure, or portion thereof when in the opinion of the Council such emergency action is required due to imminent danger of any type endangering adjoining property, the public right of way, or human life or health. In the case of emergency action pursuant to this Subsection (b), the Council may promptly order and cause such building, structure, or portion thereof to be made safe, secured, or removed. The Council may vacate adjacent structures and protect the public by appropriate fence or such other means as may be necessary, and for this purpose, the Council may close a public or private way.

(c) To the extent that the circumstances allow without furthering the risk of harm or danger, prior to taking any action, the Appropriate Municipal Official or the Council as applicable shall attempt to give actual notice of the proposed action to those persons and/or entities identified in Section 7(b)(1) and seek to secure their cooperation.

(d) In the case of any action taken pursuant to this Section, the Appropriate Municipal Official shall prepare a declaration of the emergency that shall set forth in detail the reason or reasons for emergency repair, move, or demolition. The declaration shall identify the street address, the legal description, and the parcel identification number of the property where the building, structure, or portion thereof is located. The Appropriate Municipal Official shall serve, post, and file the declaration as soon as practicable as provided for the service of a notice in Section 7(b). The Appropriate Municipal Official shall also provide the declaration to the Council by tendering a copy of the report to the Clerk. The Clerk shall distribute a copy of the report to the members of the Council.

(e) The cost of the emergency action may be fixed by the Council and shall be assessed pursuant to this Ordinance in the same manner provided for non-emergency repairs, moves, or demolitions.

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(f) In cases of emergency action pursuant to this Section, the decision of the Appropriate Municipal Official and/or the Council, as applicable, shall be final, and there shall be no right to appeal the decision of the Appropriate Municipal Official and/or the Council, as applicable, in the case of an emergency.

Section 13. Duties of the Fire Department.

The employees of the Fire Department may make a report in writing to the building official of all buildings or structures which are, may be, or are suspected to be "dangerous buildings." Such reports should be delivered to the building official within twenty-four (24) hours of the discovery of such buildings by an employee of the Fire Department.

Section 14. Duties of the Police Department.

All employees of the Police Department may make a report in writing to the building official of all buildings or structures which are, may be, or are suspected to be "dangerous buildings." Such reports should be delivered to the building official within twenty-four (24) hours of the discovery of such buildings by an employee of the Police Department.

Section 15. Duties of the City Attorney.

The City Attorney is hereby authorized to:

(1) Prosecute all persons performing any act or acts deemed unlawful under Section 16 of this Ordinance.

(2) Appear at all hearings before the Council authorized by this Ordinance.

(3) Bring suit to collect all municipal liens, assessments, expenditures or costs incurred by the City in repairing, causing to be vacated, moved, or demolished any building, structure, part of building or structure, party wall, or foundation pursuant to this Ordinance.

(4) Take such other legal action as is necessary to carry out the terms and provisions of this Ordinance, including, but not limited to, those actions contemplated by Section 17 of this Ordinance.

Section 16. Enforcement and penalties.

(a) It shall be unlawful for any person, or for any agent, servant or employee of such person, to fail to comply with an order or notice given pursuant to this Ordinance.

(b) It shall be unlawful for any person, or for any agent, servant or employee of such person, to fail or refuse to perform any duty imposed by this Ordinance.

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(c) It shall be unlawful for any person, or for any agent, servant or employee of such person, to obstruct or interfere with an Appropriate Municipal Official in carrying out the purposes of this Ordinance.

(d) It shall be unlawful for any person, or for any agent, servant or employee of such person, to obstruct or interfere with a repair, move, or demolition ordered pursuant to this Ordinance by remaining upon the premises or in such proximity to the premises and at such a time and location where the work cannot be accomplished without endangering the life, health, safety, or general welfare of himself or another person.

(e) It shall be unlawful for any person, or for any agent, servant or employee of such person, to mutilate, destroy, tamper with, or remove a notice posted pursuant to Section 7(b)(2) or Section 12(d).

(f) It shall be unlawful for any person, including an occupant or lessee in possession, to fail to comply with any notice to vacate pursuant to this Ordinance.

(g) It shall be unlawful for any person to enter, access, or be upon the premises that the Appropriate Municipal Official has ordered to be vacated and that is the subject of a notice pursuant to Section 7 or a declaration pursuant to Section 12 except for the purposes of demolishing the same, of moving the same, or of making the required repairs.

(h) It shall be unlawful for any person who has received a notice pursuant to Section 7 or a declaration pursuant to Section 12 to sell, transfer, mortgage, lease, encumber, or otherwise dispose of such building, structure, part of building or structure, party wall, or foundation that is the subject of notice to another until such person shall first furnish the grantee, transferee, mortgagee, or lessee a true copy of the notice served pursuant to Section 7 or the declaration served pursuant to Section 12 and shall furnish to the City building official a signed and notarized statement from the grantee, transferee, mortgagee, or lessee acknowledging the receipt of the notice served pursuant to Section 7 or the declaration served pursuant to Section 12 and fully accepting the responsibility without condition for making the corrections or repairs required by such notice served pursuant to Section 7 or Section 12.

(i) A violation of this Section shall be punishable by a fine not to exceed the sum of five hundred ($500) for each offense, and if a willful violation, by imprisonment, not to exceed six months, or both, at the discretion of the court trying the same. Each day shall constitute a separate offense.

(j) The penalties and remedies provided by this Ordinance shall not apply to the City or any official (elected or appointed), agent, officer, or employee of the City who is administering this Ordinance or otherwise performing its, his, or her official duties.

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Section 17. Civil remedies.

The continued or recurrent performance of any act or acts deemed unlawful under Section 16 of this Ordinance is hereby declared to be detrimental to the health, safety, comfort and convenience of the public and is a nuisance. The City, as an additional or alternative remedy, may institute injunctive proceedings in a court of competent jurisdiction to abate the same or proceed as otherwise authorized under law to address nuisances.

Section 18. No effect on immunities.

This Ordinance is adopted only to provide a service for the public as a whole, and is not for the benefit of any individual person or entity. By the adoption of this Ordinance, the City and its agents, officers, and employees accept no duty for the benefit (intended or unintended) of any person, including but not limited to any owner, mortgagee, lien holder, landlord, tenant, occupant, roomer, invitee of any type, trespasser, or any of their agents, officers, or employees. Any duty alleged to arise under this Ordinance on the part of the City or any of its agents, officers, or employees for the benefit of any person is hereby expressly rejected. The City and its agents, officers, and employees hereby expressly reserve all applicable immunities existing under any doctrine, authority, or law (whether under the common law, statute, or otherwise), including but not limited to substantive immunity, qualified immunity, and discretionary function immunity. Save for the powers and remedies that this Ordinance gives to the City and to its agents, officers, and employees who are administering this Ordinance or otherwise performing its, his, or her official duties, this Ordinance does not create any private cause of action for the benefit of any person.

Section 19. Cumulative effect.

This Ordinance is cumulative in nature and is in addition to any power and authority that the City may have under any other law.

Section 20. Effect on Existing Prosecutions and Actions.

The adoption of this ordinance shall not in any manner affect any prosecution of any act illegally done contrary to the provisions of any ordinance now or heretofore in existence, and every such prosecution, whether begun before or after the enactment of this ordinance shall be governed by the law under which the offense was committed; nor shall a prosecution, or the right to prosecute, for the recovery of any penalty or the enforcement of any forfeiture or lien be in any manner affected by the adoption of this ordinance; nor shall any civil action or cause of action existing prior to or at the time of the adoption of this ordinance be affected in any manner by its adoption.

Section 21. Severability.

The provisions, sections, paragraphs, sentences, clauses, phrases, and parts thereof of this Ordinance are severable, and if any provision, section, paragraph, sentence, clause, phrase, or

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part thereof of this Ordinance shall be declared unconstitutional or invalid by a court of competent jurisdiction, then such ruling shall not affect any other provision, section, paragraph, sentence, clause, phrase, or part thereof, since the same would have been enacted by the Council without the incorporation of any such unconstitutional or invalid provision, section, paragraph, sentence, clause, phrase, or part thereof.

Section 22. Effective Date.

This Ordinance shall become effective upon its adoption as provided by law.

DONE, ORDERED, ADOPTED and APPROVED this the 26th day of January, 2016.

APPROVED BY:

Drew Gilbert, Mayor

ATTESTED BY:

Leanne Dawkins, Clerk

CERTIFICATION:

I, Leanne Dawkins, as Clerk of Cordova, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance No. 001-2016 is a true and correct copy of such Ordinance that was duly adopted by the Council of Cordova, Alabama, on the 26th day of January, 2016, as same appears in the official records of said City.

Posted at Cordova City Hall, Piggly Wiggly Grocery Store, Cordova Post Office, and Sheri's One Stop this the 26th day of Januggry, 2016.

Leanne Dawkins, Clerk

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At Work for a Better Community

Hand Arendall LLC's Dangerous Buildings & Unsafe Structures Program

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PROVIDING OUR CLIENTS WITH LEGAL SERVICES IN ALL AREAS OF TRADITIONAL CIVIL PRACTICE

Firm Profile

Hand Arendall provides its clients with legal services in all areas of traditional civil practice. The firm was organized in 1941 and has more than 70 lawyers, making it one of the largest law firms in the State of Alabama. The firm has a fundamental commitment to providing quality legal services in a timely and cost-effective manner. Cases and projects are staffed with the goal of achieving success for the client with maximum efficiency. With offices in Mobile, Birmingham, Fairhope and Athens, Alabama, Hand Arendall is uniquely situated among the Southeast's major law firms to provide legal direction to clients throughout Alabama, Mississippi and the Panhandle of Florida.

Managing Lawyer

Roger L. Bates

Executive Director

James T. Allen
He may be reached at 251 694-6315 or jallen@handarendall.com

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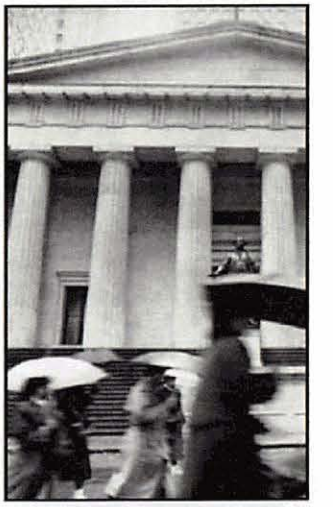
State and Local Government

Hand Arendall's State and Local Government Practice Group is experienced in representing elected officials and cities, counties, state agencies and other public corporations in the State of Alabama. In serving as special or general counsel to many such governmental bodies, the members of the Practice Group have routinely handled matters common to public entities such as the drafting and implementation of local ordinances and state legislation, contract negotiations, zoning and land use disputes, compliance with open meetings and open records laws, compliance with state ethics laws, competitive bidding procurement procedures, taxation, public finance, and the regulation of public utilities



Representing governmental bodies on such matters naturally leads to disputes that members of the Practice Group attempt to resolve, failing which, they work closely with members of the firm's Governmental and Regulatory Services Practice Team to litigate such disputes.

As the world economy has evolved, our lawyers have become proficient in drafting and guiding the implementation of local ordinances and state legislation required to facilitate the location and development of local business opportunities and operations. Through contract negotiations, compliance with zoning and land use rules, a knowledge of procurement procedures and a fundamental knowledge of state and local governmental processes our governmental relations attorneys advise clients in their dealings with all governmental bodies. We have experience assisting our clients with negotiating contracts with governmental bodies, securing governmental approval and funding for client projects, pursuing clients' interests in connection with pending local and state legislation, securing local permits and favorable interpretations of local regulations, and resolving local real estate and license tax disputes.

For more information regarding the State and Local Government Practice Group, contact Practice Group Chairman Benjamin S. Goldman or any other lawyers in the Practice Group.

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Benjamin S. Goldman

Ben Goldman is a Member of the firm and Chair of its State and Local Government Practice Group. Since 2001, Goldman has practiced as a litigator, successfully defending clients through all stages of federal and state court litigation, including trial and appeal. He has represented over 50 Alabama municipalities, utilities, boards, and other governmental entities. Pursuant to appointments, he presently serves as City Attorney and Prosecutor for Tarrant, Alabama, as City Attorney for Cordova, Alabama, as Town Attorney for Mulga, Alabama, and as Town Attorney for McMullen, Alabama. Furthermore, Goldman has served as corporate counsel to local, regional, and national businesses, representing them in such matters as contract negotiations, employment issues, and collections.

In 2012, Goldman received the International Municipal Lawyer Association's 2012 Daniel J. Curtin Young Public Lawyer of the Year Award as the top public lawyer under 40 in the U.S. and Canada for his "Fight the Blight & Make it Right" campaign. Among his recognitions, Goldman has been named a "Super Lawyer" and an "Alabama Rising Star" by Super Lawyers in multiple years in areas related to the representation of local government, a 2012 "Top 40 Under 40" by the *Birmingham Business Journal*, as one of the inaugural "Rising Stars of the Bar" for 2013 by *B-Metro*, and as a "Top Attorney" by *Birmingham Magazine*.

Goldman graduated *magna cum laude* with a B.A. from Spring Hill College. He obtained his J.D. from the University of Alabama School of Law where he was a member of the National Trial Advocacy Team, a member of the Bench and Bar Legal Honor Society, a Student Bar Association Senator, and an Honor Court Justice.

In service to his community, Goldman is currently Vice President of the Alabama Association of Municipal Attorneys and President of the Tarrant-Pinson Valley Chamber of Commerce. He is a member of the Birmingham Bar Association's Executive Committee, the governing body for the organization's more than 4,000 members. He is a volunteer for the Alabama State Bar and Birmingham Volunteer Lawyers Programs and a United Way of Central Alabama Visiting Allocation Team. Goldman is a former President of the Legal Aid Society of Birmingham Board of Directors, a former member of the Family Promise of Birmingham Board of Directors, and a former member of the Girl Scouts of North-Central Alabama Board of Directors.

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Mark T. Waggoner

Mark T. Waggoner is the Chair of the firm's Employment and Labor Practice Group. Mark argued the position of respondent Dr. Steve Franks before the United States Supreme Court in *Lane v. Franks* (No. 13-483) on April 28, 2014. He has significant experience in most types of civil litigation, but his emphasis is in the fields of employment law and environmental law. He represents management in all aspects of workplace statutory compliance, employment discrimination charges and litigation, employment contracts, personnel policies and procedures, and workplace drug testing. He served as Hearing Officer for Jefferson County Personnel Board. He has been involved in several class action employment discrimination cases, including *U.S. v. Jefferson County*. Mark is a frequent speaker to various groups regarding employment issues. He is a member of the Defense Research Institute and is on the steering committee of DRI's Employment Law Committee.

Mark's environmental law experience includes administrative permitting proceedings and appeals before the Alabama Department of Environmental Management and litigation concerning Clean Water Act and Solid Waste Act compliance. He has been appointed Deputy Attorney General to handle condemnation matters on behalf of the State of Alabama Department of Transportation. Mark served as chair of the Environmental and Natural Resources Law Section of the Alabama State Bar, 2007-2008. He was appointed by Governor Bob Riley to serve on the board of the Red Mountain Greenway and Recreational Area Commission.

He was born in Birmingham, Alabama, and was admitted to the Alabama State Bar in 1986 and the District of Columbia Bar in 1988. He is admitted to practice before all state and federal courts in Alabama, the United States Court of Appeals for the Eighth and Eleventh Circuits, and the United States Supreme Court.

After graduation from Auburn University in 1982 and from Cumberland School of Law in 1986, Mark served as Legislative Assistant to United States Senator Jeremiah Denton; in the Office of the General Counsel, U.S. Department of Energy; and as Special Assistant to the Assistant Secretary for Legislative, Intergovernmental and Public Affairs, U. S. Department of Energy.

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Kelly Thrasher Fox

Kelly Thrasher Fox practices in the areas of mergers and acquisitions, real estate, business and estate planning, finance, and general corporate, tax and contract law. She assists entrepreneurs in their evolution from starting their business, selling or expanding their business, and dissolving their business, including all of the steps along the way such as financing and contractual negotiations. Kelly also assists many governmental entities in the development of various types of real estate ventures and other contractual negotiations. Kelly also works with various municipalities in remediating blighted areas.

Kelly graduated with a B.S. in Business Administration, *magna cum laude*, from Auburn University in 1998. Kelly obtained her J.D., *magna cum laude*, from Cumberland School of Law in 2001 where she was Copy Editor of the Cumberland Law Review. She received her Masters of Laws in Taxation Degree from the University of Florida School of Law in 2002 and served as a Student Editor for the Florida Tax Review.

Kelly is a member of the Birmingham Tax Forum and Alabama Women in Business. Kelly is also a member of the South Shelby Chamber of Commerce and the Lions Club – Columbiana Chapter.

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At Work for a Better Community

There are two different statutory schemes in Alabama that authorize a municipality to demolish a dangerous building. *See* ALA. CODE §§ 11-40-30 thru 11-40-36 (1975); ALA. CODE §§ 11-53B-1 thru 11-53B-16 (1975). There are different benefits and powers conferred within each scheme. Alabama municipalities are also granted general powers to abate nuisances. *See* ALA. CODE §§ 6-5-122, 11-47-117, 11-47-118, 11-47-131; & 11-53-1 thru 11-53-4.

Our dangerous buildings and unsafe structures ordinance employs, alternatively, all tools provided by law to municipalities for the fixing of costs, creation of liens, making of assessments, and collection of costs associated with repairing, moving or demolishing buildings and structures, or parts of buildings and structures, party walls, and foundations when found to be unsafe to the extent of being a public nuisance from any cause. Our philosophy is to employ a process that keeps all of the municipality's options open.

An Alabama Federal Court has held that following the state statutes alone is NOT adequate due process. *See Ellis v. City of Montgomery*, 460 F. Supp. 2d 1301, 1310-11 (M.D. AL 2006).

We go above-and-beyond the requirements of state law to ensure adequate due process by:

- Utilizing a title report;
- Filing a notice of *lis pendens* in the probate court;
- Following special procedures aimed at notifying unknown heirs; and
- Setting a time limit to act on the appropriate municipal official's findings and to complete the remediation.

Our ordinance has been tested in litigation and withstood challenge. *See Maddox Enterprises, LP , et al. v. City of Vestavia Hills, Alabama*, Dk. No. 2120436 (Ala. Civ. App. May 29, 2013) (dismissing an appeal from the Circuit Court's order affirming the City Council's resolution authorizing demolition).

