

**MEETING AGENDA OF THE  
MOUNTAIN BROOK CITY COUNCIL**

**CITY HALL COUNCIL CHAMBER (ROOM A108)  
56 CHURCH STREET, MOUNTAIN BROOK, AL 35213**

**NOVEMBER 26, 2018, 7:00 P.M.**

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1. Approval of the minutes of the November 13, 2018, regular meeting of the Mountain Brook City Council.
2. Consideration: Resolution reaffirming the City's commitment to promote safe workplace guidelines with respect to the City's workers' compensation program.
3. Consideration: Resolution authorizing the installation of and ongoing operation of a street light in the vicinity of 3869 Glencoe Drive.
4. Consideration: Resolution declaring certain [library] equipment surplus and authorizing its sale at public Internet auction.
5. Consideration: Resolution authorizing the execution of a right-of-way encroachment (driveway in unimproved right-of-way) agreement between the he City and TJB, LLC with respect to the property located at 142 Spring Street.
6. Consideration: Ordinance annexing an undeveloped, 18-acre parcel in the Cherokee Bend South area.
7. Announcement: The next regular meeting of the City Council will be December 10, 2018, at 7:00 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213.
8. Comments from residents.
9. Adjourn.

**MOUNTAIN BROOK CITY COUNCIL  
PRE-MEETING DISCUSSION  
NOVEMBER 13, 2018**

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The City Council of the City of Mountain Brook, Alabama met in public session in the Pre-council Room (A106) of City Hall at 6:15 p.m. on the 13th day of November, 2018. The Council President called the meeting to order and the roll was called with the following results:

**Present:** Virginia C. Smith, Council President  
William S. Pritchard III, Council President Pro Tempore  
Philip E. Black  
Lloyd C. Shelton  
Alice B. Womack

**Absent:** Stewart Welch III, Mayor

Also present were City Attorney Carl Johnson, City Manager Sam Gaston and City Clerk Steven Boone.

**1. AGENDA**

1. Purchase of lights for four athletic fields at the High School athletic complex—Shanda Williams (Appendix 1)
2. Contract with Stone and Sons Electric for installation of new lights at the High School athletic complex—Shanda Williams (Appendix 2)

[Note: Items 1 and 2 above involving the LED lighting at the Athletic Complex shall be presented to the Mountain Brook Board of Education for its consideration and approval before coming back to the City Council for reconsideration.]

3. Authorize Nimrod Long and Associates to apply for a Recreational Trails Program grant from the Alabama Department of Economic and Community Affairs for the Jemison Park renovation project—Shanda Williams (Motion No. 2018-159 was added to the formal meeting agenda)
4. Street light request at 3869 Glencoe Drive near Winston Way—Sam Gaston (Appendix 3)

[The City Manager shall mail notices to affected neighbors and the request shall be reconsidered by the City Council at its November 26, 2018, meeting.]

5. Review of the matters to be considered at the formal (7 p.m.) meeting

**2. EXECUTIVE SESSION AND ADJOURNMENT**

Council President Smith made a motion that the City Council convenes in executive session to discuss a matter involving litigation and that the City Council shall reconvene in the Council Room (A108) immediately upon its conclusion. The City Attorney certified that the subject matter of the executive session is permissible under the Open Meetings Act. The motion was seconded by Council member Womack. There being no further discussion, the vote was called with the following results:

**Ayes:** Virginia C. Smith, Council President  
William S. Pritchard III, Council President Pro Tempore  
Philip E. Black  
Lloyd C. Shelton  
Alice B. Womack

**Nays:** None

Council President Smith thereupon declared that said motion carried by a vote of 5—0, adjourned the pre-meeting at approximately 6:45 p.m.

**3. CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct synopsis of the discussion from the work session of the City Council of the City of Mountain Brook, Alabama held at City Hall, Pre-Council Room (A106) on November 13, 2018, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that no formal action or votes were conducted at said work session.

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City Clerk

**MINUTES OF THE REGULAR MEETING OF THE  
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK  
NOVEMBER 13, 2018**

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The City Council of the City of Mountain Brook, Alabama met in public session in the City Hall Council Chamber at 7:00 p.m. on the 13th day of November, 2018. [Due to the Council President feeling ill] the Council President Pro Tempore called the meeting to order and the roll was called with the following results:

Present: Virginia C. Smith, Council President  
William S. Pritchard III, Council President Pro Tempore  
Philip E. Black  
Lloyd C. Shelton  
Alice B. Womack

Absent: Stewart Welch III, Mayor

Also present were City Attorney Carl Johnson, City Manager Sam Gaston and City Clerk Steven Boone.

The Council President stated that a quorum was present and that the meeting was open for the transaction of business

**1. PRESENTATIONS**

- a. President Smith read aloud presented Resolution No. 2018-151 (Exhibit 1) to Susan Swagler and on behalf of the City Council and residents of the community expressed gratitude for her dedicated service on the Planning Commission.
- b. City Manager Sam Gaston read aloud and presented Proclamation No. 2018-153 (Exhibit 3) to Ms. Jessie Schniper, Regant of the Princess Sehay Chapter of the National Society Daughters of the American Revolution (NSDAR or DAR).

**2. CONSENT AGENDA**

Council President Smith announced that the following matters will be considered at one time on the consent agenda provided no one in attendance objects:

Approval of the minutes of the October 22, 2018, regular meeting of the City Council.

Approval of the minutes of the November 5, 2018, organizational meeting of the City Council.

<b>2018-151</b>	Expression gratitude to Susan Swagler for her service on the Planning Commission	Exhibit 1
<b>2018-152 Proclamation</b>	November 24, 2018 proclaimed Small Business Saturday in the City of Mountain Brook	Exhibit 2
<b>2018-153 Proclamation</b>	November 2018 proclaimed National American Indian Heritage Month in the City of Mountain Brook	Exhibit 3
<b>2018-154</b>	Ratify and approving the transfer of funds for the fiscal year ended September 30, 2018	Exhibit 4

<b>2018-155</b>	Authorize the execution of an agreement with Advance Plumbing Company, Inc. with respect to the Mountain Brook Elementary School athletic field restroom project	Exhibit 5, Appendix 1
<b>2018-156</b>	Authorize the execution of an agreement with Alabama Sawyer, LLC for log recycling services	Exhibit 6, Appendix 2
<b>2018-157</b>	Authorize the execution of a preliminary engineering agreement with the State of Alabama (acting by and through Alabama Department of Transportation) with respect to bridge reconstruction and habilitation for Old Brook Trail (BIN 012869) over Little Shades Creek and Canterbury Road Bridge (BIN 002873) over Watkins Creek (Project No. STPBH-3716(256), CPMS Ref No. 100066110)	Appendix 3
<b>2018-158</b>	Authorize the execution of a professional service agreement with Gresham Smith with respect to the Old Brook Trail and Canterbury Road bridge projects (ALDOT Project No. STPBH-3716(256), CPMS Ref No. 100066110)	Exhibit 7, Appendix 4
<b>2018-159 MOTION</b>	Authorize 1) the City's application for an ADECA Recreational Trails Program grant with respect to planned Jemison Trail improvements and 2) the City's commitment to pay the required matching funds should the grant be awarded	Exhibit 8, Appendix 5

Thereupon, the foregoing minutes, proclamations, resolutions and motion were introduced by Council President Smith and a motion for their immediate adoption was made by Council Shelton. The minutes, proclamations, resolutions and motion were then considered by the City Council. Council President Pro Tempore Pritchard seconded the motion to adopt the foregoing minutes, proclamations, resolutions and motion. Then, upon the question being put and the roll called, the vote was recorded as follows:

Ayes: Virginia C. Smith, Council President  
William S. Pritchard III, Council President Pro Tempore  
Philip E. Black  
Lloyd C. Shelton  
Alice B. Womack

Nays: None

Council President Smith thereupon declared that said minutes, proclamations (No. 2018-152 and 2018-153) and resolutions (Nos. 2018-151, and 2018-154 through 2018-158) and motion (No. 2018-159) are adopted by a vote of 5—0 and as evidence thereof signed the same.

### 3. ANNOUNCEMENT

The next regular meeting of the City Council will be Monday, November 26, 2018, at 7:00 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213.

### 4. ADJOURNMENT

There being no further business to come before the City Council, Council President Smith adjourned the meeting at approximately 7:10 p.m.

## 5. CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct transcript of the joint, regular meeting of the City Council of the City of Mountain Brook, Alabama held at City Hall, Council Chamber (Room A108) on November 13, 2018, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that a quorum was present.

\_\_\_\_\_  
City Clerk

### EXHIBIT 1

#### RESOLUTION NO. 2018-151

**WHEREAS**, Susan Swagler served with distinction on the Mountain Planning Commission for nearly twelve years, from January 2007 to October 2018, during which time she also served in the capacity of secretary, vice-chair, and chair of the planning commission; and

**WHEREAS**, over the course of her tenure on the Planning Commission, Susan Swagler's invaluable insight greatly contributed to the detailed review process of many legacy zoning and redevelopment projects, including: Overton Village, Cahaba Village, Lane Parke and "The Pig," as well as numerous meaningful institutional projects such as the community's library, city hall, schools, and religious facilities; and

**WHEREAS**, Susan Swagler unfailingly exhibited a love for the Mountain Brook community and always took its best interest to heart, carefully weighing the benefits of each zoning proposal against potential effects on surrounding properties, neighborhoods, and the city as a whole; and

**WHEREAS**, Susan Swagler consistently went the extra mile to personally visit proposed development sites in order to investigate zoning cases at the pedestrian level -- viewing development proposals from the perspective of adjoining neighbors; and

**WHEREAS**, Susan Swagler is a true *friend of planning*, consistently taking a special interest in numerous zoning code amendments, and whose tireless efforts helped shape the adoption of the Village Master Plan, and;

**WHEREAS**, Susan Swagler chaired the Planning Commission with a grace and warmth that will be missed, her mannerism was always professional and personable at the same time; and

**WHEREAS**, While Susan Swagler always brought fresh enthusiasm, an open mind, and a sharp intuition to each case, she also possessed the fortitude to make tough recommendations on a case when a proposed project was not properly mitigated in such a way as to protect the community; and

**WHEREAS**, Through her strong leadership and human empathy, Susan Swagler has left the city of Mountain Brook a better place than when she "found" it.

**NOW, THEREFORE**, be it resolved that the Mayor and City Council, on behalf of all the residents of Mountain Brook, do publicly thank Susan Swagler for her exemplary service and wish her well in future endeavors.

**RESOLUTION NO. 2017-160**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby reaffirms the City's commitment to promote safe workplace guidelines with respect to the City's workers' compensation program (Exhibit A attached hereto).

**ADOPTED:** This 26th day of November, 2018.

\_\_\_\_\_  
Council President

**APPROVED:** This 26th day of November, 2018.

\_\_\_\_\_  
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 November 26, 2018, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk



# MUNICIPAL WORKERS COMPENSATION FUND, INC.

P.O. Box 1270 • 535 ADAMS AVENUE • MONTGOMERY, AL 36102  
334-262-2566 • FAX 334-263-0200  
CLAIMS 1-888-736-0210

TOM HENDERSON  
Mayor, Center Point  
President

SADIE BRITT  
Councilmember, Lincoln  
Vice President

JESSE MATTHEWS  
Councilmember, Bessemer  
Secretary Treasurer

TOM WILLIAMS  
Mayor, Satsuma  
Director

MICKEY MURDOCH  
Mayor, Elba  
Director

KEN SMITH  
General Manager

RICHARD BUTTENSCHAW  
Operations Manager

STEVE MARTIN  
Finance Director

DATE: November 1, 2018

TO: All Members of MWCF, Inc.

FROM: Richard Buttenshaw  
MWCF Operations Manager

SUBJECT: Premium Discounts for the 2019 Fund Year

The Board of Directors of the Municipal Workers Compensation Fund, Inc. (MWCF) met on October 24th and approved premium discounts for those members that commit to certain safety guidelines, establish a medical protocol and adopt a drug and alcohol testing program that is 4th amendment compliant. A three (3) percent discount will be given for each program. Members that adopt all three programs will receive a ten (10) percent discount instead of nine (9) percent. For this past year, 55% of MWCF members took advantage of this 10% discount! For those members who have already adopted a medical protocol and/or a drug and alcohol testing program in prior years no action needs to be taken to receive the discounts for these programs. The Safe Workplace Guidelines however, must be renewed annually. **If it is signed and returned by December 15th, the discount will appear on the initial billing for 2019-2020.** We encourage each member to review the enclosed document(s) carefully. Please make a copy for your file and then completed forms should be returned to MWCF at the above address or faxed to 334-263-0200. **No discount will be issued after February 1, 2019 for Safe Workplace Guidelines received after that date.**

If your municipality or municipal entity does not presently participate in the Drug and Alcohol testing program or have a Medical Protocol on file, that information has also been enclosed for your review.

For more details, see the article in the Fall 2018 issue of *Risk Management Solutions* mailed to you last month or download at [www.almwcf.org](http://www.almwcf.org).



## 2019 Safe Workplace Guidelines

Name of Municipality or Agency: \_\_\_\_\_

Name of Safety Coordinator: \_\_\_\_\_ Email Address: \_\_\_\_\_

Safety Coordinator Phone Number:(    ) \_\_\_\_\_ Fax Number: (    ) \_\_\_\_\_

The undersigned hereby confirms to the Municipal Workers Compensation Fund, Inc., our intent to implement the following safety standards relevant to our municipal entity:

### GENERAL SAFETY GUIDELINES

1. Adopt and implement a written safety manual or a statement of safety standards.
2. Establish a Safety Committee to recommend new safety policies, review and update existing safety policies, review accidents and establish methods to help prevent accidents, injuries and damages to equipment.
3. Have quality safety meetings for all employees once a month. At least one of these meetings each year should be a training session on proper lifting techniques and back wellness. Consider integrating health & wellness topics such as smoking, diabetes, management of stress and weight into these meetings. Document attendance, date, time and issues covered. Quality safety training can be provided utilizing tools such as the MWCF video library and/or LocalGovU online training center. These and other excellent free resources can be found at [www.losscontrol.org](http://www.losscontrol.org).
4. Have the designated Safety Coordinator or City Clerk meet with the designated Loss Control representative and review loss run reports. During this review, reports should be analyzed to make sure the records are correct. The Safety Coordinator or City Clerk should present a summary of the report to the Mayor or other Chief Executive Officer and all department heads.
5. Investigate all job related injuries regardless of the severity, determine the cause, maintain investigation records, and report all job related injuries immediately by completing a First Report of Injury Form at [www.almwcf.org](http://www.almwcf.org). Confer with any employee who has filed two or more claims in a 12 month period as to how their job can be made safer.
6. Provide a safety orientation for all new employees (including temporary and part-time) on how to do job tasks safely and document that this has been done.
7. Designate a doctor or medical group to be used by employees for non-emergency job-related injuries. This can be done via completion of the Medical Protocol Document (if not previously submitted) which also provides an additional premium discount. It is highly recommended that a supervisor or manager accompany injured employees to the medical facility on the initial visit. In life threatening emergencies, employee should be taken to the nearest medical facility.

