

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

POSEY
WESTVIA

March 16, 2018

By Hand Delivery

City Manager Jeff Downes
Vestavia Hills Municipal Center
1032 Montgomery Highway
Vestavia Hills, Alabama 35216

In Re: Conwell Property

Dear Mr. Downes:

Recently, you requested that I provide you with the zoning classification of the Conwell property and a summary of the history regarding that land. The purpose of this report is to comply with your request.

I. FACTS

Recently, Mr. John Posey requested that the City of Vestavia Hills, Alabama ("City") issue a zoning certification for unimproved real estate consisting of 12.44 acres and referred to as Glen at Jacobs Condominium Land. In order to do that, the City Clerk needs information regarding the zoning classification of the property that has been referred to over the last 30 years as the "Conwell property."

II. THE PROPERTY

Important information about the Conwell property (hereinafter referred to as "the property") is set forth below.

A. **LEGAL DESCRIPTION:** The property is more particularly described as follows:

"Part of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 6, Township 19 South,
Range 2 West, more particularly described as follows:

Commence at the NE corner of the SE¼ of the SW¼ of Section 6, Township 19 South, Range 2 West and run South along the East line for 60.05 feet to the point of beginning; thence 92 degrees 24' right and run Westerly along the Southerly line of a County Road for 811.17 feet; thence 92 degrees 14' left and run Southerly for 175.00 feet; thence 87 degrees 46' left and run Easterly for 150.00 feet; thence 71 degrees 15' right and run Southeasterly for 600.00 feet; thence 71 degrees 15' left and run Easterly for 545 feet more or less to a point on the East line of said quarter-quarter section; thence North along the East line of said quarter-quarter section to the point of beginning."

B. SIZE: The property consists of a total of 10.9 acres, which is divided into two (2) different parcels as follows:

1.	<u>Parcel 1:</u>	3.19 acres
2.	<u>Parcel 2:</u>	7.71 acres
	Total	10.90 acres

C. ZONING CLASSIFICATION: The zoning classifications for the two parcels are as follows:

<u>Parcel</u>	<u>Size</u>	<u>Zoning Classification Prior to 11/22/1988</u>	<u>Zoning Classification After 11/22/1988</u>
1	3.19 acres	A-1 Agricultural under Jefferson County; R-1 pursuant to Vestavia Hills Zoning Map	R-4 Single-Family Residential under Vestavia Hills Zoning Code
2	7.71 acres	A-1 Agricultural under Jefferson County; R-1 Pursuant to Vestavia Hills Zoning Map	R-8 Townhomes under Vestavia Hills Zoning Code

III. REZONING REQUEST

In the summer of 1986, Mr. and Mrs. Conwell made an application to the City of Vestavia Hills requesting that the property be rezoned. They specifically requested:

A. That Parcel 1 consisting of 3.19 acres be rezoned from Agricultural to R-4 Single-Family Residential; and

B. That Parcel 2 consisting of 7.71 acres be rezoned from Agricultural to R-8 Townhomes, which would allow the construction of 56 townhomes.

Ordinance Number 841 proposed the requested rezoning. On September 15, 1986, The City Council unanimously voted to deny the rezoning request.

A copy of Ordinance Number 841 is attached hereto, marked as Exhibit 1 and is incorporated into this report by reference as though set out fully herein. A copy of the Minutes of the September 15, 1986 City Council Meeting is attached hereto, marked as Exhibit 2 and is incorporated into this report by reference as though set out fully herein.

IV. LAWSUIT

A. **STYLE:** In 1986, the owners of the property filed a lawsuit in the Civil Division of the Circuit Court of Jefferson County, Alabama styled *William W. Conwell and Margaret E. Conwell, Plaintiffs v. the City of Vestavia Hills, a municipal corporation, et al*, being case number CV 86-504-681.

B. **JUDGE:** Jefferson County Court Judge Marvin Cherner presided over the case.

C. **ATTORNEYS:**

1. **Plaintiffs:** The Plaintiffs were represented by attorney, Douglas P. Corretti.

2. **Defendants:** The Defendants were represented by attorney, Patrick H. Boone.

D. **TRIAL:** The case was tried to a conclusion.

E. **DEVELOPMENT PLAN:** A specific development plan for Parcel 1 and Parcel 2 was introduced and received into evidence as Court Exhibit 3.

F. **COURT ORDER DATED AUGUST 5, 1988:**

1. The Court found and determined that the denial of the zoning request did not have a reasonable and substantial relationship to the promotion of the public health, safety, morals or general welfare of the City.

2. The Court further found and determined that the action by the City Council in denying the rezoning application was arbitrary and capricious.

3. The Court held that the decision of the City to deny the requested rezoning is overruled.

4. The Plaintiffs were ordered to prepare Restrictive Covenants to be filed in the office of the Probate Court of Jefferson County, Alabama by which the Conwells will undertake the obligation to develop their property in accordance with their proposed development plan **without deviation** (*emphasis added*).

5. Upon approval by the Court of such Restrictive Covenants and upon the filing of the same in the Probate Court of Jefferson County, Alabama, the City of Vestavia Hills shall approve the Conwells' application to rezone their property from R-1 Residential to R-4 Residential (Parcel 1) and R-8 Townhomes (Parcel 2) in accordance with the application made by the Conwells.

A copy of the Court Order, dated August 5, 1988, is attached hereto, marked as Exhibit 3 and is incorporated into this report by reference as though set out fully herein.

G. RESTRICTIVE COVENANTS:

1. The Conwells prepared the Restrictive Covenants as ordered by the Court.
2. The Restrictive Covenants were approved by Judge Cherner, filed in the office of the Judge of Probate of Jefferson County, Alabama on November 22, 1988 and recorded at Real 3585, Page 697.
3. In substance, the Restrictive Covenants provided, among other things, that the 10.9 acres shall be developed in accordance with that certain Site Development Plan prepared by Fortinberry and Wisdom Architects and Planners, dated March 19, 1986, **without deviation** (*emphasis added*).