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At Work for a Better Community

- In 2011, Hand Arendall developed our Dangerous Buildings Program for the City of Tarrant. In less than five years, Tarrant has successfully remediated approximately 3% of all residential structures in its corporate limits. In other words, through this program, three out of every 100 houses in Tarrant have been repaired or demolished.

- Following the tornadoes of April 27, 2011, the City of Vestavia Hills had 533 residential structures left damaged. After turning to Hand Arendall for assistance and implementing the firm's Dangerous Buildings Program, by April 2014, Vestavia had remediated every single one.

Before Remediation

After Remediation

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At Work for a Better Community

As a part of the City of Athens's neighborhood improvement initiative, Hand Arendall's team has been successful in sending a message that the City is ready, willing, and able to demolish blighted properties. As a result, property owners are now more responsive to the City's Building Department in self remediating blighted properties such that the City's demolition rate has decreased. The City has been particularly successful in tackling "heir properties" for which no one could previously find an owner to hold accountable for a blighted property.

EXAMPLES OF REMEDIATION ACCOMPLISHED BY, AND AT THE EXPENSE OF, THE OWNER FOLLOWING NOTICE FROM THE CITY

Before Remediation

After Remediation

This property sold for c. $330,000 within 3 days of going on the market.

This property went from nuisance to occupied home back on the tax roster.

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At Work for a Better Community

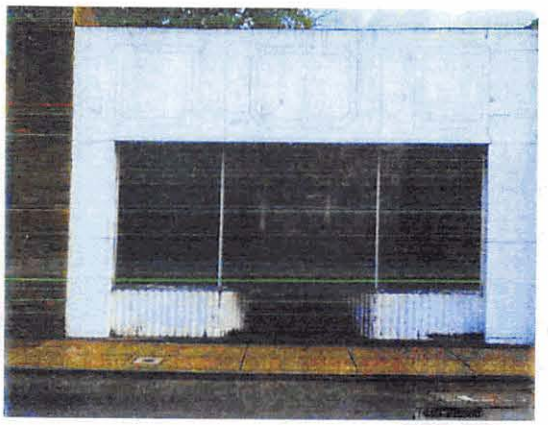
- Hand Arendall's team has assisted various municipalities with commercial remediations. On Vestavia's behalf, Hand Arendall litigated the demolition of a commercial structure (a large hotel that had languished for years) successfully through trial and appeal to the Alabama Court of Civil Appeals.

EXAMPLES OF COMMERCIAL PROPERTIES REMEDIATED THROUGH HAND ARENDALL'S PROCESS

Vestavia Motor Lodge
Before Demolition

Vestavia Motor Lodge
During Demolition

The bottom photos show abandoned store fronts in Tarrant



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At Work for a Better Community

HOW TO RECEIVE A RETURN ON YOUR MUNICIPALITY'S INVESTMENT IN YOUR COMMUNITY

SERVICES

- For services related to the creation of your municipality's dangerous buildings and unsafe structures program, we will charge a one-time fee of $1,750.
- For this one-time fee, your municipality will receive up to three (3) hours of telephone consultation with our lawyers and the one-time preparation of 15 customized forms that take a property from initial inspection through the fixing of a lien for the costs of remediation.
- The forms include a flow chart so that your municipality can easily navigate the process every time.
- If we are engaged to assist with specific property remediations, then we will bill our work at an agreed upon hourly rate.

COLLECTIONS

- By satisfying the process for both state statutory schemes, this allows us to:
  - Add the lien to the ad valorem bill,
  - And/or collect assessments.
- If the property owner fails to pay assessments when due, the city can sell the property to the highest bidder for cash.
- "[A] municipality may assess reasonable attorney's fees and clerical costs as part of the cost of demolition of an unsafe structure." ALA. ATTY. GEN. OP. 2012-032.

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Representative Clients Utilizing Hand Arendall LLC's Dangerous Buildings Program and/or Related Services

City of Andalusia

City of Athens

City of Citronelle

City of Columbiana

City of Cordova

City of Greensboro

City of Pinson

City of Tarrant

City of Vestavia Hills

Town of Chatom

Town of Grove Hill

Town of Hobson City

Town of Mulga

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◆ VESTAVIA HILLS

City Deals with Unsafe, Blighted Homes

By William C. Singleton III
JOURNAL CONTRIBUTOR

The city of Vestavia Hills has been on a tear ridding itself of unsafe and blighted houses in its community.

Since the City Council last January strengthened an ordinance to make it easier to remove unsafe structures, the city has seen 11 homes torn down because of blighted or unsafe conditions.

The city has demolished only one of those homes with the others having been removed by property owners, said Keith Blanton, building official for the city of Vestavia Hills.

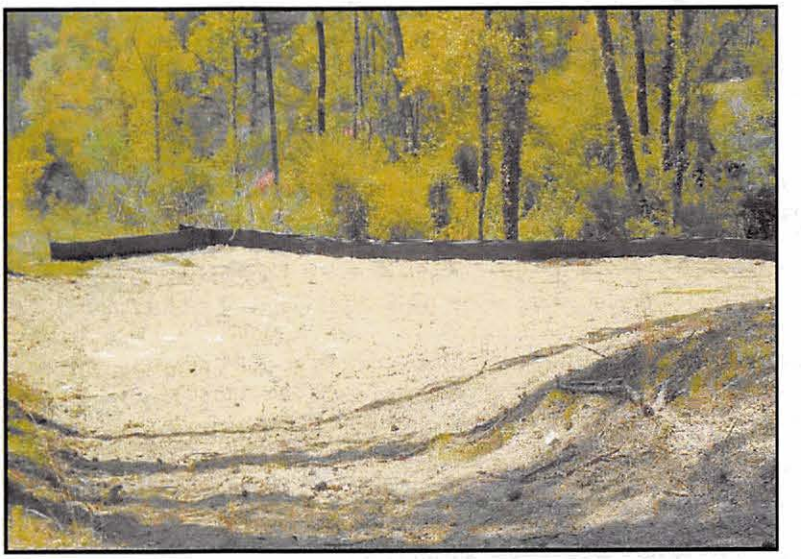
The city has been successful in getting six homes repaired rather than removed, and at least nine others are "still active," meaning the city has identified them as properties that need to be fixed up or removed.

"We don't have it all cleaned up, but we feel like we're continuing to move forward," said Vestavia Hills Mayor Alberto "Butch" Zaragoza.

The council enacted the city's dangerous buildings and unsafe structures ordinance as a result of the April 27, 2011 storms that left many damaged homes across central Alabama and in Vestavia Hills' Cahaba Heights section.

City officials said many residents have worked diligently to repair their homes. However, some residents have let their damaged homes languish to become eyesores to their neighborhoods and communities and to become potential magnets for varmints and vagrants.

"Your council was extremely patient. And before they adopted this program, they tried to work for a year following the tornado to be sure people were working with their insurance companies (to restore their homes)," said Ben Goldman, an attorney representing the city in condemnation and removal of unsafe, blighted structures. "These are really the exceptions that after a year plus following the tornadoes haven't been remediated."



Top: Vestavia Hills is being aggresive about ridding the city of blighted and unsafe homes like this house on Mountainside Road.
Above: The house was torn down by the city and the lot was levelled to make way for a new home. *Photos special to The Journal*

Goldman displayed a list of those properties with before-and-after pictures at a recent council meeting.

Goldman noted that the building inspections department, particularly Blanton, has done a good job getting homeowners to clean their properties and restore their homes.

In cases where homes have been torn down and removed, the lots have been prepared for construction of another home.

"All the lots you'll see are ready to go and to be put back to use," Goldman said. "They are shovel-ready. Vestavia is an inviting place, and we want people to come and put these lots back to use." ❖

By Michele Gerlach

'Everything but the kitchen sink:' New rules to govern old buildings

Published 12:00am Wednesday, September 2, 2015

In two weeks, the City of Andalusia expects to have a brand new ordinance governing unsafe structures and dangerous buildings.

The council had its first reading of the updated ordinance, which was crafted by Birmingham attorney Ben Goldman of Hand Arendall LLC, who specializes in difficult abatement issues and unsafe structures.

The 23-page ordinance very specifically defines dangerous buildings to include:

• Those whose interior walls or other vertical structure members list, lean or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third of its base.

• Those which show 33 percent or more of damage or deterioration of one of its supporting members, or 50 percent of damage or deterioration of the non-supporting enclosing or outside walls or covering.

It also defines dangerous buildings as those that have been damaged, are unfit for human habitation, contain unsafe equipment, or are an attractive nuisance to children who might play in or on them, among other conditions.

The proposed ordinance requires an appropriate municipal official to notify the owners and mortgage holders of such structures, and gives the owner 45 days to submit a plan for repairs.

The owners may be notified by certified mail, by postings put within three feet of the entrance to the property, or by recording it in the office of the probate judge. The municipal official may also publish a form of the notice in a publication of general circulation in Covington County.

If the owner does not comply with his plan, the repairs or demolition will be accomplished by the city and the cost will be assessed against the property.

If the owner does not respond within 45 days, the city council will hold a public hearing on the findings.

A property owner has 20 days to appeal the council's decisions to circuit court.

The ordinance will be immediately effective upon its passage, which is expected at the Sept. 15 meeting.

"It covers everything but the kitchen sink," Councilman Kennith Mount said of the specificities of the ordinance.

"It takes a lot of subjectivity out of the process," Mayor Earl Johnson said. "IT is very specific about what constitutes unsafe, abatable property."

Copies of the ordinance are available for review at City Hall.

By Michele Gerlach

- **Latest Stories**

  - DTF INVOLVED IN CHASE
  - Council OKs downtown contracts
  - Tisdale questions city plans
  - Curry indicted on drug charges
  - Achoo! Pollen counts high this week

Council: Construction fence around bank building needed today

Published 2:14am Wednesday, February 17, 2016

Email This Post Comments

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Andalusia residents should see a temporary construction fence go up today around the city's tallest structure, the First National Bank building, also known as the Timmerman Building, on the Court Square.

The building was among the first abated as unsafe under a new ordinance passed last fall. The ordinance calls for the city to contact property owners about problems. If property owners do not take action or present a plan for action, buildings are posted as unsafe, and after 30 days, a public hearing is held.

Last night, the council held public hearings for seven parcels, including the First National Bank building, located at 101 S. Cotton St.

Montgomery attorney John Plummer represented the property owners, listed as Pacific Equity, LLC in Santa Monica, Calif. The city also served notice to the Historical Preservation Authority of the City of Andalusia, to FNB Building, LLC, and to the estate of William Kiepura.

Birmingham attorney Ben Goldman of Hand Arendall LLC, who specializes in abatements and helped craft the city's new ordinance, said "They have been working with us for the past three weeks. I think they have made some commitments to do things that need to be done."

Andy Wiggins, director of planning and development, outlined specific problems with the building.

"A few months back, one of the windows turned loose and came to the street," he said. "It is not our intent to demolish this building. We'd like to see it fixed, and not present public safety issues."

Wiggins said the windows on all seven floors need to be replaced to prevent further falling objects and to secure the building from weather damage.

In addition, he said, there are problems with mortar joints turning loose, and bricks falling from the parapet wall.

The council agreed to continue the public hearing on the condition of the building until March 1, giving owners time to develop a timetable for completion of repairs, as required by the ordinance. However, the council asked that a construction fence be erected today for public safety purposes.

"Sometimes it's difficult when you have out-of-town, or out-of-state property owners," Mayor Earl Johnson said. "They're not here, they don't know the condition of building.

SHELBY COUNTY REPORTER
Wednesday, May 21, 2014 | ALABAMA'S BEST COMMUNITY NEWSPAPER | ShelbyCountyReporter.com | 50¢

Columbiana cracks down on outstanding property abatements

By GINNY COOPER
Staff Writer

HAND ARENDALL

COLUMBIANA — The City of Columbiana voted to hire Birmingham law firm Hand Arendall, LLC to handle outstanding property abatements in the city on May 6.

There are between 25 and 30 structures on the list that are a "blight to the community," Columbiana Mayor Stancil Handley said, and though they have been on a list for several years there are "various reasons" the abatements never took place.

At the city council meeting on May 6, members voted to hire Hand Arendall, LLC to "design, manage and prosecute, on an as needed basis, the city of Columbiana's dangerous buildings and unsafe structures," according to documents.

"In the past an abatement would get started, but it would fall by the wayside and not get followed through. With Hand Arendall it will get followed through," Handley said.

Handley, who declined to name the structures listed for abatement, said the aim of the abatements is to remove blighted areas from the city, which are dangerous and a "collection place for graffiti and unsafe activities."

The abatement process has several steps, explained Hand Arendall attorney Kelly Fox.

The firm first provides preliminary notice of the abatements through certified mail as well as postings on the property, town hall, library and a published legal notice.

After a designated time from the preliminary notice, which varies according to the history of the property, the firm files a notice in probate court.

"After we file a notice in probate court, they have 50 days before a hearing in front of the city council," Fox said.

During the hearing, property owners must be able to show they have the "time, money and resources" to solve the problem, and if the council agrees then they will reach a remediation agreement.

However, if the property owner fails to convince the council that they will be able to repair the property, the city can "decide to order the demolition of the property," Fox said.

"In entering into a professional services agreement with Hand Arendall, LLC. we look forward to them assisting the city with the remediation of dangerous buildings, unsafe structures and other nuisances that are located within the city," Handley said.

The Alabama Municipal JOURNAL

November/December 2012 Volume 70, Number 5

Municipal Employees Under Attack

see page 5

Tarrant City Attorney, Ben Goldman, Honored by International Association for Municipal Legal Work

For decades, the City of Tarrant, a small bedroom community turned industrial city, has struggled with blight, deserted property and environmental problems. Hand Arendall LLC partner Benjamin S. Goldman watched as city officials faced mounting problems with burned houses, abandoned cars and garbage issues.

But in the beginning of 2011, Goldman began working with city leaders to help force change. For that work, Goldman, 36, was honored with the Daniel J. Curtin Young Public Lawyer of the Year Award by the International Municipal Lawyers Association (IMLA). This award recognizes a public law practitioner who has provided outstanding service to the public and who possesses an exemplary reputation in the legal community, the highest of ethical standards and who revels in maintaining a life that balances a passion for professional excellence and the joy of family and friends.

"To be recognized for outstanding service to the public is such a tremendous honor for me professionally," Goldman said. "As an attorney who focuses on municipal law, service to the public is the primary focus of my practice."

Goldman accepted the award on October 22, 2012, at the IMLA's 77th Annual Conference in Austin, Texas, where professionals from across the United States and Canada attended. Members of the Curtin family were on hand to participate in the award celebration.

"Our firm has had a long history in representing governmental entities, including numerous municipalities throughout the state," said Roger Bates, Managing Partner of Hand Arendall. "Ben has grown into one of our lead attorneys in this area and is looked upon as an expert in the area of municipal representation. Ben is becoming even more known for his work outside of the city council meetings with his efforts to improve the quality of life in the cities he represents. For him, it's not just being a good lawyer and doing a good job for your client, it's about serving the community in which we live and changing people's lives."

Goldman was endorsed for the Daniel J. Curtin Young Public Lawyer Award by the Alabama League of Municipalities. In a letter written on behalf of his nomination, Executive Director Ken Smith said: "Ben has reviewed and helped us interpret legislation, answered questions from other municipal attorneys around the State, made presentations at our training conferences and worked without hesitation with us in any capacity we needed. He has quickly grasped many nuances of local government law and a true willingness to go beyond simple representation of the city to helping his community improve and develop. In my opinion, he exemplifies what the Curtin Award was created to recognize."

The award focused on the City of Tarrant's efforts to remediate urban blight through programs that Goldman helped design and facilitate with other city leaders, including the revitalization of the historic downtown district, the creation of a tax increment financing district, the implementation of an environmental docket in the City's Municipal Court, a new dangerous buildings ordinance and a program for the removal of blighted buildings, the implementation of a property inspection policy to bring dilapidated properties into compliance with applicable building code, and the initiation of the Tarrant Optimization Project (T.O.P.).

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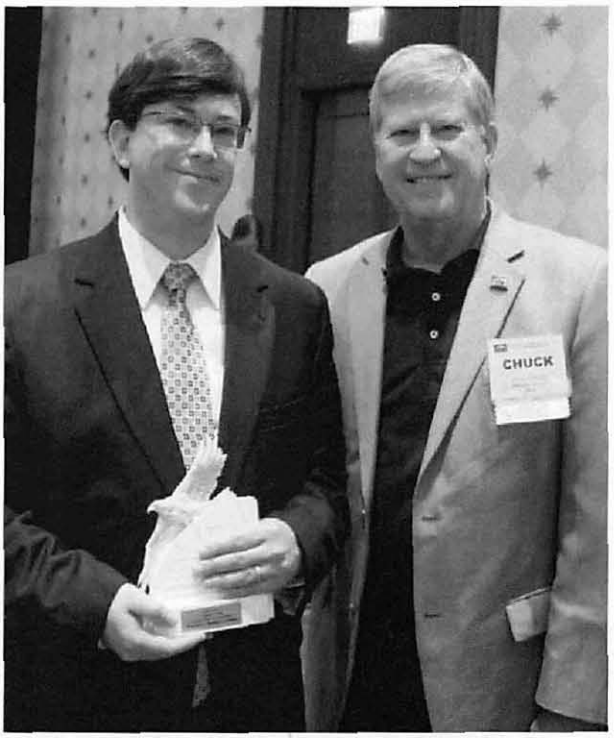

Ben Goldman (left) pictured with Chuck Thompson, Executive Director of the International Municipal Lawyers Association (IMLA), was honored last month with the Daniel J. Curtin Young Public Lawyer of the Year Award by the IMLA for helping the City of Tarrant change its future. Goldman worked to remediate urban blight through programs that he helped design and facilitate with other city leaders.

"Ben exemplifies the highest degree of knowledge, class and professionalism in every endeavor in which he is involved," said Tarrant Mayor Loxil Tuck. "He has provided both initiative and leadership in creating many city ordinances to address problems facing our city."

As a part of the City of Tarrant's neighborhood improvement initiative, Goldman wanted to send a message to the community that positive change was taking place in the City's neighborhoods. Accordingly, Goldman created and the City Council adopted T.O.P., the new program. Large signs were placed on lots as the properties were remediated. In 2011-2012, the City remediated approximately two percent of residential housing in the City.