### TRAINING AND PROCEDURES

8. Issue safety equipment where necessary, and provide proper tools for a job to employees to help prevent accidents and require the use of such safety equipment through a written policy.
9. Adopt a written infectious disease policy and consider providing hepatitis B shots for all police, fire, emergency medical technician, sanitation personnel, or any employee who has a high possibility of exposure.
10. Consider providing CPR/AED and first aid training to employees.
11. Emphasize the significance of good maintenance and housekeeping of equipment, work areas, building and grounds. Documented inspections of all equipment, work areas, building and grounds for safety hazards, including electrical, fire and life safety hazards should be done at least quarterly. Any problems discovered should be corrected immediately and documented.

**BOTH PAGES OF FORM MUST BE SUBMITTED TO MWCF BY FEBRUARY 1, 2019 TO BE ELIGIBLE FOR PREMIUM DISCOUNT**



12. Evaluate all excavations to insure proper trenching and shoring procedures are in place and provide employee training on the proper use of excavating equipment.

13. Part-time, seasonal and temporary employees should comply with the same safety standards and policies as permanent employees.

14. As violence in the workplace is increasing annually, consider implementing a Workplace Violence policy/Emergency Action Plan. A sample Workplace Violence policy can be downloaded at [www.losscontrol.org](http://www.losscontrol.org) under Reference Documents.

**MOTOR VEHICLES**

15. Establish a written policy instructing operators of motor vehicles to be observant of any malfunction and seek immediate repair when such malfunction is apparent. A record of any action taken should be maintained.

16. Evaluate traffic safety programs using the DOT guidelines when working near roadways and ensure conformance with safety guidelines. These guidelines are available in the Manual on Uniform Traffic Control Devices for Streets and Highways and is available free of charge on our loss control website [www.losscontrol.org](http://www.losscontrol.org). (WZSF-001)

17. Consider defensive driving courses for those employees who drive vehicles. It is recommended that all drivers attend a defensive driving course every two years. MWCF provides a Skid Car Training Program for operators of all municipal vehicles.

18. Have a written vehicle operations policy that details the requirements and responsibilities of safely operating a municipal vehicle, mandates seat belt use for driver and all passengers, and prohibits the use of any non-job essential electronic device while driving.

19. Consider establishing a Vehicle Accident Review Board to help determine cause of vehicle crashes and make recommendations. A sample Accident Review policy can be downloaded at [www.losscontrol.org](http://www.losscontrol.org) under Reference Documents.

**POLICE DEPARTMENTS (WHERE APPLICABLE)**

20. Consider requiring that all Police Officers wear bullet resistant vests and wear reflective vests when involved in traffic control duty.

21. Implement a written police and jail procedure manual (where applicable) with rules and regulations updated periodically.

22. Consider utilizing available law enforcement training aids such as the Firearms Training System (FATS) available through MWCF.

23. Consider providing coverage for all volunteer firemen and reserve police officers through MWCF.

Number of non-elected paid employees \_\_\_\_\_.

\_\_\_\_\_  
Mayor or Chief Executive Officer (Please Print)

\_\_\_\_\_  
Safety Coordinator (Please Print)

\_\_\_\_\_  
Mayor or Chief Executive Officer (Signature)

\_\_\_\_\_  
Safety Coordinator (Signature)

\_\_\_\_\_  
Municipality or Agency

\_\_\_\_\_  
Date

**A safety meeting to discuss these Safe Workplace Guidelines should be held with all department heads once it has been signed. Document the time, place and attendees at this meeting. MWCF should be notified immediately of changes in the Safety Coordinator position by contacting Donna Wagner at (334) 262-2566 or [donnaw@alalm.org](mailto:donnaw@alalm.org).**

**BOTH PAGES OF FORM MUST BE SUBMITTED TO MWCF BY FEBRUARY 1, 2019 TO BE ELIGIBLE FOR PREMIUM DISCOUNT**

**RESOLUTION NO. 2018-161**

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

1. That Alabama Power Company is requested to install one (1) 84 watt LED area, 4000K, gray – 8,500 to 14,000 lumens street light in the vicinity of 3869 Glencoe Drive as more fully described in Exhibit A attached hereto (Lighting Services NESC Lease Agreement (Governmental-S)).
2. That the City Manager is hereby authorized to execute and deliver, or cause to be executed and delivered, on behalf of the City such documents, instruments, and agreements that may be deemed necessary or appropriate with respect to said street light upgrades/installations.
3. That the City Clerk is directed to furnish the Alabama Power Company a certified copy of this resolution.

**ADOPTED:** This 26th day of November, 2018.

\_\_\_\_\_  
Council President

**APPROVED:** This 26th day of November, 2018.

\_\_\_\_\_  
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 meeting held on November 26, 2018, as same appears in the minutes or record of said meeting.

\_\_\_\_\_  
City Clerk

# Lighting Services NESC® Lease Agreement (Governmental-S)



Customer Legal Name CITY OF MOUNTAIN BROOK DBA \_\_\_\_\_  
 Service Address 0 STREETLIGHTS, UNREG NESC LIGHTS BIRMINGHAM AL 35213 County JEFFERSON  
 Mailing Address PO BOX 130009, BIRMINGHAM AL 35213  
 Email \_\_\_\_\_ Tel # \_\_\_\_\_ Alt Tel \_\_\_\_\_  
 Tax ID 000-00-3229 Business Description Municipal Street Lights

Existing Customer? Yes  No  If Yes (and if possible), does Customer want Equipment added to an existing account? Yes  No  Existing Account 36128-68008  
*For informational purposes only*

Equipment									
	Qty	Wattage	Type	Description	OH/UG	M/UM	Equipment Amount (\$)	Estimated Regulated Charge (\$)*	Estimated Monthly Charge (\$)*
(1)	1	84	LED	Area - 4000k - gray - 8500 to 14000 Lumens	OH	UM	\$11.91	\$1.97	\$13.88
(2)									
(3)									
(4)									
(5)									
(6)									
(7)									
(8)									
(9)									
(10)									
Monthly Total *									\$13.88

**Project Notes:** Install new street light near 3869 Glencoe Dr - on existing pole

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<b>Initial Term</b>	36 months	<b>Prepaid Amount</b>	\$ 0.00
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\* The Regulated Charge is subject to change at any time as dictated by the Alabama Public Service Commission. The amount shown is an estimate based on the Unmetered Outdoor Lighting (ODL) rate in effect at time of Agreement proposal; actual charges may vary.

Customer agrees to lease the Equipment referenced above from Alabama Power Company on the attached terms and conditions and authorizes all actions noted above.

Customer Authorized Signature	Date	Alabama Power Company	Date
Sign Here _____	_____	Sign Here _____	_____
Print Name _____	_____	Print Name _____	_____
Print Title _____	_____	Print Title _____	_____

APC Internal Use Only - APC Reference Number (if applicable): \_\_\_\_\_



3873 Glencoe Drive  
Mountain Brook, Alabama 35213

Sam Gaston, City Manager  
City Hall, City of Mountain Brook  
56 Church Street  
Mountain Brook, AL 35213

Dear Mr. Gaston,

The streetlight in front of my house has been lit for the last 30-40 years that I have lived in this house. It has been out for the last 3-4 months. I have notified the city about this, but thus far it has not been re-lit. I am now told that the city does not own the pole or light and nor does the Power Company. I do not own it, nor does my next-door neighbor. Consequently, I need you help to have the light re-lit and maintained properly. The pole is on the corner of Glencoe and Glenview Drives and is heavily trafficked. I believe it would be beneficial for the corner stop sign to be illuminated.

Thank you for your help.



Dr. John T. Eagan, Sr.  
Cell: 205-960-1041



**RESOLUTION NO. 2018-162**

**WHEREAS**, the City of Mountain Brook, Alabama, has certain items of personal property which are no longer needed for public or municipal purposes; and

**WHEREAS**, Section 11-43-56 of the Alabama Code of 1975 authorizes the municipal governing body to dispose of unneeded personal property.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Mountain Brook, as follows: It is hereby established and declared that the following property owned by the City of Mountain Brook, Alabama is not needed for public or municipal purposes and is hereby declared surplus property:

<b>Item</b>	<b>Description</b>	<b>Notes</b>
25	23" Flat screen monitors	Dell P2314Ht
19	Microcomputer CPUs	Dell 9020
3	Tablets	Apple iPad 2
2	B/W laser printers	HP Laserjet P3015
1	Multi-function copier	Kyocera TASKalpha 3050ci

**BE IT FURTHER RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Manager is hereby authorized and directed to sell said equipment to the highest bidder by way of public Internet auction or dispose if not sold at said auction.

**ADOPTED:** This 26th day of November, 2018.

\_\_\_\_\_  
Council President

**APPROVED:** This 26th day of November, 2018.

\_\_\_\_\_  
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 meeting held on November 26, 2018, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk

**RESOLUTION NO. 2018-163**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that City Council hereby authorizes the execution of a right-of-way encroachment agreement between the he City and TJB, LLC, in the form as attached hereto as Exhibit A, with respect to the property located at 142 Spring Street, 35213.

**ADOPTED:** This 26th day of November, 2018.

\_\_\_\_\_  
Council President

**APPROVED:** This 26th day of November, 2018.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City 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 meeting held on November 26, 2018, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk



**CITY OF MOUNTAIN BROOK**

**Dana O. Hazen, AICP**  
**Director of Planning, Building & Sustainability**  
56 Church Street  
Mountain Brook, Alabama 35213  
Telephone: 205/802-3821  
Fax: 205.879.6913  
hazend@mtnbrook.org

DATE: November 26, 2018

TO: Mayor, City Council & City Manager  
FROM: Dana Hazen, City Planner

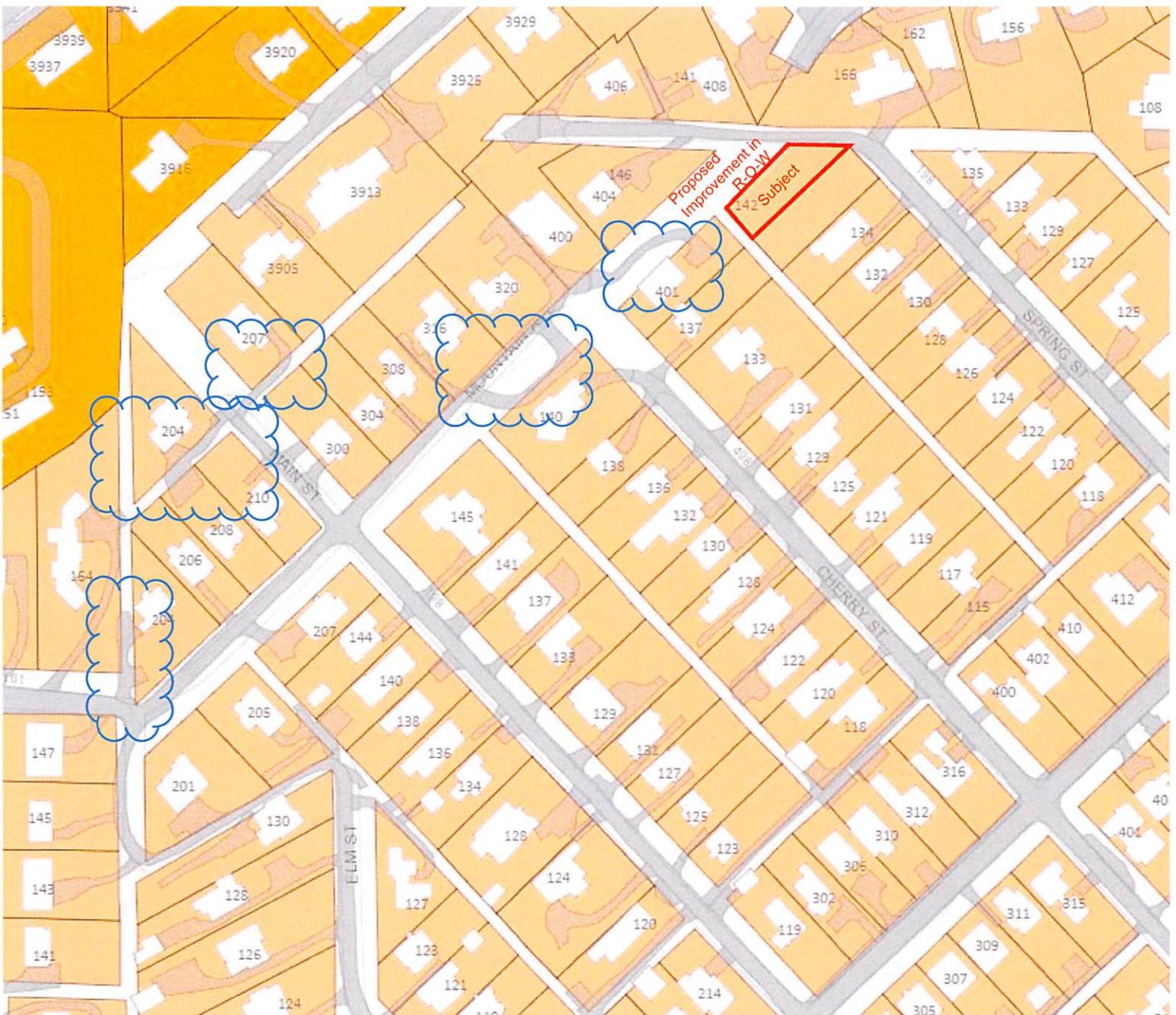
RE: Encroachment Agreement – 142 Spring Street

In conjunction with the construction of a new single family dwelling at 142 Spring Street, the applicant proposes an access drive within the adjoining unimproved Mountain Avenue right-of-way to the north. The right-of-way is 50 feet wide and, as may be seen on the attached topographic survey and photograph, contains a slope on the right (which is not proposed to be altered).

Staff inspected the site and noted that there is an existing, aging, asphalt driveway in the same location as the proposed new driveway; the applicant intends to install a new concrete improvement that will be a little wider than the existing asphalt, and do some grading of the left side of the right-of-way in order to transition to the building site.