A copy of Restrictive Covenants is attached hereto, marked as Exhibit 4 and is incorporated into this report by reference as though set out fully herein.

G. COURT ORDER DATED NOVEMBER 22, 1988: On November 22, 1988, Judge Cherner rendered an Order, which provided, among other things, as follows:

“1. That the Defendant, City of Vestavia Hills, shall forthwith zone Plaintiffs' property from R-1 (Residential District) to R-4 (Residential District) and R-8 (Townhome District) in accordance with the rezoning application heretofore made by Plaintiffs to the City of Vestavia Hills and without any further or additional public hearings before the Planning and Zoning Board and the City Council of the City of Vestavia Hills.”

A copy of the Court Order dated November 22, 1988 is attached hereto, marked as Exhibit 5 and is incorporated into this report by reference as though set out fully herein.

V. PARCEL 1 OF THE CONWELL PROPERTY

A visual inspection of the Conwell property on Wisteria Road shows that Parcel 1 consisting of 3.19 acres has been developed for single-family detached residential dwellings.

March 16, 2018

Page 5

VI. PARCEL 2 OF THE CONWELL PROPERTY

A visual inspection of the Conwell property reflects that Parcel 2 consisting of 7.71 acres is vacant and unimproved.

VII. CONCLUSION

Parcel 2 of the Conwell property consisting of 7.71 acres is presently zoned R-8 Townhomes pursuant to the Court Order, dated November 22, 1988, and designated as Exhibit 5. Among other things, the two Court Orders and Restrictive Covenants allow the construction of no more than fifty-six (56) townhome units to be constructed under the R-8 Townhome zoning classification **without deviation** from the plan submitted to and approved by the Court in 1988.

Please call me if you have any questions regarding this report.

Very truly yours,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

Enclosures

cc: City Clerk Rebecca Leavings (by hand-w/encl.)

ORDINANCE NUMBER 841

AN ORDINANCE TO FURTHER AMEND THE ZONING ORDINANCE AND ZONING MAP OF THE CITY OF VESTAVIA HILLS, ALABAMA ADOPTED SEPTEMBER 16, 1985 AND AS LAST AMENDED SO AS TO CHANGE THE CLASS OF DISTRICT ZONING OF A PARCEL OF PROPERTY FROM R-1 TO R-8 AND ANOTHER PARCEL OF PROPERTY FROM R-1 TO R-4

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

1. That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from R-1 to R-8.

Commence at the northeast corner of the southeast one-quarter of the southwest quarter of Section 6 Township 19 South Range 2 West; thence run south along the east line of said quarter-quarter section line for a distance of 195.43 feet to the point of beginning; from the point of beginning thus obtained run in a southerly direction along the east line of said quarter-quarter for a distance of 608.59 feet; thence turn an angle to the right of 92 degrees 24 minutes and run in a westerly direction for a distance of 542.90 feet; thence turn an angle to the right of 71 degrees 15 minutes and run in a northwesterly direction along the northeasterly line of Rockwood Ridge subdivision as recorded in Map Book 80 Page 17 in the Office of the Judge of Probate, Jefferson County, Alabama for a distance of 521.39 feet; thence turn an angle to the right of 121 degrees 42 minutes 23 seconds and run in a southeasterly direction for a distance of 49.23 feet; thence turn an angle to the right of 7 degrees 20 minutes 25 seconds and run in a southeasterly direction for a distance of 80.38 feet; thence turn an angle to the left of 17 degrees 47

minutes 44 seconds and run in a southeasterly direction for a distance of 72.04 feet; thence turn an angle to the left of 34 degrees 23 minutes 21 seconds and run in a northeasterly direction for a distance of 106.25 feet; thence turn an angle to the right of 7 degrees 48 minutes 26 seconds and run in a northeasterly direction for a distance of 58.49 feet; thence turn an angle to the left of 9 degrees 58 minutes 21 seconds and run in a northeasterly direction for a distance of 43.03 feet; thence turn an angle to the right of 13 degrees 13 minutes 30 seconds and run in a northeasterly direction for a distance of 152.00 feet; thence turn an angle to the right of 21 degrees 24 minutes 57 seconds and run in an easterly direction for a distance of 168.36 feet to the point of beginning.

3240 Wisteria Drive (7.66 acres).

2. That the Zoning ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from R-1 to R-4.

Commence at the northeast corner of the southeast one-quarter of the southwest one-quarter of Section 6 Township 19 South Range 2 West; thence turn south along the east line of said quarter-quarter for a distance of 60.43 feet to the point of beginning; from the point of beginning thus obtained turn an angle to the right of 92 degrees 23 minutes 02 seconds and run in a westerly direction along the south right-of-way line of Wisteria Drive for a distance of 811.48 feet; thence turn an angle to the left of 92 degrees 16 minutes 28 seconds and run in a southerly direction for a distance of 174.92 feet; thence turn an angle to the left