When the City had to turn the cost of garbage service over to residents because of budget constraints, the number of residents who actually signed up for service was dismal. As garbage piled up on streets and alleys, Tarrant faced a public health problem. Goldman obtained a change in City policy so that customers seeking to establish electric service could not do so until the City verified that the customer was subscribed to garbage service and, where applicable, that the customer had obtained a certificate of occupancy indicating compliance with the City's property inspection policy. While citizens were willing to go without garbage service, they were not willing to go without electric service, and the problem improved as garbage subscriptions rose dramatically.

As Tarrant's Prosecutor, Goldman began conducting Environmental Dockets designed to address problems affecting the City's neighborhoods (litter, junked vehicles, noise, vicious animals, and other nuisances). In further remedy to the garbage problem, a standard plea has been arranged for the Environmental Dockets where the defendant will remedy whatever condition brought the defendant to court, will subscribe for garbage service, will pay a monitoring fee, and will agree to remain under the Court's jurisdiction for one year. If the defendant agrees to the terms, at the end of one year, the charge will be dismissed. However, if the defendant does not agree, Goldman promises that, where applicable, he will petition the court to have the defendant sentenced to hard labor picking up trash. To date, 100 percent of defendants have agreed to the terms, and today, the City is cleaner.

The Environmental Dockets also had unintended consequences on crime in the City. "Our office didn't want to get involved in an environmental docket," said Tarrant Police Chief Dennis Reno. "But we noticed that immediately burglaries dropped by more than 50 percent. We went from 8 to 9 burglaries a week down to 2 or 3 a week. The weeks we had officers in a neighborhood serving notices, burglaries dropped. It proved that the mere presence of a police officer in a neighborhood during the daytime will reduce burglaries."

The City of Tarrant was also honored for these changes when it received the Alabama League of Municipalities' "2012 Municipal Quality of Life Award."

"Ben is not only an outstanding lawyer but he is an outstanding person," said Lori Lein, General Counsel for the Alabama League of Municipalities, who has known Goldman for several years. "He has always given freely of his time to the League and the Alabama Municipal Attorneys Association. In doing so, he has helped us guide and support our member municipalities when issues arise affecting local government. This award is an acknowledgment of his professional abilities and integrity and is well deserved."

Goldman graduated magna cum laude, with a B.A. from Spring Hill College. He obtained his J.D. from the University of Alabama School of Law where he was a member of the National Trial Advocacy Team, a member of the Bench and Bar Legal Honor Society, a Student Bar Association Senator, and an Honor Court Justice.

As a litigator, Goldman has successfully defended clients through all stages of federal and state court litigation, including trial and appeal. He has represented more than 50 Alabama municipalities, utilities, development boards and other governmental entities and has served as corporate counsel to local, regional and national businesses, representing them in such matters as contract negotiations, employment issues and collections. In addition, he has represented and advised lenders and large creditors in bankruptcy proceedings. Pursuant to appointments, he presently serves as City Attorney and Prosecutor for Tarrant, Alabama, and as Town Attorney for Mulga, Alabama.

In service to his community, Goldman is currently a member of the Girl Scouts of North-Central Alabama Board of Directors, the Birmingham Hospitality Network Board of Directors, the Legal Aid Society of Birmingham Board of Directors, the Tarrant-Pinson Valley Chamber of Commerce, the Birmingham Tip-Off Club, the Crewe of Columbus and a volunteer for the Alabama State Bar Volunteer Lawyers Program.

Among his recognitions, Goldman was named an "Alabama Rising Star" by Super Lawyers. He is a recipient of The Literacy Council's Distinguished Partner Award and the National MS Society Leadership Award. He is also a graduate of the 2009 IADC Trial Academy hosted by Stanford Law School in Palo Alto, California, and he is a graduate of the Alabama State Bar Leadership Forum Class 7. In 2012, Goldman was named a "Top 40 Under 40" by the *Birmingham Business Journal*. ■

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KeyCite Yellow Flag - Negative Treatment
Declined to Extend by Guettler v. City of Montgomery, M.D.Ala., June 4, 2012

460 F.Supp.2d 1301
United States District Court,
M.D. Alabama,
Northern Division.

Wilbert ELLIS, Plaintiff,
v.
CITY OF MONTGOMERY, Defendant.

Civil Action No. 2:05cv791-MHT (WO). | Nov. 7, 2006.

Synopsis
Background: Landowner brought § 1983 action, alleging that city violated his due process rights when it demolished his house.

Holdings: In a bench trial, the District Court, Myron H. Thompson, J., held that

[1] city's procedure of using county revenue commissioner's records to identify owners of property was not reasonably calculated to allow it to determine the correct owner of house it intended to demolish, and

[2] owner was entitled to compensatory damages in amount of $11,790 plus interest.

Judgment for plaintiff.

West Headnotes (15)

[1] **Constitutional Law**⇐Real Property in General

Real property is protected by the due process clause. U.S.C.A. Const.Amend. 14.

Cases that cite this headnote

[2] **Constitutional Law**⇐Destruction of Property

For purposes of the due process clause, government's demolition of a person's property is a deprivation of that property. U.S.C.A. Const.Amend. 14.

Cases that cite this headnote

[3] **Records**—Conclusiveness of Record

Under Alabama law, the records of the probate office, not those of the revenue commissioner, are authoritative as to who owns a piece of property at any given time. Ala.Code 1975, § 35-4-50.

Cases that cite this headnote

[4] **Constitutional Law**—Destruction of Property
Municipal Corporations—Destruction of or Injury to Property

Given that easily accessed and more accurate records of land transfers were available in county probate office, city's procedure of using county revenue commissioner's records to identify owners of property was not reasonably calculated to allow it to determine the correct owner of house it intended to demolish, and therefore city violated landowner's due process rights by providing inadequate notice before demolishing house; revenue commissioner's records were often late in reflecting a change in property ownership. U.S.C.A. Const.Amend. 14.

1 Cases that cite this headnote

[5] **Civil Rights**—Vicarious or Respondeat Superior Liability in General

There can be no respondeat superior liability for § 1983 claims. 42 U.S.C.A. § 1983.

Cases that cite this headnote

[6] **Civil Rights**—Governmental Ordinance, Policy, Practice, or Custom

A municipality is directly liable under § 1983 only if the violation of the plaintiff's rights is attributable to a municipal policy or custom. 42 U.S.C.A. § 1983.

Cases that cite this headnote

[7] **Civil Rights**—Property and Housing

City's failure to provide property owner with adequate notice before demolishing his house, in violation of his due process rights, was caused by a municipal policy or custom, and therefore city was liable in owner's § 1983 action; city's only policy and practice for providing pre-demolition notice to property owners was to access county revenue

commissioner's property records, even though city was aware that those records were not up-to-date. U.S.C.A. Const.Amend. 14; 42 U.S.C.A. § 1983.

1 Cases that cite this headnote

[8] **Civil Rights**⇐Grounds and Subjects; Compensatory Damages

If the government fails to comply with the dictates of the due process clause, the aggrieved party can seek compensatory damages under § 1983, but recovery of damages is limited to those injuries proved to be caused by the defendant. U.S.C.A. Const.Amend. 14; 42 U.S.C.A. § 1983.

Cases that cite this headnote

[9] **Civil Rights**⇐Measure and Amount

Property owner whose due process rights were violated when city demolished his house without providing adequate notice was entitled to compensatory damages in amount of $11,790 plus interest; sum represented the difference between the value of the house when owner purchased it and the value of the land after house was destroyed, added to amount of city's lien for costs of demolition. U.S.C.A. Const.Amend. 14.

Cases that cite this headnote

[10] **Civil Rights**⇐Monetary Relief in General

Damages under § 1983 are ordinarily determined according to principles derived from the common law of torts. 42 U.S.C.A. § 1983.

Cases that cite this headnote

[11] **Civil Rights**⇐Exemplary or Punitive Damages

Property owner was not entitled to punitive damages, in § 1983 action arising out of city's demolition of his home. 42 U.S.C.A. § 1983.

Cases that cite this headnote

[12] **Civil Rights**⇐Government Liability

Municipalities are immune from punitive damages in actions under § 1983. 42 U.S.C.A. § 1983.

Cases that cite this headnote

[13] **Civil Rights**⇐Results of Litigation; Prevailing Parties

Property owner was entitled to reasonable attorneys' fees and expenses, where owner was prevailing party in his § 1983 action arising out of city's demolition of his house. 42 U.S.C.A. §§ 1983, 1988(b).

Cases that cite this headnote

[14] **Declaratory Judgment**⇐Counties and Municipalities and Their Officers
Declaratory Judgment⇐Declaratory Relief

Property owner whose house was demolished by city in violation of his due process rights was entitled to declaratory judgment that city's notice procedure was defective in relying on out-of-date public records of the county revenue commissioner rather than the up-to-date title and deed records of the probate judge. U.S.C.A. Const.Amend. 14; 42 U.S.C.A. § 1983.

Cases that cite this headnote

[15] **Civil Rights**⇐Property and Housing

Property owner whose house was demolished by city in violation of his due process rights was not entitled to injunctive relief as to city's notice procedure, where in light of decision against it, city had every incentive to devise notice procedures compliant with due process. U.S.C.A. Const.Amend. 14; 42 U.S.C.A. § 1983.

Cases that cite this headnote

Attorneys and Law Firms

***1303** Jay Lewis, Keith Anderson Nelms, Law Offices of Jay Lewis, LLC, Montgomery, AL, for Plaintiff.

Kimberly Owen Fehl, City of Montgomery Legal Division, Montgomery, AL, for Defendant.

Opinion

OPINION

MYRON H. THOMPSON, District Judge.

Plaintiff Wilbert Ellis has filed this 42 U.S.C. § 1983 action against defendant City of Montgomery, Alabama, claiming that his right to 'procedural due process' under the Fourteenth Amendment was violated when the city failed to provide him with notice before demolishing his house.[1] Jurisdiction is proper under 28 U.S.C. §§ 1331 and 1343. After denying the parties' cross-motions for summary judgment, the court heard this matter in a non-jury trial conducted on November 3, 2006. Based on the evidence presented at a bench trial, the court finds in favor of Ellis.[2]

I. FACTUAL SUMMARY

On May 18, 2004, a city inspector was dispatched to 29 Wade Street in Montgomery, Alabama, to investigate a complaint of an unsafe structure. The inspector observed that the house at that address had been partially destroyed by fire and was in unsafe condition.

Following standard procedure as established by municipal ordinance, *see* Montgomery, Ala., Ordinance No. 10-2001, the city accessed county tax records to identify the owner of the property and then sent the owner notice that the house was declared to be unsafe and a public nuisance. Receiving no response from the owner of the property within ten days, the city sent another notice on June 2, 2004, advising the owner that, if the nuisance was not abated within 30 days, or if the owner did not request a hearing within that period of time, then the city council would authorize demolition of the structure at a hearing on July 6.

Although the property owner never responded to the June 2 notice, the July 6 city council hearing was pulled from the agenda because the city lacked funds to carry out the demolition. It was not until November 17 that the city mailed a new letter in an attempt to provide notice that the house was a public nuisance and that demolition would be authorized by the city council at a hearing on December 21, 2004.

***1304** Unbeknownst to the city, ownership of the property had changed hands between the mailings of the two notices. The city correctly identified the owner of the house as Dorothy Walters before sending the May and June notices, but probate records reflect that Walters's property was foreclosed upon by its mortgagee and sold to a finance corporation on September 3, and sold again to Ellis on October 6, 2004. These transactions were duly recorded in the county probate office, but the county's public tax records at the revenue commissioner's office did not reflect the change. The city assumed the property was still owned by Walters when it mailed the new, November notice to her, not Ellis. Consequently, when Ellis visited his property at 29 Wade Street on March 18, 2005, he discovered that the house had been demolished.

II. DISCUSSION

Ellis has sued the City of Montgomery for violating his procedural due process rights under the Fourteenth Amendment, as enforceable through 42 U.S.C. § 1983. The court will first analyze the due process claim and then address municipal liability under § 1983.

A. Procedural Due Process

Any procedural due process analysis must begin with a three-step inquiry. First, did the plaintiff have a constitutionally protected property interest? Second, did the government deprive the plaintiff of that interest? Third, did the government

employ constitutionally adequate procedures prior to the deprivation-that is, did the plaintiff receive the process he was due? *Zipperer v. City of Fort Myers,* 41 F.3d 619, 623 (11th Cir.1995); *see also Logan v. Zimmerman Brush Co.,* 455 U.S. 422, 428, 102 S.Ct. 1148, 71 L.Ed.2d 265 (1982) (describing an analytically similar two-step inquiry).

[1] [2] In this case, the first two questions are easily answered in the affirmative. It is indisputable that real property is protected by the due process clause and that for the government to demolish one's property is to deprive him of it. *Fuentes v. Shevin,* 407 U.S. 67, 86, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972) ("Any significant taking of property by the State is within the purview of the Due Process Clause."). It is also uncontested that Ellis was the owner of the property the city demolished at the time demolition took place. The only question of consequence is whether the procedures employed by the city before demolishing Ellis's house were fair and adequate under the Constitution. *See United States v. Salerno,* 481 U.S. 739, 746, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987) ("[G]overnment action depriving a person of life, liberty, or property ... must ... be implemented in a fair manner."); *see also McKinney v. Pate,* 20 F.3d 1550, 1561 (11th Cir.1994) (en banc).

More specifically, this is a case about notice. It has been more than half a century since the Supreme Court declared, in the landmark case of *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950): "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." 339 U.S. at 314, 70 S.Ct. 652. In cases where the constitutional adequacy of notice is challenged under the due process clause of the Fifth or Fourteenth Amendments, *Mullane* remains controlling. *Dusenbery v. United States,* 534 U.S. 161, 167-68, 122 S.Ct. 694, 151 L.Ed.2d 597 (2002); *Arrington v. Helms,* 438 F.3d 1336, 1349 (11th Cir.2006); *Grayden v. Rhodes,* 345 F.3d 1225, 1242-44 (11th Cir.2003).

***1305** Upon due consideration of all the evidence in this case, the court does not believe that the city employed constitutionally adequate notice procedures before demolishing Ellis's house. Unlike in *Mullane,* there is nothing wrong with the *means* of notice employed. *See Dusenbery,* 534 U.S. at 169 (observing that notice by certified mail is generally adequate for known addressees). Rather, the constitutional deficiency in the city's notice lies in its procedure for identifying the proper recipient of the notice. Several considerations guide the court to its conclusion.

1.

First, by using the public records of the county revenue commissioner to identify the property owner, the City of Montgomery did not employ notice procedures "reasonably certain to inform those affected" by its action. *Mullane,* 339 U.S. at 315, 70 S.Ct. 652. According to unopposed testimony at the bench trial of this case, the revenue commissioner's public records could lag behind in reflecting a change in property ownership by as much as two years. Residential property changes hands often enough such that it was not reasonable for the city to believe that the public records of the county revenue commissioner accurately reflected the current ownership of any given property. By sending notice to the property owner in the revenue commissioner's public records, the city could not have been reasonably confident it was sending notice to the person whose interests were affected by the demolition.

During the bench trial of this case, the court heard testimony from Dorian Brunson, the city's chief building official, and Sarah Spear, the county's revenue commissioner. Brunson, the city official responsible for demolition of unsafe structures, stated his belief that the revenue commissioner's records were approximately nine months behind in reflecting the actual owner of the property as recorded in the county probate office. Although Brunson evidently believed the time lag in recordkeeping at the revenue commissioner's office was less than a year, his testimony demonstrates that the city was aware that it consulted out-of-date property records to identify the property owner.

Revenue Commissioner Spear testified that, in fact, the property records available to the city at the time Ellis's house was declared unsafe could be as much as two years out of date. When a new deed was recorded, the office of the probate judge would notify the office of the revenue commissioner within one to two weeks. Frequently, the new owner would also notify the revenue commissioner in order to obtain a receipt for tax purposes. However, the change of ownership would not become relevant for tax and revenue purposes until the next first day of October, when the property would be assessed for taxes for the following year. And even then the public records would not reflect a change of ownership until the collection date of the

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following first day of October. This means that, if a piece of property changed hands on October 2, 2004, the new owner would not be identified in the public records of the revenue commissioner until October 1, 2006, nearly two years later.

In this case, a finance corporation purchased the Wade Street property from Walters's mortgagee in September 2004, and sold it to Ellis in October 2004. The revenue commissioner received actual notice of Ellis's purchase on October 14, 2004, when it received a copy of the deed from the probate office. However, as late as September 30, 2005, Walters was still listed by the revenue commissioner as the owner of record. And, because Ellis did not purchase the property until after October 1, 2004, he would not have been identifiable through the revenue commissioner's ***1306** records until October 1, 2006-nearly two full years after he purchased the property. Such a system may be perfectly well-suited to tax assessment and collection in Montgomery County, but it is plainly inadequate as a means of identifying the present owner of an unsafe structure in order to notify that person before tearing it down.

Revenue Commissioner Spear testified that the computer records in her office have recently improved, such that the city now has access to the "future records" of the revenue commissioner. In other words, the revenue commissioner's actual notice of a change in ownership, though not relevant for tax purposes until the next first day of October, is now immediately reflected in computer records that the city can access. Undoubtedly, this is a remarkable and much-needed improvement. It does not, however, change the lamentable fact that, at the time Ellis's house was razed, the city's practice was to rely on out-of-date property records for the purpose of giving notice to property owners before demolishing unsafe structures.

Mullane requires that "notice [be] reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action," 339 U.S. at 314, 70 S.Ct. 652, and that it be "reasonably certain to inform those affected," *id.* at 315, 70 S.Ct. 652. Given the frequency with which real property changes hands, and the lag time before such a change is reflected in the revenue commissioner's public records, it is clear that the city's notice procedure, at the time Ellis's property was condemned and demolished, did not meet that standard.

2.

Second, the city could easily and inexpensively avail itself of procedures that are "reasonably certain to inform those affected" by its action. *Mullane,* 339 U.S. at 315, 70 S.Ct. 652. In Alabama, as in most States, transfers of land and encumbrances on land are recorded in the probate office; future interest-holders are then said to be on 'record notice' when real property undergoes a change in ownership or becomes encumbered. *See generally* 1975 Ala.Code §§ 35-4-50 to -113 (recording statutes); -130 to-139 (lis pendens). The city could have made use of the recording system in a case such as this one. The city could easily employ procedures under the recording system to meet the due process requirement that its efforts be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action." *Mullane,* 339 U.S. at 314, 70 S.Ct. 652.

a.