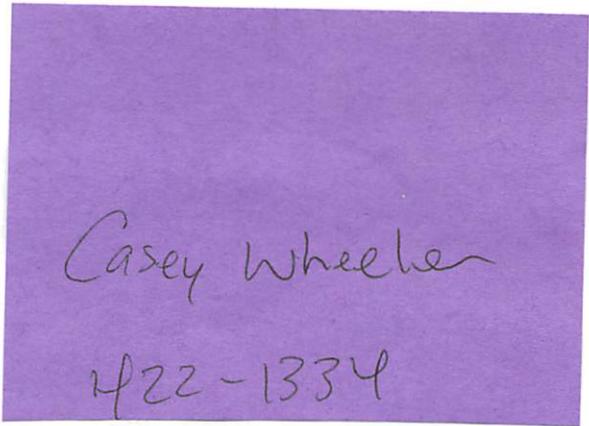
The attached zoning map depicts the subject property and adjoining right-of-way in red, and also shows other similar private improvements in the right-of-way in the vicinity (in blue “bubbles”).





THIS INSTRUMENT PREPARED BY:

TJB LLC  
\_\_\_\_\_  
\_\_\_\_\_



JEFFERSON COUNTY }  
STATE OF ALABAMA }

**RIGHT-OF-WAY ENCROACHMENT AGREEMENT**

This **Right of Way Encroachment License Agreement** (the "Agreement") is entered this \_\_\_\_\_ day of \_\_\_\_\_ 201\_, by and between the **City of Mountain Brook, Alabama**, a municipal corporation (hereinafter the "City" or "Licensor"), and TJB LLC (hereinafter individually or collectively referenced for purposes of this Agreement as the "Licensee").

**WITNESSETH:**

**WHEREAS**, the Licensee represents that it owns the following real property located in the City of Mountain Brook, Jefferson County, Alabama:

Address: 142 SPRING STREET  
Parcel ID #: 2300333605038.000  
Legal Description CRESTLINE HEIGHTS LOT 1  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(the "Property");

**WHEREAS**, the Property abuts right(s) of way that is owned by the City and reserved for the use of the general public (the "City ROW");

**WHEREAS**, the Licensee desires to install and maintain PAVED DRIVE at the location depicted on the attached Exhibit "A" (collectively hereinafter the "Improvement"), and intend that the Improvement will be used by the occupants of the Property or their guests;

**WHEREAS**, part or all of the area in which the Improvement will be installed lies within and encroaches upon the City Right of Way (hereinafter, the "Encroachment Area"); and

**WHEREAS**, subject to terms, conditions and understandings herein, the City agrees to grant the Licensee a non-exclusive, revocable license to install and use the encroaching Improvement within the City ROW.

**NOW, THEREFORE**, in consideration of the mutual covenants herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. The City grants the Licensee a non-exclusive, revocable license to utilize the City ROW for purposes reasonably related to the construction, installation, maintenance and use of above-described encroaching Improvement within the Encroachment Area (the "License"). No other uses of the City ROW are authorized.

2. The Licensee agrees and acknowledges that this Agreement grants it (or them) only a license, not any interest, title, permanent right or estate. The grant made hereunder is personal to the Licensee and does not run with the land. Further, the Licensee agrees to not claim any permanent interest in the Encroachment Area by entering into this Agreement or by its use of any contemplated encroaching Improvement.

3. The Licensee agrees to (a) keep the Encroachment Area clean and free of debris, weeds or overgrown grass, (b) maintain the contemplated encroaching Improvement in good and sound condition, and (c) not use the Encroachment Area or any encroaching Improvement in a manner that creates a hazard or causes damage to any third persons or adjacent properties.

4. The Licensee acknowledges that, in the event that the City, in the exercise of its sole discretion, determines that the Licensee's utilization of the Encroachment Area or the Improvement conflicts with City's use of or plans to use that Area, it may revoke the License effective upon providing the Licensee written notice from the Mayor, the City Manager or the City's other executive official. If the License is revoked, the City, in the exercise of its sole discretion, either (a) may request that the Licensee, at its (or their) expense, remove any encroaching Improvement and restore the City ROW to a condition that is reasonably satisfactory to the City within thirty (30) days after the receipt of notice of revocation, or (b) at the City's expense, may remove any encroaching Improvement placed by the Licensee in the Encroachment Area. If the City revokes the License, the Licensee waives and releases the City from any and all claims for expenses incurred by the Licensee to construct or maintain any Improvement in the Encroachment Area.

5. The Licensee may not assign or transfer this Agreement (or any benefit, right or obligation hereunder) to any third party without advance written consent by the City, which consent shall not be unreasonably withheld.

6. All plans, designs and work to construct any contemplated encroaching Improvement shall be subject to review and approval of the City's Building Inspection Department, or such other department as the City may designate. Further, the Licensee agrees that all operations related to the installation or maintenance of any such Improvement will comply with applicable federal, state and local laws, ordinances and regulations (including but not limited to, license and permit requirements) that relate to those operations.

7. The Licensee shall not permit any mechanic or materialman's lien to be filed against the City or concerning the Encroachment Area by reason of any labor, services, materials or equipment supplied or claimed to have been supplied to construct or maintain any encroaching

(b) The failure of the City to enforce any of the terms, conditions or provisions of this Agreement shall not be construed as a waiver of its right to subsequently compel enforcement of that or any other term, condition or provision herein. The rights, benefits and obligations under this Agreement may be waived only in a writing signed by the parties.

(c) This Agreement, and the conditions, terms and provisions herein, do not create, and are not intended to create or confer any benefit to any third party.

(c) This Agreement contains the complete agreement of the parties concerning the subject matter herein. Any prior negotiation, agreement or understanding, whether oral or written, concerning the matters addressed herein is superseded and of no effect unless expressed herein.

(d) This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Signature pages may be transmitted by facsimile or other form of electronic transmission, and any signature so transmitted will be given the same force and effect as an original signature

(e) If requested by the City, the Licensee shall record a fully-executed form of this Agreement in the real property records of the Probate Court for Jefferson County.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed on the date hereinabove set forth.

ATTEST:

**CITY OF MOUNTAIN BROOK, ALABAMA**

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mayor

**LICENSEE (if individual)**

\_\_\_\_\_

**LICENSEE (if individual)**

\_\_\_\_\_

**LICENSEE (if entity)**

TJB LLC  
\_\_\_\_\_

By: \_\_\_\_\_  
Name of Entity

Its: \_\_\_\_\_  
Owner

Improvement (collectively, a "Lien"). If such a Lien is filed, then the Licensee, after notice of its filing, promptly shall either (a) cause the same to be discharged by depositing adequate funds in court or issuing a bond; or (b) indemnify the City against any loss from a Lien by posting security or taking other actions that are reasonably satisfactory to the City.

8. The Licensee, for itself and on behalf of any of its heirs, personal representatives, authorized assigns or other persons or entities that may succeed to its interest in this Agreement (collectively the "Licensee" for purposes of this provision) agrees to waive, release, indemnify, defend and hold harmless the City, and its officers, employees, and representatives (collectively for purposes of this provision, the "City"), from and against any claim, liability, loss, expense (including, reasonable attorney fees and costs of court), demand or action asserted against the City by the Licensee or by any third party claiming personal injury, property damage or any other loss of any kind (collectively, a "Claim") that arises from or is in any manner related to (a) the Licensee's use of the License granted herein or the Encroachment Area, or (b) any encroaching Improvement placed in the City ROW. The scope of this indemnification obligation includes Claims that are caused or allegedly caused in whole or part by the negligence of the City; provided that the Licensee shall not be obligated hereunder to indemnify the City for Claims that are caused by the gross negligence or willful misconduct of the City.

9. If the Licensee removes or substantially modifies an encroaching Improvement after this Agreement is executed, it shall not replace or construct another or different Improvement or structure in the City ROW without advance approval from the City; provided that nothing herein shall prohibit the Licensee from maintaining, repairing or refurbishing any encroaching Improvement contemplated by this Agreement.

10. All notices that may be required to be given hereunder shall be deemed to have been properly given if in writing and (a) if personally delivered, or (b) sent either by registered or certified mail, postage prepaid, and addressed as follows, or by nationally recognized overnight courier to the following address (or such other address as a party may designate in writing):

To the City:  
City of Mountain Brook, Alabama  
Attention: City Manager  
56 Church Street  
Mountain Brook, AL 35213

To the Licensee:  
TJB LLC  
463 Renaissance Drive  
Hoover, AL 35226

Notices shall be deemed given upon receipt or refusal of delivery.

#### 11. Miscellaneous Provisions.

(a) This Agreement may not be amended or modified unless all parties execute a writing that is signed by their duly authorized representatives.

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

(For Use if Licensee is Individual)

I, the undersigned authority, a Notary Public duly commissioned in and for the County and State aforesaid, hereby certify that \_\_\_\_\_ whose name 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 the instrument, he/she executed same voluntarily.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission expires: \_\_\_\_\_

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

(For Use if Licensee is Individual)

I, the undersigned authority, a Notary Public duly commissioned in and for the County and State aforesaid, hereby certify that \_\_\_\_\_ whose name 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 the instrument, he/she executed same voluntarily.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission expires: \_\_\_\_\_

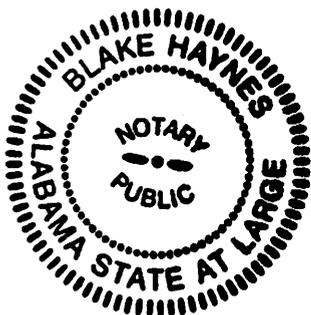
STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

(For Use if Licensee is Entity)

I, the undersigned authority, a Notary Public duly commissioned in and for the County and State aforesaid, hereby certify that Terry Bransford whose name as Owner of TJD LLC, 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 the instrument, he/she as such officer and with full authority, executed same voluntarily for and as the act of said entity.

Given under my hand and official seal this 5<sup>th</sup> day of Nov., 2013

[Signature]  
\_\_\_\_\_  
NOTARY PUBLIC  
My Commission expires: 3-3-20



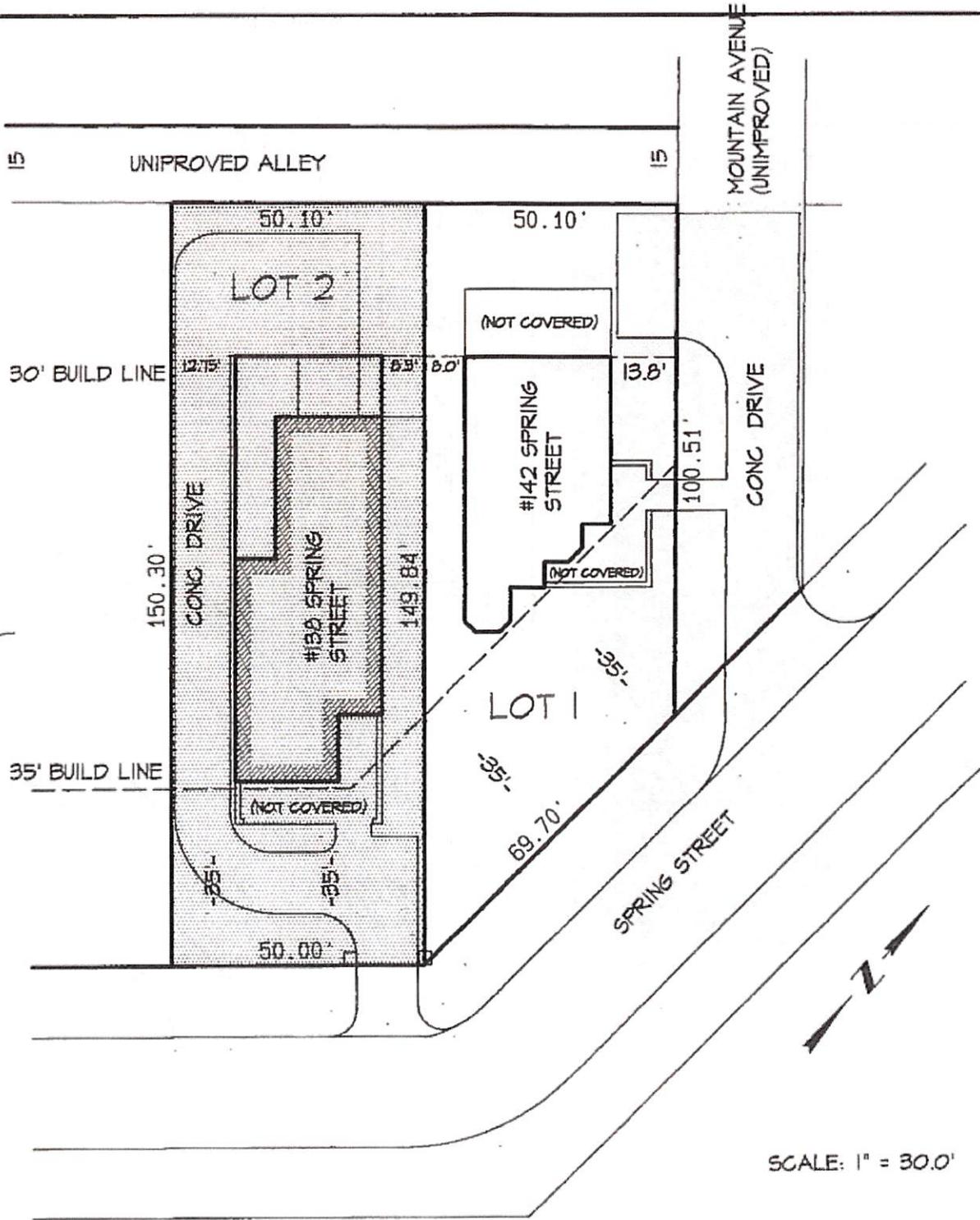
Aug 2014

**EXHIBIT A – DEPICTION OF ENCROACHMENT AREA**

See attached.