of 87 degrees 25 minutes 24 seconds and run in an easterly direction along the northerly line of Lot-2 Block 1 Rockwood Ridge First Sector for a distance of 100.10 feet; thence turn an angle to the right of 70 degrees 57 minutes 50 seconds and run in a southeasterly direction along the northeasterly line of Lots 2 and 3 Block 1 Rockwood Ridge First Sector for a distance of 77.85 feet; thence turn an angle to the left of 58 degrees 17 minutes 37 seconds and run in a southeasterly direction for a distance of 49.23 feet; thence turn an angle to the right of 7 degrees 20 minutes 25 seconds and run in a southeasterly direction for a distance of 80.38 feet; thence turn an angle to the left of 17 degrees 47 minutes 44 seconds and run in a southeasterly direction for a distance of 72.04 feet; thence turn an angle to the left of 34 degrees 23 minutes 21 seconds and run in a northeasterly direction for a distance of 106.25 feet; thence turn an angle to the right of 7 degrees 48 minutes 26 seconds and run in a northeasterly direction for a distance of 58.49 feet; thence turn an angle to the left of 9 degrees 58 minutes 21 seconds and run in a northeasterly direction for a distance of 43.03 feet; thence turn an angle to the right of 13 degrees 13 minutes 30 seconds and run in a northeasterly direction for a distance of 152.00 feet; thence turn an angle to the right of 21 degrees 24 minutes 57 seconds and run in an easterly direction for a distance of 168.36 feet; thence turn an angle to the left of 92 degrees 59 minutes 15 seconds and run north along the east line of the southeast one-quarter of the southwest one-quarter of Section 6 Township 19 South Range 2 West for a distance of 135.00 feet to the point of beginning.

3240 Wisteria Drive (3.78 acres)

APPROVED and ADOPTED this the 15th day of September, 1986.

Fred H. McCrory
Council President

ATTESTED BY:

Thelma R. Moon
City Clerk

APPROVED BY:

Sara W. Wuska
Mayor

CITY OF VESTAVIA HILLS
COUNCIL MEETING MINUTES
SEPTEMBER 15, 1986

The Vestavia Hills City Council met in regular session in the Council Chambers this date at 7:00 p.m. The roll was called with the following:

MEMBERS PRESENT: Council President Fred McCrory
Council Pro Tem Bill Williams
Councilman Hank Battle
Councilman Charlie Davis
Councilman Sherman Suitts

MEMBERS ABSENT: None

OTHERS OFFICIALS PRESENT: Mayor Sara Wuska
City Attorney Pat Boone
City Clerk Thelma Moon
City Engineer Wayne Sullivan
Chaplain Dr. Tyson
Police Chief Doug Jefferson
Fire Chief Bill Towers

OTHER OFFICIALS ABSENT: None

Invocation was given by Dr. Tyson.

APPROVAL OF MINUTES

Minutes of the September 2, 1986 meeting were approved, with one correction made by City Attorney Boone. Mr. Boone stated that on page 2 of the minutes, 4th paragraph from bottom of page, the name should read Mr. Brown instead of Mr. Boone.

MOTION: Motion for approval was made by Council Pro Tem Williams and seconded by Councilman Suitts. Voice vote was:

Councilman Battle	Yes	Council President McCrory	Yes
Councilman Davis	Yes	Council Pro Tem Williams	Yes
Councilman Suitts	Yes		

MAYOR'S ANNOUNCEMENTS

Mayor Wuska stated she had planned to announce the appointment or establishment of Vestavia Hills as a Bicentennial Community, but this was announced the previous night on the news. Mayor Wuska explained that the City will be participating in the 200th year celebration of the writing of the U.S. Constitution, and she elaborated on what this entails:

C.C. Minutes 7/17/66

The main requirements for being a Bicentennial Community are (1) establish a committee representative, and (2) develop a plan for an approved program for commemoration to educate the people about the commitments of being a Bicentennial Community. The official designation for being a Bicentennial Community comes from the Federal Committee. Vestavia Hills is the only city in Alabama to be designated a Bicentennial Community.

Margaret Armbruster is chairwoman of the 10 member Vestavia Hills Bicentennial Commission, which includes Carlos Ballard, Douglas Coretti, Judge James S. Garrett, Grace Reid, Martha Rusk, Dr. Neil Sheppherd, Nancy Terrell, Harvey Watson and Dr. Donald Wilson.

This commission will serve for the next three years and feel they will be truly wonderful years in which to appreciate and understand the liberty and freedom of our Country.

CITY OFFICIALS - GADSDEN

Council President McCrory introduced the following newly elected officials from Gadsden who were in attendance to observe the Council meeting:

Mayor:	David Nolen
Councilmen:	William Cunningham
	Doug Weems
	Robert Avery
	Robert Echols
	Holley Arbery
	Jim Armstrong
	Lewis Fuller
Attorney:	Roger Kirby

Council President McCrory welcomed them to the City. Mayor Elect Nolan stated they appreciated the opportunity to observe.

SLIDE PRESENTATION

Council President McCrory stated the entrance to the north of the City is beautified with Sybil Temple, and the Temple and the grounds are beautiful. He stated it is now time to think about beautifying the southern entrance to the City.

Council President McCrory has asked the Vestavia Hills Baptist Church to donate four or six marble columns to the City to be erected at the south entrance to Vestavia (between the freeway and Greenbrier Furniture Company would be an excellent location). He also showed the architect's rendering of the columns.

Council President McCrory also stated there are many islands to be beautified with flowers and shrubbery and we need to get everyone involved with the beautification of the City.

MEN'S GARDEN CLUB

Mr. Henderson Walker presented plans to landscape and plant more on the plot of land at the intersection of Shades Crest Road and Montgomery Highway. He stated they need electricity for the area and also water. They can use an adapter on the fire hydrant and plan to do so for water, but they need some help from the City for electricity.

Mr. Oliver Brock stated he had met with Mark Swindall of Alabama Power Company and it will cost approximately \$900.00 to get electricity, as a pole has to be set and a meter loop installed. Mr. Brock stated he and Mr. Walker were requesting that the City pay the charges for the pole and meter; the water will be all right.

Council Pro Tem Williams asked if the City could spend funds for the project since the property is in Jefferson County. City Attorney Boone stated as long as it is for City purposes, the money can be spent.

Mr. Brock stated they need the electricity because they are going to put up a live Christmas tree there.

Council President McCrory stated Claude Hudson might donate the pole and he would help with the wiring.

