

**MINUTES OF THE MEETING OF THE MADISON COUNTY
PLANNING AND ZONING COMMISSION HELD AND CONDUCTED ON
THURSDAY, THE 8th DAY OF SEPTEMBER, 2022 AT 9:00 A.M. AT THE
MADISON COUNTY COMPLEX BUILDING**

BE IT REMEMBERED that a meeting of the Madison County Planning and Zoning Commission was duly called, held and conducted on Thursday, the 8th day of September, 2022, at 9:00 a.m. in the Madison County Complex Building.

Present: Larry Miller
 Walter McKay
 Dr. Keith Rouser (by telephone)
 Bill Billingsley (by telephone)
 Rev. Henry Brown
 Scott Weeks, Planning and Zoning Administrator

The meeting was opened with prayer by Commissioner McKay, and all present participated in pledging allegiance to our flag, led by Commissioner McKay.

There first came on for consideration the minutes of the August 11, 2022, meeting of the Commission. Upon motion by Commissioner Miller, seconded by Commissioner Brown with all voting "aye," motion to approve the August 11, 2022 minutes passed.

There next came on for consideration, the need to open the meeting for public hearing of certain matters. Upon motion by Commissioner Miller to open the meeting for public hearing of certain matters, seconded by Commissioner Brown, with all voting "aye," the public hearing was so opened.

There next came on for consideration the Application of Jeff Cox and The Shire of Livingston, for Re-Zoning of +/-7.53 acres currently zoned as C-1 General Commercial District with a Planned Unit Development (PUD) overlay, to R-1B Moderate Density Residential District with a Planned Unit Development (PUD) overlay. The property subject to the application is within the parameters of the Mannsdale Livingston Historic Preservation District (MLHPD), is at the approximate intersection of Highway 463 and Highway 22, and is in Supervisor District 4.

Steve H. Smith, Esq. appeared on behalf of the Applicant, and provided the Commission with a pictorial illustration of the subject property in order that the Commission may orient themselves as to the location of the subject property. Such illustration is attached to these minutes as **Exhibit "1."** Mr. Smith advised that Applicant is seeking to rezone +/-7.53 acres in the Livingston Township PUD from its current C-1 zoning to a R-1B zoning. Mr. Smith explained that this is a downzoning. Mr. Smith advised that they did mail out notice of the public hearing as required by the Ordinance, and that he had provided return receipts to Administrator Weeks. Next, Mr. Smith directed the Commission to Exhibit "A" of his Application, which is a metes and bounds

description of the property Applicant is seeking to rezone. Exhibit "B" to his Application is a metes and bounds description of a +/-30 acres parcel which would result from the approval of the Application. Mr. Smith explained that there are currently +/-22.47 acres zoned R-1B, and if you add the subject +/-7.53 acres, that would total +/-30 acres of R-1B, and would leave +/-17.33 acres zoned as C-1. Mr. Smith explained that Exhibit "C" to the Application is a site plan, which is a conceptual drawing and is not intended to be submitted as a Preliminary Plat. Mr. Smith admitted that there are many items depicted on Exhibit "C" that do not adhere to the requirements of the Ordinance, and that would have to be addressed upon any Preliminary Plat approval. Mr. Smith stated that he wanted it made clear that Applicant did not attach Exhibit "C" as any attempt at Preliminary Plat approval. Mr. Smith next directed the Commission to Exhibit "D" of his application, and explained that it was the same separate exhibit that he handed the Commission (Exhibit 1 to these minutes).

Mr. Smith directed the Commission to Applicant's Exhibit "C," and noted that there are at total of 87 lots depicted, which is the amount allowed as per Section 2706.02 of the Ordinance. Mr. Smith noted that this calculation is the example given in that section of the Ordinance, and is derived by multiplying the total number of acres (30) by the maximum amount of dwelling units per acre (2.9), then you arrive at a total of 87 lots. Mr. Smith advised that each lot would represent a single-family dwelling unit with no condominiums, no townhouses, and no patio homes. Mr. Smith advised that the conceptual drawing is consistent with the intent and purpose of the PUD, and Article 27 of the Ordinance. Mr. Smith addressed the four (4) criteria of a PUD which are 1) to make land areas as cohesive and coordinated units, 2) to allow for more flexible and advantageous use of sites, 3) to reduce the cost of residential development allowing more dwelling units per gross acre, and 4) provide open space and common area for use by all residents of a PUD. Mr. Smith explained that the Livingston Township PUD was originally approved based on these same criteria, and other contained in Article 27 of the Ordinance, and, again noted that this was a downzoning.

Mr. Smith noted that the conceptual plan submitted shows 33.87% of the site as open/common area, which is more than double that of the required 15% as per the Ordinance. Mr. Smith again reiterated that the conceptual site plan does not contain all of the data, or information needed for approval of a Preliminary Plat, and that Applicant is only seeking a rezoning. Mr. Smith also pointed out that no plat had ever been filed on any property in the Livingston Township PUD, and the property has been developed based on a conceptual drawing just like the one attached to Applicant's application.

Mr. Smith next addressed the criteria of Section 806.03(b), and advised that the character of the neighborhood had changed to such an extent as to justify the rezoning, and that there is a public need for additional housing. Mr. Smith directed the Commission to pages 4-9 of his Application to demonstrate the change in character of the neighborhood. There, Mr. Smith noted that the Applicant had set out eight (8) of the most impactful and job-creating commercial developments which have occurred in Madison County since 2021. Mr. Smith noted that \$70M in permits were issued, and over 60 commercial permits were issued in 2021 and 2022. Mr. Smith noted that Madison County Economic Development Authority records indicate that between October 2017 and February 2022, eighteen (18) new developments were startedⁱ, and over 2,100 new jobs were created, and an investment of \$1.2B in Madison County, as a result of these

developments. Mr. Smith noted that this explosive development over the last 4-5 years has contributed to the per capita income of residents of Madison County which is in excess of \$68,000.00. Mr. Smith noted that the 2010 census showed 95,000 people in Madison County, and the 2020 census showed that number to have grown to over 109,000-which is more than a 14.5% increase. Mr. Smith noted that the Central Mississippi Multiple Listing Service data showed the number of home sales in the last two (2) years were the highest ever over the last fifteen (15) years, sales prices reached new highs, homes sold in record time, but inventory of new homes hit “rock bottom.” Mr. Smith noted that new listings rose by more than 11.5%, and inventory decreased by 47.5%. Days on market were down more than 50%, and months supply of inventory was down over 35%, down to 1.2 months. Mr. Smith argued that the economic development of Madison County had created a huge demand for housing, and has outpaced the supply of residential housing. Mr. Smith argued that over the last ten (10) years, the character of the neighborhood surrounding the Livingston Township PUD had changed drastically, and one need only drive out Highway 463 and Highway 22 to see the number of residential neighborhoods that have been developed, including Reunion, Devlin Springs, Hartfield, Johnston, Noah’s Mill, Eden, and Chestnut Hill. Mr. Smith argued that the rezoning of the subject property would be nothing but a positive impact on the Livingston Township PUD and surrounding development, and that the proposed development would be high-quality, and along the same lines as the development at the Township at Colony Park.

Mr. Smith also argued that if the Livingston Township PUD was found to be proper, and in compliance with Madison County’s Comprehensive Plan, Transportation Plan, Land Use Plan, and goals and objectives in 2010, then certainly the rezoning of a mere +/-7.53 acres now is likewise consistent with all four (4) elements of that plan now. Mr. Smith also argued that this rezoning would be the highest and best use of the property. Mr. Smith noted that, to date, only 7 commercial buildings have been built in Livingston, covering approximately +/-6.5 acres. Mr. Smith argued that the lots and homes proposed would be affordable, but compliment the Livingston Township PUD, and all other residential developments in the area. Mr. Smith argued that the Applicant had met, and exceeded the requirements for rezoning under the Ordinance, and that this approval would be the catalyst for the development of the Livingston Township PUD, and requested approval of the rezoning of the +/-7.53 acres from C-1 to R-1B.

Commissioner McKay questioned as to whether the contours of the property were done by lidar, and whether the contours shown depicted the actual slopes and contours of the property. Commissioner McKay expressed concern over the topography, and the ability to develop the property on the contours shown, including drainage and water run-off from adjacent lots. Mr. Smith responded that while he was not an engineer, he had worked with planning and zoning commissions, and developers, and that development could be done, but emphasized that the conceptual drawing submitted was only that—conceptual, and to show a proposed layout of the number of lots on the subject property, and that the Applicant has not invested the time or money in platting, and was only seeking rezoning of the property so that it could move forward with more detailed plans with the County. Commissioner McKay also expressed concern as to the emergency access depicted on the conceptual drawing, and the likelihood of traffic going from Chestnut Hill to the Town of Livingston. Mr. Smith advised that this was merely a proposal, and would be subject to approval of the County.

Attorney Clark reiterated that the only matter before the Commission was the rezoning petition, and the conceptual plan was merely conceptual, and contained many issues that were not in compliance with the Ordinance, including setbacks, encroachment into the MLHPD buffer zone, and other issues that would have to be addressed prior to submission for approval of a Preliminary Plat.

John Lassiter of 307 Moonlight Hollow in Chestnut Hill appeared in opposition. Mr. Lassiter advised that he was speaking on behalf of the Chestnut Hill Homeowners Association, and in the stead of Baxter Burns, President of that HOA. Mr. Lassiter advised that he, Mr. Burns, and the Chestnut Hill HOA were vehemently opposed to the proposed rezoning as that would only allow momentum to be had with regard to the proposed development. Mr. Lassiter advised that he and his family bought in Chestnut Hill to enjoy the rural aspect of the neighborhood, and to escape the density of other developments. Mr. Lassiter advised that he, and others, were promised responsible development with the preservation of the landscape with the local amenities of Livingston, and that such was reflected in the plans previously approved by the MLHPD District, this Commission, and the Board of Supervisors. Mr. Lassiter argued that the character of the neighborhood had not changed, and that is what makes it so desirable to live there. Mr. Lassiter argued that there are 35 available lots in Chestnut Hill right now that the same Developer owns or controls. Mr. Lassiter argued that the proposed development doubles the amount of lots on roughly the same amount of acreage, and would entail clear cutting, extensive grading, zero lot line development, and many things that they did not agree to when purchasing their lot. Mr. Lassiter criticized the Developer as an out of state developer that wants to get the most out of his property and leave the residents with the residual effects. Mr. Lassiter complained about the maintenance of Chestnut Hill Subdivision and the condition of the roads, drainage, and other common area issues. Mr. Lassiter conceded that the local person, Jeff Cox, would benefit from the proposed development, but that many other Madison County residents would be negatively impacted.

