

RESOLUTION NO. 2016-092

Clerk: NICOLE

RESOLUTION REGARDING THE VACATION OF PART OF SOUTH COVE DRIVE

WHEREAS, St. Luke's Episcopal Church ("St. Luke's" or "Petitioner") is the owner of property in the City of Mountain Brook upon which a church and supporting facilities are located;

WHEREAS, St. Luke's has acquired Lots 2, 3 and 4 (the "South Cove Lots") in the subdivision known as South Cove Addition, a map of which is recorded in Map Book 36, page 75 in the Probate Office of Jefferson County, Alabama, which lots are located along and abutting the western portion of South Cove Drive;

WHEREAS, St. Luke's has requested that the City to consider vacating the portion of South Cove Drive so that it may better utilize the South Cove Lots for operations supporting the church;

WHEREAS, to that end, there has been submitted to the City Council of the City of Mountain Brook a duly acknowledged "Petition for Vacation of Roads" dated June 12, 2016 ("**Exhibit 1**" attached hereto and incorporated by reference) executed by Petitioner, being the owner of all lands abutting the portion or portions of the public way proposed to be vacated;

WHEREAS, said Petition for Vacation of Roads requests the vacation of the portion of the street (and associated right of way) known as South Cove Drive that is identified by crosshatched markings on Exhibit A to the Petition for Vacation of Roads and is more particularly described on **Exhibit 2** hereto (the portion proposed for vacation is referred to herein as "South Cove Drive – West");

WHEREAS, Petitioner is the sole owner of all the land abutting the portion of the streets, rights-of-way, and real property for which vacation is requested by the "Petition for Vacation of Roads;"

WHEREAS, South Cove Drive-West serves only the property owned by Petitioner, and such vacation will not deprive any property owners whose lands may adjoin or are in close proximity to South Cove Drive-West of a convenient and reasonable means of ingress and egress to and from their property;

WHEREAS, after full and due consideration of the Petition requesting that South Cove Drive-West be vacated, it has been determined by the City Council that it would be in the public interest that the above described portion or portions of the streets, roads, alleys, rights-of-way, and real property be vacated;

WHEREAS, further, no person or entity shall be affected by the vacation of the public

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ways for which vacation is requested.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Mountain Brook, as follows:

1. **Vacation.** Pursuant to ALA. CODE §23-4-20 (1975), subject to the conditions and reservations hereinafter set out, the Petition for Vacation of Roads is hereby granted and South Cove Drive-West shall be vacated upon the filing of this Resolution with the Probate Court of Jefferson County, Alabama, and such filing shall operate as a declaration of vacation and shall divest all public rights and liabilities in the portion of the South Cove Drive-West, as described above.

2. **Vacation Fee.** A vacation fee in the amount of \$87,356.00 is assessed by the City to be paid by Petitioner as the sole abutting landowner who will directly benefit from said vacation; provided, however, that said fee will be paid to the City by Petitioner by constructing and maintaining a turn-around for emergency vehicles, delivery vehicles or other service vehicles on the South Cove Lots or the property acquired through this vacation. The City Council finds that the value of such improvements and Petitioner's commitment to maintain same constitutes sufficient consideration to satisfy the vacation fee hereby assessed. Petitioner agrees to execute an easement or other legal instrument granting City of Mountain Brook the permanent right to use the turnaround apparatus that will be constructed and maintained by Petitioner.

3. **Utility Easements Reserved.** The foregoing assent be and is hereby given upon the condition that any entity, including the City of Mountain Brook, which may now own or rightfully maintain any public utility, facility, line or installation, including any open or closed storm or sanitary sewer in any portion of the road hereby vacated, shall have a right and easement to continue to maintain same in its present location therein and to repair, cleanse, improve and reconstruct the same and to have convenient means of ingress and egress thereto and therefrom for said purposes, and that there be, and is hereby, reserved and excluded from the foregoing assent any assent of this Council to the vacation, annulment or impairment of the right, easement or privilege of any such entity to continue to own, maintain, repair, cleanse, improve, reconstruct and have convenient means of ingress and egress to and from such utility, facility, line or installation. Nothing in this reservation, however, shall prohibit Petitioner and any such entity so owning or maintaining any public utility, facility, line, or installation from relocating or otherwise modifying such rights and easements by agreement or mutual consent.