Mr. Walker stated they asked Jefferson County to fix the ditch along Shades Crest Road and it looks great now.

Council President McCrory stated the Council would take this matter under advisement.

PRESENTATIONS

Mr. Joe Mapes, an Exchange Club representative presented their award, "The Book of Golden Deeds" to Mayor Wuska.

Mr. Mapes presented their award, "Outstanding Newspaper Reporter of the Year" to Lou Isaacson of the Birmingham News.

SENIOR CITIZENS

Council President McCrory stated they are making progress for facilities for the Senior Citizens for this fall.

SEWER PROBLEM

Council President McCrory read a letter from Harry Benjamin, 808 Comer Circle, stating the problems they had previously had and were now having with the sewer and asking why they were not included in the sewer installation that is presently being installed on Comer Circle.

After reading the letter, Council President McCrory stated this would be turned over to the City Engineer.

STOP SIGN

Council President McCrory stated the residents in the area of Aspen Cove Drive and Shady Cove Drive had requested a stop sign at that intersection.

Police Chief Jefferson and City Engineer Sullivan both stated they supported the installation of the sign. The City Engineer's recommendation for the sign was due to inadequate site distance at this location and not because of traffic volume.

Greg McClinton asked if it was going to be a three way stop sign and stated how much they appreciated the installation of the stop sign.

MOTION: Motion for approval of a three way stop sign at Shady Cove Drive and Aspen Cove Drive was made by Council Pro Tem Williams and seconded by Councilman Battle. Voice vote was:

Councilman Battle	Yes	Council President McCrory	Yes
Councilman Davis	Yes	Council Pro Tem Williams	Yes
Councilman Suits	Yes		

REZONING - 3240 WISTERIA DRIVE

ORDINANCE #841 - Rezoning 3240 Wisteria Drive from Jefferson County R-1 to R-4 and R-8 Vestavia Hills.

Council President McCrory asked for unanimous consent. Vote was unanimous.

Mr. Douglas Corretti was present, representing Mr. Bill Conwell, owner.

Mr. Corretti stated they had already given the presentation when they came before the Council in June and would like to add they would appreciate the use of the property as requested. The existing uses on the nearby property are multi-family. Mr. Coretti stated 6 houses will face the existing single family houses, which are already surrounded on three sides by multi-family housing.

Council President McCrory read a letter from the Planning and Zoning Board stating that on May 9, 1986 they voted unanimously to deny the zoning.

Mr. William Spier, consultant for the City, gave his presentation. He stated he had worked on a number of developments and was requested by the City to look at this development and give his opinion as to what the best use for this property would be.

He said in the one square mile that surrounds this property, the map shows Interstate 65 coming down between the property. The single family housing is zoned R-2, and there is also multi-family housing.

Mr. Spier stated the one good element of planning when there is an interstate highway with its noise omissions, traffic, et cetera, is to buffer the single family residential area with multi-family which works out very well, as is shown here on the map. Most of the multi-family is high up on a hill over the area.

Mr. Spier said he had looked at the houses from the interstate, down to Rocky Ridge. The average size house is over 2000 square feet, which conforms to R-1 zoning. The proposal is for single family houses, zoned R-4, with 1200 square feet as opposed to 2000 square feet.

The rear of the property is very steep with as much as a 20% to 25% slope. The building site and the roads will have to be carved out on this hilly side to build 56 townhome units as well as 6 units on Wisteria Drive. This proposed development would create a lot of traffic, there would be a lot of school children, and would pack in the development in this area, which at the present time blends nicely. The streets and buildings would be steep.

He stated that subject property was not suitable for the type of zoning being requested (multi-family). He stated it should be zoned R-1 (single family) due to homes across the street from the property being single family. Other reasons he stated against rezoning the property were traffic problems, drainage, shale rock conditions, et cetera.

A discussion followed by Councilman Suitts and Mr. Spier as to what effect shale rock would have on the property.

Mr. Corretti stated in order for the record to be clear, their planner needed to point out his disagreements to the points Mr. Spier had made.

Mr. Corretti asked if the City had a comprehensive plan. A discussion took place between Mr. Corretti and City Attorney Boone as to the comprehensive plan done in 1973 or 1974. This was not adopted, but it did constitute a plan.

Doug Leonard gave his disagreements and stated there had been a pattern of development in the area. He stated the R-4 single family zoning requested fronting Wisteria Drive preserved and respected the property across the street from subject property and the multi-family zoning requested adjoins multi-family housing already in existence.

A lengthy discussion followed, including the following people:

Gene Shanks, Jerry DeFoor, Margaret Carter, Dr. Lloyd Robinson, Dick Larson, Virginia Velotas, Jim Cristy (3229 Wisteria Drive) and Dr. Dwight Castleberry.

MOTION: Motion was made by Council Pro Tem Williams to uphold the Planning and Zoning Board's recommendation to deny the rezoning. Councilman Suitts seconded motion. Voice vote was:

Councilman Battle	Yes	Council President McCrory	Yes
Councilman Davis	Yes	Council Pro Tem Williams	Yes
Councilman Suitts	Yes		

ANNEXATIONS

ORDINANCE #861 - Annexing 28.62 acres on Rocky Ridge Road between Surrey Hills and Mt. Brook City Limits Perkins Realty Company, owners

Council President McCrory asked for unanimous consent. Vote was unanimous.

MOTION: Motion for approval was made by Council Pro Tem Williams and seconded by Councilman Davis. Voice vote was:

Councilman Battle	Yes	Council President McCrory	Yes
Councilman Davis	Yes	Council Pro Tem Williams	Yes
Councilman Suitts	Yes		

RESOLUTION #2002 - Annexing 1-1/2 acres on Squire Lane Uday and Peggy Bhate, owners (Long Lasso method)

Council President McCrory asked for unanimous consent. Vote was unanimous.