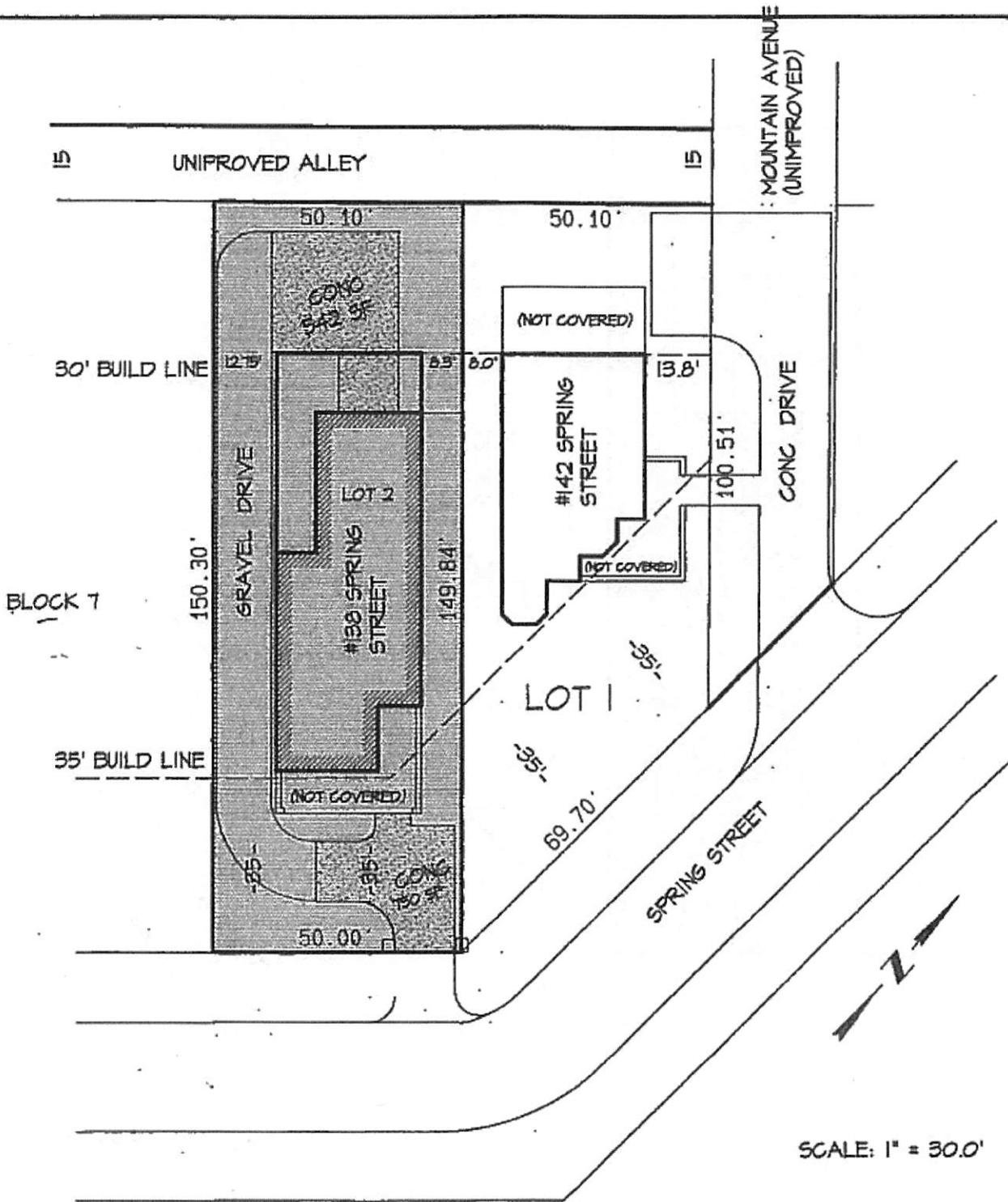
142 Spring St



# PROPOSED PLOT PLAN

LOT 2 BLOCK 7 ACCORDING TO THE MAP OF  
CRESTLINE HEIGHTS  
AS RECORDED IN MAP BOOK 7, PAGE 16





# PROPOSED PLOT PLAN

LOT 2, BLOCK 7 ACCORDING TO THE MAP OF  
 CRESTLINE HEIGHTS  
 AS RECORDED IN MAP BOOK 7, PAGE 16

HOUSE = 1742 SF 23 %  
 DRIVE CONC = 1290 SF 17 %  
 LOT = 7510 SF



Steve Boone &lt;boones@mtnbrook.org&gt;

**Re: Contest of Request for Use of City Street for Driveway/ 138, 142 Spring Street**

1 message

david allen <rda@gloorstrickland.com>  
To: boones@mtnbrook.org

Tue, Nov 20, 2018 at 9:32 AM

Thank you, Steven, for your assistance. Please confirm receipt of my previous email so that I know it will make it into the packet by the deadline. Also I wanted to ask that you list my mobile phone number as my primary contact, 205-222-3837.

On Tue, Nov 20, 2018 at 9:16 AM david allen <rda@gloorstrickland.com> wrote:

Mr. Boone:

As requested, I am sending you an e-mail to make a formal request on behalf of all residents of the North end of Spring Street to urge the City Council to postpone consideration of the Builder/ Owner's request for use of city property for a driveway.

I have also attached below an e-mail string between Glen Merchant and the residents. However, we have been in constant contact with the City since construction commenced.

My family has been a resident at 134 Spring Street since 2005.

First, I refer the Council to City Officials, including the City Magistrate, for more information about the Builder/ Owner flaunting building regulations, fines being assessed for violation of environmental regulations, trespassing, causing unsafe traffic conditions which rises to nuisance level, and breaching the peace by working until 11 pm. As of 11/16/18, the City suspended the building permits for this property due to repeated violations.

The Builder/ Owner is attempting this building project as an investment only and has shown no respect for the residents. In many cases, I know that the City Council/ Planning Commission has been reluctant to consider requests for variances/ special use until an owner/ occupant is identified. We believe this is such a case.

The Builder/Owner has basically ignored the City's warnings and now faces a joint complaint by Mr. Merchant and the Spring Street Residents to the City Magistrate to determine further penalties and fines against this Builder.

Although, you may speak to any resident of the North End of Spring Street, Bruce Barze, Wilson Holifield, and I have been most active in addressing the problems.

We respectfully request that the Council investigate the overall situation on the top of Spring Street in detail, and we are available to participate in a tour to fully communicate our concerns. Please note the following:

1. The top of Spring Street is a very unusual area, completely unlike any other in Crestline. The historical development of the property caused very strange, non-conforming lots, with steep slopes and significant rock. We believe that the issues facing the City Council as concerns this property could be problematic for the City and the residents for years to come if not addressed immediately.
2. The right-of-way at issue is platted as an extension of Mountain Avenue. It is not simply an alley right-of-way.
3. The North End of Spring Street is actually not a "street." It was platted as an alley, and appears to be surveyed and developed as an alley only. Currently, cars may not pass each other on this section of the street. We believe the Council should fully investigate this issue to determine if the alley should be developed into a street so as to accommodate the use of the property by the new residential owners and the increased traffic congestion.
4. We are also concerned about the new construction on the other side of the street as it appears the owner plans to significantly build up the grade of the property to meet the foundation. Apparently, the Owner chose not to dig a normal foundation due to the significant rock. A previous owner abandoned plans to build due to the rock situation. The raising of the grade will cause significant issues for the City Right-of-Way, which includes an unstable masonry "cave" which we believe could fall on the street at any time.

Unfortunately, the overall situation is complex and will require significant investigation to safeguard the residents of Spring Street. Therefore, we respectfully request the Council deny and postpone any petition for special use of Rights-of-Way near Spring Street.

Sincerely yours,

**R. David Allen, Jr.**

GLOOR, STRICKLAND, HAGGERTY & ALLEN, LLP

100 Williamsburg Office Park, Suite 100

Birmingham, AL 35216

Telephone: (205) 822-1223, office/ (205) 222-3837, mobile

FAX: (205) 822-1216

Email: [rda@gloorstrickland.com](mailto:rda@gloorstrickland.com)

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## Forwarded Conversation

**Subject: Photos/ Foundation/ 138, 142 Spring Street**

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From: **david allen** <[rda@gloorstrickland.com](mailto:rda@gloorstrickland.com)> Date: Fri, Nov 2, 2018 at 11:12 AM  
To: <[merchantg@mtnbrook.org](mailto:merchantg@mtnbrook.org)>, <[gastons@mtnbrook.org](mailto:gastons@mtnbrook.org)>  
Cc: Bruce Barze <[bbarze@btnllaw.com](mailto:bbarze@btnllaw.com)>, Wilson Holifield <[wilson@imiteam.com](mailto:wilson@imiteam.com)>

Please find attached for your records photos taken November 1, 2018 of the Builder/Owner pouring foundation walls during the storm yesterday in pouring rain.

I am sure that, at the very least, this is not a best practice.

Please let us know your response, and your plan to force remediation of unstable foundations on this property.

thanks,

**R. David Allen, Jr.**

GLOOR, STRICKLAND, HAGGERTY & ALLEN, LLP

100 Williamsburg Office Park, Suite 100

Birmingham, AL 35216

Telephone: (205) 822-1223, office/ (205) 222-3837, mobile

FAX: (205) 822-1216

Email: [rda@gloorstrickland.com](mailto:rda@gloorstrickland.com)

-----  
From: **Glen Merchant** <[merchantg@mtnbrook.org](mailto:merchantg@mtnbrook.org)>

Date: Fri, Nov 2, 2018 at 11:56 AM

To: david allen <[rda@gloorstrickland.com](mailto:rda@gloorstrickland.com)>

Cc: Sam Gaston <[gastons@mtnbrook.org](mailto:gastons@mtnbrook.org)>, Bruce Barze <[bbarze@btnllaw.com](mailto:bbarze@btnllaw.com)>, Wilson Holifield <[wilson@imiteam.com](mailto:wilson@imiteam.com)>

Mr. Allen,

Yes, this site is compliant. Please address your questions to me or we can have a meeting if you need additional assistance. There is no 2015 International Residential Code requirement for pouring concrete in the rain. The foundations were dug out to the specified dimensions and our inspector verified these and a soil probe during the inspection to ensure compaction of the sub surface grade at least 12" from the existing grade to ensure solid soil base. These foundations are also required to have reinforcement of #4 steel rebar that is consistent and tied together so that any soil failure due to erosion or utility excavation later that may weaken the sub grade soil at the foundation will not allow the foundation to settle or fail as part of the entire foundation system. Please be respectful of your neighbor in that he has to do his best to construct on a small and narrow lot just like yours and we should be considerate of one

another in having inconvenience such as traffic and noise during these events. I can facilitate a meeting of the neighbors and the contractor and owner if needed to have everyone be respectful and helpful as a community improvement. Any civil dispute or disagreement should be respectfully addressed and handled with the parties at odds and while I cannot enforce these concerns we can help everyone understand the differing opinions to help solve any communication gap. Please find the time to discuss further previous miscommunication errors of Mr. Wheeler with him as he stated to me he would do whatever you need him to do to correct any damage made from his tree contractor to your electric underground dog fence disturbed by the root removal of the old trees. Casey Wheeler 422-1334. [caseyjwheeler82@yahoo.com](mailto:caseyjwheeler82@yahoo.com)

Best Regards,

Glen Merchant  
Building Official

205/802-3812 Phone  
City of Mountain Brook, AL.  
56 Church Street  
Mountain Brook, AL 35213

-----  
From: **David Allen** <[rda@gloorstrickland.com](mailto:rda@gloorstrickland.com)>  
Date: Fri, Nov 2, 2018 at 2:30 PM  
To: Glen Merchant <[merchantg@mtnbrook.org](mailto:merchantg@mtnbrook.org)>  
Cc: Bruce Barze <[bbarze@btnllaw.com](mailto:bbarze@btnllaw.com)>, Sam Gaston <[gastons@mtnbrook.org](mailto:gastons@mtnbrook.org)>, Wilson Holifield <[wilson@imiteam.com](mailto:wilson@imiteam.com)>

Thank you for the detailed response. I think that is the point, that I am not an engineer or building code expert. But, I think we can agree that the manner these guys began this project will make us cautious about everything they do.

I am still pretty sure they don't have house plans, so there remains a lot of concern.

I had another call from a concerned neighbor today, so I am trying to stay on top of it

--

**R. David Allen, Jr.**  
GLOOR, STRICKLAND, HAGGERTY & ALLEN, LLP  
[100 Williamsburg Office Park, Suite 100](http://www.gloorstrickland.com)  
[Birmingham, AL 35216](http://www.gloorstrickland.com)  
Telephone: (205) 822-1223, office/ (205) 222-3837, mobile  
FAX: (205) 822-1216  
Email: [rda@gloorstrickland.com](mailto:rda@gloorstrickland.com)

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From: **Bruce Barze** <[bbarze@btnllaw.com](mailto:bbarze@btnllaw.com)>  
Date: Fri, Nov 16, 2018 at 6:34 PM  
To: Glen Merchant <[merchantg@mtnbrook.org](mailto:merchantg@mtnbrook.org)>, David Allen <[rda@gloorstrickland.com](mailto:rda@gloorstrickland.com)>  
Cc: Wilson Holifield <[wilson@imiteam.com](mailto:wilson@imiteam.com)>, Buffy Bromberg Allen <[ballen@raypoynor.com](mailto:ballen@raypoynor.com)>

Dear Glen,

I read your email below, and I understand that we all must exercise patience during the next few months. As a lawyer I am extremely familiar with the concept of an owner having the right to use and enjoy his property and to attempt to maximize its value. An owner cannot, however, do that to the detriment or at the expense of his neighbors. And if today was any indication, I am greatly concerned about how this project will proceed over the next several months. Following up on your comment below that we all need to be respectful, I agree wholeheartedly, but it is a two-way street. We are dealing with much more than mere "traffic and noise" on our street.

First, please tell Mr. Wheeler that he and his crew members cannot block driveways on Spring Street. Due to spilled concrete in the road and/or vehicles, my wife was unable to get into our driveway at two different times this afternoon (around 2.30 and 4.30). She had to park on Peachtree Street and walk down the hill to our house. I'm sure you are aware that City Ordinance Sec. 50-108 states that it is "unlawful for any person to park or leave a motor vehicle on any portion of a public street or a private street in a location which results in the partial or complete blocking of, or interference with access to or from, a driveway located on property owned by another person without the permission of the person who is the owner or tenant of such property."

Moreover, as the Shelby Concrete trucks are backing down the hill, they need to be careful. Not only do we have kids and dogs running around here, but the trucks are spilling excess concrete onto our street, and one of them nearly backed into my wife, who was coming up the hill. At around 5.30 pm, a neighbor came home and was unable to get into his driveway, which was blocked by a pickup truck/trailer. The spilled concrete was cleaned up and the vehicles ultimately were moved, but there is still concrete residue all over the street. I don't particularly want to walk my dog in that residue and have his paws get burned. I have defended companies in concrete burn cases, so I know that's a real thing. All afternoon and this evening (as we speak), the top part of Spring Street is completely impassable due to concrete trucks pouring foundation walls. I don't live up there, but it's unacceptable that the people at the top of Spring Street can't come and go from their homes. What if there were an emergency? Also, the mailman today turned around before he got to the construction project and didn't deliver mail to the homes at the top of the street, because it was blocked. That, too, is unacceptable.