John Scanlon, Esq., appeared in opposition on behalf of Chestnut Hill Homeowners Association, and requested that a certain document reflecting the HOA's opposition be attached to the minutes. Said document is attached to these minutes as **Exhibit "2."** Mr. Scanlon advised that upon his review of the Madison County Comprehensive Plan and the Land Use Plan, the subject property is designated as commercial use. Mr. Scanlon advised that Mississippi Code, and Mississippi law are clear that any rezoning must be done in harmony with the Comprehensive Plan, which are intended to be long term plans, and difficult to change. Mr. Scanlon advised that any change in the Ordinance requires a change in the Comprehensive Plan, and that there has been no requested change to the Comprehensive Plan. As such, Mr. Scanlon advised that, in his opinion, a court of law would find any such approval arbitrary and capricious, and unsupported by substantial evidence. Mr. Scanlon also advised that the burden is on the Applicant to prove the "modified Maryland Rule," which is a mistake in the original zoning, or a change in character of the neighborhood, and a public need to justify the rezoning. Mr. Scanlon argued that the Applicant's application does not address the neighborhood, but rather addresses other areas of Madison County. Mr. Scanlon also noted that the subject property lies within the bounds of the MLHPD, and that the MLHPD section of the Ordinance does not allow high density residential development, and that the main thrust of the MLHPD is to keep density low in the area of the subject property. As such, Mr. Scanlon argued that the proposed rezoning violates the purpose of the MLHPD, and the PUD. Mr. Scanlon also argued that the Notice of the Public Hearing was

invalid as it does not specify that the subject +/-7.53 acres is to be redesignated, and recombined with the PUD, and that the ordinance requires notice of a public hearing to change the PUD. As such, Mr. Scanlon requested that the Commission not recommend approval of the rezoning, as any approval would be arbitrary and capricious, not supported by evidence, and would not be upheld by a court of law. Instead, Mr. Scanlon asked that the Commission stay with the zoning that was put in place by the Board of Supervisors, and recommend denial of the Applicant's application.

David Hand of 108 Bidon Place in Livingston appeared in opposition. Mr. Hand argued that the proposed rezoning does not fit the area, and goes against all the reasons that he, and others, moved out to the area. Mr. Hand advised that he had lived in Denver prior to moving back to Mississippi, and had seen high rises built there which created crime, traffic, and everything that the opposition is against.

Kevin Watson as owner of Lot 10 in Chestnut Hill appeared in opposition. Mr. Watson argued that there were originally 50 lots proposed in the proposed development—44 of which were to be cottages, and 6 of which were to be residential lake-side lots. Mr. Watson advised that the reason he bought his lot was based upon less density than the proposed development. Mr. Watson brought to the Commission's attention that these issues were addressed in the MLHPD recommendation of denial. Mr. Watson argued that the character of the neighborhood had not changed. Mr. Watson acknowledged the economic growth, and the real estate market, but argued that that does not mean the neighborhood of Livingston had changed. Mr. Watson argued that the higher density was "all about the money" and all about a California developer leaving the neighborhood with the lots, and traffic associated with the development. Mr. Watson argued that the proposed entrance to the development is 550' from the intersection of Highway 463 and Highway 22, and that he understood that MDOT had not been approached regarding such intersection, and that it would not be approved based upon its proximity to that intersection. Mr. Watson noted that it was not just Chestnut Hill that was opposed to the rezoning, but also Noah's Mill, Stonebridge, and other subdivisions. Mr. Watson argued that there was no need, that the surrounding neighborhoods argue that there is no need for the rezoning, and asked that the Commission recommend denial of the Applicant's application.

Steve Smith responded that there are many reasons that people may not like or want a development, or the number of lots in a development. But, that does not overcome the law, and that a property owner has a right to use its property for its lawfully zoned use. Mr. Smith argued that is all the Applicant has ever intended to do. Mr. Smith directed the Commission to Exhibit "C" of his Application, and showed that Chestnut Hill was only touched by approximately 1/4th of the proposed development, and that the remaining property owners surrounding the proposed development were not in opposition. Mr. Smith argued that the rule of law was more important than what any individual, or group of individuals, thinks. Mr. Smith argued again stated that the Applicant is not seeking approval of any preliminary plat, and that it is obvious, and admitted that there are numerous modifications that would have to be made prior to any submission of a Preliminary Plat for approval. Mr. Smith argued that Mr. Scanlon's point regarding requirement to change the Comprehensive Plan or PUD prior to rezoning were not valid, but if the Board of Supervisors required such, the Applicant would do so. However, Mr. Smith argued that was not requirement for rezoning. Mr. Smith also addressed Mr. Watson's argument regarding the MLHPD's recommendation of denial. Mr. Smith pointed out that every reason listed in the

MLHPD's recommendation addressed matters regarding a preliminary plat, and not one speaks to the requirements of rezoning. Mr. Smith argued that the Applicant's application meets every criteria for approval of rezoning the subject property.

Ken Primos appeared and advised that he is a member of the MLHPD Commission, was not speaking on their behalf, but thought they would agree with his statements. Mr. Primos advised that upon the original rezoning in 2010, part of what was taken into consideration was how many lots were in Chestnut Hill, and how many lots the developer wanted to have at Livingston. Mr. Primos spoke to the difference in lot sizes in surrounding developments being +/-12,000 sf. versus approximately 3-4,000 sf. lots in the proposed development. Mr. Primos advised that the MLHPD Commission opposed the rezoning of the subject property while being fully aware that rezoning was the issue. Mr. Primos advised that the conceptual drawing submitted with the Applicant's application was called a preliminary plat, and could not be ignored at the MLHPD meeting. Mr. Primos noted that the current developer did not do what he said he was going to do in developing Livingston, and that the MLHPD Commission is opposed to both the rezoning, and what is to come from such rezoning.

Commissioner Miller questioned as to what would be a change in character of the neighborhood, and who would make that determination. Attorney Clark advised that there is no set criteria to determine exactly what a change in the neighborhood would be, and that the Commission was to determine what would constitute a change based upon the presentation of the Applicant, and the opposition voiced in the meeting. Commissioner Miller also questioned as to notice of the change in the PUD. Attorney Clark used Exhibit "C," and opined that he and Administrator Weeks had discussed this matter at length, and that the entirety of Exhibit "C" shows the entirety of the PUD. Attorney Clark opined that the Applicant is not seeking to expand or reduce the "footprint" of the PUD, but is rather seeking a change of zoning designation of property inside the "footprint" of the PUD. Commissioner Miller questioned as to whether this was a sound move to approve the rezoning. Attorney Clark advised that he could not advise the Commissioners on how to vote, but instead, the Commission must balance the rights of the property owner/developer against the rights and concerns of the citizens of the surrounding property. Commissioner Miller questioned as to whether the Applicant had met the criteria for rezoning, and Attorney Clark opined that based upon his reading of the Ordinance, the Applicant had met its criteria, but that the recommendation would be come from the Commission.

Commissioner McKay questioned as to notice to the landowners on the North side of the proposed development. Mr. Smith responded that the Ordinance requires notice to landowners within 160' of the subject property to be rezoned, and that the Applicant followed the Ordinance for required Notice.

Commissioner Miller questioned Mr. Primos regarding commercial property, and the position of the homeowners regarding undesirable commercial developments in Livingston. Mr. Primos responded that the MLHPD ordinance set forth the requirements for what could be built in the MLHPD District, and would have to be similar to what is there now. Mr. Scanlon spoke on this issue as well, and opined that the answer to the question as to whether Chestnut Hill wished for the property to remain commercial, as opposed to residential, would be "yes" within the confines of what has been approved.

There being no further discussion, upon motion by Commissioner Brown to close the Public Hearing, seconded by Commissioner Miller, with all voting "aye," the motion to close the Public Hearing was approved.

Upon question by Chairman Rouser, Attorney Clark clarified that the application for rezoning was properly before the Commission for consideration, and that the Commission must make a determination of whether to approve or deny based on the presentation of the Applicant, taking into consideration, the opposition voiced, and the recommendation of the MLHPD. Attorney Clark further advised that the MLHPD recommendation and the Commission recommendation run concurrently, but need not be the same recommendation to the Board of Supervisors.

Chairman Rouser made a motion to table the matter for further study. That motion died for lack of a second.

Upon motion by Chairman Rouser to approve the Application of Jeff Cox and The Shire of Livingston, for Re-Zoning of +/-7.53 acres currently zoned as C-1 General Commercial District with a Planned Unit Development (PUD) overlay, to R-1B Moderate Density Residential District with a Planned Unit Development (PUD) overlay, seconded by Commissioner Brown, the Application of Jeff Cox and The Shire of Livingston, for Re-Zoning of +/-7.53 acres currently zoned as C-1 General Commercial District with a Planned Unit Development (PUD) overlay, to R-1B Moderate Density Residential District with a Planned Unit Development (PUD) overlay, was approved with the vote on the matter being as follows:

Chairman Rouser	Aye
Commissioner Brown	Aye
Commissioner Miller	Aye
Commissioner McKay	Nay
Commissioner Billingsley	Nay

There next came on for discussion, the setting of the October, 2022, meeting. October 20, 2022, was suggested. Upon motion by Commissioner Billingsley, seconded by Commissioner McKay, with all voting "aye," motion to set the October, 2022, meeting for October 20, 2022, passed.