Council Pro Tem Williams stated maybe this should come up after the annexation committee study.

Councilman Suitts objected to this because he stated the Mayor did not want to use the long lasso method unless it benefits the City and we had decided not to use this method of annexation unless it benefited the City or included commercial property.

MOTION: Motion to deny this request for annexation was made by Councilman Suitts and seconded by Councilman Davis. Voice vote was:

Councilman Battle	Yes	Council President McCrory	Yes
Councilman Davis	Yes	Council Pro Tem Williams	Yes
Councilman Suitts	Yes		

Mr. Pilleteri stated he thought this annexation should be reviewed again when the study comes back from the annexation committee study.

REVENUE SHARING BUDGET USE HEARING

City Clerk Thelma Moon presented Budget Use Hearing for Revenue Sharing Funds 1985-86:

Balance On Hand - Revenue Sharing		\$17,352.43
Revenue Sharing Funds	Revenue	73,173.00
Interest Income		437.16
TOTAL REVENUE		\$90,962.59

Expenditures:

<u>Adopted Budget</u>	<u>1985-86</u>	
<u>Debt Service</u>	<u>\$300,000</u>	
General Fund		\$209,037.41
Revenue Sharing Fund		90,962.59
TOTAL DEBT SERVICE		\$300,000.00

MOTION: Motion to accept was made by Councilman Battle and seconded by Council Pro Tem Williams. Voice vote was:

Councilman Battle	Yes	Council President McCrory	Yes
Councilman Davis	Yes	Council Pro Tem Williams	Yes
Councilman Suitts	Yes		

VACATION - PINE STREET

Vacation of Pine Street is requested by Cobb Travel Agency, being represented by Henry Tyler.

Mr. Tyler stated they had redesigned the building and given up on the vacation of the two alleys, so they only needed the vacation of Pine Street. He said he had been to the Board of Zoning Adjustment, and talked with the City Engineer and Fire Marshall. He was able to redesign the building and would like approval of the vacation of Pine Street, subject to delivery of the appropriate legal document.

Mayor Wuska stated another condition is that Cobb Travel Agency pay fair market value of the land.

MOTION: Motion for approval, providing the appropriate legal document is delivered to the City and providing Cobb Travel pay a fair market value for the land was made by Council Pro Tem Williams and seconded by Councilman Suitts. Voice vote was:

Councilman Battle	Yes	Council President McCrory	Yes
Councilman Davis	Yes	Council Pro Tem Williams	Yes
Councilman Suitts	Yes		

RETIREMENT SYSTEM

RESOLUTION #2001 - Adding all permanent, full time, hourly employees to the Employees Retirement System.

Council President McCrory asked for unanimous consent. Vote was unanimous.

City Clerk Thelma Moon stated she had, under direction of the Mayor, talked with all the Street Department employees who are paid hourly about adding them to the retirement system. Everyone but two employees (who were not present at that time) agreed they wanted to be a part of the system. Mrs. Moon had also talked with the hourly paid employees at City Hall.

Mayor Wuska stated there is only one employee that we know of that does not want to participate, but if this Resolution is adopted it will cover everyone; there are no exceptions.

MOTION: After discussion, motion for approval was made by Council Pro Tem Williams and seconded by Councilman Davis. Voice vote was:

Councilman Battle	Yes	Council President McCrory	Yes
Councilman Davis	Yes	Council Pro Tem Williams	Yes
Councilman Suitts	Yes		

ADDENDUM TO MOTOROLA AGREEMENT
AUTHORIZING MAYOR TO ACT AS AGENT FOR CITY

RESOLUTION #2003 - Approving addendum to Motorola agreement and authorizing Mayor to act as agent.

Council President McCrory asked for unanimous consent. Vote was unanimous.

Mayor Wuska stated this agreement was that there is to be no copying of the software for the communication system.

MOTION: Motion for approval was made by Councilman Suitts and seconded by Council Pro Tem Williams. Voice vote was:

Councilman Battle	Yes	Council President McCrory	Yes
Councilman Davis	Yes	Council Pro Tem Williams	Yes
Councilman Suitts	Yes		

VACATION OF STREET - ROBERT MORGAN

Bob Morgan stated he would like to extend the vacation of Pine Street to his property.

WATER PROBLEM


Council President McCrory stated Richard Bodenhamer had told him of a water problem on this property and Jimmy Bonner had given Mr. Bodenhamer a cost estimate on correcting the problem. Council President McCrory wants to turn it over to the City Engineer and Mayor.

On motion, meeting adjourned.



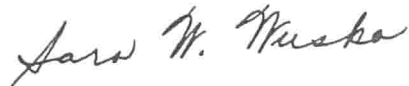
Fred H. McCrory
Council President

ATTESTED BY:



Thelma Moon
City Clerk

APPROVED BY:



Sara W. Wuska
Mayor

IN THE CIRCUIT COURT FOR THE
TENTH JUDICIAL CIRCUIT OF ALABAMA
EQUITY DIVISION

WILLIAM W. CONWELL, and
MARGARET B. CONWELL,

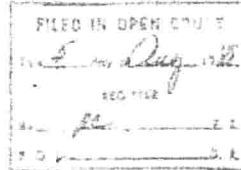
Plaintiff,

vs.

THE CITY OF VESTAVIA HILLS,
A MUNICIPAL CORPORATION,
ET AL.,

Defendant.