4. **Maintenance of Utility Facilities.** The foregoing provisions for maintenance and for ingress and egress shall mean, among other things and without limitation, that in case any building or edifice shall be constructed or placed in any portion of any of said vacated ways, it shall be constructed, placed or arranged therein so as to avoid damage to any presently existing concealed or unconcealed or patent or latent public utility, facility, line or installation in any such public way and so as to afford ways and means of ingress and egress to and from such utility, facility, line or installation, for the purpose of reconstruction, repair, cleansing or improvement of service of same, substantially equal to and as convenient as presently existing ways and means of ingress and egress thereto and therefrom for such purposes, or such as shall be approved in writing by the owner or operator of such utility, facility, line or installation.

5. **Publication.** The City Clerk is directed to publish this Resolution once in a newspaper in Jefferson County, Alabama no later than fourteen (14) days from the date of this resolution as required by Ala. Code §23-4-2 (1975).

6. **Severability.** If any part, section, or subdivision of this Resolution shall be held unconstitutional or invalid for any reason by a court of competent jurisdiction, such holding shall not be construed to invalidate or impair the remainder of this resolution, which shall continue in full force and effect notwithstanding such holding.

7. **Effective Date.** This Resolution shall become effective immediately upon its adoption and such publication, if any, as may be required by law.

ADOPTED: The 25th day of July, 2016.



Council President

APPROVED: The 25th day of July, 2016.

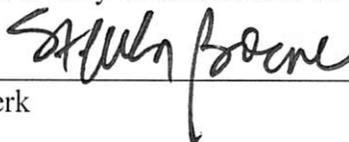


Mayor

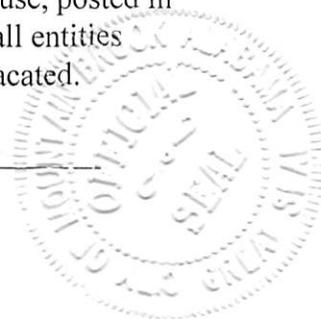
CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on July 25, 2016, as same appears in the minutes of record of said meeting.

I further certify that proper notice of the proposed vacation and consideration thereof was published in the *Birmingham News* once a week for four consecutive weeks prior to the consideration of this Resolution, posted on a bulletin board at the County Courthouse, posted in accordance with state law and served by U.S. Mail on all abutting owners and on all entities known to have facilities or equipment within the right-of-way of the street to be vacated.

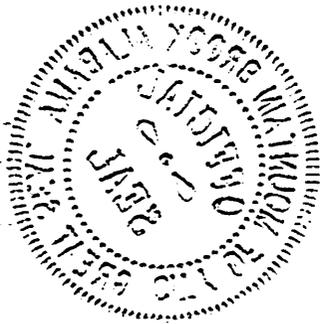


City Clerk





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EXHIBIT 2

LEGAL DESCRIPTION

A PART OF SOUTH COVE DRIVE SITUATED IN THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 4 , TOWNSHIP 18 SOUTH, RANGE 2 WEST , JEFFERSON COUNTY , ALABAMA , ACCORDING TO THE MAP OF SOUTH COVE ADDITION, AS RECORDED IN MAP BOOK 36, PAGE 75 IN THE PROBATE OFFICE OF JEFFERSON COUNTY , ALABAMA.

COMMENCE AT THE NORTHEAST CORNER OF LOT 2 ACCORDING TO SOUTH COVE ADDITION AS RECORDED IN MAP BOOK 36 PAGE 75, IN THE PROBATE OFFICE OF JEFFERSON COUNTY , ALABAMA; THENCE RUN SOUTHERLY ALONG THE WEST LINE OF SAID LOT 2 FOR 158.86 FEET TO THE SOUTHWEST CORNER OF SAID LOT 2 AND A POINT ON THE NORTHERLY RIGHT OF WAY OF SOUTH COVE DRIVE AND THE POINT OF BEGINNING OF THE VACATION HEREIN DESCRIBED; THENCE CONTINUE ALONG THE LAST DESCRIBED COURSE AND ALONG SAID RIGHT OF WAY FOR 71.14 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF SOUTH COVE DRIVE, AND THE NORTHWEST CORNER OF LOT 3 OF SAID RECORD MAP; THENCE TURN 90°00'00" LEFT AND RUN EASTERLY ALONG SAID RIGHT OF WAY FOR 23.25 FEET, TO THE POINT OF BEGINNING OF A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 193.3 FEET, AND A CENTRAL ANGLE OF 32°00'00" ; THENCE RUN ALONG THE ARC OF SAID CURVE, AND RIGHT OF WAY FOR 83.78 FEET TO THE NORTHEAST CORNER OF LOT 3 OF SAID RECORD MAP: THENCE TURN 74°49'02" LEFT FROM THE TANGENT OF SAID CURVE AND RUN NORTHWESTERLY FOR 50.50 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF SOUTH COVE DRIVE AND THE SOUTHEAST CORNER OF LOT 2 OF SAID RECORD MAP, AND THE POINT OF BEGINNING OF A CURVE TO THE RIGHT; SAID CURVE HAVING A RADIUS OF 143.30 FEET, A CENTRAL ANGLE OF 22°24'49" AND A CHORD BEARING OF SOUTH 72°35'58" WEST; THENCE RUN ALONG THE ARC OF SAID CURVE AND ALONG SAID RIGHT OF WAY FOR 56.06 FEET, TO THE POINT OF BEGINNING OF A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 97°48'00" AND A CHORD BEARING OF SOUTH 72°35'38" WEST; THENCE RUN ALONG THE ARC OF SAID CURVE AND SAID RIGHT OF WAY FOR 34.14 FEET; THENCE TURN 90°00'00" LEFT FROM THE TANGENT OF SAID CURVE AND RUN WESTERLY ALONG SAID RIGHT OF WAY FOR 20.00 FEET TO THE SOUTHWEST CORNER OF LOT 2 OF SAID RECORD MAP, AND THE POINT OF BEGINNING OF THE STREET VACATION HEREIN DESCRIBED. CONTAINING 5625 SQUARE FEET OR 0.13 ACRES, MORE OR LESS.