Again, my concern is that this project is just getting started. We're only at the stage where foundations are being poured. While it may mean the construction crew members will have to walk up the hill or carpool, Wheeler cannot congregate all of his crew and construction vehicles and trailers at the top of Spring Street while this project is ongoing. Even when they aren't blocking driveways, they are making the street virtually impassable. So, while I'm happy to be (and always strive to be) respectful of fellow property owners, given the tight logistics at the top of the street, the intersection of all of the right-of-ways, and the narrowness of our street up top, Wheeler and his subs are going to have to exercise extraordinary respectfulness and keep their vehicles to the bare minimum on Spring Street.

Regards, Bruce

cid:image001.png@01D3E58C.6ED08DA0

**R. Bruce Barze, Jr., Partner**

Barze Taylor Noles Lowther LLC

Lakeshore Park Plaza

2204 Lakeshore Drive, Suite 330

Birmingham, Alabama 35209

T: 205.872.1015

Fax: 205.872.0339

E: [bbarze@btnllaw.com](mailto:bbarze@btnllaw.com)

[www.btnllaw.com](http://www.btnllaw.com)



cid:image003.png@01D3E58C.556D87A0

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**From:** Glen Merchant <[merchantg@mtnbrook.org](mailto:merchantg@mtnbrook.org)>

**Date:** Friday, November 2, 2018 at 11:56 AM

**To:** david allen <[rda@gloorstrickland.com](mailto:rda@gloorstrickland.com)>

**Cc:** Sam Gaston <[gastons@mtnbrook.org](mailto:gastons@mtnbrook.org)>, Bruce Barze <[bbarze@btnllaw.com](mailto:bbarze@btnllaw.com)>, Wilson Holifield <[wilson@imiteam.com](mailto:wilson@imiteam.com)>

**Subject:** Re: Photos/ Foundation/ 138, 142 Spring Street

-----  
From: **Bruce Barze** <[bbarze@btnllaw.com](mailto:bbarze@btnllaw.com)>

Date: Fri, Nov 16, 2018 at 8:05 PM

To: Glen Merchant <[merchantg@mtnbrook.org](mailto:merchantg@mtnbrook.org)>, david allen <[rda@gloorstrickland.com](mailto:rda@gloorstrickland.com)>

Cc: Wilson Holifield <[wilson@imiteam.com](mailto:wilson@imiteam.com)>, Buffy Bromberg Allen <[ballen@raypoynor.com](mailto:ballen@raypoynor.com)>, Sam Gaston <[gastons@mtnbrook.org](mailto:gastons@mtnbrook.org)>

And as a follow up to my earlier email, they are still pouring concrete and blocking the street, and backing concrete trucks up Spring Street, and it's now after 8 pm. So, now they are acting in violation of City Ordinance **Sec. 109-3**.

---

**From:** Bruce Barze <[bbarze@btnllaw.com](mailto:bbarze@btnllaw.com)>

**Date:** Friday, November 16, 2018 at 6:34 PM

**To:** Glen Merchant <[merchantg@mtnbrook.org](mailto:merchantg@mtnbrook.org)>, david allen <[rda@gloorstrickland.com](mailto:rda@gloorstrickland.com)>  
**Cc:** Wilson Holifield <[wilson@imiteam.com](mailto:wilson@imiteam.com)>, Buffy Bromberg Allen <[ballen@raypoynor.com](mailto:ballen@raypoynor.com)>

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From: david allen <[rda@gloorstrickland.com](mailto:rda@gloorstrickland.com)>  
Date: Fri, Nov 16, 2018 at 8:10 PM  
To: Bruce Barze <[bbarze@btnllaw.com](mailto:bbarze@btnllaw.com)>  
Cc: Buffy Bromberg Allen <[ballen@raypoynor.com](mailto:ballen@raypoynor.com)>, Glen Merchant <[merchantg@mtnbrook.org](mailto:merchantg@mtnbrook.org)>, Wilson Holifield <[wilson@imiteam.com](mailto:wilson@imiteam.com)>



8:10 pm  
Police called

--

**R. David Allen, Jr.**  
GLOOR, STRICKLAND, HAGGERTY & ALLEN, LLP  
[100 Williamsburg Office Park, Suite 100](https://www.gloorstrickland.com)  
[Birmingham, AL 35216](https://www.gloorstrickland.com)  
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From: **Bruce Barze** <bbarze@btnllaw.com>

Date: Fri, Nov 16, 2018 at 8:40 PM

To: david allen <rda@gloorstrickland.com>

Cc: Buffy Bromberg Allen <ballen@raypoynor.com>, Glen Merchant <merchantg@mtnbrook.org>, Wilson Holifield <wilson@imiteam.com>

8:38 pm and they are still pouring concrete, banging hammers, shining bright lights, and don't look anywhere close to being finished for the day. A big part of being a respectful neighbor is following the law and city ordinances.

R. Bruce Barze, Jr.

**Barze Taylor Noles Lowther LLC**

205.872.1015

[bbarze@btnllaw.com](mailto:bbarze@btnllaw.com)

Sent from my iPhone

On Nov 16, 2018, at 8:10 PM, david allen <rda@gloorstrickland.com> wrote:

<IMG\_3046.jpg>

8:10 pm

Police called

On Fri, Nov 16, 2018 at 6:34 PM Bruce Barze <bbarze@btnllaw.com> wrote:

Dear Glen,

I read your email below, and I understand that we all must exercise patience during the next few months. As a lawyer I am extremely familiar with the concept of an owner having the right to use and enjoy his property and to attempt to maximize its value. An owner cannot, however, do that to the detriment or at the expense of his neighbors. And if today was any indication, I am greatly concerned about how this project will proceed over the next several months. Following up on your comment below that we all need to be respectful, I agree wholeheartedly, but it is a two-way street. We are dealing with much more than mere "traffic and noise" on our street.

First, please tell Mr. Wheeler that he and his crew members cannot block driveways on Spring Street. Due to spilled concrete in the road and/or vehicles, my wife was unable to get into our driveway at two different times this afternoon (around 2.30 and 4.30). She had to park on Peachtree Street and walk down the hill to our house. I'm sure you are aware that City Ordinance Sec. 50-108 states that it is "unlawful for any person to park or leave a motor vehicle on any portion of a public street or a private street in a location which results in the partial or complete blocking of, or interference with access to or from, a driveway located on property owned by another person without the permission of the person who is the owner or tenant of such property."

Moreover, as the Shelby Concrete trucks are backing down the hill, they need to be careful. Not only do we have kids and dogs running around here, but the trucks are spilling excess concrete onto our street, and one of them nearly backed into my wife, who was coming up the hill. At around 5.30 pm, a neighbor came home and was unable to get into his driveway, which was blocked by a pickup truck/trailer. The spilled concrete was cleaned up and the vehicles ultimately were moved, but there is still concrete residue all over the street. I don't particularly want to walk my dog in that residue and

have his paws get burned. I have defended companies in concrete burn cases, so I know that's a real thing. All afternoon and this evening (as we speak), the top part of Spring Street is completely impassable due to concrete trucks pouring foundation walls. I don't live up there, but it's unacceptable that the people at the top of Spring Street can't come and go from their homes. What if there were an emergency? Also, the mailman today turned around before he got to the construction project and didn't deliver mail to the homes at the top of the street, because it was blocked. That, too, is unacceptable.

Again, my concern is that this project is just getting started. We're only at the stage where foundations are being poured. While it may mean the construction crew members will have to walk up the hill or carpool, Wheeler cannot congregate all of his crew and construction vehicles and trailers at the top of Spring Street while this project is ongoing. Even when they aren't blocking driveways, they are making the street virtually impassable. So, while I'm happy to be (and always strive to be) respectful of fellow property owners, given the tight logistics at the top of the street, the intersection of all of the right-of-ways, and the narrowness of our street up top, Wheeler and his subs are going to have to exercise extraordinary respectfulness and keep their vehicles to the bare minimum on Spring Street.

Regards, Bruce

 cid:image001.png@01D3E58C.6ED08DA0

**R. Bruce Barze, Jr., Partner**

Barze Taylor Noles Lowther LLC

Lakeshore Park Plaza

[2204 Lakeshore Drive, Suite 330](#)

[Birmingham, Alabama 35209](#)

T: 205.872.1015

Fax: 205.872.0339

E: [bbarze@btnllaw.com](mailto:bbarze@btnllaw.com)

[www.btnllaw.com](http://www.btnllaw.com)

 cid:image003.png@01D3E58C.556D87A0 <image001.png>

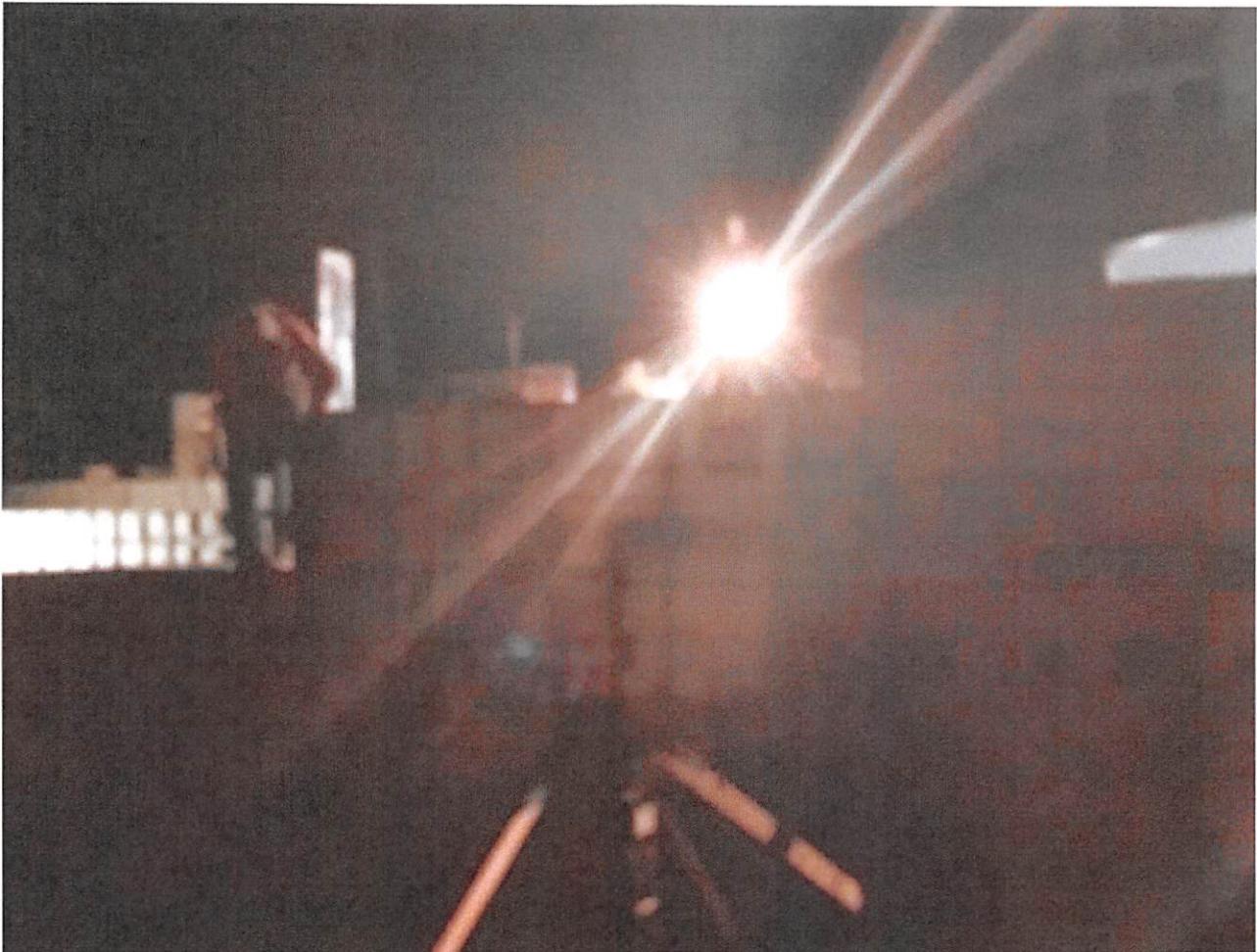
-----  
From: **Buffy B. Allen** <[ballen@raypoynor.com](mailto:ballen@raypoynor.com)>

Date: Fri, Nov 16, 2018 at 9:08 PM

To: Bruce Barze <[bbarze@btnllaw.com](mailto:bbarze@btnllaw.com)>

Cc: david allen <[rda@gloorstrickland.com](mailto:rda@gloorstrickland.com)>, Glen Merchant <[merchantg@mtnbrook.org](mailto:merchantg@mtnbrook.org)>, Wilson Holifield <[wilson@imiteam.com](mailto:wilson@imiteam.com)>

Mr. Merchant, The builder and All crews are Still here @9:09 p.m. and hammering away



-----  
From: **Bruce Barze** <[bbarze@btnllaw.com](mailto:bbarze@btnllaw.com)>

Date: Fri, Nov 16, 2018 at 9:13 PM

To: david allen <[rda@gloorstrickland.com](mailto:rda@gloorstrickland.com)>

Cc: Buffy Bromberg Allen <[ballen@raypoynor.com](mailto:ballen@raypoynor.com)>, Glen Merchant <[merchantg@mtnbrook.org](mailto:merchantg@mtnbrook.org)>, Wilson Holifield <[wilson@imiteam.com](mailto:wilson@imiteam.com)>

9:10 pm and they're still working, trucks backing up with back up alarms, and my neighbor's driveway is blocked and he can't get into his driveway. Hammers still banging away, and a concrete pump boom is still extended with flood lights shining everywhere.

R. Bruce Barze, Jr.  
**Barze Taylor Noles Lowther LLC**  
205.872.1015  
[bbarze@btnllaw.com](mailto:bbarze@btnllaw.com)

Sent from my iPhone

On Nov 16, 2018, at 8:10 PM, david allen <[rda@gloorstrickland.com](mailto:rda@gloorstrickland.com)> wrote:

<IMG\_3046.jpg>

8:10 pm

Police called

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Moreover, as the Shelby Concrete trucks are backing down the hill, they need to be careful. Not only do we have kids and dogs running around here, but the trucks are spilling excess concrete onto our street, and one of them nearly backed into my wife, who was coming up the hill. At around 5.30 pm, a neighbor came home and was unable to get into his driveway, which was blocked by a pickup truck/trailer. The spilled concrete was cleaned up and the vehicles ultimately were moved, but there is still concrete residue all over the street. I don't particularly want to walk my dog in that residue and have his paws get burned. I have defended companies in concrete burn cases, so I know that's a real thing. All afternoon and this evening (as we speak), the top part of Spring Street is completely impassable due to concrete trucks pouring foundation walls. I don't live up there, but it's unacceptable that the people at the top of Spring Street can't come and go from their homes. What if there were an emergency? Also, the mailman today turned around before he got to the construction project and didn't deliver mail to the homes at the top of the street, because it was blocked. That, too, is unacceptable.