CIVIL ACTION NO.
CV 86 504 881 MC



JUDGMENT

This case came on to be heard upon testimony taken and other evidence produced at an oral hearing. This is a review of the actions of the City of Vestavia Hills in denying a requested change of zoning made by the Conwells of a 10.9 acre tract of land located on Wisteria Drive in the City of Vestavia Hills, Jefferson County, Alabama, more particularly described as follows:

Part of the SE 1/4 of the SW 1/4 of Section 6, Township 19 South, Range 2 West, more particularly described as follows:

Commence at the NE corner of the SE 1/4 of the SW 1/4 of Section 6, Township 19 South, Range 2 West, and run south along the east line for 89.05 feet to the point of beginning; thence 92° 24' right and run westerly along the southerly line of a county road for 811.17 feet; thence 92° 14' left and run southerly for 175.00 feet; thence 87° 48' left and run easterly for 150.00 feet; thence 71° 15' right and run southeasterly for 600.00 feet; thence 71° 15' left and run easterly for 345 feet, more or less, to a point on the east line of said 1/4 section; thence north along the east line of said 1/4 section to the point of beginning.

According to the complaint as amended, the Subject Property described above was initially a part of the unincorporated area of Jefferson County and there carried a zoning classification of A-1 Agricultural. The Subject Property was subsequently annexed by the City of Vestavia, but the zoning classification was never changed so that the property is still zoned A-1 Agricultural, although the zoning map of the City of Vestavia Hills reflects that the property is zoned R-1 Residential.

In any event, the Conwells applied to the city of Vestavia Hills requesting that the zoning classification of the Subject Property be changed by rezoning one part of the Conwells' property fronting on Wisteria Drive to R-4 Residential District for the development of single family residences and by rezoning the remainder of the Conwells' property separated from the first part by a creek to R-8 Townhouse Residential District.

The total area of the Subject Property is approximately 10.9 acres. Under the proposed development plan, which the Conwells submitted to Vestavia Hills and which the Conwells still wish to follow, their own house, which is situated on the Subject Property, will have a residential lot fronting on Wisteria Drive a distance of approximately 200 feet. This lot will extend southward from Wisteria Drive to the creek which meanders more or less in an east-west direction from the west boundary to the east boundary of Subject Property.

The remainder of the property fronting Wisteria Drive extending south to a creek on both sides of the Conwell lot is proposed to be divided into residential lots having a width of from 90 to 100 feet and a depth ranging from 135 feet to more than 175 feet.

Under the proposed development plan, approximately 3.15 acres is to be rezoned R-4 Residential District. This tract is bounded on the south by the creek and on the north by Wisteria Drive. The Subject Property fronts Wisteria Drive a distance of approximately 811 feet.

The total number of single family residences contemplated by the development plan in the parcel zoned R-4 Residential is six in addition to the existing residence occupied by the Conwells. Under R-4 zoning, the minimum lot size is 12,000 square feet with a minimum lot width of 70 feet at the lot building line. All of the residential lots in the development plan are in full compliance with the requirements set out in the Vestavia zoning ordinance for R-4 Residential District. In fact, the density of

the contemplated residential development would be 2.2 units per acre, when the maximum allowable density under R-4 zoning is 3.5 units per acre. The 3.19 acre tract zoned R-4 Residential District is bounded on both the east and west side by other single family residences. To the north across Wisteria Drive is the development known as the Derby Downs subdivision, consisting of approximately 250 single family detached residences. This subdivision is still expanding and is a very stable and attractive residential area.

The remaining or second tract of land comprising the Conwell's property lies south of the creek and consists of 3.71 acres. For this property, the Conwells seek a change in zoning classification to R-8 Residential District allowing construction of townhouses. Under the Conwell's development plan, it is proposed that a total of 56 units will be constructed in five clusters or buildings. The smallest building will consist of five townhouse units. The other clusters will consist of six, seven, eight, eleven and nineteen townhouse units, respectively.

The townhouse development has been planned so as to minimize the amount of grading needed and to leave the surface of the ground intact. Approximately one-half of the site will not be disturbed.

The Vestavia R-8 zoning classification permits 10 units to the acre, or a total of 77 units on the tract for which R-8 zoning is sought. However, the Conwell's development plan contemplates that a total of 56 townhouse units will be constructed.

The proposed R-4 parcel fronting Wisteria Drive is almost completely level. The second parcel south of the creek for which townhouses are proposed slopes upward at a gradually increasing rate to a ridge near the southern boundary of the tract. The elevation at Wisteria Drive is 460 feet above sea level, while the elevation at the southern boundary is from 600 to 620 feet above sea level.

The tract for which townhouses are proposed is adjoined by multi-family developments. On the south boundary of the proposed R-8 townhouse development are the Panorama Terrace Apartments, consisting of 272 multi-family units, as well as clubhouses, swimming pools and tennis courts. Immediately to the east of the Panorama Terrace Apartments are the Rocky Ridge Apartments, consisting of 152 multi-family units and other facilities. The Rocky Ridge Apartments are separated on the southeast from the Conwells' proposed townhouse development by unimproved land which is part of the Shallowford Townhouse development. To the north along the eastern boundary, the proposed townhouse development is bounded by the Shallowford Townhouse development, consisting of 45 proposed townhouses fronting on Shallowford Circle. These 45 townhouses are directly across a public road called Shallowford Circle from single-family detached residences which are part of the Darby Downs development.

The Conwells' proposed townhouse development is bounded on the west by a development consisting of duplexes and quadruplexes, i.e., buildings consisting of two units in each building and buildings consisting of four units in each building. Further west along Wisteria Drive and beyond the city limits of Vestavia Hills, approximately 700 or 800 feet from the Conwells' property, is another townhouse development which will ultimately have more than 40 units.

The Conwells' proposed development plan is compatible with the zoning and uses presently being made on land adjoining the Conwells' property. The single-family detached residential development will adjoin other single-family detached residences on both sides and across Wisteria Drive from that development. The nearest townhouse will be at least 250 feet from Wisteria Drive with others in the first row of townhouses going to 260 and 300 feet away. The second row of townhouses will be at least 375 feet away from Wisteria Drive, with other townhouses being about 500 feet away.