[3] Instead of consulting out-of-date public records from the revenue commissioner's office, the city could search title in the county probate office prior to demolishing a building in order to discover who owns the property at the time notice is sent out. Under Alabama law, and according to uncontroverted testimony at trial, the records of the probate office, not those of the revenue commissioner, are authoritative as to who owns a piece of property at any given time. *See* 1975 Ala.Code § 35-4-50. Whenever a new property owner records her purchase as required by law, the city itself is then on 'record notice' of a change in ownership. *See* 1975 Ala.Code § 35-4-51. In other words, were the city to check property records in the probate office when it sends notice of a city council hearing and pending demolition, it would discover who owns the property at the time notice was being sent.

Admittedly, the city cannot be expected to conduct a title search the day before demolition takes place, or have agents simultaneously standing by in the probate office and at the demolition site just in case a last-minute transfer of property

***1307** should occur. "[T]he Due Process Clause does not require such heroic efforts by the Government." *Dusenbery,* 534 U.S. at 170, 122 S.Ct. 694. Instead, the city's notice procedure need only be "reasonably calculated to apprise the party of the pendency of the action." *Id.* (citing *Mullane,* 339 U.S. at 314, 70 S.Ct. 652); *see also Cuvillier v. Rockdale County,* 390 F.3d 1336, 1339 n. 8 (11th Cir.2004).

The city's notice procedure would be "reasonably calculated" to inform the person whose interests are affected by the demolition if, in addition to searching title in the probate office before sending notice to the property owner, the city were to take some additional measures to ensure that subsequent purchasers are on notice of pending demolition proceedings.

b.

For instance, the city could itself record, in the probate office, notice of the pending demolition proceedings. That way, any subsequent purchaser of the property would be on record notice that demolition could occur. Once notice from the city becomes a part of the public record, properly filed with the probate office, the city would be under no further obligation to ensure that the property did not change hands prior to demolition. "[A] purchaser or other person to whom notice is imputed by recordation is presumed to have examined the records in the office of the judge of probate." Jesse P. Evans III, *Alabama Property Rights & Remedies* § 5.4[e], at 5-16 (3d ed.2004).

This type of procedure is widely recognized under the law of *lis pendens.* Under Alabama law, upon commencement of any civil action involving an interest in real property, the party instituting the action must file notice of it in the probate office. 1975 Ala.Code § 35-4-131. Subsequent purchasers and interest-holders are protected from the pending action if *lis pendens* notice is not filed; and they are deemed to be on record notice of the pending action if it is. *Id.* § 35-4-135. In other States, the commencement of demolition proceedings is accompanied by a *lis pendens* filing. *See, e.g., Price v. United States,* 46 Fed.Cl. 640, 648 (2000) (because defendant city had recorded notice of *lis pendens* prior to property sale, plaintiff's claim not to have knowledge of pending demolition proceedings was rejected); *Continental Paper & Supply Co. v. City of Detroit,* 451 Mich. 162, 545 N.W.2d 657, 662 n. 6 (1996) (Mallett, J., dissenting) (describing the process by which the city, prior to demolishing a building declared unsafe, "filed a lis pendens to notify interested parties that legal proceedings had been commenced").

Here, there is no need for the court to conjecture as to whether a *lis pendens* filing is required as a matter of state law when demolition proceedings occur before city council as set out in 1975 Ala.Code §§ 11-40-30 to -36 rather than pursuant to the formal filing of a civil action in state court. *See* 1975 Ala.Code § 25-4-131. The above discussion of the *lis pendens* doctrine merely serves to demonstrate how common it is, and how easy would it be, for the municipal authority to utilize the recording statutes as a means of complying with the due process clause. A simple *lis pendens* filing after sending notice to the current owner of a property would place subsequent purchasers on record notice that demolition could occur.

c.

Additionally, if the city issues notice for a second time because the previous city council hearing has been pulled from the agenda and the previous findings of the building inspector have expired, the city could search title again in order to find out whether the property has changed hands since the first notice was issued. According to Montgomery, Ala. Ordinance No. ***1308** 10-2001, "A failure by the City Council to act on the findings of the Building Official within ninety (90) days from the date notice of same were first given to the property owner shall constitute a vacation of the Building Official's findings." Ordinance No. 10-2001 at C(2). Of course, the city is free to reinitiate proceedings after the 90-day time limit has run, and it did so in this case. Under the court's reading of the ordinance, restarting proceedings would also entail re-checking the property records, and Chief Building Official Brunson's trial testimony confirms this is the city's ordinary practice.[3]

Even if the city were to file a *lis pendens* notice with the probate records when the first notice is issued, the terms of Ordinance No. 10-2001 suggest that such notice would not be valid for more than 90 days. Therefore, under the terms of the ordinance, subsequent purchasers would be on record notice of pending demolition proceedings only if they attempted to

purchase the property before the building official's findings expired.[4] Accordingly, placing new owners on notice of new proceedings, after the ordinance's 90-day expiration date had passed, would require sending notice to the new owner then on file in the probate office.

d.

In sum, the City of Montgomery has highly practical and inexpensive options for employing notice procedures reasonably certain to inform property owners that their property is unsafe and set to be demolished. First, it could search the *probate* office's records when it declares a property unsafe and sends notice to its owner. Second, it could *record* notice in the probate office that a property had been declared unsafe and subject to demolition, thereby alerting subsequent purchasers that the property is condemned. Third, should the building official's findings expire after 90 days pursuant to city ordinance, the city could check probate records again before reinitiating demolition proceedings to make sure that the new notice goes to the correct property owner.

The court is not holding that these procedures are the only means of complying with the due process clause. Rather, the court has identified them in order to demonstrate that there are "inexpensive and efficient mechanism[s]," ***1309** *Greene v. Lindsey,* 456 U.S. 444, 455, 102 S.Ct. 1874, 72 L.Ed.2d 249 (1982), available to the city in fulfilling its due process obligations. These procedures are "relatively modest administrative burden[s]." *Mennonite Bd. of Missions v. Adams,* 462 U.S. 791, 800, 103 S.Ct. 2706, 77 L.Ed.2d 180 (1983).

[4] Here, the city pursued none of these options, and indeed provided no form of "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action." *Mullane,* 339 U.S. at 314, 70 S.Ct. 652. Ellis recorded his purchase of the Wade Street property as required by law; the city itself was therefore on 'record notice' of a change in ownership. *See* 1975 Ala.Code § 35-4-51. Had the city bothered to check the property records in the probate office when it reinitiated city-council proceedings in November 2004 (five months before the demolition occurred), it would have discovered that ownership of the property had changed. The court cannot conclude that Ellis was provided the notice required by the due process clause in this case.[5]

3.

This court is not aware of any Eleventh Circuit Court of Appeals case with facts similar to those presented here. However, such a case was decided *en banc* by the Eighth Circuit Court of Appeals, and the court finds its reasoning persuasive. In *Kornblum v. St. Louis County,* 72 F.3d 661 (8th Cir.1995) (en banc), the plaintiff brought a procedural due process claim against St. Louis County, under 42 U.S.C. § 1983, for not providing him adequate notice before demolishing his house. The district court granted summary judgment for the county, but the court of appeals reversed.

The similarities between *Kornblum* and the case before this court are striking. In *Kornblum,* as in this case, the governmental authority declared the property in question a public nuisance and commenced proceedings to have the nuisance abated. 72 F.3d at 662. It sent notice to the then-owner of the property, but by the time the house was demolished the property had been purchased by someone else. *Id.* at 662-63. Approximately nine months elapsed between the county's checking property records to identify the owner and the ultimate demolition of the plaintiff's house. *Id.*

In ruling for the Eighth Circuit *en banc* that notice to the previous property owners was inadequate under the due process clause, Judge Morris S. Arnold noted that the

> "delay in demolishing the property contributed significantly to the unreasonableness of the notice in this case.... Because the County delayed a long time before it demolished the building, it created a foreseeable and appreciable risk that its action would affect a set of interested parties different from those whose interests were affected when the house was declared a nuisance."

Id. at 664. As previously discussed, the court believes that similar principles apply here.

***1310** In fact, at least one distinction between this case and *Kornblum* makes Ellis's case even stronger. In *Kornblum,* the plaintiff did not actually purchase the property until after the final hearing had taken place and the demolition order issued. *Id.* at 662. The court of appeals held that "some form of notice to *future* purchasers such as Mr. Kornblum was called for under the circumstances of this case." *Id.* at 663 (emphasis added). Here, unlike in *Kornblum,* the City of Montgomery reinitiated proceedings and ordered demolition after Ellis had already purchased the property. The city's failure here was not to provide notice to future purchasers, but to provide notice to the person who actually owned the property at the time the city council hearing occurred. If notice must be provided to future purchasers, then surely it must be provided to actual owners as well.[6]

Admittedly, one distinction between this case and *Kornblum* was that St. Louis County had failed to comply with its own ordinance that a declaration of public nuisance be filed with the recorder of deeds. *Id.* at 662. But of course the Eighth Circuit's decision did not turn on the facts that a notice procedure was already in place and that the county had violated it; the government does not violate procedural due process merely by violating its own procedures. *Smith v. Georgia,* 684 F.2d 729, 732 n. 6 (11th Cir.1982). Arguably, compliance with a preexisting ordinance is slightly easier than providing record notice without the benefit of an ordinance, but the administrative burdens involved are comparable in both cases-and, as previously mentioned, quite minimal. If anything, the appellate court's discussion of the recording ordinance in *Kornblum* confirms that there *is* a highly effective notice procedure available to the City of Montgomery that is "simple, straightforward, and virtually costless," *Kornblum,* 72 F.3d at 664.

4.

The City of Montgomery has advanced two additional arguments against Ellis's due process claim. First, the city states it should prevail because its notice procedures were fully compliant with state and local law. Second, the city states that Ellis's agreement to purchase the property "as is" precludes relief. Both arguments are unavailing.

a.

The city notes that the Alabama statute governing demolition procedures requires that the municipality send notice to only the "address on file in the tax collector's or revenue commissioner's office," and provides that "[t]he mailing of the certified or registered mail notice, properly addressed and postage prepaid, shall constitute notice as required herein." 1975 Ala.Code § 11-40-31. Pursuant to that statute, Montgomery, Ala. Ordinance No. 10-2001 provides for notice to "the person ... last assessing the property for ... taxes," and requires notice to be sent to the "addresses on file in the Montgomery County Revenue Commissioner's office *or* Montgomery County Probate Judge's Office." Ordinance No. 10-2001 at B(2) (emphasis added). It therefore appears that the city, in sending notice to the property owner as reflected in the revenue commissioner's records, was following state and local law.

But, as previously stated, the State is not empowered to determine what constitutes ***1311** adequate notice under the due process clause of the Federal Constitution. "[B]ecause minimum procedural requirements are a matter of federal law, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action." *Logan,* 455 U.S. at 432, 102 S.Ct. 1148 (internal quotation marks and brackets omitted). Notwithstanding the language of the state statute, any notice procedure must be reasonably certain to inform real property owners of the pendency of demolition proceedings. The city's notice procedure, at the time Ellis's property was condemned and demolished, fell far short of that standard.

As previously discussed, the principal defect in the city's procedure was in using outdated records from the county revenue commissioner to identify property owners whose property it intended to demolish. Although maintaining property ownership records is among the duties of the revenue commissioner, the commissioner's purpose in keeping those records is distinctly

different from that of the probate judge. The office of the revenue commissioner maintains records for the purpose of assessing and collecting property taxes, whereas the office of the probate judge maintains records for the purpose of definitively identifying real property ownership. *Benchmark Resources Corp. v. United States,* 64 Fed.Cl. 526, 535 (2005); *see also* 1975 Ala.Code § 35-4-50 ("Conveyances of property, required by law to be recorded, *must* be recorded in the office of the judge of probate.") (emphasis added).

This difference in the functions and purposes of the two offices should be obvious from the revenue commissioner's recordkeeping system as explained by Revenue Commissioner Spear at trial. Because the actual owner of any given piece of property is relevant only for tax assessment purposes beginning on October 1 of each year, and for tax collection purposes on October 1 of the following year, the revenue commissioner's computer records for each property identify the person from whom taxes were due to be collected on the previous October 1. As a result, the name listed with each property may be an outdated listing of who actually owns the property; indeed, it may be up to two years out-of-date. The revenue commissioner's records are designed to reflect property ownership for tax assessment and collection purposes, not for the purpose of identifying the *current* owner of real property.

As stated, before the city razes a structure, it must undertake reasonable measures to identify the owner of record. Consulting the official deeds and records at the office of the probate judge would satisfy this requirement. *Cf. Cuvillier,* 390 F.3d at 1339 (approving tax office's consultation of local deeds and records in effort to identify property owner prior to tax sale). Therefore, even if the city followed state and local law in consulting the records of the county revenue commissioner, such actions did not constitute adequate notice under the due process clause of the Federal Constitution.

b.

The city also argues that, because Ellis agreed to purchase the Wade Street property "as is," the city had no obligation to provide him with notice before destroying his house. This is plainly wrong.

Under Alabama law, an "as is" clause in a purchase contract or deed serves to preclude any fraud claim by the purchase based on the seller's failure to disclose material information. *Moore v. Prudential Residential Servs. Ltd.,* 849 So.2d 914, 924 (Ala.2002). But this limits only the purchaser's ability to recover from the seller; it does not relieve the city from its ***1312** constitutional obligation to provide adequate notice to the current holder of property before destroying that property. As previously discussed, the city failed in that obligation. The terms of Ellis's purchase contract and warranty deed are immaterial.

B. Municipal Liability

[5] Now that Ellis has established a violation of his right to procedural due process, it remains to be seen whether he will be able to recover from the City of Montgomery under 42 U.S.C. § 1983. It is well established that there can be no respondeat superior liability for § 1983 claims. *Monell v. Dep't of Social Servs.,* 436 U.S. 658, 691, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978); *Holloman v. Harland,* 370 F.3d 1252, 1290 (11th Cir.2004). In other words, the named defendant in a § 1983 suit may be held liable only for its own unconstitutional conduct, not that of subordinates or employees. *Monell,* 436 U.S. at 694, 98 S.Ct. 2018.

[6] The question is therefore whether the City of Montgomery itself violated Ellis's right to due process. A municipality is directly liable under § 1983 only if the violation of the plaintiff's rights is attributable to a municipal policy or custom. *Id.* "The 'official policy' requirement [is] intended to distinguish acts of the municipality from acts of employees of the municipality, and thereby make clear that municipal liability is limited to action for which the municipality is actually responsible." *Pembaur v. City of Cincinnati,* 475 U.S. 469, 479, 106 S.Ct. 1292, 89 L.Ed.2d 452 (1986). "A policy is a decision that is officially adopted by the municipality, or created by an official of such rank that he or she could be said to be acting on behalf of the municipality.... A custom is a practice that is so settled and permanent that it takes on the force of

law." *Sewell v. Town of Lake Hamilton,* 117 F.3d 488, 489 (11th Cir.1997); *see also Board of County Comm'rs v. Brown,* 520 U.S. 397, 403-04, 117 S.Ct. 1382, 137 L.Ed.2d 626 (1997). Formal policies that violate the Constitution are rare, which means that most plaintiffs must allege an informal custom that takes on the force of law. *Grech v. Clayton County,* 335 F.3d 1326, 1330 (11th Cir.2003) (en banc).

[7] In this case, the court is satisfied that the deprivation of Ellis's due process right was caused by a policy or custom within the meaning of *Monell* and its progeny. According to the uncontroverted testimony of Dorian Brunson, the city's chief building official, the city's policy and practice for providing pre-demolition notice to property owners is to access the revenue commissioner's property records, even though the city is aware that those records are not up-to-date. Brunson testified that the city has no other policy to discover whether the property in question has changed ownership.

Based on this evidence, the court concludes that, at the time Ellis was denied due process, it was the city's policy or custom to rely on property records from the revenue commissioner's office even though the name listed on those records may not reflect the actual owner of a given property. The evidence also reflects that the city had no other policy or custom in place to reduce the likelihood that property would be demolished without owners receiving notice of the pending action.

If the city had produced evidence that the inadequate notice procedure employed in Ellis's case was merely an oversight by a negligent municipal employee, then the city would have a stronger defense against direct municipal liability under § 1983. But, because it appears that the city itself is responsible for not providing Ellis the notice he was due, the city is not shielded from liability in this case.

*1313 III. RELIEF

Ellis's complaint seeks compensatory damages, punitive damages, attorneys' fees and expenses, and declaratory and injunctive relief. The court will address each form of relief requested in turn.

A. Compensatory Damages

[8] "If the government fails to comply with the dictates of the Due Process Clause, the aggrieved party can seek compensatory damages ... under 42 U.S.C. § 1983." *Grayden v. Rhodes,* 345 F.3d 1225, 1232 (11th Cir.2003). "Recovery of damages is limited to those injuries proved to be caused by the defendant[ ]." *Troupe v. Sarasota County,* 419 F.3d 1160, 1165 (11th Cir.2005).

Based on the evidence presented at trial, the court finds the following facts. Prior to the fire that severely damaged the house and rendered it unsafe, the house was assessed as having a fair market value of $ 29,000. After the fire, Ellis paid $ 4,500[7] for the house. Ellis believes that although he paid only $ 4,500, it was worth approximately $ 15,000. He attributes the difference to the fact that the house was sold at a foreclosure sale subject to the statutory redemption rights of Walters, and that the damage to the house from the fire appeared to be worse than it actually was. Although Ellis's estimate of the house's value when he purchased it is imprecise at best, the court credits it for lack of any other reliable evidence of its value at the time.

Ellis also testified that he would have repaired the house for an additional $ 15,000 and rented it out to tenants for $ 450 per month. Aside from clearing some debris from the property, Ellis had not begun substantial repairs on the house at the time it was destroyed by the city.

The property, with the house gone, is now assessed at a fair market value of $ 6,000. A lien for the demolition fee of $ 2,790 plus interest is currently attached to the property.