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Regards, Bruce

cid:image001.png@01D3E58C.6ED08DA0

**R. Bruce Barze, Jr., Partner**

Barze Taylor Noles Lowther LLC

Lakeshore Park Plaza

[2204 Lakeshore Drive, Suite 330](https://www.barze.com)

Birmingham, Alabama 35209

T: 205.872.1015

Fax: 205.872.0339

E: [bbarze@btnllaw.com](mailto:bbarze@btnllaw.com)

[www.btnllaw.com](http://www.btnllaw.com)

-----  
From: **Sam Gaston** <[gastons@mtnbrook.org](mailto:gastons@mtnbrook.org)>

Date: Fri, Nov 16, 2018 at 9:26 PM

To: Bruce Barze <[bbarze@btnllaw.com](mailto:bbarze@btnllaw.com)>

Cc: Glen Merchant <[merchantg@mtnbrook.org](mailto:merchantg@mtnbrook.org)>, david allen <[rda@gloorstrickland.com](mailto:rda@gloorstrickland.com)>, Wilson Holifield <[wilson@imiteam.com](mailto:wilson@imiteam.com)>, Buffy Bromberg Allen <[ballen@raypoynor.com](mailto:ballen@raypoynor.com)>

Our Police Dept was notified shortly after your email.

Sent from my iPhone  
Sam Gaston

On Nov 16, 2018, at 9:05 PM, Bruce Barze <[bbarze@btnllaw.com](mailto:bbarze@btnllaw.com)> wrote:

And as a follow up to my earlier email, they are still pouring concrete and blocking the street, and backing concrete trucks up Spring Street, and it's now after 8 pm. So, now they are acting in violation of City Ordinance **Sec. 109-3**.

---

**From:** Bruce Barze <[bbarze@btnllaw.com](mailto:bbarze@btnllaw.com)>

**Date:** Friday, November 16, 2018 at 6:34 PM

**To:** Glen Merchant <[merchantg@mtnbrook.org](mailto:merchantg@mtnbrook.org)>, david allen <[rda@gloorstrickland.com](mailto:rda@gloorstrickland.com)>

**Cc:** Wilson Holifield <[wilson@imiteam.com](mailto:wilson@imiteam.com)>, Buffy Bromberg Allen <[ballen@raypoynor.com](mailto:ballen@raypoynor.com)>

**Subject:** Re: Photos/ Foundation/ 138, 142 Spring Street

Dear Glen,

I read your email below, and I understand that we all must exercise patience during the next few months. As a lawyer I am extremely familiar with the concept of an owner having the right to use and enjoy his property and to attempt to maximize its value. An owner cannot, however, do that to the detriment or at the expense of his neighbors. And if today was any indication, I am greatly concerned about how this project will proceed over the next several months. Following up on your comment below that we all need to be respectful, I agree wholeheartedly, but it is a two-way street. We are dealing with much more than mere "traffic and noise" on our street.

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Regards, Bruce

<image001.png>

**R. Bruce Barze, Jr., Partner**

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[www.btnllaw.com](http://www.btnllaw.com)

<image002.png> <image003.png>

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From: **Bruce Barze** <[bbarze@btnllaw.com](mailto:bbarze@btnllaw.com)>  
Date: Fri, Nov 16, 2018 at 9:32 PM  
To: Sam Gaston <[gastons@mtnbrook.org](mailto:gastons@mtnbrook.org)>  
Cc: Glen Merchant <[merchantg@mtnbrook.org](mailto:merchantg@mtnbrook.org)>, david allen <[rda@gloorstrickland.com](mailto:rda@gloorstrickland.com)>, Wilson Holifield <[wilson@imiteam.com](mailto:wilson@imiteam.com)>, Buffy Bromberg Allen <[ballen@raypoynor.com](mailto:ballen@raypoynor.com)>

Much appreciated. Have a good weekend.

R. Bruce Barze, Jr.  
**Barze Taylor Noles Lowther LLC**  
205.872.1015  
[bbarze@btnllaw.com](mailto:bbarze@btnllaw.com)

Sent from my iPhone

--  
**R. David Allen, Jr.**  
GLOOR, STRICKLAND, HAGGERTY & ALLEN, LLP  
[100 Williamsburg Office Park, Suite 100](#)  
[Birmingham, AL 35216](#)  
Telephone: (205) 822-1223, office/ (205) 222-3837, mobile  
FAX: (205) 822-1216  
Email: [rda@gloorstrickland.com](mailto:rda@gloorstrickland.com)

CONFIDENTIALITY NOTICE: Unless otherwise indicated or obvious from the nature of the above communication, the information contained in the above communication is attorney-client privileged and confidential information/work product. The communication is intended for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error or are not sure whether it is privileged, please notify us by return e-mail and destroy any copies, electronic, paper or otherwise, which you may have of the above communication.

CIRCULAR 230 DISCLOSURE: Any tax information or written tax advice contained herein (including the attachments) is not intended and is not written to be used, and cannot be used, for the purpose of (i) avoiding tax penalties that may be imposed on the taxpayer, or (ii) promoting, marketing, or recommending to another party, any partnership, or other entity, investment plan, or arrangement or any tax related matter(s) addressed herein. (This disclosure is made pursuant to, and in order to comply with, certain requirements of Revised Circular 230 and 31 C.F.R. Section 1035 relating to and governing practice before the Internal Revenue Service).



Steve Boone <boones@mtnbrook.org>

---

**Item #5, City Council Meeting, 11/26/2018**

1 message

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**Virginia Martin** <virginiamartin1@bellsouth.net>

Mon, Nov 26, 2018 at 1:17 PM

To: hazend@mtnbrook.org, Glen Merchant <merchantg@mtnbrook.org>, boones@mtnbrook.org, gastons@mtnbrook.org

I, Virginia M. Martin live at 145 Spring Street at the North end on the right. I do not have a problem with 142 Spring Street using the City's right of way, along undeveloped Mountain Avenue, for a driveway and parking pad. Thanks for your consideration of my opinion. Gina Martin

Sent from my iPhone

ORDINANCE NO. 2038

3758 Rock Brook Lane, 35223  
23-00-36-4-001-012.000  
18+/- acres

**AN ORDINANCE TO ALTER AND REARRANGE  
THE BOUNDARY LINES OF THE CITY OF MOUNTAIN BROOK, ALABAMA,  
SO AS TO INCLUDE WITHIN THE CORPORATE LIMITS CERTAIN OTHER  
TERRITORY CONTIGUOUS TO SAID CITY**

**WHEREAS**, the City Council of the City of Mountain Brook, Alabama, does hereby determine that the matters set forth in that certain petition of **Lisa G. Jones** and **Jeffrey P. Gilliam**, wherein the owners of the property described therein and hereinafter described in this Ordinance, requested that said property be annexed to the City of Mountain Brook are true, and that it is in the public interest that said property be annexed to the City of Mountain Brook.

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

Section 1. Alteration of Corporate Limits. That under the provisions of the Code of Alabama (1975) § 11-42-21, the corporate limits of the City of Mountain Brook, Alabama, be, and the same are altered and rearranged so as to include, in addition to the territory already within the corporate limits of said City, the territory, which is contiguous to said City of Mountain Brook, Alabama, and not within the corporate limits of any other municipality, as more particularly described in Exhibit A attached hereto.

Section 2. Zoning. The zoning of the property described in Section 1 above will be temporarily assigned to the zoning district set forth in City of Mountain Brook Ordinance No. 1347.

Section 3. Fire Dues. Pursuant to Act No. 604, as amended, of the 1976 Alabama Legislature, the City does hereby agree that if the territory described in this ordinance, or part thereof, is in any fire district organized under the laws of the State of Alabama, an amount shall be paid to the fire district equal to six times the amount of dues that the owner of the territory being annexed paid to the fire district the preceding year.

Section 4. Severability. If any part, section, or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect notwithstanding such holding. If any part, section, or subdivision of this ordinance or documents, map, or petition to which it may refer shall be held unconstitutional or invalid as to any portion of the territory annexed herein, such holding shall not be construed to impair or invalidate the ordinance as to the territory not included in or affected by such holding.

Section 5. Publication. The City Clerk shall file a certified copy of the property described in Section 1 above, and a certified copy of this ordinance with the Probate Judge of the county in which the property is located, and also cause a copy of this ordinance to be published in a newspaper of general circulation in the City of Mountain Brook, or to be published by posting as provided by law.

**Section 6. Repealer.** All ordinances or parts of ordinances heretofore adopted by the City Council of the City of Mountain Brook, Alabama, which are inconsistent with the provisions of this ordinance are hereby expressly repealed.

**ADOPTED:** This 26th day of November, 2018.

---

Council President

**APPROVED:** This 26th day of November, 2018.

---

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 an ordinance adopted by the City Council of the City of Mountain Brook, Alabama, at its regular meeting on the 26th day of November, 2018, as same appears in the minutes of record of said meeting, and published by posting copies thereof on the 30th day of May, 2018, at the following public places, which copies remained posted for five (5) days as provided by law:

City Hall, 56 Church Street  
Gilchrist Pharmacy, 2850 Cahaba Road

Overton Park, 3020 Overton Road  
Cahaba River Walk, 3503 Overton Road

---

City Clerk

STATE OF ALABAMA  
JEFFERSON COUNTY

DECLARATION OF PROTECTIVE COVENANTS

---

KNOW ALL MEN BY THESE PRESENTS, that:

WHEREAS, Morris-Shea Bridge Co., Inc. is the owner of the following described real property, located in Jefferson County, Alabama, with an address of 4998 Spring Rock Road and 5004 Spring Rock Road, more particularly described on Exhibit "A" and illustrated in the accompanying map entitled Exhibit "B," which are attached hereto and made a part hereof; and

WHEREAS, the undersigned desires to subject said Property with the conditions, limitations, and restrictions hereinafter set forth.

The undersigned does hereby expressly engraft the following restrictive and protective covenants, conditions, covenants, and limitations on the real property hereinafter described in Exhibit A attached hereto:

I. EXCLUSIVE RESIDENTIAL USE AND IMPROVEMENTS.

A. The Property shall be used for single-family residential purposes only and for no other use or purpose.

B. Any residence constructed on the Property shall contain a minimum of 4,500 square feet of heated and cooled area.

C. The exterior of the residence constructed on the Property must be of brick or better material, and such residence shall have a pitched roof.

D. The residence constructed must contain a minimum of a two (2) car garage or parking area within a basement.

E. The Property shall not be further subdivided.

II. GENERAL PROVISIONS.

A. The Owner of the Property shall use his or her best efforts to prevent the development or occurrence of any unclean, unsightly, or unkept conditions of buildings or grounds on such Property which shall tend to decrease the beauty of the specific area or the neighborhood as a whole.

B. No weeds, underbrush, or other unsightly growth shall be permitted to grow or remain from the building line forward, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain upon any part of the Property.

C. No vegetables or other crops may be grown on the front yard of any house on the Property.

D. No trash, garbage, or other refuse shall be dumped, stored, or accumulated on the Property. Trash, garbage, or other waste shall not be kept on the Property except in sanitary containers or garbage compactor units.

E. No structure of temporary character such as a trailer, mobile home, manufactured home, double-wide manufactured home, tent, or shack shall be used as a residence either temporarily or permanently.

### III. GENERAL PROVISIONS.

A. Each and every covenant and restriction contained herein shall be considered to be an independent and separate covenant and agreement and in the event any one or more of said covenants or restrictions shall, for any reason, be held invalid or unenforceable, all remaining covenants and restrictions shall nevertheless remain in full force and effect in all matters and respects.

B. The covenants and restrictions herein shall enure to the benefit of the land described above and shall run with the land. If any person shall violate or attempt to violate any of such restrictions or covenants, it shall be lawful for the undersigned or the City of Mountain Brook, Alabama: (a) to prosecute proceedings at law for the recovery of damages against the person or persons so violating or attempting to violate any such covenant or restriction, or (b) to maintain an action in equity against the person or persons so violating or attempting to violate any such covenant or restriction for the purpose of preventing such violation; provided, however, that the remedies contained in this paragraph shall be construed as cumulative of all other remedies now or hereafter provided by law.

C. The restrictions, covenants and provisions contained herein shall remain in full force and effect for a period of twenty-five (25) years from the date hereof, after which time said restrictive covenants and provisions shall be automatically extended for successive periods of ten (10) years.



**CITY OF MOUNTAIN BROOK**

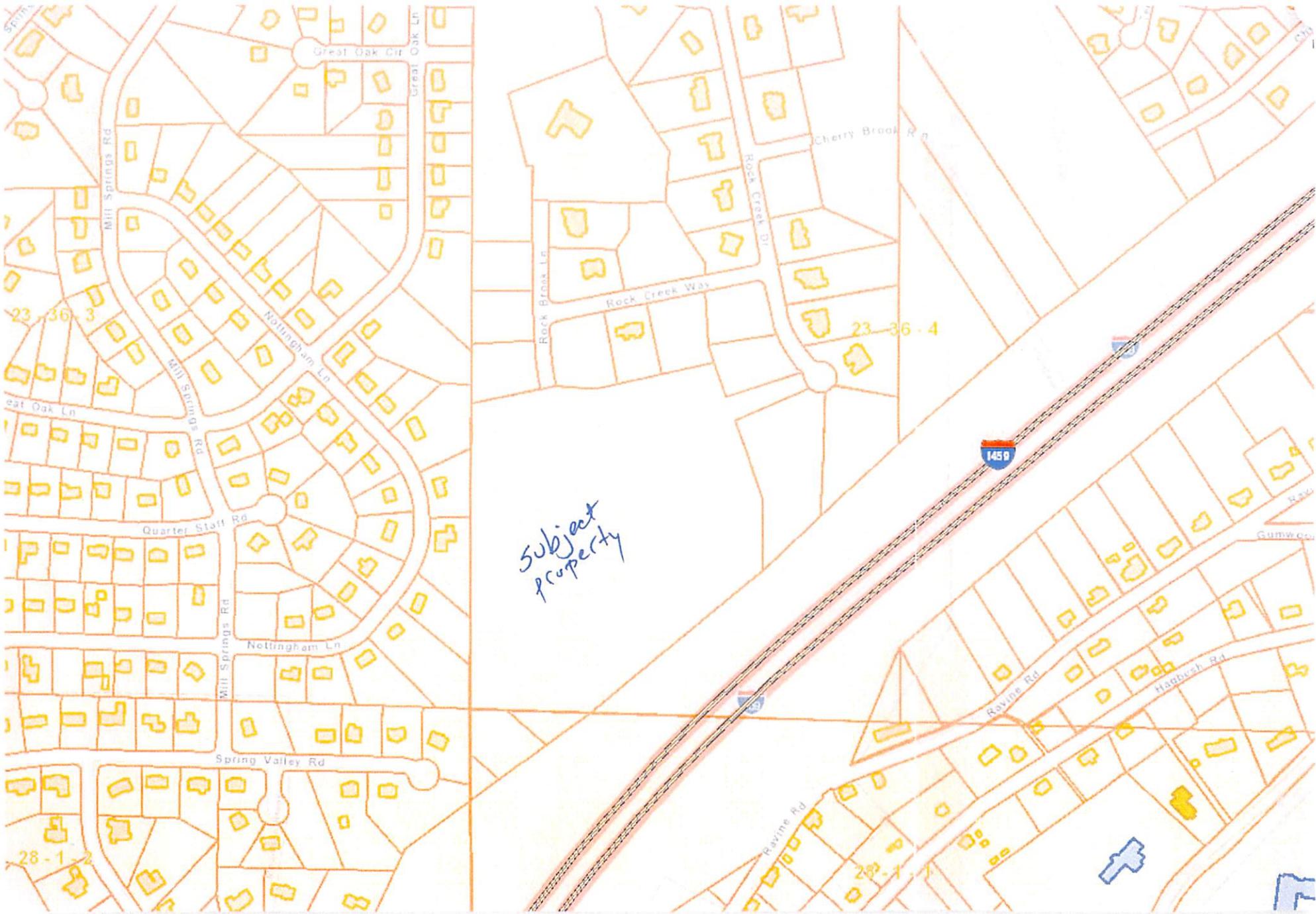
P. O. Box 130009  
Mountain Brook, Alabama 35213-0009  
Telephone: 205.802.2400  
[www.mtnbrook.org](http://www.mtnbrook.org)