It was established by expert testimony at the trial that the existing public road system serving the Subject Property is adequate for any additional traffic caused by the Conwells' development plan.

The Conwells' property is presently served by a Jefferson County sewer trunk line which has more than sufficient capacity to serve all of the units contemplated by the Conwells' development plan. All drainage problems in connection with the development have been considered and provided for. There are no problems in providing water, gas and electricity to the Conwells' property.

In opposition to the reasoning, Vestavia Hills contends that the townhouse development can be easily seen by the residents in the Derby Downs Subdivision because the townhouses will sit on an upwardly sloping hillside. Vestavia Hills argues that the townhouse development will therefore have an adverse and intrusive visual impact on the occupants in the Derby Downs Subdivision.

With the consent of the parties, the Court has itself visited the site and walked over the Conwells' property, including the southern tract for which townhouse development is proposed. In addition, the Court has undertaken to estimate the possible visual impact of the townhouses by looking at the site of the proposed townhouse development from various vantage points in the Derby Downs Subdivision. This Court concludes that the adverse visual impact of the townhouse development on the Derby Downs development will be minimal and of no consequence. Even the closest point, the Derby Downs residents are at such a distance from the townhouse development that it will not affect their enjoyment or use of their respective residences.

In Hall v. Jefferson County, 457 So. 2d 792 (Ala. 1984), the supreme court discussed the standards to be applied by this Court in reviewing the decision of a zoning authority in granting or refusing to rezone property. The supreme court stated in part

the following:

... (Property ownership should, and does, bring with it freedom to use one's possession as the owner deems appropriate, subject, of course, to the reasonable restraints for the general health, safety, or public welfare. Absent the need for such reasonable impediments, the landowner's "bundle of rights" should remain inviolate. Indeed, the "fairly debatable" standard is not invoked unless and until the zoning authority has met the threshold test of showing that the challenged zoning restriction comports with a legitimate governmental interest, or has a substantial relation to a legitimate public purpose.

The "fairly debatable" standard is a rule of procedure or application and does not subsume or modify the fundamental requisite that the ordinance itself and its application must have a reasonable and substantial relationship to the promotion of public health, safety, morals, or general welfare. City of Boca Raton v. Boca Villas Corp., 371 So. 2d 154 (Fla. 1979). As this Court observed in Jefferson County v. O'Rorke, 394 So. 2d 937 (Ala. 1981):

"When a zoning restriction exceeds bounds necessary for the welfare of the public, it must be stricken as an unconstitutional invasion of property rights."

The Supreme Court of Alabama has also stated that it is a basic axiom of the law in zoning cases that a trial court will affirm the decision of a duly constituted municipal body so long as the court finds the decision of that body to be based upon a "fairly debatable" rationale. Jefferson County v. O'Rorke, 394 So. 2d 937 (Ala. 1981).

Speaking further to this issue in Hall v. Jefferson County, ~~supra~~, the supreme court stated:

Arbitrariness and capriciousness by municipal governing bodies cannot be sanctioned under the denomination "fairly debatable." Anything is debatable. Everything is not fairly debatable.

Also see, City of Birmingham v. Norris, 374 So. 2d 854 (Ala. 1979).

It is the opinion of this Court that the manner in which Vestavia Hills' zoning ordinance has been applied as the result of the denial of the Conwells' requested zoning change does not have a reasonable and substantial relationship to the promotion of public health, safety, morals or general welfare

Based upon the evidence presented in this case, this Court also finds that the decision of Vestavia Hills in denying the

Conwells' application for zoning change is not fairly debatable and therefore is arbitrary and capricious. The decision of Vestavia Hills in denying such zoning request is therefore due to be reversed.

In accordance with this opinion, it is hereby ordered by the Court as follows:

1. The decision of the City of Vestavia Hills to deny the request for zoning change on the property described in this order is hereby overruled.

2. The Conwells are hereby directed to prepare and submit for approval by this Court appropriate restrictive covenants to be filed in the Office of the Probate Court of Jefferson County by which the Conwells will undertake the obligation to develop their property in accordance with their proposed development plan without deviation.

3. Upon the submission of such restrictive covenants, this Court will set the matter for hearing, at which time the City of Vestavia Hills shall submit any proposals for changes.

4. Upon approval by this Court of such restrictive covenants and upon the filing of the same in the Probate Court of Jefferson County, Alabama, the City of Vestavia Hills shall approve the Conwells' application to rezone their property from R-1 Residential to R-4 Residential and R-8 Residential District in accordance with the application made by the Conwells.

5. All costs of court are hereby taxed against the City of Vestavia Hills, Alabama.

Done this 5th day of August, 1956.


CIRCUIT JUDGE

COPIES TO:

Douglas Corretti
Mary Douglas Hawkins
1804 7th Avenue North
Birmingham, AL 35203

Patrick K. Boone
Howard Perdue
1312 City Federal Building
Birmingham, AL 35203

122649

THE STATE OF ALABAMA)
JEFFERSON COUNTY)

RESTRICTIVE COVENANTS

WHEREAS, WILLIAM W. CONWELL and MARGARET B. CONWELL ("Owners") are the Owners of certain real property located and situated on Wisteria Drive in the City of Vestavia Hills, Jefferson County, Alabama, which said real property is more particularly described in Exhibit "A" attached hereto and expressly incorporated herein by reference; and

WHEREAS, Owners are desirous of establishing and engrafting the restrictive covenants herein on said real property so as to guarantee the use of said real property for R-4 (Residential District) and R-8 (Townhome District) uses pursuant to the Zoning Ordinance of the City of Vestavia Hills.