[9] Based on this evidence, the court concludes that Ellis is entitled to compensatory damages of $ 11,790, plus whatever interest has accrued on the cost-of-demolition lien. This sum is reached by calculating the difference between the value of the

house when Ellis purchased it and the value of the property, which Ellis still owns, now that the house has been destroyed. As stated, the court credits Ellis's estimate that the house was worth $ 15,000 when he bought it. As for the value of the property now, it is currently assessed at $ 6,000, but a $ 2,790 lien for the costs of demolition is attached, reducing its total value to $ 3,210. The difference between $ 15,000 and $ 3,210 is $ 11,790.

Alternatively, should the city find it administratively convenient simply to waive the demolition fee and cancel the lien, total damages would be reduced to $ 9,000-the difference between $ 15,000 and $ 6,000, or the loss of value in Ellis's property caused by the destruction of his house.

[10] Although Ellis may have lost a year or more in revenue from rent, the court is not convinced that this would have made up for the cost of repairs to the house-repairs Ellis never made. While it is true that revenue from rent would have eventually paid for repairs, such future income is too speculative and remote. Damages under § 1983 are "ordinarily determined ***1314** according to principles derived from the common law of torts." *Memphis Cmty. Sch. Dist. v. Stachura,* 477 U.S. 299, 306, 106 S.Ct. 2537, 91 L.Ed.2d 249 (1986). In this case, that common law is reflected in the law of Alabama. Under current Alabama law, recovery for loss of future profits requires that the future profits be proved with "reasonable certainty." *Super Valu Stores, Inc. v. Peterson,* 506 So.2d 317, 327 (Ala.1987). The court finds that Ellis's testimony that he expected to rent out the house once he had completed repairs does not meet that standard. The court therefore declines to award additional damages based on future rental income. In any event, the court suspects that Ellis's expectation of future rental income was captured by the value of the house when it was purchased-value that is now incorporated into the damages Ellis is due.

B. Punitive Damages

[11] [12] Municipalities are immune from punitive damages under 42 U.S.C. § 1983. *City of Newport v. Fact Concerts, Inc.,* 453 U.S. 247, 271, 101 S.Ct. 2748, 69 L.Ed.2d 616 (1981). Therefore, Ellis cannot recover punitive damages from the city in this case.

C. Attorneys' Fees and Expenses

[13] As the "prevailing party" in a civil action under § 1983, Ellis is entitled to reasonable attorneys' fees and expenses. 42 U.S.C. § 1988(b). The court will give the parties an opportunity to agree on the amount of such fees and expenses.

D. Declaratory and Injunctive Relief

[14] [15] As discussed, the principal defect in the city's notice procedure was to rely on out-of-date public records of the county revenue commissioner rather than the up-to-date title and deed records of the probate judge. The court will enter a declaration to that effect. At trial, Revenue Commissioner Spear testified that very recent technological improvements at her office now enable the city to learn of a change in property ownership as soon as it occurs. In addition to making note of this development, the court is confident that the city, in reading this opinion, has every incentive to devise notice procedures compliant with due process. Accordingly, the court declines to afford injunctive relief in conjunction with this case.

IV. CONCLUSION

For the foregoing reasons, the court finds in favor of Ellis and against the City of Montgomery, and will afford Ellis declaratory relief, damages, fees, and costs. An appropriate judgment will be entered in accordance with this opinion.

JUDGMENT

In accordance with the opinion entered on this date, it is the ORDER, JUDGMENT, and DECREE of the court as follows:

(1) It is DECLARED that defendant City of Montgomery deprived plaintiff Wilbert Ellis of his real property at 29 Wade Street, Montgomery, Alabama, without due process of law, in violation of the due process clause of the Fourteenth Amendment of the United States Constitution, as enforced through 42 U.S.C. § 1983.

(2) Judgment is entered in favor of plaintiff Ellis and against defendant City of Montgomery.

(3) Plaintiff Ellis shall have and recover from defendant City of Montgomery either:
(a) the sum of $ 11,790, plus whatever interest has accrued on the cost-of-demolition lien now attached to his property; or

(b) should defendant City of Montgomery cancel said lien and waive the demolition fee, the sum of $ 9,000.

***1315** It is further ORDERED that plaintiff Ellis shall have until December 7, 2006, to file any motion for attorneys' fees and expenses. The court encourages the parties to attempt to resolve the matter of attorneys' fees and expenses on their own.

It is further ORDERED that costs are taxed against defendant City of Montgomery, for which execution may issue.

The clerk of the court is DIRECTED to enter this document on the civil docket as a final judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

Footnotes

1 Ellis originally named the mayor and city council as additional defendants and alleged additional claims under the takings clause of the Fifth Amendment and the substantive component of the due process clause of the Fourteenth Amendment. Without objection, the court has since dismissed those defendants and claims.

2 The parties agreed that, so as to save time, the court could consider not only evidence presented at trial but also the evidence submitted by the parties with their cross-motions for summary judgment.

3 Brunson admits he does not know if his subordinates actually checked the revenue commissioner's property records again in November 2004, but the court is willing to give the city the benefit of the doubt and assume the city followed its regular procedures. Of course, the city's failure to follow its own procedures would not itself constitute a violation of due process under the Federal Constitution. *See Smith v. Georgia,* 684 F.2d 729, 732 n. 6 (11th Cir.1982). Nor would compliance with state law or city ordinance insulate the city from liability under the due process clause. *See Vitek v. Jones,* 445 U.S. 480, 490 n. 6, 100 S.Ct. 1254, 63 L.Ed.2d 552 (1980) (quoting *Arnett v. Kennedy,* 416 U.S. 134, 167, 94 S.Ct. 1633, 40 L.Ed.2d 15 (1974) (Powell, J., concurring)); *see also Logan,* 455 U.S. at 432, 102 S.Ct. 1148. To the contrary, following regular procedures in this case would make no difference as to whether Ellis would receive notice; whereas, had the city checked *probate* records in November 2004, rather than the revenue commissioner's records, it would have discovered that Ellis, not Walters, owned the property it planned to destroy.

4 In fact, the International Property Maintenance Code, which the City of Montgomery adopted as city ordinance in 2003, prohibits the sale or transfer of any property then under a "compliance order" from the municipality. Int'l Prop. Maint. Code § 107.5 (2003). Of course, when the building official's findings expire at the end of 90 days, this prohibition is no longer operative. Therefore, in this case, sale of the property in September 2004-more than 90 days after the city sent its May and June notices to Walters-was entirely legal and valid.

5 The court does not base its conclusion that the notice it provided was inadequate solely on the fact that a better notice procedure was conceivable. *See Arrington,* 438 F.3d at 1350 ("Our task is not to determine whether the notice ... request[ed] would be *ideal* under all the circumstances, but rather whether the notice ... receive[d] is *reasonable* under all the circumstances."); *Cuvillier,* 390

F.3d at 1339 n. 8 ("*Dusenbery* indicates that governments are not required to make the 'best' efforts, but only those that are 'reasonably calculated' to provide proper notice."). Rather, the court finds that the city's notice procedures were constitutionally inadequate, and additionally finds that relatively cheap and practical alternatives are available.

6 It is noteworthy that the dissenting opinion in *Kornblum* emphasized its disagreement with the majority's contention that "unidentifiable and unknown, future potential purchasers who have absolutely no interest in the property at the time of the hearing are constitutionally entitled to notice." *Kornblum,* 72 F.3d at 666 (Hansen, J., dissenting). Since Ellis actually owned the Wade Street property at the time the city reinitiated its condemnation procedures on November 17, 2004, the dissenters' argument does not apply here.

7 At trial, Ellis testified that the purchase price was $ 4,600. A copy of the warranty deed, submitted as evidence at the summary-judgment stage and admitted into evidence at trial by stipulation of the parties, reflects a purchase price of $ 4,500. The court assumes Ellis was simply mistaken during his testimony.

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Sam Gaston

From: WISELY, DALE
Sent: Friday, January 08, 2016 6:57 AM
To: 'gastons@mtnbrook.org'
Subject: FW: possible ordinance
Attachments: ORDINANCE.docx

To Members of the City Council:

A few years ago, I spoke to a Dr. Dicky Barlow, Chief Cook and Billy Pritchard about the possibility of asking the City Council to consider an ordinance prohibiting the use of cell phones by motorists in school zones during car pool hours. I want to respectfully ask you to consider this matter.

This was prompted by my having recently observed a driver, on a cell phone, sail through a red light, in the middle of kids walking in for school, on Montevallo and Church. Fortunately, she did not collide with any of our students and it was a non-event. But, we routinely see drivers in carpools with phones to their ears, with large SUVs full of children.

I have taken the liberty of drafting an ordinance which is attached. It would grieve me if you were to find this presumptuous. I thought it might be useful to you to see what an ordinance like this might look like. I used an existing MB ordinance as a model. The language of the draft is based on a state law in Louisiana, where it is illegal to use a cell phone in school zones. I am sure it would have to be extensively reworked by people who actually know what they are doing.

I think most people are now aware of the role of distracted driving in causing accidents. As you may know, for 15 years I have been studying teenage driving in order to provide workshops for parents on teenage driving. This has caused me to try to keep up with the research on distracted driving. Much of the national conversation around this has properly been focused on texting while driving. If you were to consider some kind of action regarding cell phone use in school zones, I am sure you would want to consider that it already illegal, statewide to text while driving.

One unfortunate and unintended consequence of the focus on *texting* while driving is that it has caused people to underestimate the risk of *talking* on the telephone while driving. A fair way to summarize the research is to say that texting while driving increases a driver's risk of causing an accident about tenfold. *Talking* on one's phone while driving increases the chances of accident about fourfold. That is not a trivial increase in the risk of accidents which could cause severe injury or death, including injury and death of school children. The benchmark often employee by researchers to evaluate the risk of distracted driving is to compare it to DUI. In many studies, the impairment of a driver from use of a cellphone while driving is similar to the impairment of drivers under the influence of alcohol. Given that, I do not see a way around a conclusion that when motorists are on their phones, in school zones, during car pool times, our students are at greater risk of injury or death than otherwise.

Finally, let me address the question of enforcement. It is clear to me that there are problems associated with enforcing measures of this kind. First, I do believe there would be ample opportunities to cite drivers who are on their phones during car pool times in school zones. But, even if there were not, I do think laws and ordinances of this kind have an educational value, not to mention that there actually are people who obey laws even when the risk of getting caught are low!

I am at your service and looking forward to any conversations about this matter you find appropriate.

Thanks,

Dale Wisely

ORDINANCE

AN ORDINANCE TO PROHIBIT THE USE OF WIRELESS COMMUNICATION DEVICVICES WHILE OPERATING A MOTOR VEHICLE IN SCHOOL ZONES BETWEEN THE HOURS OF 7:30 A.M. AND 8:00 A.M. AND BETWEEN THE HOURS OF 2:30 P.M. AND 3:00 P.M. AND WHEN PEDESTRIANS, WHO ARE MINORS, ARE VISIBLE IN SCHOOL ZONES.

BE IT ORDAINED by the City Council of the City of Mountain Brook, Alabama, as follows:

1. **Provisions**. It shall be unlawful for the driver of a motor vehicle in a School Zone to operate a wireless communication device between the hours of 7:30 A.M. and 8:00 A.M. and between the hours of 2:30 P.M. and 3:15 P.M. and when pedestrians, who are minors, are visible in school zones. Operating a wireless communication device shall include engaging in a call; writing, sending, or reading text-based communications; accessing, reading, or posting to a social network site or accessing or adding any information to the wireless communication device. The provisions of this Section shall only apply within a school zone upon a public road or highway during posted hours when signs are located in a visible manner in each direction that indicate the use of a hand-held wireless communications device is prohibited while operating a motor vehicle.
2. **"Wireless telecommunications device" defined**. "Wireless telecommunications device" means a cellular telephone, a text- messaging device, a personal digital assistant, a stand-alone computer, or any other substantially similar wireless device that is readily removable from the vehicle and is used to write, send, or read text or data through manual input. A "wireless telecommunications device" shall not include any device or component that is permanently affixed to a motor vehicle. It does not include a hands-free wireless telephone, an electronic communication device used hands-free, citizens band radios, citizens band radio hybrids, commercial two-way radio communications devices, two-way radio transmitters or receivers used by licensees of the Federal Communication Commission in the Amateur Radio Service, or electronic communication devices with a push-to-talk function.
3. **Violations**.
   (1) Violations of this ordinance shall constitute a moving violation.
   (2) The first violation of the provisions of this ordinance shall be punishable for a fine of not more than $XX.
   (3) Each subsequent violation shall be punishable by a fine of not more than $XX
   (4) If a person is involved in a collision at the time of the violation, then the fine shall be equal to double the amount of the standard fine imposed in this ordinance and the law enforcement officer investigating the collision shall indicate on the written report that the person was using a wireless communication device at the time of the collision.

4. **Exceptions**: The provisions of this ordinance shall not apply to a person who uses a wireless telecommunications device and does any of the following:

   (1) Reports a traffic collision, medical emergency, or serious road hazard.

(2) Reports a situation in which the person believes his personal safety is in 24 jeopardy.

(3) Reports or averts the perpetration or potential perpetration of a criminal act against the driver or another person.

(4) Operates a wireless telecommunications device while the motor vehicle is lawfully parked.

(5) Uses a wireless telecommunications device in an official capacity as an operator of an authorized emergency vehicle.

5. **Repealer.** All ordinances or parts of ordinances heretofore adopted by the City Council of the City of Mountain Brook, Alabama that are inconsistent with the provisions of this ordinance are hereby expressly repealed.
6. **Severabilitv.** 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.
7. **Effective Date.** This ordinance shall become effective immediately upon adoption, publication as provided by law, and the installation of appropriate traffic signage indicating that such turns are prohibited.

PROFESSIONAL SERVICES AGREEMENT
Between
The City of Mountain Brook and Skipper Consulting, Inc.

This Agreement is made by and between **the City of Mountain Brook, Alabama ("Client")**, doing business at 56 Church Street, Mountain Brook, Alabama 35213 and, **Skipper Consulting, Inc. ("Consultant")**, doing business at 3644 Vann Road, Suite 100, Birmingham, Alabama 35235.

WHEREAS, the Client requests that the Consultant perform professional traffic engineering services related to a traffic study and other work related to to a proposed ordinance banning the use of wireless communication devices within school zones within the City of Mountain Brook (the "Project" or "Services");

WHEREAS, the parties intend that the Consultant be authorized to start work on the services outlined in this agreement upon execution of this Agreement, and

WHEREAS, the Client and Consultant agree that the Services be performed pursuant to the terms of this Agreement, together with the attached Exhibit A and the Addendum related hereto, which writings constitute the entire agreement between them relating to this assignment.

1. **PROFESSIONAL SERVICES**: The Consultant agrees to perform the following Services under this Agreement:

SEE SCOPE OF WORK SET FORTH ON EXHIBIT "A"

The Consultant agrees to perform its Services in a manner that is consistent with professional skill and care that would be provided by other professionals in its industry under same or similar conditions, and in the orderly progress of the Project.

2. **CLIENT'S RESPONSIBILITIES:** Client, at its expense, will provide the Consultant with all required site information, existing plans, reports, studies, project schedules and similar information that is contained in its files. The Consultant may rely on the information provided by the Client without verification.

The Client will designate a representative who shall have the authority to act on behalf of the Client for this project.

The Client shall participate with the Consultant by providing all information and criteria in a timely manner, review documents and make decisions on project alternatives to the extent necessary to allow the Consultant to perform the scope of work within established schedules.

3. **COMPENSATION/ BILLING/ PAYMENT:** Skipper Consulting Inc. will undertake and perform the work and Services outlined in Exhibit "A" for a fixed fee (inclusive of all expenses) for a fixed fee in the amount of **$6,250.00**

The CLIENT will bill for its Services monthly based on the work completed during the billing period. Invoices for uncontested amounts are payable within 30 days from the receipt by the Client, and such payment shall not be contingent or dependent upon any conditions or any action or undertaking of the Client other than those conditions, if any, specifically set forth in this Agreement.

If complications or other unforeseen factors cause a change in the scope of Work outlined in Exhibit "A", the Consultant will notify the Client in writing of the changes and any adjustments to the fee required by such change. If the Client wishes to undertake tasks that are identified as being outside the proposed scope of services, the Consultant will submit a proposal for the additional work. No additional work or

services other than those contemplated herein shall be performed without the written approval of the Client.

If for any reason, payment for uncontested amounts reflected on invoices is more than 30 days delinquent, the Consultant shall have the right to stop work on the assignment until such payment is made. The Consultant will not be liable for any delays to project schedules caused for such work stoppage.

4. STANDARD TERMS AND CONDITIONS

The Client shall have final right of review and approval of all plans and specifications that shall be delivered in connection with the performance of the Services; however, review and approval shall not be withheld unreasonably.

The rights and obligations of the parties to this Agreement may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

Either party may terminate this Agreement upon 10 days' written notice to the other party should the defaulting party substantially fail to perform any or its material responsibilities in the Agreement through no fault of the party desiring to terminate. In the event of termination of this Agreement, due to the fault of a person or party other than the Consultant, Consultant shall be paid for Services performed to termination date.

The Consultant agrees to furnish consulting services only related to the Project. Consultant shall be responsible for coordination of its work with that of Client.

This Agreement (including Exhibit A and the Addendum) shall constitute the entire agreement between the parties concerning the matters herein, and any prior understanding or representation of any kind preceding the date of this agreement shall not be binding upon either party except to the extent incorporated into this Agreement.

Any modification or amendment of this Agreement shall be binding only if placed in writing and signed by each party or an authorized representative of each party.

This agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Alabama.

The failure of either party to this agreement to insist upon the performance of any of the terms and conditions of this agreement, or the waiver of any breach of any of the terms and conditions of this agreement, shall not be construed as thereafter waiving any such terms and conditions but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect.

Neither party to this Agreement shall be liable to the other for any loss, cost, or damages, arising out from or resulting from, any failure to perform in accordance with its terms where the causes of such failure shall occur due to events beyond a party's reasonable control, include, but not limited to, the following: acts of God, strikes, lockouts, or other industrial disturbances, wars, whether declared or undeclared, blockades, insurrections, riots, governmental action, explosions, fire, floods, or any other cause not within the reasonable control of either party.

Consultant shall secure and maintain such insurance as is reflected on the Addendum.

Client shall provide Consultant access to the Project site necessary for the Consultant to provide the services outlined.

The Client's reuse of any report, documents or other deliverables prepared by the Consultant for the Project on any other project without written verification by the Consultant shall be at the Client's risk.

The persons signing this Agreement warrant that they have the authority to sign on behalf of the Client and Consultant.