---

**Date:** August 7, 2018  
**To:** Sam Gaston, City Manager  
**From:** Steven Boone  
**Subject:** Annexation petition for the August 13, 2018, pre-meeting discussion

I am in receipt of an annexation petition from Lisa Jones and Jeffrey Gilliam for an undeveloped, 18-acre parcel in the Cherokee Bend South area. A developer plans to subdivide the parcel into three lots and construct homes consistent with the City's protective covenants. I have requested that the fully executed covenants be delivered prior to the City Council's consideration of the annexation petition.

If the City Council agrees, this matter may be added to the formal meeting agenda for consideration on August 13, 2018.



Subject Property

145 B

23-36-3

23-36-4

28-1-1

28-1-1



City of  
Mountain Brook

Steve Boone <boones@mtnbrook.org>

## Re: Annexation

1 message

Jason Wallace <jason@bigskybuilder.com>

Tue, Jul 31, 2018 at 10:49 AM

To: Steve Boone <boones@mtnbrook.org>, Dana Hazen <hazend@mtnbrook.org>, Jason Wallace <buildbigsky@gmail.com>

We had David Rawson at Gonzalez-Strength look at it & he said we're good on setbacks & road frontage requirements.

On Tue, Jul 31, 2018 at 10:45 AM, Steve Boone <boones@mtnbrook.org> wrote:  
Dana, have frontage issues been answered?

Steven Boone

On Jul 30, 2018, at 4:25 PM, Jason Wallace <jason@bigskybuilder.com> wrote:

Steve/Dana,

Wasn't certain who would be best to ask this, so I just copied you both to email. We are about ready to submit for annexation of the 3 estate Lots in Cherokee Bend. In regards to the "Questionnaire With Respect To Annexation of Property" form, it asks property owners name. We have this particular property under contract & set to close this year. Are we able to fill out form as owners, or will the current owner/seller, have to sign for that? Just want to make sure we have filled out right, prior to submitting to city.

Thanks again for your help

On Mon, May 21, 2018 at 8:38 AM, Steve Boone <boones@mtnbrook.org> wrote:

I am getting back to you about the prospect of your annexing the undeveloped land in Cherokee Bend South. While I cannot speak specifically for the City Council, I see no reason you cannot proceed with your petition for annexation. Be advised that the lots may well require Residence A zoning in order to meet the road frontage requirements of the City (even though the area of the proposed lots qualifies for Estate zoning, that zoning classification requires greater road frontage). If you have specific questions about the City's zoning regulations you should talk with Dana Hazen at 802-3816.

Attached is the paperwork required to annex the property. You already have a copy of the covenants that are required for undeveloped land.

--

**Steven Boone**

City of Mountain Brook  
P. O. Box 130009  
Mountain Brook, AL 35213-0009  
Direct: (205) 802-3825  
Facsimile: (205) 874-0611

[www.mtnbrook.org](http://www.mtnbrook.org)  
<http://mtnbrookcity.blogspot.com/>  
Twitter®: @mountain\_brook

TO THE CITY CLERK AND THE CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK, A MUNICIPAL CORPORATION IN THE STATE OF ALABAMA:

The undersigned (is the owner) (are the owners) of the property described in Exhibit A attached hereto ("Property"), which is contiguous to the corporate limits of the City of Mountain Brook, a municipal corporation in the State of Alabama ("City"). No part of the Property is within the corporate limits or police jurisdiction of any other municipality. (I) (We) hereby file this petition with the City Clerk of the City and request that the Property be annexed to the City, pursuant to the Code of Alabama 1975, §11-42-21, et seq. A map of the Property, which shows its relationship to the corporate limits of the City, is attached hereto as Exhibit B.

In witness whereof, the undersigned (has) (have) signed this petition on the 2<sup>nd</sup> day of August, 2018.

Betty D. Gilliam  
Witness

[Signature]  
(signature)

Lisa G. Jones  
(print or type name on this line)

Betty D. Gilliam  
Witness

[Signature]  
(signature)

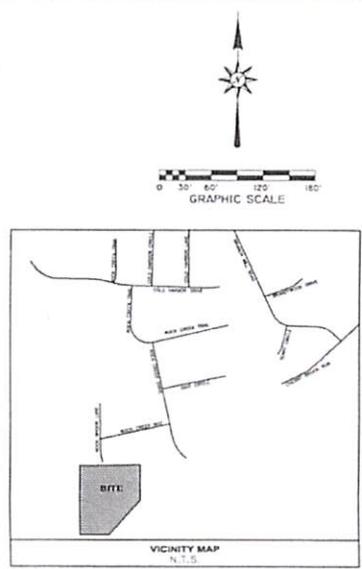
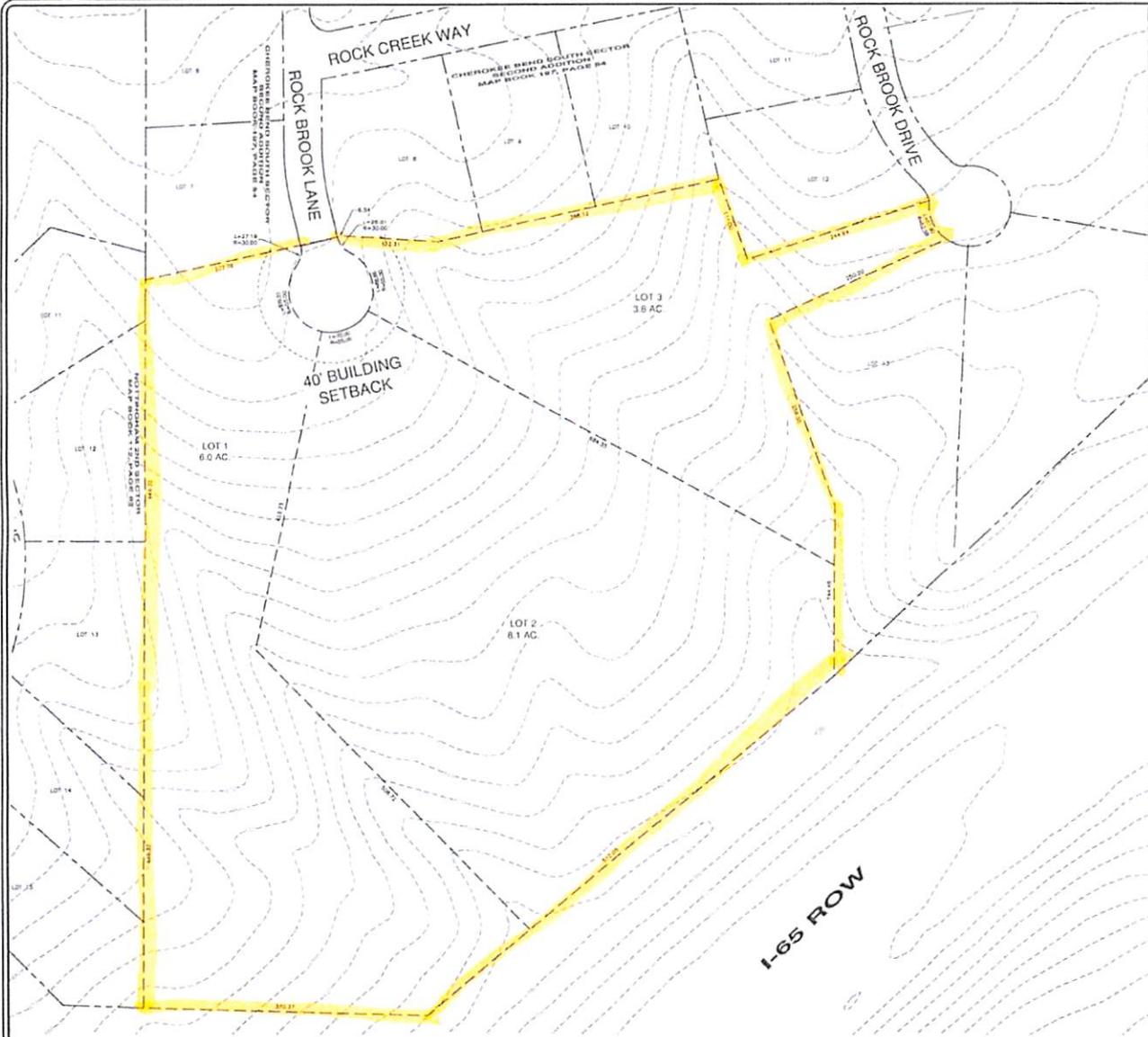
Jeffrey P Gilliam  
(print or type name on this line)

Bent Tree LLC.  
Jason Wallace  
256-990-8002  
Duidbigsky@gmail.com

Description of Property

18 acres to be subdivided into 3 Estate Lots.  
Property adjoins existing Cherokee Bend Subdivision  
off Rock Brook Ln. and Rock Creek Drive.

Schedule 1



NO.	DESCRIPTION	DATE

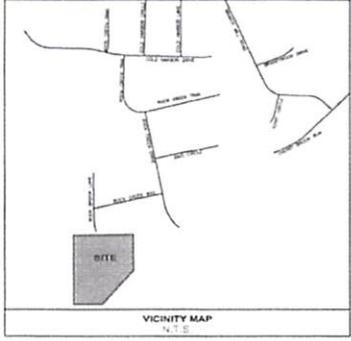
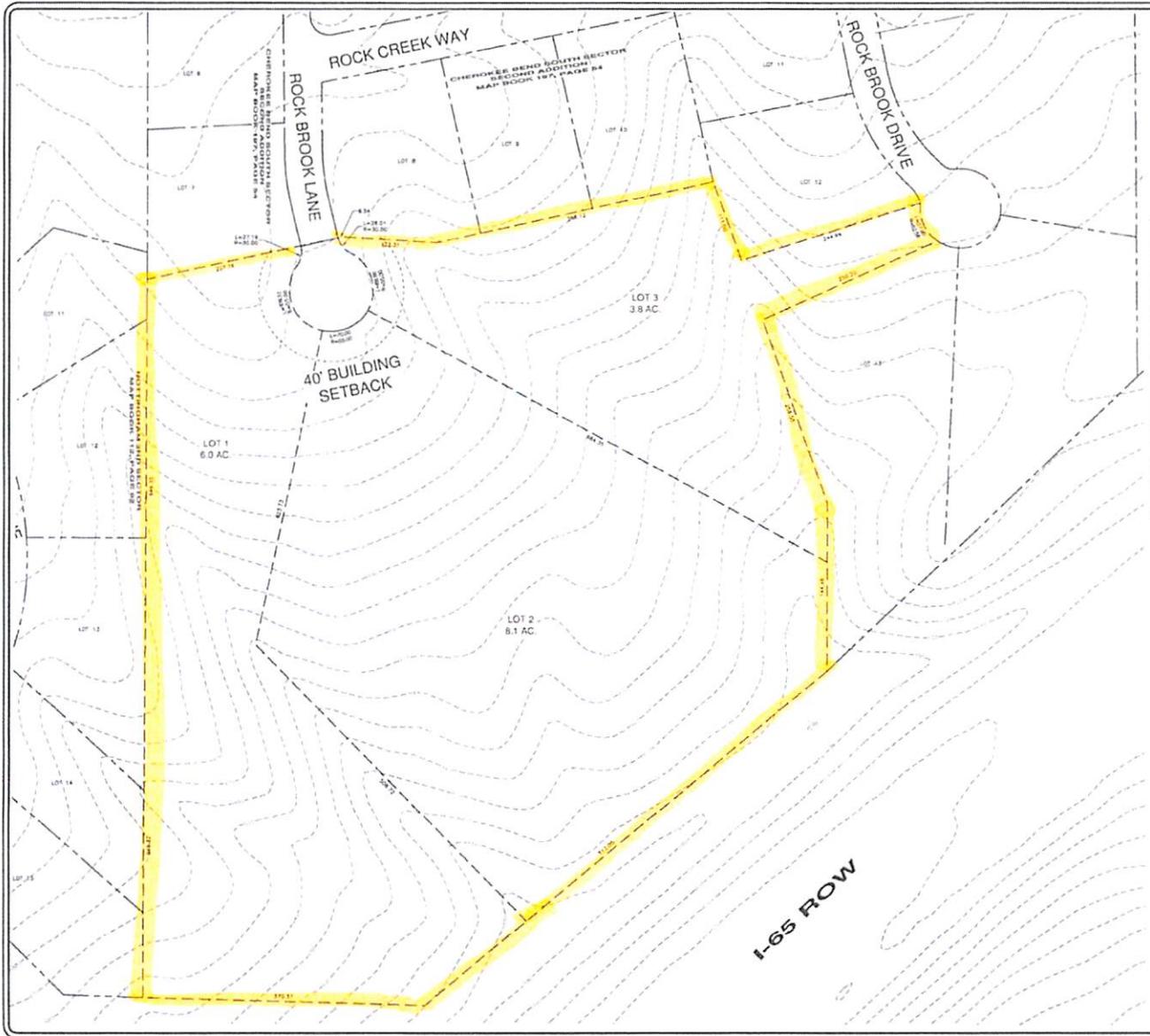
**PRELIMINARY LAYOUT**  
**ROCK BROOK LANE**  
 BENT TREE, AL  
**BENT TREE, LLC**  
 DATE: 8/18/18  
 SCALE: AS SHOWN  
 BY: J. L. BENT

**CONZALEZ - STRENGTH & ASSOCIATES, INC.**  
 CIVIL ENGINEERING, LAND SURVEYING, PLANNING, TRAFFIC & TRANSPORTATION  
 3175 PARKWAY AVENUE SUITE 100  
 FARMINGDALE, MISSISSIPPI 39238  
 PHONE: (601) 842-3488  
 WWW.CONZALEZ-STRONG.COM  
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SHEET NO. OF TOTAL SHEETS
PROJECT NO.