With there being no further business, the September 8, 2022, meeting of the Madison County Planning and Zoning Commission was adjourned.

12-8-22

Date



Dr. Keith Rouser, Chairman

ⁱ Mr. Smith directed the Commission to footnote 1 of his Application for all eighteen (18) of those developments.

RECEIVED

JUN 29 2022

APPLICATION FOR REZONING

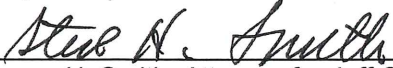
Name and Address of Applicant: Jeff Cox P.O. Box 2235 Clinton, MS 39060	The Shire of Livingston 130 Livingston Church Road Flora, MS 39071
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APPLICATION DATE	Present Zoning of Property	Legal Description of Property:	TAX PARCEL NUMBER	FLOOD ZONE	MAP/PLAT OF PROPERTY
6-29-2022	C-1	See (Exhibit A)	081C-08-002/1.00	X	See (Exhibit B)

Other Comments: As per Article VIII Section 806 of the Madison County Zoning Ordinance.

Comments This rezoning is a "downzoning" of 7.53 acres from C-1 to R-1B and is totally located within the confines of the Livingston Township PUD

Respectfully Submitted



 Steven H. Smith, Attorney for Jeff Cox and The Shire of Livingston

Petition submitted to Madison County Planning and Development Commission on _____

Recommendation of Madison County Planning and Development Commission on Petition _____

Public Hearing date as established by the Madison County Board of Supervisors _____

Final disposition of Petition _____

BEFORE THE BOARD OF SUPERVISORS OF THE COUNTY OF MADISON
STATE OF MISSISSIPPI

IN THE MATTER OF REZONING OF
CERTAIN LANDS SITUATED IN
SECTION 8, TOWNSHIP 8 NORTH,
RANGE 1 WEST, MADISON COUNTY,
MISSISSIPPI

PETITIONERS: JEFF COX AND THE SHIRE AT LIVINGSTON

PETITION TO REZONE REAL PROPERTY

Comes now Jeff Cox and The Shire At Livingston, and files this their Petition to Rezone Real Property (“Petition”) with the Board of Supervisors of Madison County, Mississippi to rezone 7.53 acres of real property from its present C-1 classification contained in the Livingston Township PUD located in Section 8, Township 8 North, Range 1 West, to an R-1B classification.

I.

Characteristics of the Subject Property

1. A copy of the legal description of the property requested to be rezoned/reclassified hereunder is attached hereto as **Exhibit “A”** and made a part hereof.
2. Pursuant to publication and a public hearing the Board of Supervisors of Madison County, Mississippi, at its regularly scheduled meeting on August 17, 2009, did adopt an ordinance which rezoned 47.20 acres from its then R-1B residential use classification and C-1 commercial use classification to a Planned Unit Development superimposed over a R-1B Zoning district, now known as The Livingston Township PUD (“LT PUD”).
3. Subsequent to an unsuccessful legal challenge of the MCBS rezoning of the LT PUD, the MCBS reaffirmed its rezoning of the 47.2 acres to the LT PUD in its minutes of February

7, 2011. To date all development is in compliance with the LT PUD and all Madison County Zoning Ordinances.

4. The current LT PUD consist of 22.47 acres of residential property zoned R-1B and 24.86 acres of commercial property zoned C-1. To date seven (7) commercial buildings have been constructed on the C-1 commercial property located on approximately 6.5 acres. None of the R-1B property has been developed as of the date of this Application. Approval of this Application will necessarily ensure that the property currently rezoned R-1B within the LT PUD, and the acreage requested to be rezoned from C-1 to R1B hereunder, will be developed in the very near future.
5. Specifically, the Applicant is requesting that 7.53 acres of the 24.86 acres of commercial property lying within the current LT PUD be **down zoned** from its current C-1 classification to a R-1B classification. If this Application is approved the total amount of property zoned R-1B within the current LT PUD will be increased from 22.47 acres to 30 acres. Correspondingly, the total amount of property zoned C-1 within the current LT PUD will be **decreased** from 24.86 acres to 17.33 acres.
6. In conjunction with the rezoning the Petitioners are also requesting that the 22.47 acres currently zoned R-1B and the 7.53 acres requested to be rezoned hereunder be combined and redesignated within the existing LT PUD to depict a total of thirty (30) acres zoned R-1B. If the rezoning requested herein is approved the existing LT PUD would then consist of thirty (30) acres of R-1B zoned property and only 17.33 acres of C-1 zoned property, as opposed to 24.86 acres of C-1 zoned property. All of the remaining aspects/characteristics of the current LT PUD will remain intact as set forth in Sections 2700-2713 of the Madison County Zoning Ordinance ("MCZO"). (i.e. 2.90 units per acre) A legal description of the

thirty (30) acres of R-1B zoned property if this rezoning is approved is attached hereto as **Exhibit “B”** and made a part hereof.

7. A preliminary Plat consisting of two (2) sheets, depicting the 30 acres of R-1B zoned property is attached hereto as **Exhibit “C”** and made a part hereof. Plats depicting the location and dimensions of the originally zoned R-1B property and the C-1 property requested to be rezoned hereunder are also attached hereto as collective **Exhibit “D”** and made a part hereof.
8. The preliminary plat (“**Exhibit “C”**”) depicts a total of eighty-seven (87) R-1B lots of varying shapes, and dimensions and provides for the development of the 30 acres in a cohesive and coordinated manner rather than on a lot-by-lot basis, i.e. 2.9 lots or dwelling units per acre. (Section 2706.08). The preliminary plat is also consistent with the intent and purpose of the existing LT PUD to allow varying lot sizes and minimum lot widths while obtaining the approximate same overall density as would ordinarily apply if the same area were developed by conventional means. (See Section 2700, A-D, pgs. 162 and 163 of MCZO.) **In addition the preliminary plat also establishes that the revised acreage of R-1B property (30 acres vs. 22.47) will contain over thirty-three percent (33%) of Common Open Space which is more than double the percentage of Common Open Space required under Section 2709.01.**

II.

Changes or Conditions that Support Rezoning

9. Section 806.03 MCZO provides that rezoning is appropriate if the rezoning meets one of two (2) criteria. The second of those criteria is “**That the character of the neighborhood has changed to such an extent as to justify reclassification, and that there is a public**

need for the rezoning.” Not only does the Applicants “Rezoning Petition” squarely meet and exceed this criteria, but such was the case when the Livingston Township PUD was first adopted in 2009.

10. Since January 2021 more than seventy million (\$70,000,000) in commercial construction permits have been issued in Madison County. The cities of Ridgeland, Madison, and Gluckstadt and Madison County continue to be a hot bed for economic activity and development. Over sixty (60) permits were issued in 2021 which included everything from commercial and industrial construction to business and church expansions along with signature retail developments. All of these new developments have also created thousands of new jobs in Madison County, Mississippi which will require additional residential development. A list of just a few of the more impactful and job creating developments created in Central and Southern Madison County are listed below:

- (a) The largest permit issued was for the new Amazon conveyer distribution center in the amount of \$56,400,000 located off of Highway 22 in Canton, Mississippi. This 69.2-acre development is expected to create over 1,000 new jobs.
- (b) In February of 2022 Nissan announced that its Canton location would be the new manufacturer of two (2) new all-electric vehicles in the State of Mississippi. This will require the upskilling of nearly 2,000 employees to ensure the current manufacturing and assembly jobs remain in Mississippi and that Nissan will continue employment of almost 5,000 people at its Canton, Mississippi Plant.
- (c) The Madison County Economic Development Authority (“MCEDA”) has partnered with Agracel and Ergon to construct a 100,000 square foot speculative building on the Madison County Mega Site (“Mega Site”). The building is being constructed with the

ability to expand up to 300,000 square feet which will produce hundreds of new jobs for years to come. Madison County currently controls approximately 900 acres of the Mega Site and is working with Entergy to construct a \$60,000,000 substation that would provide upwards of 80 megawatts to service to the entire Mega Site.

- (d) In March of 2022 the University of Mississippi Medical Center (“UMMC”) purchased roughly 36 acres in Ridgeland, Mississippi at the intersection of Colony Park Boulevard and I-55 frontage road. UMMC intends to increase its teaching and academic facilities along with its healthcare and surgical capabilities, thereby creating thousands of new jobs.
- (e) In May of 2021 Southern Beverage Company announced its plan to build a new and modern 184,000 square foot distribution facility in Ridgeland, Mississippi which will create and bring an additional 200 jobs to South Madison County.
- (f) The Villages at Madison has been approved and is currently under construction. The Villages at Madison will ultimately consist of over 18,000 square feet of retail, commercial and office space in the City of Madison which will also generate the need for additional residential housing.
- (g) The building permit for Sullivan’s Market Place grocery store in Gluckstadt totaled \$5,500,000. The building permits for Grace Crossing Baptist Church, Germantown Retail Center and Mannsdale Dental respectively totaled \$2,100,000, \$1,100,000 and \$975,000.

(h) Based on MCEDA records, between October 2017 and February 2022, 18 new developments were announced/started¹. Over 2,100 new jobs committed, in excess of \$1,225,010,000 investment committed, and all with a corresponding per capita income for Madison County of \$68,381.00.

11. The economic development referenced above is only a part of all of the economic development taking place all over Madison County. New businesses are flocking to Madison County as a consequence of its mushrooming residential population growth over the last decade. According to the 2020 census, more than 109,000 people currently reside in Madison County which is an increase of 14.6% from the 95,000 people that lived here in 2010. Undeveloped property throughout Central and South Madison County is being placed into developments of all kinds and creating a never-ending need for new housing.