CLIENT: CITY OF MOUNTAIN BROOK, AL		CONSULTANT: SKIPPER CONSULTING INC.	
By:		By:	
Printed Name:		Printed Name:	Richard L. Caudle, P.E.
Title:		Title:	Senior Traffic Engineer
Date:		Date:	5/1/16

EXHIBIT "A"
SCOPE OF WORK

The Consultant shall perform the following scope of work in relation to traffic studies conducted as a part of the consideration of a ban on the use of wireless communication devices within school zones within the City of Mountain Brook.

1. The Consultant shall attend a kick-off meeting with the City staff to discuss specific scope of work and schedule items.
2. The Consultant shall conduct morning and afternoon observations of traffic flows and the impact of wireless communication devices on traffic flows at each of six (6) school zones within the City, specifically:
   a. Mountain Brook High School
   b. Mountain Brook Junior High School
   c. Mountain Brook Elementary School
   d. Crestline Elementary School
   e. Brookwood Forest Elementary School
   f. Cherokee Bend Elementary School
3. The Consultant shall request from the City crash reports for each school zone for the previous three years and analyze the reports to determine if wireless communication use was a factor in any crashes.
4. The Consultant shall attend a meeting with School staff for each of the six schools listed above.
5. The Consultant shall prepare a draft report which documents the study findings. Specific items to be included in the draft report would be:
   a. the observed impacts of wireless communication device usage, as related to:
      i. queue inefficiencies
      ii. conflicts, both vehicle-vehicle and vehicle-pedestrian
   b. recommendations on limits of enforcement and required school zone changes
   c. recommendations on times for enforcement
   d. recommendations on the need for and design of signing to advise motorists of the wireless device use restriction.
6. After review, the Consultant shall issue a final report.
7. The Consultant shall attend as many meetings of the Mountain Brook City Council as needed.

ADDENDUM TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MOUNTAIN BROOK AND SKIPPER CONSULTING, INC. – TRAFFIC ENGINEERING SERVICES (SCHOOL ZONE WIRELESS COMMUNICATION DEVICE ORDINANCE)

THIS ADDENDUM TO PROFESSIONAL SERVICES AGREEMENT ("the/this Addendum") between the City of Mountain Brook, Alabama ("the City") and Skipper Consulting, Inc. ("the Contractor") is entered between the parties.

This Addendum is a part of the Professional Services Agreement between the parties (the "Agreement") concerning the work, services or project described in the Agreement. In the event of any conflict between the terms and provisions of this Addendum and the Agreement, the terms herein supersede and control any conflicting or inconsistent terms or provisions, particularly to the extent the conflicting or inconsistent terms or provisions in the Agreement purport either to (a) confer greater rights or remedies on the Contractor than are provided herein or under otherwise applicable law, or to (b) reduce, restrict, or eliminate rights or remedies that would be available to the City under otherwise applicable law. The Addendum shall remain in full force and effect with respect to any amendment, extension, or supplement of or to the principal Agreement, whether or not expressly acknowledged or incorporated therein. No agent, employee, or representative of the City is authorized to waive, modify, or suspend the operation of the Addendum or any of its terms or provisions without the express approval of the Mountain Brook City Council.

1. *Definitions.* For purposes of this Addendum, the terms below have the following meanings:

A. *"The City"* refers to and includes the City of Mountain Brook, Alabama, and its constituent departments, boards, and agencies. The City may also be referenced in the Agreement as the "Client."

B. *"The (this) Agreement"* refers to the principal contract, agreement, proposal, quotation, or other document that sets forth the basic terms and conditions under which the Contractor is engaged to provide goods, materials, or services to the City, including the payment or other consideration to be provided by the City in exchange therefor.

C. *"The Contractor"* refers to the person, firm, or other legal entity that enters the Agreement with the City to provide goods, materials, or services to the City, and includes vendors and suppliers providing goods, materials, and services to the City with or without a formal contract as well as the Contractor's vendors, suppliers, and subcontractors. The Contractor may also be referenced in the Agreement as the "Consultant."

2. *Dispute Resolution.* If a disagreement, claim, issue or disagreement arises between the parties with respect to the performance of this Agreement or the failure of a Party to perform their respective rights or obligations hereunder (a "Dispute"), the parties will use reasonable efforts to resolve any Dispute at the designated representative level. If the parties are unable to amicably resolve any Dispute at that level, each agree to escalate that matter to senior managers or senior officials for consideration by and potential resolution by them. If the Dispute is not resolved at the senior level, the dispute resolution

mechanism shall be litigation in a court with competent jurisdiction that is located in Jefferson County, Alabama.

3. *Attorney's Fees; Court Costs; Litigation Expenses.* The City shall not be liable for attorney's fees, court costs, litigation expenses, and like charges except and to the extent such fees, costs, and charges would be assessed against the City under applicable law in the absence of any contractual provision imposing or assigning liability therefor.

4. *Late Payment Charges; Fees; Interest.* The City shall not be liable for any late payment charges, interest, or fees on any delinquent bill for goods, materials, or services, and bills rendered to the City shall not be considered delinquent any earlier than thirty (30) days after rendition of a complete and accurate bill by the Contractor. Contested bills shall not be considered delinquent pending resolution of the dispute.

5. *Indemnification; Hold-Harmless; Release; Waiver; Limitations of Liability or Remedies.* The City shall not and does not indemnify, hold harmless, or release the Contractor or any other person, firm, or legal entity for, from, or with respect to any claim, cause of action, cost, charge, fee, expense, or liability whatsoever arising out of or relating to the subject matter of the Agreement or the performance or nonperformance thereof; nor shall or does the City waive its right to assert or pursue any remedy or claim for relief of any kind that it may have against the Contractor or any other person, firm, or entity for any actual or alleged default or other breach of legal duty on the part of the Contractor or any person, firm, or entity in privity therewith or acting on Contractor's behalf. Any limitation or restriction regarding the type, nature, form, amount, or extent of any right, remedy, relief, or recovery that would otherwise be available to the City is expressly disavowed, excluded from the terms of the agreement, and void.

6. *Choice of Law; Choice of Venue or Forum.* The meaning, legal effect, and enforcement of terms and provisions of the Agreement and the resolution of any disputes arising thereunder or relating thereto shall be governed by the laws of the State of Alabama except to the extent otherwise required by applicable conflict-of-law principles. The venue of any suit, action, or legal proceeding brought to enforce or secure relief by reason of any asserted breach of duty arising out of or relating to the performance or nonperformance of the Agreement shall be Jefferson County, Alabama except to the extent otherwise required by applicable principles of law.

7. *Construction of Addendum.* Nothing in this Addendum shall be construed to create or impose any duty or liability on the City, to create a right or remedy in favor of the Contractor against the City, or to restrict or abrogate any right or remedy that is available to the City against the Contractor or any other person, firm, or entity under either the principal Agreement or as a matter of law.

8. *Independent Contractor.* Consultant's relationship to Client at all times is that of an independent contractor. Consultant exclusively controls the means and methods in which it performs its operations or provides the goods, services or undertaking described in the Agreement. The Client does not reserve any right of control over Consultant's operations or the activities it utilizes to perform its obligations in the Agreement.

9. *Contractor's Insurance Requirements*: For the duration of this Agreement and for limits not less than stated below, the Contractor shall maintain the following insurance with a company(ies) lawfully authorized to do business in the location of the Project and reasonably acceptable to the City:

.1 Comprehensive General Liability: This insurance shall cover all operations performed by or on behalf of Contractor, and provide coverage for bodily injury and property damage with a combined single limit of not less than $500,000 per occurrence.

.2 Automobile Liability: If the work or services performed by the Contractor involves use of motor vehicles on public streets, Automobile Liability covering owned and rented vehicles operated by Contractor with policy limits of not less than Five Hundred Thousand Dollars ($500,000) combined single limit and aggregate for bodily injury and property damage, per occurrence.

.3 Workers Compensation: Workers' Compensation and Employers Liability as required by statute.

.4 Professional Liability: If Contractor is providing professional services, Professional Liability covering Contractor's negligent acts, errors and omissions in its performance of professional services with policy limits of not less One Million Dollars ($1,000,000) per claim and in the aggregate.

Contractor may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies. These insurance requirements are in addition to and do not affect any indemnification obligation of Contractor herein.

All policies, except for the Workers Compensation and Professional Liability policies shall contain endorsements naming the City, and its officers, employees and agents as additional named insured with respect to liabilities that arise out of and result from the operations of the Contractor or its performance of Services or work. The additional named insured endorsement shall not limit the scope of coverage to the City to vicarious liability, but shall allow coverage for the City to the fullest extent provided by the policy.

All insurance policies required herein are to be primary and non-contributory with any insurance or self-insurance program administered by the City.

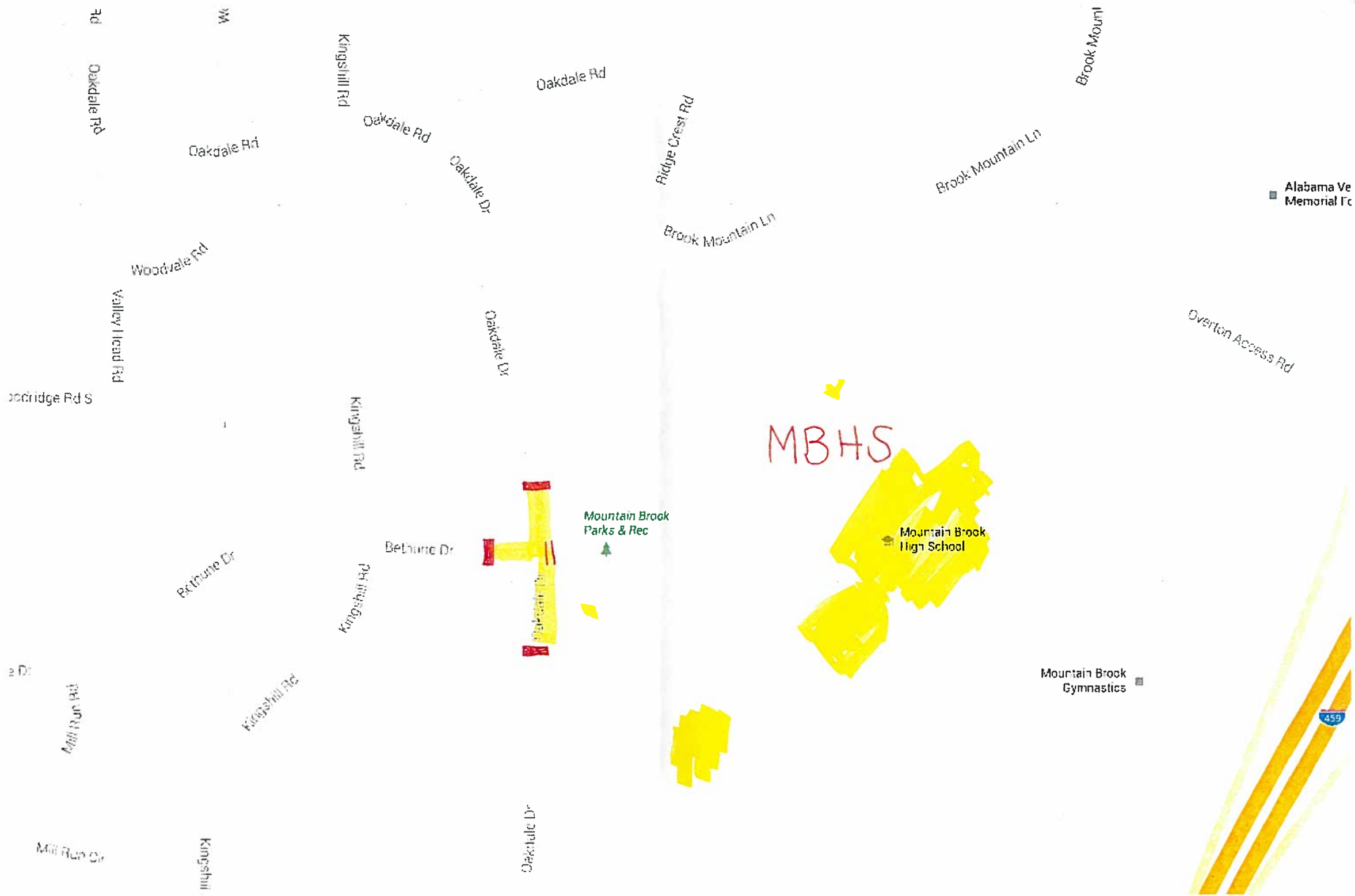
Before commencement of Services hereunder, Contractor shall provide the City a certificate(s) of insurance and endorsements (including the additional insured endorsements) evidencing compliance with the requirements in this section. This certificate(s) shall provide that such insurance shall not be terminated or expire without thirty (30) days advance notice to the City.

10. *Indemnification for Claims by Third Parties.* The Contractor agrees to defend, indemnify, and hold harmless the City, and its agents, employees and officials (collectively hereinafter the "Indemnitees") from and against all demands, actions, damages, judgments, expenses (including but not limited to attorneys' fees, expert fees, court costs and other litigation costs), losses, damages, and claims (including those for bodily injury, sickness, disease or death, or to injury to, destruction or loss of use of tangible property, or those for financial loss or damages, collectively hereinafter "Claim(s)") that are made against the City by any third parties (including any employee, agent or representative of the Contractor, collectively "Third Parties") to the extent that such Claims are caused or allegedly caused by

the negligence of the Consultant in the performance of its Services, its work on the Project described in the Agreement or its failure to perform its obligations in the Agreement.

11. *EXCLUSION OF CONSEQUENTIAL DAMAGES.* THE CONTRACTOR AGREES AND ACKNOWLEDGES THAT, IN THE EVENT THAT IT ASSERTS ANY CLAIM, DEMAND OR ACTION OF ANY TYPE AGAINST THE CITY ARISING FROM ITS ALLEGED BREACH OF THE AGREEMENT OR ITS FAILURE TO PERFORM ANY OF ITS OBLIGATIONS THEREUNDER, THE MAXIMUM AMOUNT THAT THE CONTRACTOR MAY RECOVER FROM THE CITY AS DAMAGES IN ANY SUCH ACTION IS LIMITED TO THE ACTUAL DAMAGES THAT DIRECTLY ARISE FROM THAT BREACH. THE CONTRACTOR FURTHER ACKNOWLEDGES THAT THE COMMERCIAL TERMS HEREIN WERE PROPOSED AND BASED ON THE ASSUMPTION THAT THIS SPECIFIC LIMITATION IS APPLICABLE, AND THAT THE CITY WOULD NOT ENTERED INTO THIS AGREEMENT WITHOUT INCLUDING THIS LIMTATION. IN NO EVENT WILL THE CITY BE LIABLE TO THE CONTRACTOR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR OTHER SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES OR FOR INCREASED COST OF OPERATIONS. NOTHING IN THIS PROVISION IS INTENDED TO IMPACT, MODIFY, AMEND OR LIMIT THE TERMS OR APPLICATION OF THE INDEMNIFICATION PROVISION IN THE PROVISION ABOVE THAT PERTAINS TO CONTRACTOR'S OBLIGATIONS TO INDEMNIFY THE CITY FOR CLAIMS MADE AGAINST THE CITY BY THIRD PARTIES.