NOW, THEREFORE, in consideration of the premises, Owners do hereby adopt the following conditions, restrictions, covenants and limitations which shall apply in their entirety to said real property:

1. That the said real property consisting of approximately 10.9 acres shall be developed in accordance with that certain site development plan prepared by Fortinberry & Wisdom, Architects and Planners dated March, 1986, without deviation, which said site development plan was admitted in evidence as Plaintiff's Exhibit 3 in that certain action entitled William W. Conwell, et al. v. City of Vestavia Hills, et al., Civil Action No. CV86 504-681 MC.

2. That approximately 3.19 acres of said real property which fronts on Wisteria Drive for a distance of approximately 811 feet shall be developed with single family detached residences in compliance with the City of Vestavia Hills R-4 (Residential District) zoning classification.

3. That the single family detached residential lots developed under the R-4 (Residential District) zoning classification shall not exceed six (6) in number, in addition to the existing single family detached residence occupied by Owners which said Owners' residential lot shall front on Wisteria Drive a distance of approximately 200 feet.

4. That the proposed single family detached residential lots shall have a minimum lot size of 12,000 square feet, a minimum width of 90 feet and a minimum depth of 135 feet.

5. That the proposed single family detached residential structures erected or placed on any lot within the R-4 (Residential District) shall contain not less than 1600 square feet of living area. Living area is defined as heated and finished area and does not include porches, garages, basements, carports or attics.

6. That the remainder of the said real property containing approximately 7.71 acres shall be developed with townhomes in compliance with the City of Vestavia Hills R-8 (Townhome District) zoning classification.

7. That the townhome units developed under the R-8 (Townhome District) zoning classification shall not exceed fifty-six (56) in number.

8. The covenants, conditions, restrictions and limitations contained herein are in compliance with the Judgment entered on August 5, 1988 in the civil action referred to hereinabove.

9. That the restrictive covenants contained herein shall be enforceable in any court of competent jurisdiction by way of damages and injunctive relief.

10. That the restrictive covenants contained herein shall inure to the benefit of the said real property and shall run with the land.

11. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals on this 24 day of November 1988.

WITNESS:

Anne M. Cray

William W. Conwell (SEAL)
WILLIAM W. CONWELL

Anne M. Cray

Margaret B. Conwell (SEAL)
MARGARET B. CONWELL

THE STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that WILLIAM W. CONWELL and MARGARET B. CONWELL, whose names are signed to the foregoing Restrictive Covenants and who are known to me, acknowledged before me on this date, that being informed of the contents of the Restrictive Covenants, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 7th day of November, 1988.

Ann M. Cray
NOTARY PUBLIC

EXHIBIT "A"

Part of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 6, Township 19 South, Range 2 West, more particularly described as follows:

Commence at the NE corner of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 6, Township 19 South, Range 2 West and run South along the East line for 60.05 feet to the point of beginning; thence $92^{\circ}24'$ right and run Westerly along the Southerly line of a County Road for 811.17 feet; thence $92^{\circ}14'$ left and run Southerly for 175.00 feet; thence $87^{\circ}46'$ left and run Easterly for 150.00 feet; thence $71^{\circ}15'$ right and run Southeasterly for 600.00 feet; thence $71^{\circ}15'$ left and run Easterly for 545 feet more or less to a point on the East line of said quarter-quarter section; thence North along the East line of said quarter-quarter section to the point of beginning.

FILED IN THE OFFICE OF THE
CLERK OF THE DISTRICT COURT
AT SALT LAKE CITY

1980 NOV 22 AM 10:03

By *[Signature]*
CLERK OF DISTRICT COURT

JUDGE OF PROBATE

[Handwritten mark]

11

IN THE CIRCUIT COURT FOR THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

WILLIAM W. CONWELL and
MARGARET B. CONWELL,

Plaintiff,

v.

THE CITY OF VESTAVIA HILLS, a
municipal corporation, et al.,

Defendant.

FILED IN OPEN COURT	
This <u>22</u> day of <u>Nov</u> , 19 <u>88</u>	
REGISTER	
By _____	E. R. J.
CIVIL ACTION NUMBER _____	E. O. D.
CV 86 504-881 MC	D. R. J.

CIVIL ACTION NUMBER _____

CV 86 504-881 MC

(IN EQUITY)

FINAL JUDGMENT

In accordance with and pursuant to the Judgment entered in this cause on August 5, 1988, Plaintiffs' prepared and submitted to this Court for its approval appropriate restrictive covenants to be filed in the Office of the Judge of Probate of Jefferson County, Alabama, whereby Plaintiffs obligated themselves to develop their property in accordance with their proposed development plan without deviation. On November 7, 1988, Defendants made known to the Court that the restrictive covenants were satisfactory and same were approved by this Court. Plaintiffs have furnished the Court satisfactory evidence that said restrictive covenants have been duly filed for record in said Probate Office.

It is therefore ORDERED and ADJUDGED by the Court as follows:

1. That the Defendant, City of Vestavia Hills, shall forthwith rezone Plaintiffs' property from R-1 (Residential District) to R-4 (Residential District) and R-8 (Townhome District) in accordance with the rezoning application heretofore made by Plaintiffs to the City of Vestavia Hills and without any further or additional public hearings before the Planning and Zoning Board and the City Council of the City of Vestavia Hills.
2. The Judgment entered in this cause August 5, 1988, remains in full force and effect except as amended and modified hereby.
3. The Court costs incurred in this cause are hereby taxed against the City of Vestavia Hills.

DONE and ORDERED this 22 day of November, 1988.

Orlando Chew
CIRCUIT JUDGE

COPIES TO: Douglas Corretti
Mary Douglas Hawkins
1204 Seventh Avenue North
Birmingham, Alabama 35203

Patrick Boone
Howard Pardue
1312 City Federal Building
Birmingham, Alabama 35203