12. According to the Central Mississippi Multiple Listing Service, 2021² was a year for the record books with 2022 picking up where 2021 left off. **In 2021 and continuing into 2022 existing house sales hit their highest level in 15 years. Sales prices have reached new highs, inventory of homes for sale hit rock bottom and homes sold in record time. From 2021-2022 new listings increased by 11.7%. Inventory levels of homes for sale decreased by 47.5%, and days on the market was down 50.7%. The month's supply of inventory was down 35% to 1.2 months.**

13. Over the last ten (10) years the economic developmental activity and residential home sales have been extremely strong within Central and South Madison County. This signifies the

¹ Musee; Fastenal; Malouf Construction; Topre; Southern Beverage; Vertex Aerospace; B&B Electric & Utility Contractors, Inc.; Logista; UPS; Amazon; Systems Electro Coasting; The Village at Madison; Agron (Agracel & Ergon); Entergy; Tony's Tamales; Department of Public Safety; Nissan North America; Southern Sky.

² Central Mississippi MLS covers residential activity in a ten (10) county area.

continued demand and increasing public need for housing. The economic development referenced above, along with all of the smaller retail and commercial construction have **now outpaced the supply of residential housing**. There has been and continues to be a very strong demand and continued public need for residential housing. The increased number of residential acres in the reclassified Livingston PURD would have a positive and beneficial impact not only on the Livingston PUD, as a whole, but also as to the surrounding residential developments. The increase of additional residential lots will attract quality residential development and quality families to the area. The rezoning requested and reclassification of a total of 30 acres to R-1B from a C-1 classification is made possible by the Bear Creek Water Association.

14. There can be no doubt that the character of our neighborhood here in Central and South Madison County has drastically changed over the last ten (10) years since the Livingston PUD was rezoned. The addition of neighborhoods such as Reunion, Devlin Springs, Hartfield, Johnstone, Noah's Mill, Eden and Chestnut Hill have proven that this is an area that is growing and thriving. This development will fit perfectly with the changing character, while keeping with the historical and old-style desires of the Livingston community. The sewerage requirements placed upon developments by Bear Creek Water Association, the Mississippi Department of Environmental Quality, and the Mississippi State Department of Health severely limits the financial feasibility of larger lot subdivisions and have further changed the character of the areas within the sewer certificated area.

15. The Zoning Ordinance of Madison County, Mississippi describes the C-1 district as a General Commercial District and R-1B as a moderate density Residential District. The LT

Planned Unit Development superimposed over the R-1B and C-1 designations offers many advantages. Article XVIII, Section 1800, et al describes the purpose of the PURD District as follows:

A. To provide for the development of relatively large land areas as total cohesive and coordinated units, rather than development on a lot-by-lot basis.

B. To permit more flexible and advantageous use of sites, especially with regard to natural features of the landscape, through the relaxation of conventional zoning requirements including minimum lot size and minimum lot width, while at the same time retaining approximately the same overall density as would ordinarily apply if the same areas were developed by conventional methods.

C. To help reduce the cost of residential development by allowing more dwelling units per gross acre than could be built in a conventional low density subdivision (due to the extensive space requirements of streets rights-of-way, utility easements, etc., in a conventional subdivision) and by reducing the length of streets and utility extensions through concentration or clustering of housing.

D. To provide for the development of sites in which land not used for structures and yards but not required by the basic zoning of the site shall be reserved collectively in contiguous units accessible to all dwellings within the PURD as open space; this open space will provide recreational opportunities for the residents of the PURD, and will also afford improved, safer pedestrian circulation within the PURD.

16. Jeff Cox and The Shire at Livingston propose to develop the subject property according to the developmental plan/preliminary plat attached hereto as **Exhibit "C"** which is dated (*new preliminary plat date*), 2022. **This development would also provide for a secondary/emergency access for The Shire at Livingston and the Chestnut Hill Subdivisions as shown on the preliminary plat (Exhibit "C") attached hereto.**

17. The Petitioners assert that this rezoning of 7.53 acres of C-1 zoned property to R-1B zoned property would be the highest and best use of the property, compliment the development of the remaining 17.33 acres of C-1 zoned property and be in harmony with the existing residentially zoned property in the immediate area. This property has immediate access to

Highway 22 and 463 and is not located in a flood hazard zone. The **down zoning** of the property here in question would also operate to reduce overall traffic and vehicular trips in and around the Livingston development and surrounding residential developments.


WHEREFORE, PREMISES CONSIDERED, Petitioners Jeff Cox and The Shire at Livingston respectfully request that their Petition to Rezone Real Property be received, and after due consideration, the Board of Supervisors of Madison County, Mississippi will enter an Order rezoning the 7.53 acres currently zoned C-1 in the current Livingston Township PUD to an R-1B classification so that the LT PUD would thereafter consist of thirty (30) acres of R-1B zoned property and 17.33 acres of C-1 zoned property. The Petitioners further request that the Madison County Land Use Plan be amended to reflect the rezoning requested hereinabove.

RESPECTFULLY SUBMITTED, this the th28 day of June, 2022.



Jeff Cox, Developer

The Shire at Livingston

By: 

Mike Bollenbacher, Managing Member
of B&S MS Holdings, LLC

**Legal Description
For
The Shire – Rezoning Commercial to Residential**

A tract or parcel of land containing **7.53 acres**, more or less, lying and being situated in the Southeast 1/4 of Section 8, Township 8 North, Range 1 East, Madison County, Mississippi and being more particularly described by metes and bounds as follows:

Commencing at a found monument with brass cap marking the Southeast corner of said Section 8; run thence

North for a distance of 888.59 feet; thence

West for a distance of 707.05 feet to a found 1/2 inch iron pin with an orange cap (COA5-6) marking the West right-of-way of Mississippi Highway No. 463 and the Northeast corner of Chestnut Hill Part 1 D as recorded in Plat Cabinet E, Slides 141B-142A in the Office of the Chancery Clerk of Madison County; thence

Continue along the North line of said Chestnut Hill Part 1D as follows:

South 89 degrees 47 minutes 11 seconds West for a distance of 628.63 feet to found 1/2 inch iron pin with an orange cap (COA5-6); thence

Northwesterly along the arc of a curve to the left for a distance of 80.10 feet, said curve having a radius of 60.00 feet and a deflection angle of 76 degrees 29 minutes 37 seconds, (chord bearing and distance, North 74 degrees 37 minutes 43 seconds West, 74.29 feet) to a found 1/2 inch iron pin with an orange cap (COA5-6); thence

North 13 degrees 25 minutes 10 seconds East for a distance of 52.24 feet to a found 1/2 inch iron pin with an orange cap (COA5-6); thence

North 76 degrees 41 minutes 00 seconds West for a distance of 189.42 feet; thence

North 70 degrees 30 minutes 38 seconds West for a distance of 81.27 feet to a found 1/2 inch iron pin with an orange cap (COA5-6); thence

North 56 degrees 05 minutes 44 seconds West for a distance of 216.40 feet to a found 1/2 inch iron pin with an orange cap (COA5-6); thence

Leaving said North line of Chestnut Hill Part 1D; thence

North 74 degrees 51 minutes 40 seconds West for a distance of 221.80 feet; thence

North 39 degrees 50 minutes 39 seconds West for a distance of 307.35 feet to a set 1/2 inch iron pin and the **Point of Beginning** of the herein described property; thence

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6/3/2022



Outlook\C2JUBVPJIB-8371-RES-

North 39 degrees 50 minutes 39 seconds West for a distance of 426.88 feet to the South line of the Citizens Bank & Trust Company property as recorded in Deed Book 847, Page 165 in the Office of the Chancery Clerk of Madison County; thence

North 49 degrees 45 minutes 00 seconds East along said South line of the Citizens Bank & Trust Company property for a distance of 187.17 feet; thence

North 47 degrees 11 minutes 00 seconds East along said South line of the Citizens Bank & Trust Company property for a distance of 55.15 feet to a found 1/2 inch iron pin with an orange cap (COA5-6) marking the Southeast corner of said Citizens Bank & Trust Company property and the Southwest corner of the B & S MS Holdings, LLC property as recorded in Deed Book 3766, Page 89 in the Office of the Chancery Clerk of Madison County; thence

North 43 degrees 37 minutes 46 seconds East along the South line of said B & S MS Holdings, LLC property for a distance of 147.45 feet to a found 1/2 inch iron pin with a blue cap; thence

North 40 degrees 21 minutes 29 seconds East along the South line of said B & S MS Holdings, LLC property for a distance of 128.72 feet to a found 1/2 inch iron pin with a blue cap marking the Southeast corner of said B & S MS Holdings, LLC property; thence

South 35 degrees 59 minutes 27 seconds East for a distance of 28.29 feet to a found 1/2 inch iron pin with an orange cap (COA5-6); thence

North 46 degrees 53 minutes 26 seconds East for a distance of 96.18 feet to the West line of the Livingston Community Hall LLC property as recorded in Deed Book 3365, Page 51 in the Office of the Chancery Clerk of Madison County; thence

South 43 degrees 06 minutes 21 seconds East along said West line of the Livingston Community Hall LLC property for a distance of 65.99 feet to the Southwest corner of said Livingston Community Hall LLC property; thence

North 48 degrees 58 minutes 54 seconds East along the South line of said Livingston Community Hall LLC property for a distance of 100.33 feet; thence

North 52 degrees 50 minutes 25 seconds East along said South line of the Livingston Community Hall LLC property for a distance of 35.00 feet; thence

North 16 degrees 13 minutes 25 seconds East along said South line of the Livingston Community Hall LLC property for a distance of 22.21 feet to the Southeast corner of said Livingston Community Hall LLC property; thence

North 43 degrees 45 minutes 45 seconds West along the East line of said Livingston Community Hall LLC property for a distance of 139.70 feet; thence

South 16 degrees 13 minutes 25 seconds West along the East line of said Livingston Community Hall LLC property for a distance of 16.74 feet; thence

South 76 degrees 13 minutes 50 seconds West along the East line of said Livingston Community Hall LLC property for a distance of 5.20 feet; thence

North 43 degrees 45 minutes 45 seconds West along the East line of said Livingston Community Hall LLC property for a distance of 172.60 feet; thence

North 72 degrees 59 minutes 05 seconds East for a distance of 176.35 feet to a found 1/2 inch iron pin marking said West right-of-way of Mississippi Highway No. 463; thence

Continue along said West right-of-way of Mississippi Highway No. 463 as follows:

Southeasterly along the arc of a curve to the left for a distance of 494.81 feet, said curve having a radius of 1,190.58 feet and a deflection angle of 23 degrees 48 minutes 44 seconds, (chord bearing and distance, South 31 degrees 54 minutes 21 seconds East, 491.25 feet) to a set 1/2 inch iron pin; thence

South 50 degrees 11 minutes 34 seconds West for a distance of 364.70 feet to a set 1/2 inch iron pin; thence

South 39 degrees 48 minutes 26 seconds East for a distance of 144.00 feet to a set 1/2 inch iron pin; thence

South 50 degrees 11 minutes 34 seconds West for a distance of 457.15 feet to the **Point of Beginning**.