CITY: CITY OF MOUNTAIN BROOK		**CONTRACTOR: SKIPPER CONSULTING INC.**	
By:	_____	By:	Rich Caudle
Printed Name:	_____	Printed Name:	Richard L. Caudle, P.E.
Title:	_____	Title:	Senior Traffic Engineer
Date:	_____	Date:	5/1/16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Ridge Crest Rd
Brook Mountain Ln
Brook Mountain Ln
Brook Mount
Alabama Ve
Memorial Fc
Woodvale Rd
Valley Head Rd
Oakdale Dr
Overton Access Rd
Kingshill Rd
Bethune Dr
Bethune Dr
Mountain Brook
Parks & Rec
MBHS
Mountain Brook
High School
Mill Run Rd
Kingshill Rd
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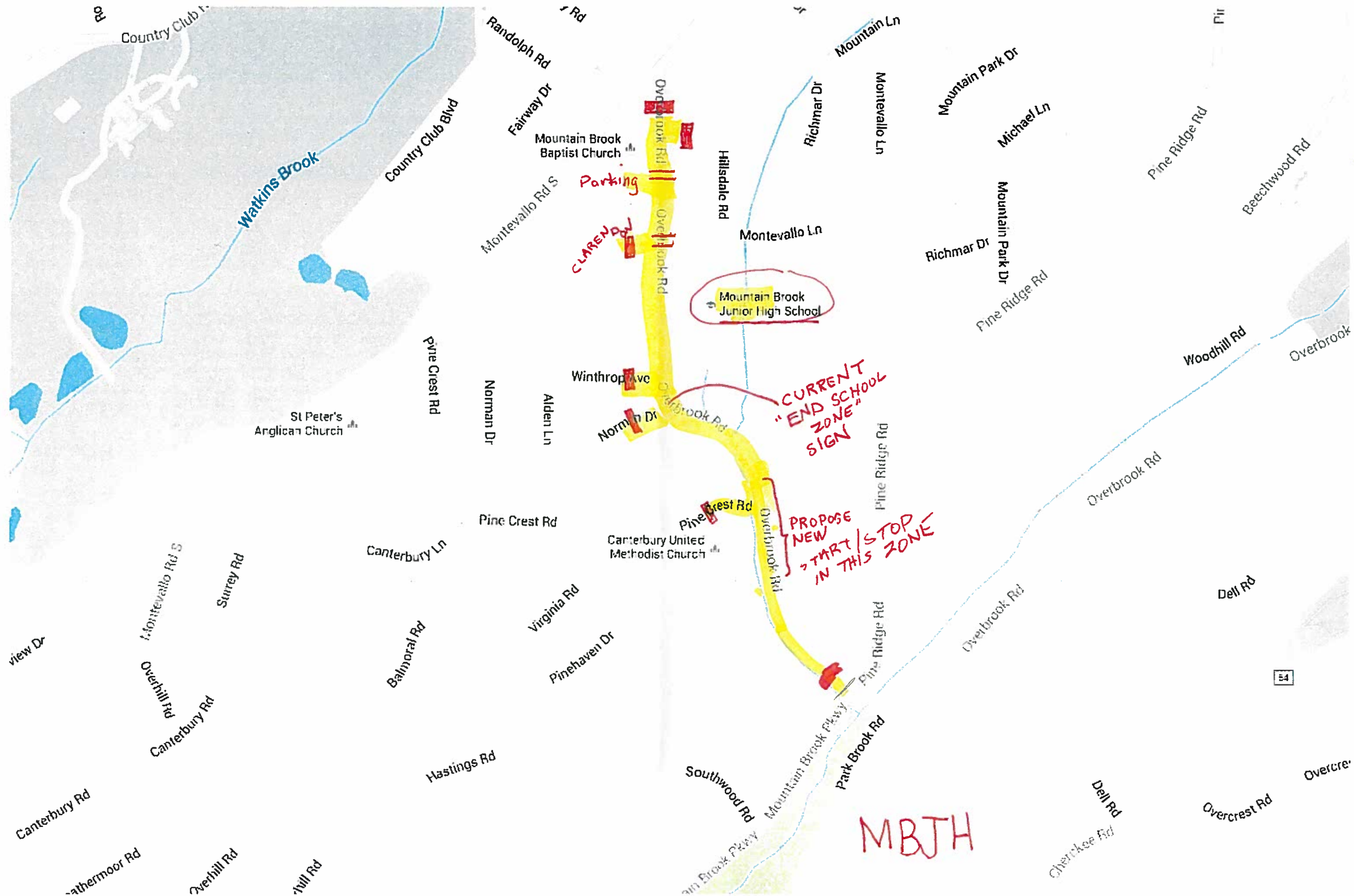
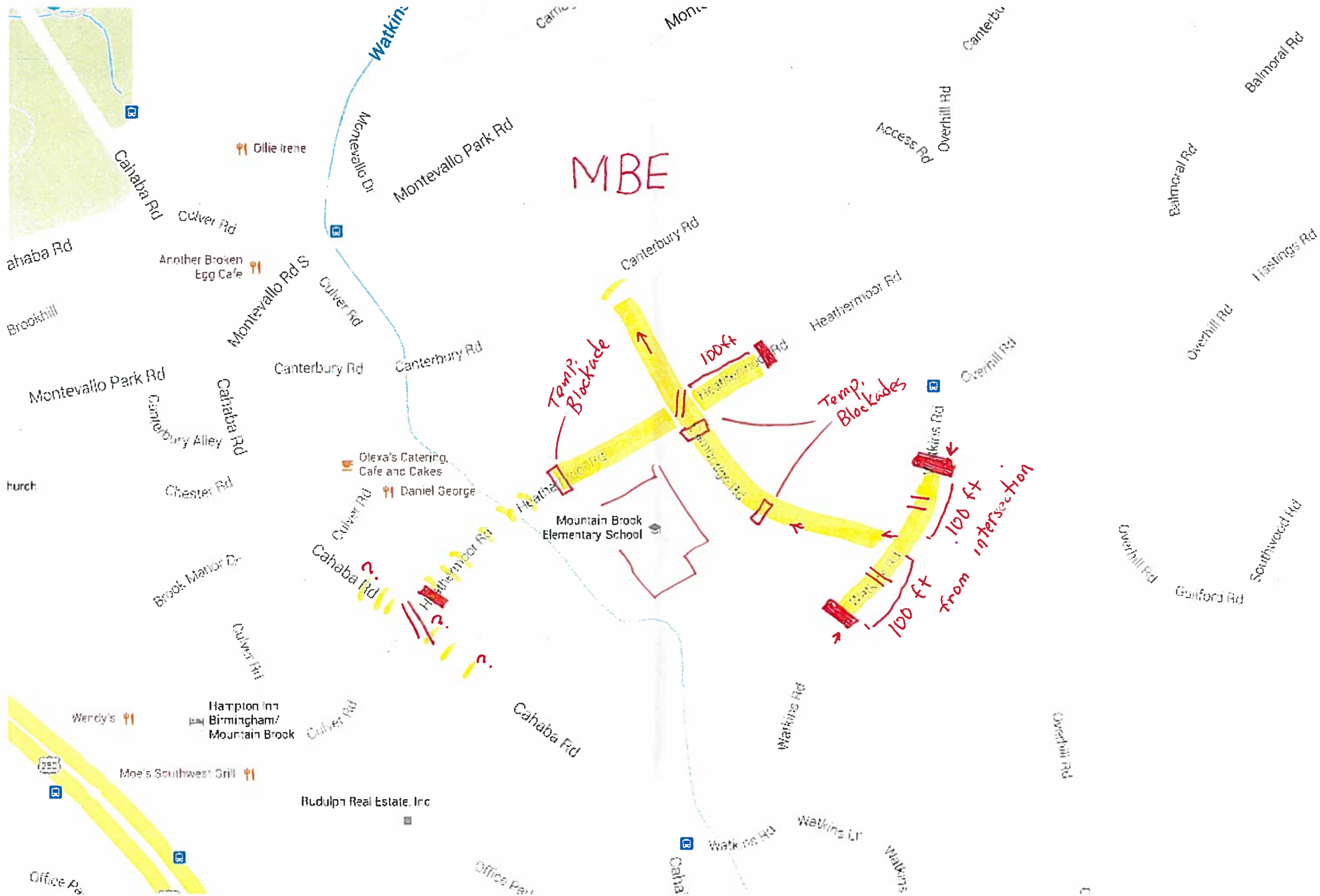
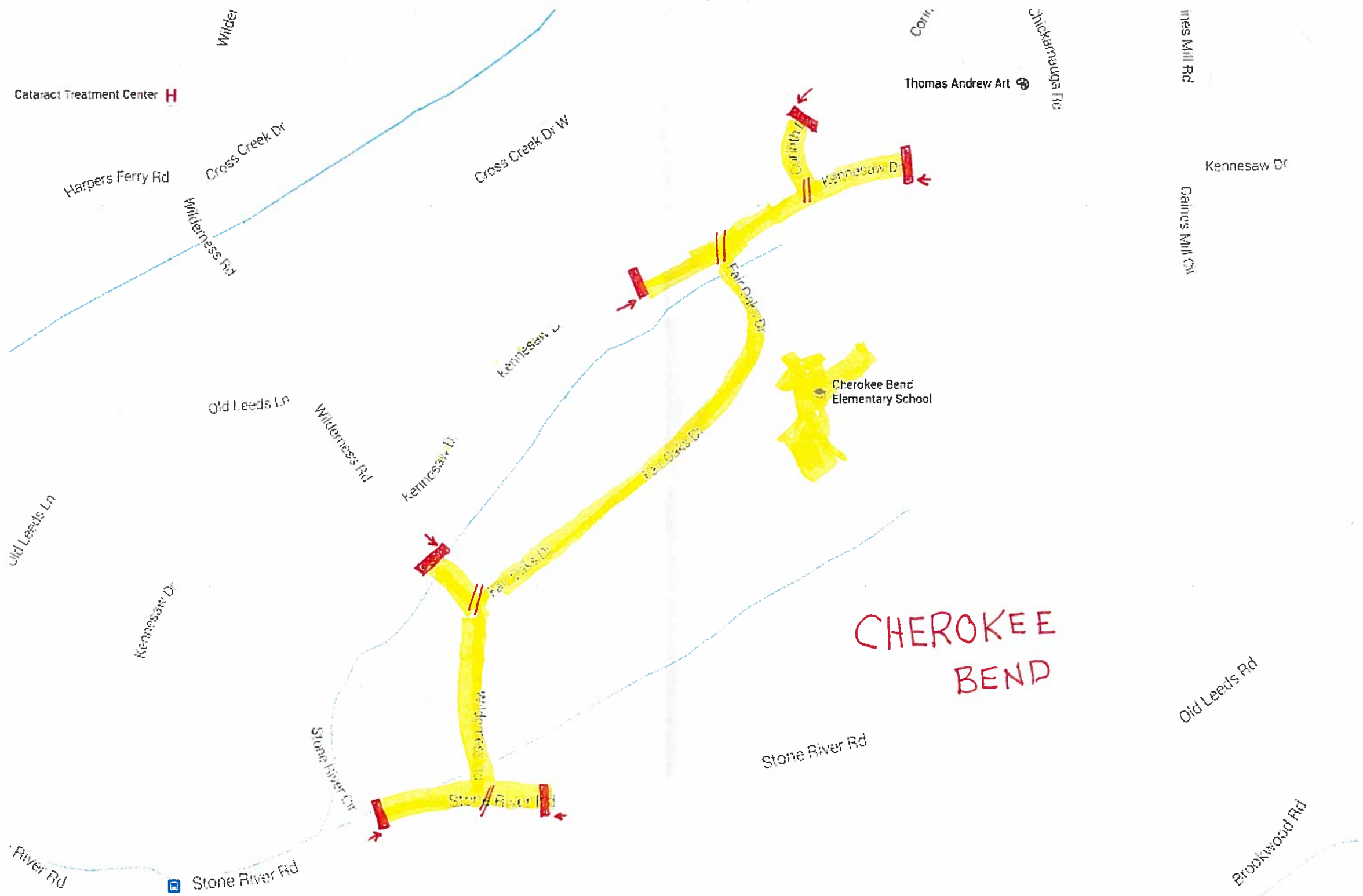
Oakdale Dr
Mountain Brook
Gymnastics
459


Country Club Blvd
Watkins Brook
Randolph Rd
Fairway Dr
Mountain Brook Baptist Church
Parking
CLARENDON
Montevallo Rd S
Overbrook Rd
Hillsdale Rd
Richmar Dr
Montevallo Ln
Mountain Ln
Mountain Park Dr
Michael Ln
Pine Ridge Rd
Beechwood Rd
Mountain Brook Junior High School
Woodhill Rd
Overbrook
Pine Crest Rd
Norman Dr
Alden Ln
Winthrop Ave
Norman Dr
CURRENT "END SCHOOL ZONE" SIGN
PROPOSE NEW START/STOP IN THIS ZONE
Canterbury United Methodist Church
Canterbury Ln
Surrey Rd
Virginia Rd
Balmoral Rd
Pinehaven Dr
Overhill Rd
Canterbury Rd
Hastings Rd
Southwood Rd
Mountain Brook Pkwy
Park Brook Rd
Dell Rd
Overcrest Rd
Cherokee Rd
MBJH


MBE
Watkins
Montevallo Dr
Montevallo Park Rd
Ollie Irene
Cahaba Rd
Culver Rd
Another Broken Egg Cafe
Montevallo Rd S
Brookhill
Canterbury Rd
Canterbury Alley
Chester Rd
Olexa's Catering, Cafe and Cakes
Daniel George
Mountain Brook Elementary School
Heathermoor Rd
Brook Manor Dr
Hampton Inn Birmingham/ Mountain Brook
Wendy's
Moe's Southwest Grill
Rudulph Real Estate, Inc
Cahaba Rd
Watkins Rd
Watkins Ln
Office Pk
Overhill Rd
Access Rd
Balmoral Rd
Hastings Rd
Guilford Rd
Southwood Rd
Temp. Blockade
100 ft
Temp. Blockades
100 ft from intersection
?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Harpers Ferry Rd
Cross Creek Dr
Wilderness Rd
Cross Creek Dr W
Thomas Andrew Art
Chickamauga Rd
Kennesaw Dr
Gaines Mill Rd
Fair Oaks Dr
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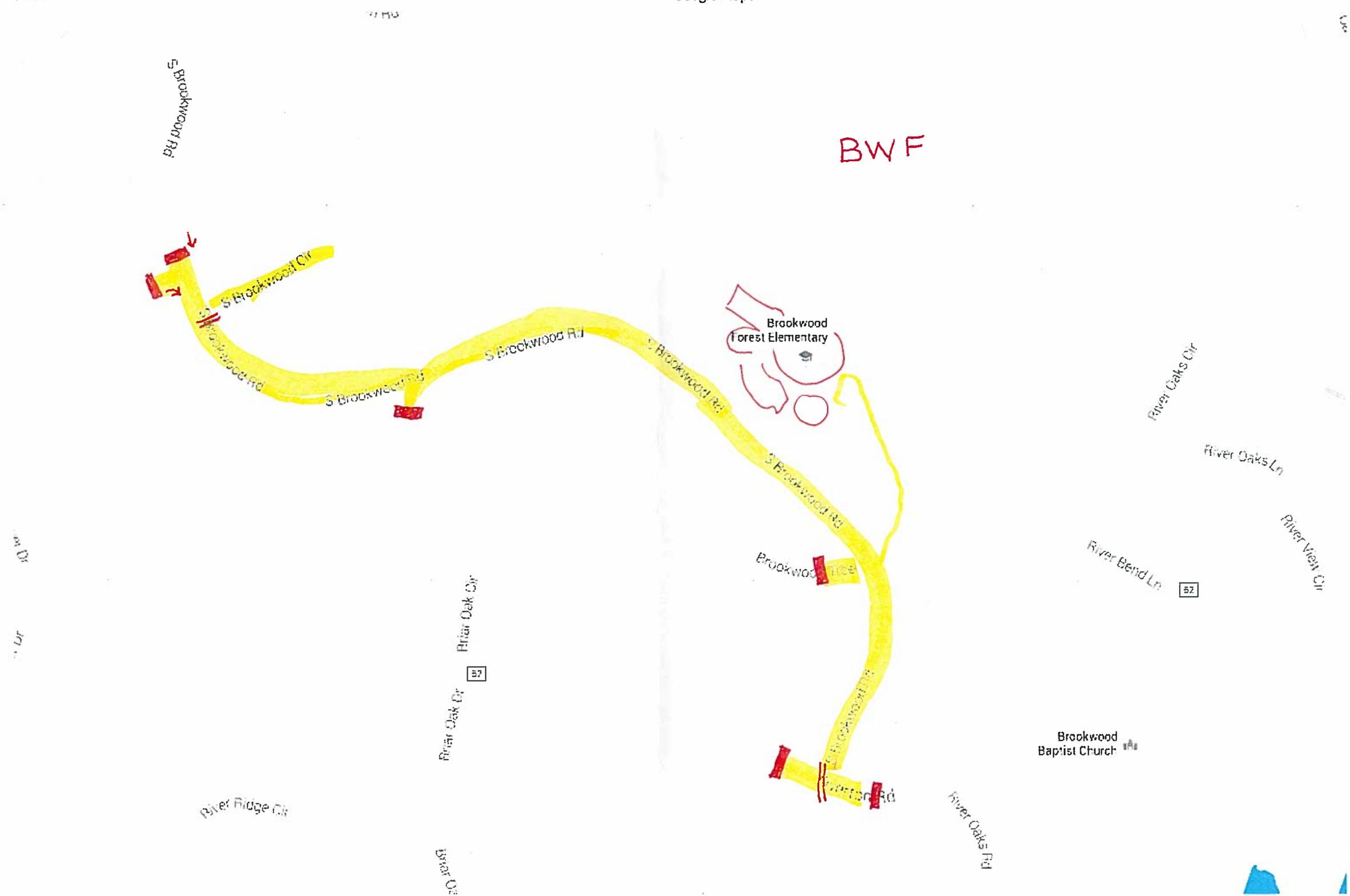
Old Leeds Ln
Wilderness Rd
Kennesaw Dr
Stone River Cir
Stone River Rd
Old Leeds Rd
Brookwood Rd
CHEROKEE BEND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Brookwood Forest Elementary
S Brookwood Rd
Brookwood Ridge
S Brookwood Dr
Everton Rd
River Oaks Cir
River Oaks Ln
River Bend Ln
River View Cir
52
Brookwood Baptist Church
River Oaks Rd
Briar Oak Cir
57
Briar Oak Dr
River Ridge Cir

Shannon Ln
Main St
Elm St
Memory Ct
Guard
Dexter Ave
Meadow Brook Ln
Jackson Blvd
Montevallo Rd S
Cove Dr
N Cove Dr
S Cove Drive South
Glenview Dr
Winston Way
Glencoe Dr
Country Club Rd
Dan Watkins Dr
La Paz
Taco Mama
Watkins Brook
Ridge Dr
Keely Ct
Guard
Crestline Elementary
St Luke's Episcopal Church
Oak St
Montrose Rd
Old Leeds Rd
Lolos
Country Club Blvd
E Fairway Dr
W-JACKSON
Park Ln S
Mountain Alley
Montevallo Ln
Richmar Dr
Mountain Ln
Forest Glen Dr
Pine Ridge Rd
Greenway Rd
Randolph Rd
Fairway Dr
Mountain Park Dr
Michael Ln
Mountain Brook Baptist Church
Overbrook Rd
Hillsdale Rd
Mountain Brook Club
Beechwood Rd
Mountain Brook Junior High School
CURRENT SCHOOL CROSSING SIGN
Woodhill Rd
Pine Crest Rd
Winthrop Ave
Norman Dr
Alden
St Peter's
Dell Rd

DOT LED Sign
DOT2424RW-A049

PRODUCT ID
17720

DIMENSIONS
24" H x 24" W x 5" D

CONSTRUCTION
Cabinet: Extruded aluminum cabinet with welded seams, NEMA 4X rated/IP66. Continuous hinged door with 1" silicone gasket, and tool-less stainless-steel locking clamps. 5.0" Deep.
Cabinet Finish: Black
Face Material: Replaceable 1/4" thick, impact resistant, smoke-tinted polycarbonate (5109)
Faces: Single faced sign
Integral Hood: Optional hood available
Integral Mounting Tabs: Optional mounting tabs available

ELECTRICAL
Photodimming: (3) Redundant fail-safe photocells for auto photodimming
Power Supplies: (2) Redundant power supplies per message
UL/cUL Listed: Listed for wet locations
Voltage: 100-240 VAC, Amps calculated at (120 VAC)

MESSAGE
Illumination: Super bright direct view LEDs. Message blanks out when off.
LED Viewing Angle: Narrow Angle
Sign Messages: See message table below

NOTE: Other colors, voltages, cabinet sizes, cabinet styles and paint finishes are available upon request.