CONZALEZ - STRENGTH & ASSOCIATES, INC. 8/18/18

1:1 Page 001 of 001 (Sheet 001 of 001) 10/10/2018 10:10:10 AM



<p><b>PRELIMINARY LAYOUT</b>  <b>ROCK BROOK LANE</b>          A  <b>BENT TREE, LLC</b></p>		<p>DATE: 10/10/2018          SCALE: 1"=100'          SHEET: 001 OF 001</p>
<p><b>GONZALEZ - STRENGTH &amp; ASSOCIATES, INC.</b>          CIVIL ENGINEERING, LAND SURVEYING, PLANNING, TRAFFIC &amp; TRANSPORTATION          1100 W. ALABAMA STREET          HOUSTON, ALABAMA 35894          TEL: (205) 842-2228          FAX: (205) 842-2229          www.Gonzalez-Strength.com</p>		<p>© Copyright 2008          11/10/2018 10:10:10 AM</p>

SEND TAX NOTICE TO:  
Jeffrey Paul Gilliam  
5733 Cypress Trace  
Hoover, AL 35244

This instrument was prepared by  
A. Eric Johnston, Esquire  
1200 Corporate Drive, Suite 107  
Birmingham, Alabama 35242

2012121500129890 1/3  
BK: LR201220 Pg: 1222  
Jefferson County, Alabama  
I certify this instrument filed on:  
12/15/2012 10:57:58 AM  
Judge of Probate- Alan L. King

**WARRANTY DEED**

STATE OF ALABAMA )  
JEFFERSON COUNTY ) KNOW ALL MEN BY THESE PRESENTS:

That in consideration of \$1.00 and other good and valuable consideration to the undersigned grantor (whether one or more), in hand paid by the grantee herein, the receipt whereof is acknowledged, we, Duncan & Gilliam Construction Co., Inc., Paul Wesley Gilliam, Jr. and spouse, Betty Duncan Gilliam (herein referred to as grantor, whether one or more), grant, bargain, sell and convey unto Jeffrey Paul Gilliam and Lisa Gilliam Jones (herein referred to as grantee, whether one or more), as joint tenants, the following described real estate, situated in Jefferson County, Alabama, to wit:

See attached Exhibit "A."

Subject only to: unpaid taxes, easements, rights of way, mineral or mining rights, and other proper encumbrances of record.

This is not the homestead of the Grantor.

NO TITLE OPINION GIVEN.

TO HAVE AND TO HOLD to the said grantee, his, her or their heirs and assigns forever.

And we do for ourselves and for our heirs, executors, and administrators covenant with the said GRANTEE, their heirs and assigns, that we are lawfully seized in fee simple of said premises; that they are free from all encumbrances, unless otherwise noted above; that we have a good right to sell and convey the same as aforesaid; that we will and our heirs, executors and administrators shall warrant and defend the same to the said GRANTEE, their heirs and assigns forever, against the lawful claims of all persons.

IN WITNESS WHEREOF, I have hereunto set our hands and seals, this 14<sup>th</sup> day of December, 2012.

DUNCAN & GILLIAM CONSTRUCTION  
CO., INC.

  
BY: Paul Wesley Gilliam, Jr.  
ITS: President

  
Paul Wesley Gilliam, Jr.

  
Betty Duncan Gilliam

STATE OF ALABAMA )  
JEFFERSON COUNTY )

General Acknowledgment

I, A. Eric Johnston, a Notary Public in and for said County, in said State, hereby certify that Paul Wesley Gilliam, Jr., in his capacity as President of Duncan & Gilliam Construction Co., Inc., signs this with full authority, and who is known to me, being first duly sworn on oath, acknowledged before me on this day, that, being informed of the contents of the conveyance he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 14<sup>th</sup> day of December, 2012.

  
\_\_\_\_\_  
Notary Public  
My Commission Expires: 2-3-2016

STATE OF ALABAMA )  
JEFFERSON COUNTY )

General Acknowledgment

I, A. Eric Johnston, a Notary Public in and for said County, in said State, hereby certify that Paul Wesley Gilliam, Jr. and Betty Duncan Gilliam, whose names are signed to the foregoing conveyance, and who are known to me, acknowledged before me on this day, that, being informed of the contents of the conveyance they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 14<sup>th</sup> day of December, 2012.

  
\_\_\_\_\_  
Notary Public  
My Commission Expires: 2-3-2016

**EXHIBIT "A" TO THE DEED FROM  
DUNCAN & GILLIAM CONSTRUCTION CO., INC.,  
PAUL WESLEY GILLIAM, JR. AND BETTY DUNCAN GILLIAM  
TO  
JEFFREY PAUL GILLIAM AND LISA GILLIAM JONES**

**LOTS I**

Lots 4, 6, 7, and 8, lying North and West of Interstate Highway I-459, according to the map of Overton Land Company's Overton No. 1 Subdivision, as recorded in Map Book 34, Page 91, in the Office of the Judge of Probate of Jefferson County, Alabama.

**LOTS II**

Lots 10, 13 and 14, according to the map and survey of Cherokee Bend, Second Sector, Second Edition, as recorded in Map Book 197, Page 54, in the Office of the Judge of Probate of Jefferson County, Alabama.

**PARCEL I:**

Beginning at the northeast corner of the northwest quarter of the southeast quarter of Section 36, Township 17 south, Range 2 west, Jefferson County, Alabama, and run thence S 00°00'00" W along the east line of said quarter-quarter section a distance of 1,136.78' to the southeast corner of Lot 18 of Cherokee Bend, South Sector, Second Addition as recorded in Map Book 197, Page 54, in the Office of the Judge of Probate of Jefferson County, Alabama; Thence run N 65°47'21" W along the northeasterly line of said Lot 18 a distance of 250.23' to the southeast corner of Lot 8 of Cherokee Bend, South Sector, First Addition as recorded in Map Book 175, Page 1, in the Office of the Judge of Probate of Jefferson County, Alabama; Thence run N 11°12'06" W along the rear lot lines of Lot 8 of same said subdivision a distance of 180.00" to a corner marking the southeast corner of Cherry Brook Run, a public street; Thence run N 05°29'28" W across the said street a distance of 50.25' to the southeast corner of Lot 9 of same said subdivision; Thence run N 11°12'06" W along the east line of Lot 9 a distance of 225.00' to a corner; Thence run N 78°47'54" E along the south line of Lot 11 of same said subdivision a distance of 145.00' to the southeast corner of said Lot 11; Thence run N 11°12'06" W along the east line of said Lot 11 a distance of 225.00' to the southeasterly corner of Rock Creek Trail, a public street; Thence run N 16°54'44" W across the east end of said street a distance of 50.25' to the southeast corner of Lot 12 of same said subdivision; Thence run N 11°12'06" W along the east property line of Lot 12 of same said subdivision a distance of 304.45' to a corner on the north line of said northwest quarter of the southeast quarter of said Section 36; Thence run S 88°15'10" E along the north line of said quarter-quarter a distance of 287.07' to the point of beginning, containing 6.14 acres, more or less. Property is subject to any and all agreements, easements, omissions, restrictions and/or limitations of probated record and/or applicable law.

**PARCEL II - No property conveyed.**

**PARCEL III:**

Beginning at the southwest corner of Lot 7, Cherokee Bend, South Sector, 2nd Addition, as recorded in Map Book 197, Page 54, in the Office of the Judge of Probate of Jefferson County, Alabama, and run thence S 00°01'32" E a distance of 975.55' to a property corner; Thence run S 87°16'04" E a distance of 117.01' to a corner on the northwesterly right of way line of Interstate Highway No. 459; Thence run N 59°57'45" E along said right of way line of said I-459 a distance of 883.84' to a corner; Thence run N 01°44'54" E

a distance of 230.00' to a corner; Thence run N 18°09'34" W a distance of 260.00' to a corner on the southerly margin of a proposed access easement; Thence run N 64°26'53" E along said southerly margin of said proposed easement a distance of 267.95' to a point on the westerly margin of Rock Creek Drive in a curve to the right having a central angle of 28°17'24" and a radius of 50.00'; Thence run northerly along the arc of said curve an arc distance of 24.69' to the P.R.C. of a curve to the left having a central angle of 48°11'23" and a radius of 25.0'; Thence run northerly along the arc of said curve an arc distance of 21.03' to the P.R.C. of a curve to the left having a central angle of 01°38'21" and a radius of 349.55'; Thence run northerly along the arc of said curve an arc distance of 10.00' to a point on the north line of said access easement; Thence run S 71°27'04" W a distance of 261.62' to a corner; Thence run N 18°09'34" W along the rear lot line of Lot 12 of same said subdivision a distance of 112.67' to the southeast corner of Lot 10 of same said subdivision; Thence S 78°47'54" W a distance of 110.14' to a corner; Thence run S 78°47'54" W a distance of 256.85' to a corner; Thence run S 88°31'41" W a distance of 118.48' to a corner; Thence run S 78°47'54" W a distance of 50.0' crossing Rock Creek Lane to a corner; Thence run S 78°46'59" W along the south line of same said Lot 7, of same said subdivision, a distance of 224.55' to the point of beginning, containing 17.25 acres, more or less. Property is subject to any and all agreements, easements, omissions, restrictions and/or limitations of probated record, regulation, and/or applicable law.

PARCEL IV - No property conveyed.

PARCEL V:

All that part of the SW 1/4 of the SE 1/4 lying south of the Interstate Highway 459 right-of-way, containing 0.15 acres, more or less.

**LOT AND PARCEL HEADINGS ARE ONLY FOR GRANTOR'S IDENTIFICATION  
FROM PRIOR DOCUMENTS AND DO NOT DESCRIBE OR RELATE TO THE  
DESCRIPTION OF ANY PROPERTY BEING CONVEYED.**

Real Estate Sales Validation Form

This Document must be filed in accordance with Code of Alabama 1975, Section 40-22-1  
Duncan & Gilliam Construction Co., Inc.

Grantor's Name Paul Wesley Gilliam, Jr., Betty  
Mailing Address Duncan Gilliam  
728 Twin Branch Drive  
Birmingham, AL 35226

Grantee's Name Jeffrey Paul Gilliam, Lisa Gilliam  
Jonah  
Mailing Address 5733 Cypress Trace  
Hoover, AL 35244

Property Address Various Parcels  
Overton Road, Birmingham,  
Alabama

Date of Sale \_\_\_\_\_  
Total Purchase Price \$ \_\_\_\_\_  
or  
Actual Value \$ \_\_\_\_\_  
or  
Assessor's Market Value \$ 1,097,700.00

The purchase price or actual value claimed on this form can be verified in the following documentary evidence: (check one) (Recordation of documentary evidence is not required)

- Bill of Sale
- Sales Contract
- Closing Statement
- Appraisal
- Other Tax Assessor's Notices

If the conveyance document presented for recordation contains all of the required information referenced above, the filing of this form is not required.

Instructions

Grantor's name and mailing address - provide the name of the person or persons conveying interest to property and their current mailing address.

Grantee's name and mailing address - provide the name of the person or persons to whom interest to property is being conveyed.

Property address - the physical address of the property being conveyed, if available.

Date of Sale - the date on which interest to the property was conveyed.

Total purchase price - the total amount paid for the purchase of the property, both real and personal, being conveyed by the instrument offered for record.

Actual value - if the property is not being sold, the true value of the property, both real and personal, being conveyed by the instrument offered for record. This may be evidenced by an appraisal conducted by a licensed appraiser or the assessor's current market value.

If no proof is provided and the value must be determined, the current estimate of fair market value, excluding current use valuation, of the property as determined by the local official charged with the responsibility of valuing property for property tax purposes will be used and the taxpayer will be penalized pursuant to Code of Alabama 1975 § 40-22-1 (h).

I attest, to the best of my knowledge and belief that the information contained in this document is true and accurate. I further understand that any false statements claimed on this form may result in the imposition of the penalty indicated in Code of Alabama 1975 § 40-22-1 (h).

Date \_\_\_\_\_

Print Paul W. Gilliam, Jr.

Unattested

Sign *Paul W. Gilliam, Jr.*  
(Grantor/Grantee/Owner/Agent) circle one

20121218001358990 5/5  
Bk: LR201220 Pg: 7222  
Jefferson County, Alabama  
12/18/2012 10:57:50 AM D  
Fee - \$25.00  
Deed Tax - \$1089.00  
Total of Fees and Taxes - \$1126.00  
HTC/ERK

Int Form

Form RT-1

QUESTIONNAIRE WITH RESPECT TO ANNEXATION OF PROPERTY

1. Print name(s) of property owner(s).  
Bent Tree LLC.
2. Insert the attached Schedule 1 the legal description of the property owned by the undersigned for which an annexation petition has been filed ("Property").
3. Provide the following information about the Property:
  - a. Address: 3758 Rock Brook Ln.  
Birmingham, AL 35223
  - b. Size of property: 18.70 acres, or  
square feet
  - c. Number of residents: 3
  - d. Number of residents of voting age  
(18 years of age and or older): N/A
  - e. Number of registered voters: N/A
4. Provide the following information with respect to each person residing on the Property who is under the age of 22 years. If more than one such person resides on the Property, use an additional sheet, if necessary, to provide information for such additional person(s).
  - a. Name: \_\_\_\_\_
  - b. Age: \_\_\_\_\_
  - c. Grade in school, during the current school term: \_\_\_\_\_
  - d. School presently attended: \_\_\_\_\_
5. What is the present use of the Property? Current Use
6. What is the anticipated use of the Property? Develop into 3 Residential Lots.
7. Is the Property under contract with the City of Mountain Brook for fire protection services?  
YES ( ) NO ( )

8. Attach a copy of the deed by which the Property was conveyed to the present owner(s).

In witness whereof, the undersigned (has) (have) executed this questionnaire on the 2<sup>nd</sup> day of August, 2018.

Betty D. Williams  
Witness

[Signature]  
(signature of owner)

Betty D. Williams  
Witness

[Signature]  
(signature of owner)