Prepared by:
Benchmark Engineering and Surveying, LLC
101 Highpointe Court, Suite B
Brandon, MS 39042
(601) 591-1077 Office
(601) 591-0711 Fax
Email: mlove@benchmarkms.net

660 Katherine Drive, Suite 301
Flowood, MS 39232
(601) 627-7780 Office
Email: gbonds@benchmarkms.net

**Legal Description
For
The Shire – Residential Rezoning**

A tract or parcel of land containing **29.98 acres**, more or less, lying and being situated in the Southeast 1/4 of Section 8, Township 8 North, Range 1 East, Madison County, Mississippi and being more particularly described by metes and bounds as follows:

Commencing at a found monument with brass cap marking the Southeast corner of said Section 8; run thence

North for a distance of 888.59 feet; thence

West for a distance of 707.05 feet to a found 1/2 inch iron pin with an orange cap (COA5-6) marking the West right-of-way of Mississippi Highway No. 463 and the Northeast corner of Chestnut Hill Part 1 D as recorded in Plat Cabinet E, Slides 141B-142A in the Office of the Chancery Clerk of Madison County and the **Point of Beginning** of the herein described property; thence

Continue along the North line of said Chestnut Hill Part 1D as follows:

South 89 degrees 47 minutes 11 seconds West for a distance of 628.63 feet to found 1/2 inch iron pin with an orange cap (COA5-6); thence

Northwesterly along the arc of a curve to the left for a distance of 80.10 feet, said curve having a radius of 60.00 feet and a deflection angle of 76 degrees 29 minutes 37 seconds, (chord bearing and distance, North 74 degrees 37 minutes 43 seconds West, 74.29 feet) to a found 1/2 inch iron pin with an orange cap (COA5-6); thence

North 13 degrees 25 minutes 10 seconds East for a distance of 52.24 feet to a found 1/2 inch iron pin with an orange cap (COA5-6); thence

North 76 degrees 41 minutes 00 seconds West for a distance of 189.42 feet; thence

North 70 degrees 30 minutes 38 seconds West for a distance of 81.27 feet to a found 1/2 inch iron pin with an orange cap (COA5-6); thence

North 56 degrees 05 minutes 44 seconds West for a distance of 216.40 feet to a found 1/2 inch iron pin with an orange cap (COA5-6); thence

Leaving said North line of Chestnut Hill Part 1D; thence

North 74 degrees 51 minutes 40 seconds West for a distance of 221.80 feet; thence

North 39 degrees 50 minutes 39 seconds West for a distance of 734.23 feet to the South line of the Citizens Bank & Trust Company property as recorded in Deed Book 847, Page 165 in the Office of the Chancery Clerk of Madison County; thence



North 49 degrees 45 minutes 00 seconds East along said South line of the Citizens Bank & Trust Company property for a distance of 187.17 feet; thence

North 47 degrees 11 minutes 00 seconds East along said South line of the Citizens Bank & Trust Company property for a distance of 55.15 feet to a found 1/2 inch iron pin with an orange cap (COA5-6) marking the Southeast corner of said Citizens Bank & Trust Company property and the Southwest corner of the B & S MS Holdings, LLC property as recorded in Deed Book 3766, Page 89 in the Office of the Chancery Clerk of Madison County

North 43 degrees 37 minutes 46 seconds East along the South line of said B & S MS Holdings, LLC property for a distance of 147.45 feet to a found 1/2 inch iron pin with a blue cap; thence

North 40 degrees 21 minutes 29 seconds East along the South line of said B & S MS Holdings, LLC property for a distance of 128.72 feet to a found 1/2 inch iron pin with a blue cap marking the Southeast corner of said B & S MS Holdings, LLC property; thence

South 35 degrees 59 minutes 27 seconds East for a distance of 28.29 feet to a found 1/2 inch iron pin with an orange cap (COA5-6); thence

North 46 degrees 53 minutes 26 seconds East for a distance of 96.18 feet to the West line of the Livingston Community Hall LLC property as recorded in Deed Book 3365, Page 51 in the Office of the Chancery Clerk of Madison County; thence

South 43 degrees 06 minutes 21 seconds East along said West line of the Livingston Community Hall LLC property for a distance of 65.99 feet to the Southwest corner of said Livingston Community Hall LLC property

North 48 degrees 58 minutes 54 seconds East along the South line of said Livingston Community Hall LLC property for a distance of 100.33 feet; thence

North 52 degrees 50 minutes 25 seconds East along said South line of the Livingston Community Hall LLC property for a distance of 35.00 feet; thence

North 16 degrees 13 minutes 25 seconds East along said South line of the Livingston Community Hall LLC property for a distance of 22.21 feet to the Southeast corner of said Livingston Community Hall LLC property; thence

North 43 degrees 45 minutes 45 seconds West along the East line of said Livingston Community Hall LLC property for a distance of 16.74 feet; thence

South 16 degrees 13 minutes 25 seconds West along the East line of said Livingston Community Hall LLC property for a distance of 139.70 feet; thence

South 76 degrees 13 minutes 50 seconds West along the East line of said Livingston Community Hall LLC property for a distance of 5.20 feet; thence

North 43 degrees 45 minutes 45 seconds West along the East line of said Livingston Community Hall LLC property for a distance of 172.60 feet; thence

North 72 degrees 59 minutes 05 seconds East for a distance of 176.35 feet to a found 1/2 inch iron pin marking said West right-of-way of Mississippi Highway No. 463; thence

Continue along said West right-of-way of Mississippi Highway No. 463 as follows:

Southeasterly along the arc of a curve to the left for a distance of 686.98 feet, said curve having a radius of 1,190.58 feet and a deflection angle of 33 degrees 03 minutes 37 seconds, (chord bearing and distance, South 36 degrees 31 minutes 48 seconds East, 677.49 feet) to a found 1/2 inch iron pin with an orange cap (COA5-6); thence

South 53 degrees 11 minutes 58 seconds East for a distance of 312.54 feet to a found 1/2 inch iron pin with an orange cap (COA5-6)

Southeasterly along the arc of a curve to the right for a distance of 695.51 feet, said curve having a radius of 1,373.62 feet and a deflection angle of 29 degrees 00 minutes 39 seconds, (chord bearing and distance, South 40 degrees 06 minutes 20 seconds East, 688.10 feet) to a found 1/2 inch iron pin with an orange cap (COA5-6); thence

South 25 degrees 03 minutes 34 seconds East for a distance of 385.72 feet to the **Point of Beginning.**

Prepared by:
Benchmark Engineering and Surveying, LLC
101 Highpointe Court, Suite B
Brandon, MS 39042
(601) 591-1077 Office
(601) 591-0711 Fax
Email: mlove@benchmarkms.net

660 Katherine Drive, Suite 301
Flowood, MS 39232
(601) 627-7780 Office
Email: gbonds@benchmarkms.net



LETTER	AREA (S.F.)	LETTER	AREA (S.F.)
A	38,903± S.F.	L	4,816± S.F.
B	7,569± S.F.	M	1,998± S.F.
C	6,631± S.F.	N	2,104± S.F.
D	2,104± S.F.	O	2,578± S.F.
E	6,933± S.F.	P	2,578± S.F.
F	1,233± S.F.	Q	8,045± S.F.
G	1,831± S.F.	R	190,659± S.F.
H	2,585± S.F.	S	73,194± S.F.
I	2,014± S.F.	T	63,191± S.F.
J	2,014± S.F.	U	63,191± S.F.
K	1,998± S.F.	V	8,277± S.F.



- COMMON AREA (GREEN SPACES/OPEN SPACES)
- SINGLE FAMILY RESIDENTIAL LOTS
- ROADS & ALLEYS



EXHIBIT

NOTES:

1. THIS PLAN, AND ALL PARTS HEREOF, SHALL BE CONSIDERED AS A WHOLE AND SHALL BE VOID WITHOUT THE OTHERS.
2. THIS PLAN IS THE PROPERTY OF THE ENGINEER AND SURVEYOR AND SHALL BE KEPT IN THE OFFICE OF THE ENGINEER AND SURVEYOR.
3. THIS PLAN IS NOT TO BE USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN CONSENT OF THE ENGINEER AND SURVEYOR.
4. THIS PLAN IS NOT TO BE USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN CONSENT OF THE ENGINEER AND SURVEYOR.
5. THIS PLAN IS NOT TO BE USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN CONSENT OF THE ENGINEER AND SURVEYOR.
6. THIS PLAN IS NOT TO BE USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN CONSENT OF THE ENGINEER AND SURVEYOR.
7. THIS PLAN IS NOT TO BE USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN CONSENT OF THE ENGINEER AND SURVEYOR.
8. THIS PLAN IS NOT TO BE USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN CONSENT OF THE ENGINEER AND SURVEYOR.
9. THIS PLAN IS NOT TO BE USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN CONSENT OF THE ENGINEER AND SURVEYOR.
10. THIS PLAN IS NOT TO BE USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN CONSENT OF THE ENGINEER AND SURVEYOR.