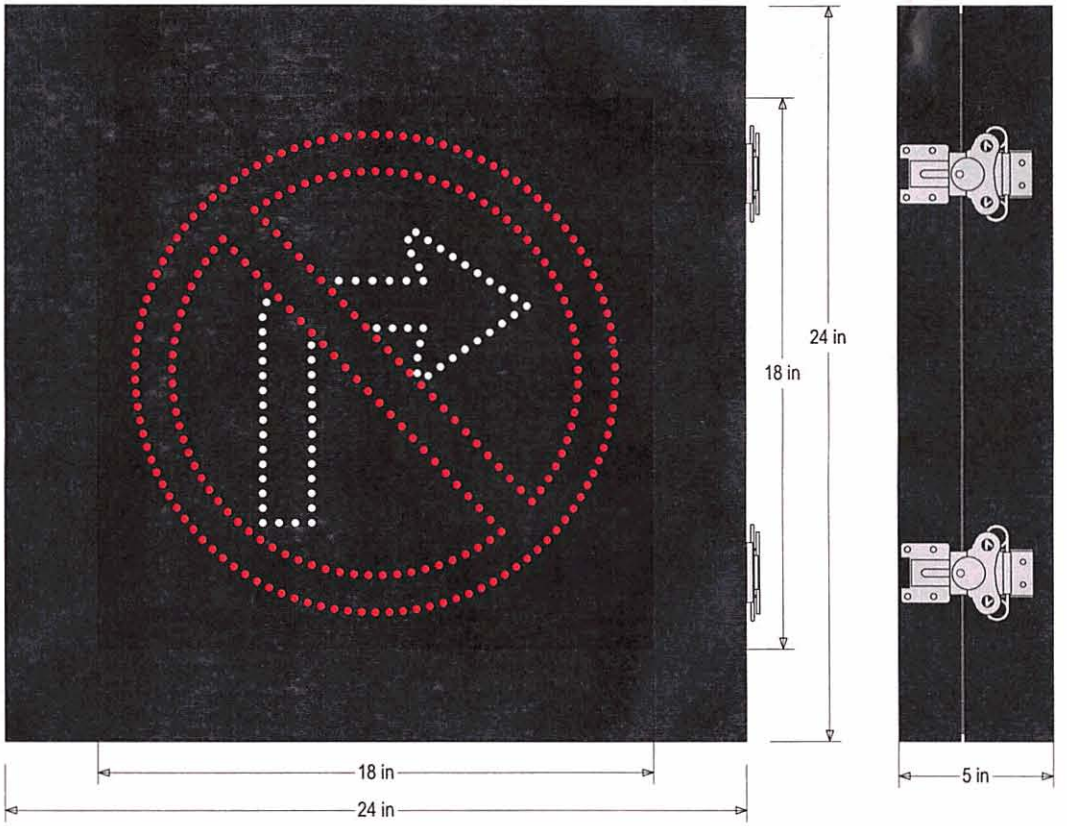
MESSAGE	LED/COLOR	HEIGHT	AMPS
NO RIGHT TURN SYMBOL	Red Narrow Angle	15.5"	0.088
RIGHT ARROW	White Narrow Angle	10.0"	0.040

Signal-Tech
4985 Pittsburgh Ave.
Erie, PA 16509
Phone: (877) 547-9900
Fax: (814) 835-2300
Email: sales@signal-tech.com
Website: www.signal-tech.com

Proudly Made in the USA

Product View
R3-1

NOTE: Sign image may not exactly represent the finished product. For illustration purposes only.



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Sam Gaston

From: Richard Caudle
Sent: Tuesday, May 03, 2016 8:07 AM
To: Ted Cook
Cc: Becky White; Sam S. Gaston; Ronald Vaughn
Subject: RE: May 9th agendas
Attachments: blank out sign.pdf

Attached is the spec sheet on a fiber optic led blank out sign that could be installed on the span wire next to the signal heads facing the US-280 connector ramp. The cost for this sign would be approximately $3000, part only. Installation (hanging and wiring it into the signal) would be over and above the $3000 cost.

From: Ted Cook [mailto:cookt@mtnbrook.org]
Sent: Monday, May 02, 2016 6:43 PM
To: Richard Caudle
Cc: Becky White; Sam S. Gaston; Ronald Vaughn
Subject: Re: May 9th agendas

Enforcement is very difficult at this location, as with many in MB. There is no where to safely sit and monitor the intersection for violators.

On May 2, 2016 5:48 PM, "Richard Caudle" <richard@skipperinc.com> wrote:
I would be interested in hearing what Chief Cook would have to say about the enforceability of the existing sign.

If needed, could the same sign be installed on the signal span wire next to the signal heads? That would be in Mountain Brook.

Sent from my Verizon Wireless 4G LTE DROID

Sam Gaston <gastons@mtnbrook.org> wrote:

I think that is where the rub is. The sign is in Birmingham, but they turn into Mountain Brook.

Sam S.Gaston
City Manager
City of Mountain Brook, AL.
56 Church Street
P.O. Box 130009
Mountain Brook AL. 35213
(205) 802-3803 Phone
(205) 870-3577 Fax

From: Richard Caudle [mailto:richard@skipperinc.com]
Sent: Monday, May 02, 2016 4:46 PM
To: Sam S. Gaston
Cc: Becky White; Ted Cook; Ronald Vaughn
Subject: Re: May 9th agendas

No Turn On Red sign is still in place. We could put up an overhead LED blank out sign with the same message that illuminates whenever the signal heads are red. My recommendation as a first course of action is to enforce the existing sign.

Sent from my Verizon Wireless 4G LTE DROID

Sam Gaston <gastons@mtnbrook.org> wrote:

I think the Mayor's point is that people are ignoring the sign and turning right anyway.

Sam S.Gaston
City Manager
City of Mountain Brook, AL.
56 Church Street
P.O. Box 130009
Mountain Brook AL. 35213
(205) 802-3803 Phone
(205) 870-3577 Fax

From: White, Becky [mailto:bwhite@sain.com]
Sent: Monday, May 02, 2016 4:06 PM
To: 'Sam Gaston'; Richard Caudle
Cc: Ted Cook; Ronald Vaughn
Subject: RE: May 9th agendas

It's not clear to me why you would want to prohibit right turns onto Cahaba Road. I would need more information to understand the comment.
There is a No Right Turn On Red sign on Google street view. Is that what he is referring to?

Becky White

From: Sam Gaston [mailto:gastons@mtnbrook.org]
Sent: Monday, May 02, 2016 3:41 PM
To: White, Becky; Richard Caudle
Cc: Ted Cook; Ronald Vaughn
Subject: RE: May 9th agendas

Coming off Hwy 280 as you stop at the red light at Cahaba Road.

Sam S.Gaston
City Manager
City of Mountain Brook, AL.
56 Church Street
P.O. Box 130009
Mountain Brook AL. 35213
(205) 802-3803 Phone
(205) 870-3577 Fax

From: White, Becky [mailto:bwhite@sain.com]
Sent: Monday, May 02, 2016 3:00 PM
To: 'Sam Gaston'; Richard Caudle
Cc: Ted Cook; Ronald Vaughn
Subject: RE: May 9th agendas

What approach leg is in question?

Becky White

From: Sam Gaston [mailto:gastons@mtnbrook.org]
Sent: Monday, May 02, 2016 2:54 PM
To: Richard Caudle; White, Becky
Cc: Ted Cook; Ronald Vaughn
Subject: FW: May 9th agendas

Hasn't this issue been reviewed and discussed in traffic studies of this area? What is your opinions?

Sam S.Gaston
City Manager
City of Mountain Brook, AL.
56 Church Street
P.O. Box 130009
Mountain Brook AL. 35213
(205) 802-3803 Phone
(205) 870-3577 Fax

From: LastValhalla@aol.com [mailto:LastValhalla@aol.com]
Sent: Monday, May 02, 2016 2:39 PM
To: gastons@MTNBROOK.org
Subject: Fwd: May 9th agendas

Sam: Add to pre mtg a discussion and reasons why not or why cant re putting up an ***effective*** no right turn sign at intersection of 280 and Cahaba Rd. A little history, I think the pole is actually in Bham but we put it up, I think we got permission. However no one obeys it and those cars turning right take up the all stacking room between MB circle and that intersection, causing a major problem. E veryone has commented on it. There should b e some way to put a sign or something there to prevent this. Plse have chief or Dana look into it and give us a report. Thanks. Terry

MARK S. DRUMMOND
3453 Brook Mountain Lane
Mountain Brook, AL 35223
Phone (205) 907-3244
m.s.d@mindspring.com

May 2, 2016

Mr. Sam Gaston
City Manager, City of Mountain Brook
56 Church Street
P.O. Box 130009
Mountain Brook, AL 35213

Dear Mr. Gaston,

I am writing you on behalf of the Brook Mountain Estates Homeowners Association, Inc. and as a thirty-one year resident of Mountain Brook. The entry of Brook Mountain Estates occurs at the intersection of Brook Mountain Lane and the cul-de-sac termination of Ridgecrest Road (please refer to the attached map exhibit). At the Ridgecrest Road cul-de-sac (please refer to attached photo) resides property owned by the City of Mountain Brook (western half, right side of photo) and Lot 1 of Brook Mountain Estates and our landscaped entrance area and attendant stone wall & column hardscape structure (eastern half, left side of photo).

Our Homeowners Association has maintained the landscaping on both the City of Mountain Brook and Brook Mountain Estates sides. The routine maintenance that we perform on the City of Mountain Brook side is to trim the crape myrtles and boxwoods, much the plating beds, weed control, and cutting back the invasive privet hedge. We do not mind maintaining the entire cul-de-sac area because we take great pride in the appearance of our entry area and our neighborhood.

Over the years the cul-de-sac has been a meeting place and parking spot for Mountain Brook High School students. Groups of teens gather at all times, day and night, leaving trash in the cul-de-sac and in our maintained entrance area. During school hours, students use the cul-de-sac as unauthorized High School parking (photo shows typical school time parking in the cul-de-sac) and walk through the woods from the cul-de-sac to the High School.

The Brook Mountain Estates Homeowners Association, Inc. considers the unauthorized access from the cul-de-sac to the High School a potential liability hazard if a student were to get injured walking on this steep terrain. The congestive parking in the cul-de-sac renders it useless for turning around any emergency vehicle, such as a fire truck or

ambulance. The trash and beer cans that accumulate in the cul-de-sac is a public nuisance and a constant maintenance issue for our residents, neighborhood and HOA.

We respectfully request that No Parking and No Litter signs be erected in the Ridgecrest Road cul-de-sac as a matter of public safety, HOA liability exposure, and public nuisance issues.

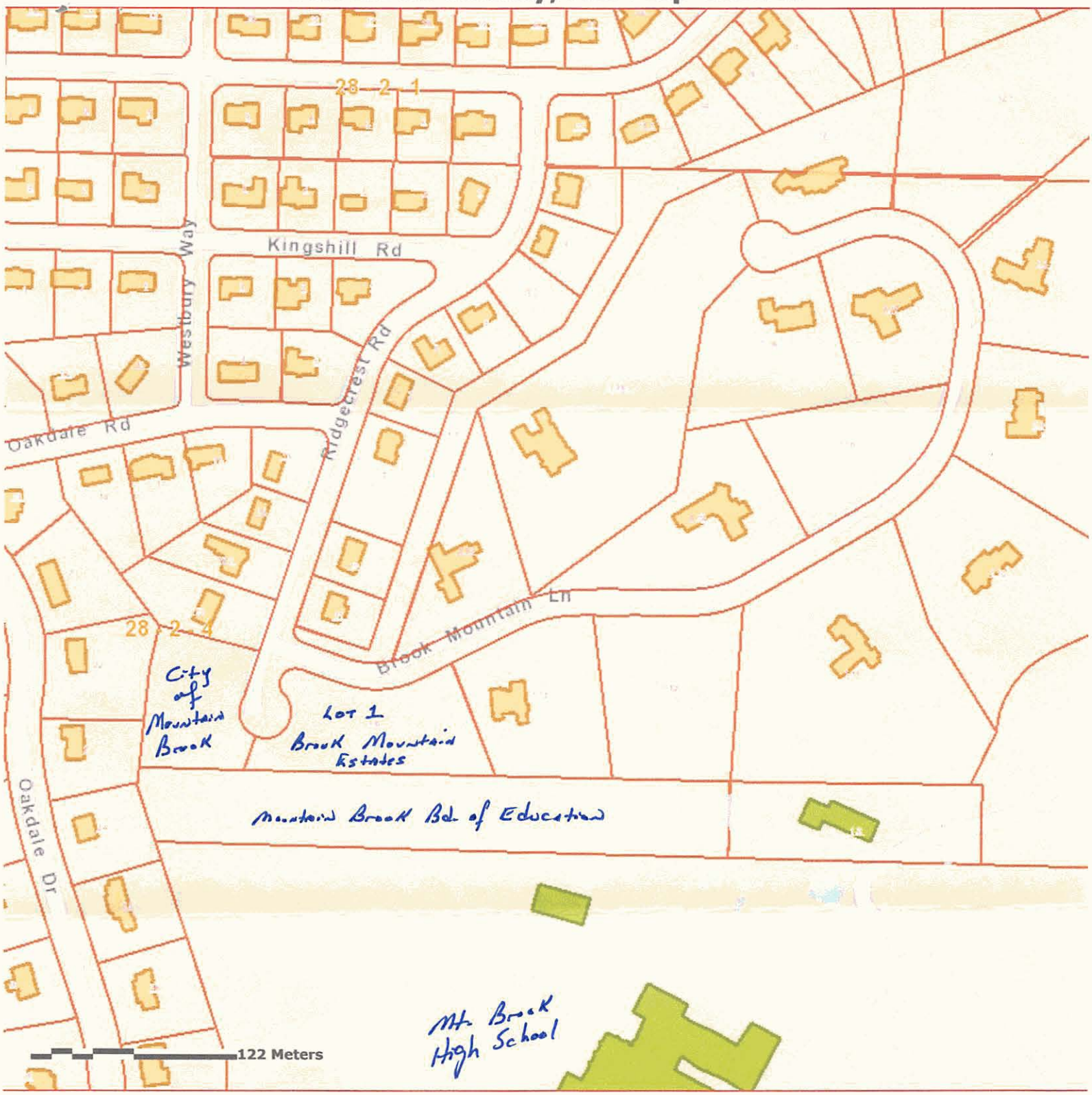
Please let me know if we need to meet to discuss. Thank you for your consideration on this matter.

Sincerely,

Mark S. Drummond
President
Brook Mountain Estates Homeowners Association, Inc.

Cc:// Mr. Jody Saiia, Brook Mountain Estates HOA, Inc. (Treasurer)

Jefferson County, AL. Map Viewer



1221AG9

Sam Gaston

From: Sam Gaston
Sent: Wednesday, May 04, 2016 4:24 PM
To: 'Mark Drummond'
Cc: 'jodysaiia@gmail.com'
Subject: RE: Brook Mountain Estates HOA - Ridgecrest Rd. cul-de-sac problems

Mark and Jody,
We met with the high school principal today and we have reviewed the situation. We have/had a similar situation on West Chester south of the school a few months ago.
Here is what I can report to you;

1. Our Public Works crews will continue to monitor the trash in the cul-de-sac.
2. There are two street lights in this area. Our night patrols will check to be certain they are both working. The southernmost light has a very short arm on the pole. I can ask APCO to place a longer arm on the pole so that the light better illuminates the cul-de-sac.
3. The students parking along the cul-de-sac are mainly sophomores who are not allowed to drive on campus. School policy only allows for juniors and seniors to have a car on campus. A few could be students who have lost their campus driving privileges or students who have been assigned a parking space on the lower end of the campus by the baseball field and don't want to walk so far to the school building.
4. In August the school will remind the sophomore parents and students that they are not allowed to park on campus , but if they drive, do not park in residential areas. These students are encouraged to carpool with juniors and seniors or adults. The junior and senior drivers will also be reminded to use their on-campus parking spaces and to not park off campus.
5. There is a gate on your side of the school, plus a missing section of fence. The school plans to lock this gate, except for football games in the Fall and to repair the missing section of fence.
6. School is out on May 27th.
7. This problem seems mild in the Fall, but rears up in the Spring when many sophomores obtain their driver's licenses.
8. You can come to the City Council's pre-meeting on May 9th to ask the Council to consider making the cul-de-sac a "No-Parking" zone for certain hours of the day such as 7am-3pm Monday-Friday. My concern is that this will only push the student drivers up the hill on Ridgecrest or down Brook Mountain Lane. The City Council will want the staff to notify all the residents of your street and up Ridgecrest of this proposed "No-Parking" request and schedule a hearing on it at the May 23rd meeting.

We do not set the time of the pre-meeting until the Friday before, but my guess it will start at 6pm on Monday, May 9th with our formal meeting at 7pm. Please let me know if you would like to attend or have any questions about the information above.

Sam S.Gaston
City Manager
City of Mountain Brook, AL.
56 Church Street
P.O. Box 130009
Mountain Brook AL. 35213
(205) 802-3803 Phone
(205) 870-3577 Fax

From: Mark Drummond [mailto:m.s.d@mindspring.com]
Sent: Monday, May 02, 2016 10:45 AM
To: gastons@mtnbrook.org
Cc: jodysaiia@gmail.com

Sam Gaston

From: HOOD, AMANDA
Sent: Friday, May 06, 2016 8:53 AM
To: Sam Gaston; Ted Cook
Subject: Fencing

Mr. Gaston and Chief Cook,

Per our meeting this week, our maintenance team has corrected the open fencing issue related to the Ridgecrest area. The gate was installed by parks and rec. for retrieving balls and other items. We have requested that it be secured during school hours.

Have a wonderful weekend,
Amanda

Sent from my iPad

Memorandum

To: All Department Heads

CC: Mayor and members of the City Council

From: Sam Gaston, City Manager

Date: _____

Re: Fiscal 2017 budget schedule

The following is the preliminary fiscal 2017 budget schedule:

Wednesday	May 18, 2016	7:30 a.m. until approx. 9 a.m.	Mayor and City Council work session to establish budget priorities and identify special projects for fiscal 2017
Wednesday	Jun 22, 2016	By 5 p.m.	First draft of departmental budgets to be submitted by all department supervisors to the Director of Finance
Monday—Friday	Jul 18–Jul 22, Jul 25–Jul 29	TBA	City Manager to conduct budget meetings with each department supervisor to review their respective budget
Tuesday	Aug 9, 2016	8 a.m. until approx. 2 p.m.	The Finance Committee to meet with each department supervisor to review their respective budget
Wednesday	August 24, 2016	8 a.m. until approx. 2 p.m.	Mayor and City Council to meet with each department supervisor to review their respective budget and to consider the Finance Committee's recommendations
Monday	Sep 12, 2019	7 p.m.	Public Hearing to be conducted at the regular meeting of the City Council and adoption of the fiscal 2017 budget