STATE OF ALABAMA)

JEFFERSON COUNTY)

PETITION FOR VACATION OF ROADS

WHEREAS, the undersigned, St. Luke's Episcopal Church (the "**Owner**") is the owner of Lots 2, 3 and 4 in subdivision known as South Cove Addition, a map of which is recorded in Map Book 36, page 75 in the Probate Office of Jefferson County, Alabama, and which is depicted on that certain map attached hereto as **Exhibit A** (the "**Map**"); and

WHEREAS, the land owned by the Owner and shown on the Map shall be collectively referred to herein as the "**St. Luke's Parcel**"; and

WHEREAS, in connection with its redevelopment of the St. Luke's Parcel, the Owner desires to vacate a portion of the street commonly known as South Cove Drive (the "Vacated ROW"), such portion identified by crosshatched markings on the Map and labeled "VACATED RIGHT OF WAY"; and

WHEREAS, the Owner is the only owner of all of the land abutting the Vacated ROW; and

WHEREAS, such vacation will not deprive any property owners whose land abuts, adjoins or is in close proximity to the St. Luke's Parcel of a convenient and reasonable means of ingress and egress to their property.

NOW, THEREFORE, the Owner does hereby, pursuant to and in accordance with the provisions of Section 23-4-20 of the Alabama Code of 1975, joins in and submits this written petition for vacation of the Vacated ROW, and the same being within the city limits of Mountain Brook, Alabama, does hereby pray and request the assent of the City Council of Mountain Brook, Alabama, to the vacation of the Vacated ROW and its approval of the same.

IN WITNESS WHEREOF, the Owner has hereto set its signature and seal on the date of the acknowledgment of the Owner's signature below, to be effective as of June 22, 2016.

OWNER:

SAINT LUKE'S EPISCOPAL CHURCH,

By: *Richmond Webster*
Name: Richmond Webster
Its: Rector

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Richmond Webster whose name as Rector of Saint Luke's Episcopal Church, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability limited partnership on the day the same bears date.

Given under my hand and official seal this the 22 day of June, 2016.

Sharon May Fowler
Notary Public

[AFFIX SEAL]

My commission expires: May 16, 2020



EXHIBIT A

Copy of Map

See attached.

SAINT LUKES EPISCOPAL CHURCH
RIGHT OF WAY VACATION EXHIBIT

BECKHAM'S RESURVEY OF
ACREAGE "C" OF GLENBROOK
MAP BOOK 34 PAGE 38

POINT OF
COMMENCEMENT
ROW VACATION

SOUTH COVE ADDITION
MAP BOOK 36 PAGE 75

POINT OF
BEGINNING
ROW VACATION

SOUTH COVE DRIVE
50' R.O.W.

L=58.06'
R=143.30'
CB=S 72°35'58" W
DELTA=22°24'48"

L=34.14'
R=20.00'
DELTA=67°48'00"

L=83.78'
R=183.30'
DELTA=32°08'00"

60°00'00"
20.00'

71.14'

23.25'

60°00'00"

74°58'00" TO TAN

60°00'00"

60°00'00"

60°00'00"

60°00'00"

60°00'00"

60°00'00"

60°00'00"

60°00'00"

60°00'00"

SCALE: 1" = 50'

SOUTH COVE ADDITION
MAP BOOK 36 PAGE 75

ARRINGTON ENGINEERING
Civil Engineers - Surveyors - Land Planners
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