PROJECT:
THE SHIRE AT LIVINGSTON

SHEET NUMBER:
2 of 2

PROJECT NUMBER:
B-8371

PROJECT LOCATION:
HIGHWAY 463
MADISON COUNTY, MISSISSIPPI

CLIENT:
CHESTNUT HILL, LLC

116 LIVINGSTON CHURCH ROAD, SUITE B, FLORA, MS 39071

DATE: 03/22/23 **DRAWN:** NSA

CHECKED: GAB **SCALE:** 1"=60'

REF. CA:

EC SURFACE:

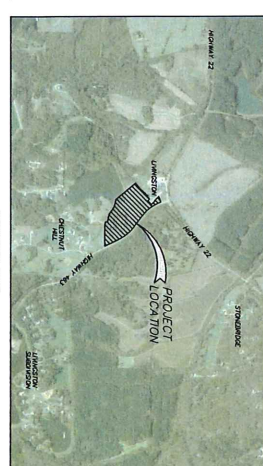
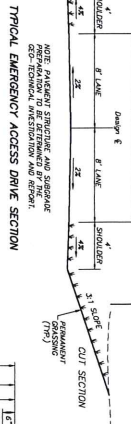
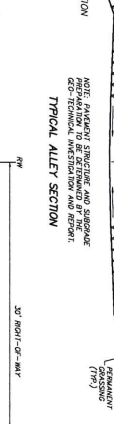
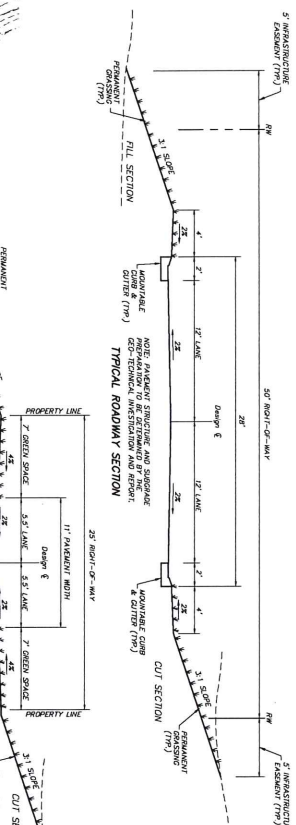
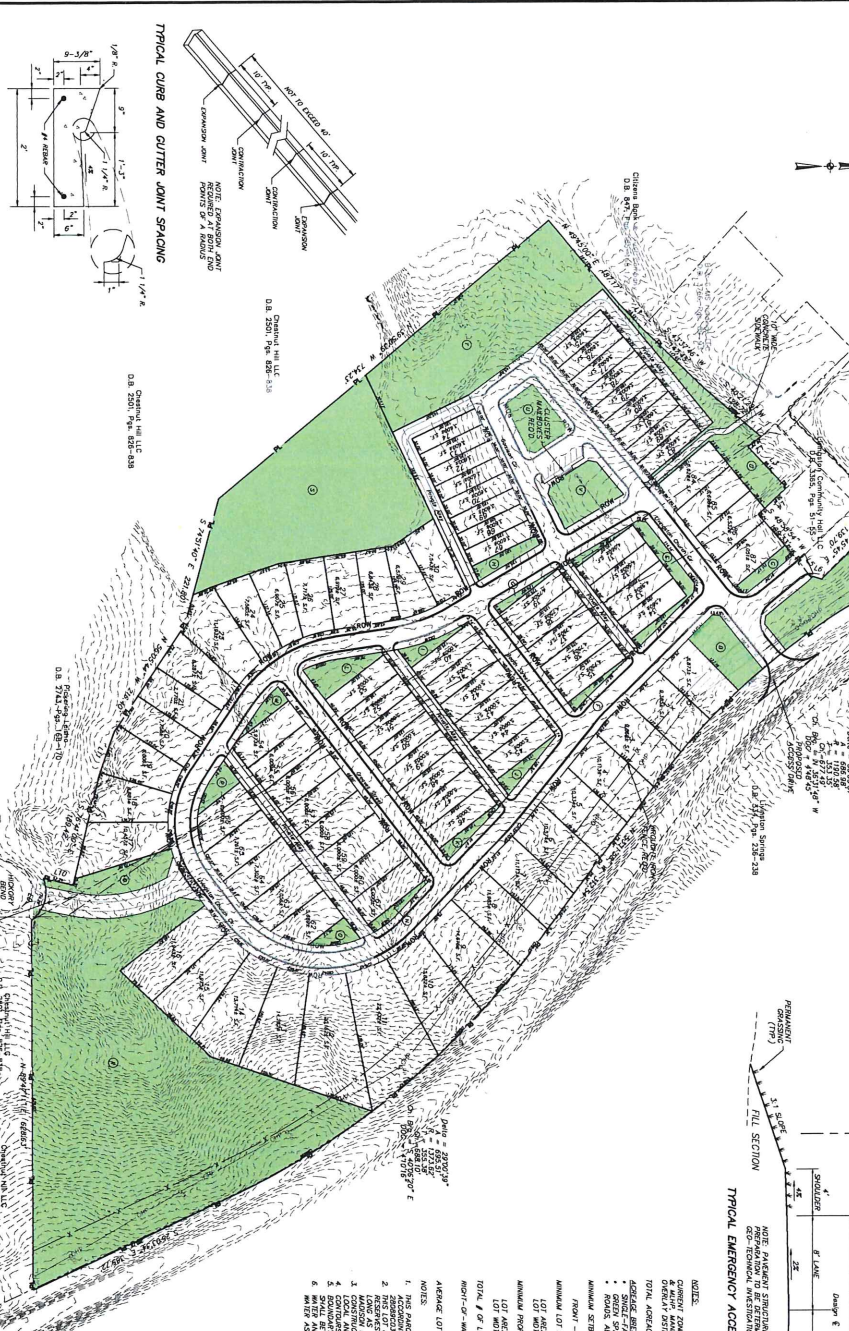
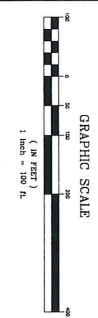
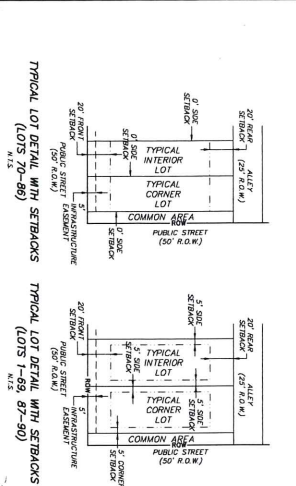
FD SURFACE:

BENCHMARK
ENGINEERING & SURVEYING, LLC

181 Highgate Court, Suite B
Bridges, Mississippi 39242
601-881-1877

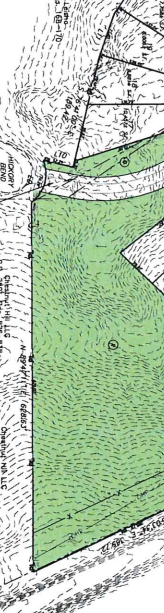
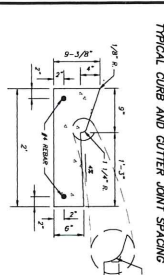
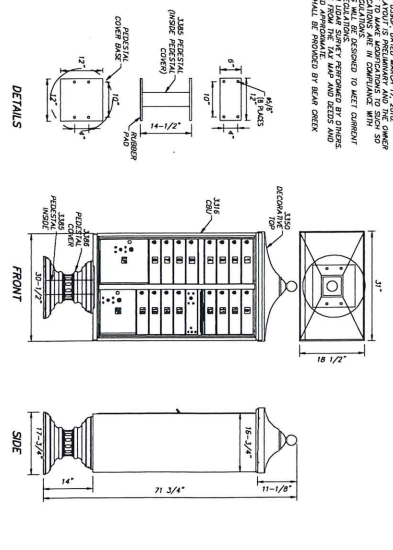
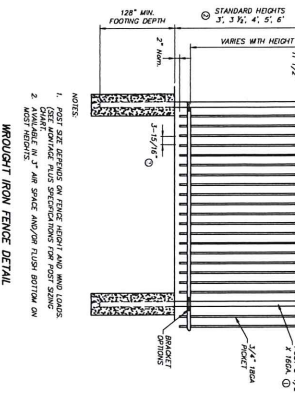
860 Katherine Drive, Suite 302
Towers, Mississippi 39232
601-887-7769

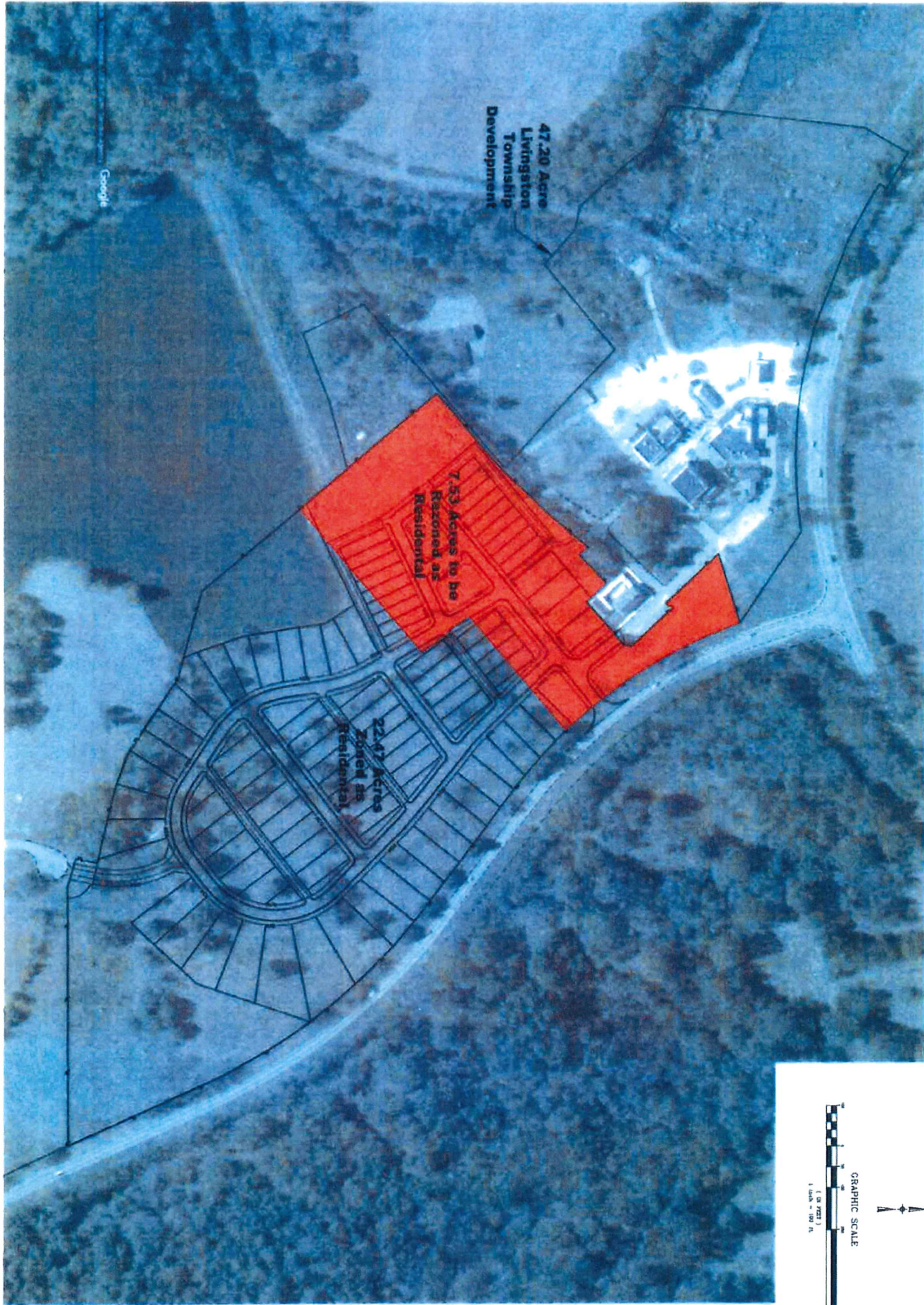
www.benchmarkinc.com



NO.	DATE	DESCRIPTION
1	01/22/22	ISSUED FOR PERMIT
2	02/01/22	REVISED PER COMMENTS
3	02/15/22	REVISED PER COMMENTS
4	02/22/22	REVISED PER COMMENTS
5	03/01/22	REVISED PER COMMENTS
6	03/08/22	REVISED PER COMMENTS
7	03/15/22	REVISED PER COMMENTS
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99	12/18/23	REVISED PER COMMENTS
100	12/25/23	REVISED PER COMMENTS

- NOTES:**
1. THIS PROJECT IS LOCATED IN FLOOD ZONE X AND IS ZONED RESIDENTIAL SINGLE-FAMILY (RS-1). THE DEVELOPER SHALL OBTAIN A FLOOD DAMAGE PREVENTION CERTIFICATE FROM THE MISSISSIPPI DEPARTMENT OF REVENUE AND TAXATION PRIOR TO THE START OF CONSTRUCTION.
 2. THE DEVELOPER SHALL OBTAIN A PERMIT FROM THE MISSISSIPPI DEPARTMENT OF REVENUE AND TAXATION PRIOR TO THE START OF CONSTRUCTION.
 3. THE DEVELOPER SHALL OBTAIN A PERMIT FROM THE MISSISSIPPI DEPARTMENT OF REVENUE AND TAXATION PRIOR TO THE START OF CONSTRUCTION.
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PROJECT NUMBER
B-3371

PROJECT
THE SHIRE AT LIVINGSTON

SHEET NUMBER
1 of 1

SHEET CONTENTS
ZONING EXHIBIT

PROJECT LOCATION
HIGHWAY 463
MADISON COUNTY, MISSISSIPPI

CLIENT
CHESTNUT HILL, LLC
115 LIVINGSTON EMBURGE ROAD, SUITE B, LIVING, MS 39071

DATE 04/19/21 DRAWN ABA

DESIGNED GAB SCALE 1"=100'

REF. E.A.

EG SURFACE

FG SURFACE

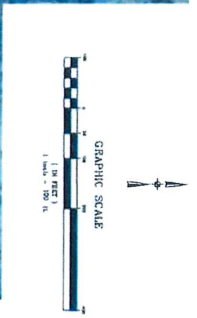
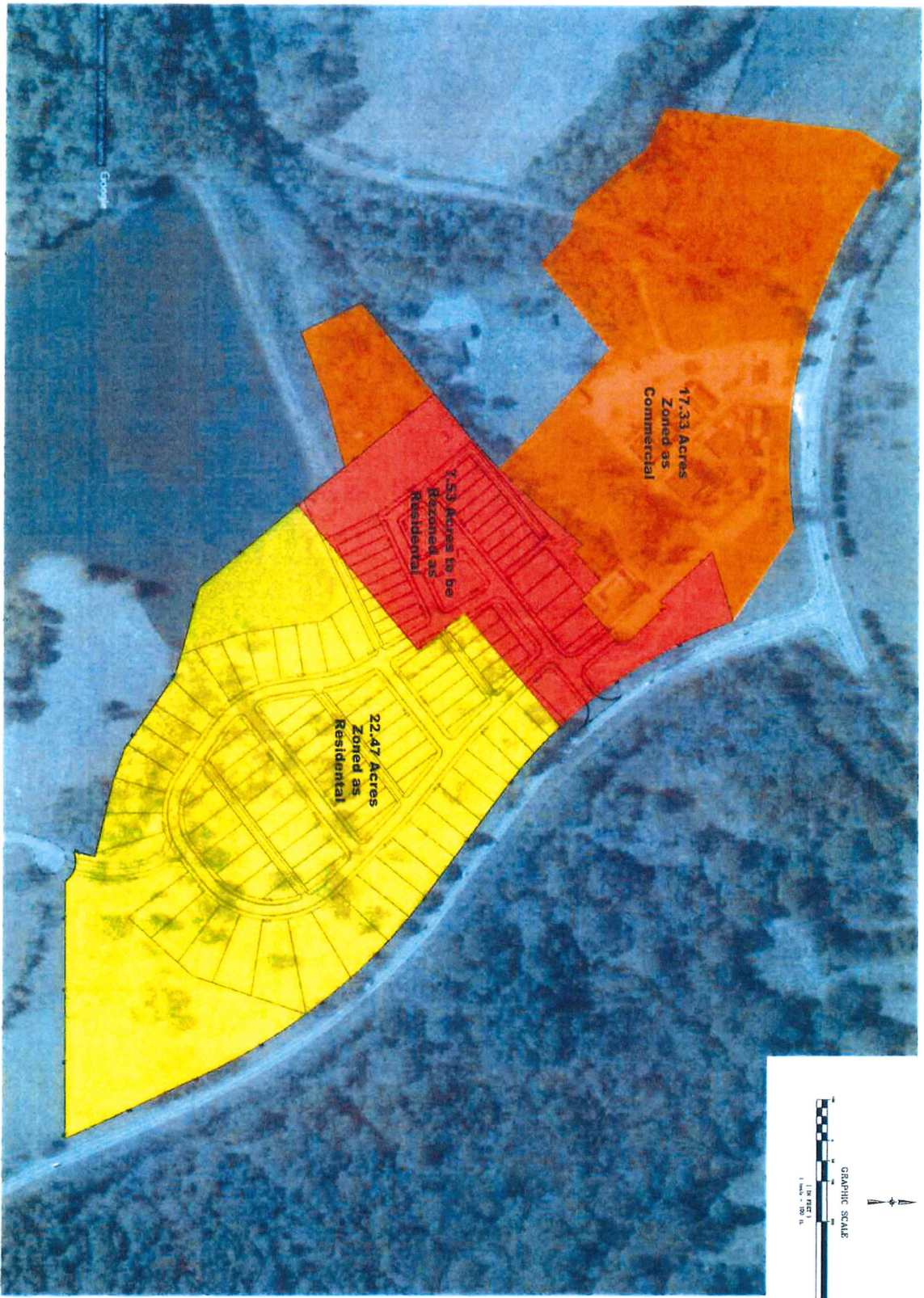
REVISIONS

BENCHMARK
ENGINEERING & SURVEYING, LLC

1000 Highway 463, Suite 100 Livingston, MS 39071
337-237-1111 www.benchmarkinc.com

tabbler

EXHIBIT "D"



PROJECT THE SHIRE AT LIVINGSTON	PROJECT LOCATION HIGHWAY 463 MADISON COUNTY, MISSISSIPPI 0.66" CHESLNU HILL, LLC 112 LIVINGSTON EXECUTIVE ROAD, SUITE 111, DORA, MS 39071	DATE: 5/14/22	DRAWN: MBL	REVISIONS:
		CHECKED: GAB	SCALE: 1"=100'	_____
SHEET NUMBER 1 of 1	SHEET CONTAINS ZONING EXHIBIT	10% SURFACE	7% SURFACE	BENCHMARK ENGINEERING & SURVEYING, LLC <small>181 Livingston Street, Suite 400 Dora, Mississippi 39071 662-487-3167</small>

BEFORE THE BOARD OF SUPERVISORS OF MADISON COUNTY, MISSISSIPPI

IN THE MATTER OF THE REZONING OF
CERTAIN LANDS SITUATED IN SECTION 8,
TOWNSHIP 8 NORTH, RANGE 1 EAST,
MADISON COUNTY MISSISSIPPI

CHESTNUT HILL
HOMEOWNER ASSOCIATION, INC.

APPELLANT/OBJECTOR

V.

JEFF COX AND THE SHIRE AT LIVINGSTON

APPELLEES/PETITIONERS

**CHESTNUT HILL'S LEGAL MEMORANDUM ON APPEAL and
OBJECTION TO COX-SHIRE REZONING REQUEST**

COMES NOW Appellant Chestnut Hill Homeowner Association, Inc., ("Chestnut Hill") and hereby submits this, its Legal Memorandum and Objection to the rezoning request made by Jeff Cox and the Shire as the request asks the Board of Supervisors for a decision which is both arbitrary and capricious, as well as unsupported by substantial evidence. The Petitioners carry a heavy burden which they cannot meet, and the proposed rezoning does not comport with the 2019 Comprehensive Plan as required by state law; additionally, Petitioners wholly fail to show 1) the requisite change in character of the neighborhood since 2019, or even since the most recent rezoning, and 2) a public need. Chestnut Hill requests this Board to deny the request.

INTRODUCTION and BACKGROUND

Petitioners Jeff Cox and The Shire at Livingston seek a rezoning of certain land in Madison County; more specifically, the Petitioners request this Board of Supervisors to rezone 7.53 acres from C-1 to R-1B. As a result, what is now 22.47 residential acres would become 30 acres, and what is now 24.86 commercial acres would become 17.33. The Petitioners also seek in writing, if this Board were to approve its rezoning request, writing that the new 30-acres of

residential land be re-combined and redesignated within the Livingston Township Planned Unit Development (“PUD”). This matter came before the Madison County Planning and Zoning Commission for a public hearing on Sept. 8, 2022, at which time multiple people were heard by the Commission; among the points brought to the Commission’s attention in opposition to the request were that this proposed zoning change does not comport with the County’s 2019 Comprehensive Plan and that the Petitioners cannot meet their burden of proof to show either requirement compelling a zoning change. Even today, Petitioners can show neither a change in character of the neighborhood which has taken place since the last zoning change nor a public need for more residential land. Nonetheless, the Planning and Zoning Commission ultimately voted 3-2 to recommend approval of the rezoning request to the Board of Supervisors.

Chestnut Hill filed an appeal with the County on Sept. 21, which under sections 806.06 and 813.02 of the County Zoning Ordinance entitles Chestnut Hill as the aggrieved party to a new public hearing. The appeal public hearing was initially set for Nov. 21, but the County continued the matter to Dec. 19. The decision of the Planning and Zoning Commission was made in error, and Appellant Chestnut Hill now asks this Board to reject the Commission’s recommendation and to deny the rezoning request.

OBJECTION and ARGUMENT

Petitioners cannot meet their heavy burden, the proposed rezoning does not comport with the Comprehensive Plan as required by state law, and Petitioners fail to show any requisite change in character of the neighborhood since 2019 or any recent rezoning, or a public need.

I. The Petitioners Bear the Burden of Proof, as the County’s Zoning Ordinance is Presumed Valid.

While the Zoning Ordinance provides that the aggrieved party bringing this appeal is entitled to a new public hearing, the party seeking the zoning change bears the burden of proof.

Mississippi law is clear on this point – the burden of proof rests upon the party seeking a zoning change “to show that the character of the neighborhood had changed to such an extent that it justified rezoning and that there was a public need for rezoning the property.” *Bd. of Aldermen v. Conerly*, 509 So. 2d 877, 884 (Miss. 1987). “Unless the evidence is clear and convincing as to those requirements, the action of a rezoning board has been held to be arbitrary, capricious and discriminatory.” *Id.*

Additionally, “[a]ll presumptions must be indulged in favor of the validity of a zoning ordinance if it is within the legislative power of the [County]. Such an ordinance is presumed to be reasonable and for the public good.” *Id.* at 883. “The presumption of reasonableness must be applied to the facts of the particular case, and it applies to re-zoning as well as to the original zoning regulation, but not with the same weight, the presumption being that the zones are well planned and arranged to be more or less permanent, subject to change only to meet a genuine change in conditions.” *Id.*

In rezoning requests, “if there has been a change in the neighborhood and if there is a public need therefor, evidence to support it should not be difficult to produce.” *Id.* at 886. “To support on appeal a reclassification of zones, the record at a minimum should contain a map showing the circumstances of the area, the changes in the neighborhood, statistics showing a public need, and such further matters of proof so that a rational, informed judgment may be formed as to what the governing board considered.” *Id.* “When there is no such proof in the record we must conclude there was neither change nor public need.” *Id.*

Zoning changes are intended to be difficult because properly adopted zoning ordinances are presumed valid. Here, the Petitioners made mention of the correct standard for change – change in character of the neighborhood and public need – but failed to provide any real proof to

this Commission. Without such proof, Petitioners fall short of meeting their burden, and this rezoning request fails. This Board should reject the slim recommendation of the Planning and Zoning Commission and deny the rezoning request.

II. The Request is not in Accordance with the 2019 Comprehensive Plan.

All zoning changes must be made in accordance with the County's Comprehensive Plan under Section 806.04 of the Madison County Zoning Ordinance, as well as Miss. Code Ann. § 17-1-9. The Land Use Plan found on page 37 of the Comprehensive Plan adopted in 2019 clearly shows the area at issue as planned for commercial use, not residential, and there has been no request to amend the Comprehensive Plan. Thus, such a rezoning would constitute spot zoning.

"[A]lthough a zoning ordinance or amendment creates in the center of a large zone a small area or a district devoted to a different use, it is not spot zoning if it is enacted in accordance with a comprehensive zoning plan." *Ridgewood Land Co. v. Simmons*, 243 Miss. 236, 251-52, 137 So. 2d 532,538 (1962). See also *Thomas v. Bd. of Supervisors*, 45 So. 3d 1173, 1188 (Miss. 2010); *Hall v. City of Ridgeland*, 37 So. 3d 25, 42 (Miss. 2010); *McWaters v. Biloxi*, 591 So. 2d 824, 829 (Miss. 1991) (to avoid spot zoning, the change must be in harmony with comprehensive plan). "When the validity of a rezoning ordinance is at issue, one test for arbitrariness is to look at the rezoning in the context of the comprehensive plan as the same may have evolved and been amended." *Woodland Hills Conservation Asso. v. Jackson*, 443 So. 2d 1173, 1181 (Miss. 1983). "Where the reclassification does no substantial violence to the growth scheme of the comprehensive plan and varies in no major respect from zoning classifications in the surrounding area, it will generally not be disturbed on judicial review. 'Spot zoning,' on the other hand, is generally condemned." *Id.* This rezoning request for more residential land is not made in accordance with the 2019 Comprehensive Plan and should be denied.

III. There is No Change in Character of the Neighborhood since 2019 or Any Other Rezoning Request nor Public Need Justifying Rezoning.

The Petitioner fails to show both a change in the character of the neighborhood and a public need which would justify the rezoning, instead citing matters happening in other surrounding communities and cities, such as Madison, Ridgeland, and the Canton area. Nothing within the neighborhood is shown to have changed to the point to justify a rezoning from commercial to residential; more importantly, in the time since the County last comprehensively rezoned – a mere 3 years ago in 2019 – the Petitioners can show no change whatsoever. Chestnut Hill will offer a detailed report from its urban and regional planning consultant Chris Watson to show that there has been very little change over the applicable period and no evidence of a public need for more residential land exists.

The real issues here apply to all rezoning cases and are simple after considering the facts of the case. In order to justify rezoning of property, the appellant must prove (1) there has been a substantial change in the character of the neighborhood since 1976, (the date which begins the period under consideration), and (2) a public need exists for additional C-1 restricted commercial zoning, and those essentials must be proved by clear and convincing evidence. *City of Oxford v. Inman*, 405 So. 2d 111 (Miss. 1981); *Cloverleaf Mall, Ltd. v. Conerly*, 387 So. 2d 736 (Miss. 1980); *Sullivan v. City of Bay St. Louis*, 375 So. 2d 1200 (Miss. 1979).

Bridges v. Jackson, 443 So. 2d 1187, 1189 (Miss. 1983) (the “modified Maryland” rule).

“There is no bright-line rule as to what constitutes sufficient evidence of change in a neighborhood's character or public need. *Thomas*, 45 So. 3d at 1182 (¶30). However, there must be enough evidence for the zoning board to reach an informed decision.² *Id.*” *Gardner v. City of Tupelo*, 76 So. 3d 204, 207-08 (Miss. Ct. App. 2011).

A. The Time in which the Character of the Neighborhood may have changed.

Importantly, the period of time in which the neighborhood is examined to have changed (or not to have changed) is not an endless delve into the past, as the Petitioners would have this

Board believe, but rather since the most recent comprehensive rezoning which was in 2019, or since the last rezoning request. In either case, the Petitioners fail to provide sufficient evidence to the County. When reviewing a city or county's decision on rezoning requests, the Supreme Court has noted that "[m]aterial to this examination are new or additional facts which have occurred *since original zoning.*" *Cloverleaf Mall, Ltd. v. Conerly*, 387 So. 2d 736, 738 (Miss. 1980) (record showed no change, and the Court agreed "[b]ased on the record the rezoning was arbitrary, capricious, discriminatory, and abuse of discretion, and illegal"). The Court noted the area at issue there was "unchanged *since the adoption of the comprehensive zoning ordinance* and the ordinance extending the commercial zone." *Id.* at 740. Findings should be based on "evidence introduced at the hearing" that there is both a public need and "a material change had occurred in the circumstances and conditions of the neighborhood since the enactment of the original zoning ordinance." *Broadacres, Inc. v. Hattiesburg*, 489 So. 2d 501, 503 (Miss. 1986).

"Evidence that nearby property has been rezoned supports a finding by the city council there has been a material or substantial change in the neighborhood *since the inception of the comprehensive zoning plan.*" *McWaters v. Biloxi*, 591 So. 2d 824, 827 (Miss. 1991) (citing *Martinson v. City of Jackson*, 215 So.2d 414, 418 (Miss. 1968)). In this case, the County adopted a new comprehensive rezoning plan just three years ago in 2019, along with a revised Zoning Ordinance and Zoning Map. The Mississippi Supreme Court has noted, "Likewise, the evidence failed to establish that *since the adoption of the zoning map* there had been any such change in the character of the neighborhood as to justify a reclassification." *Martinson v. Jackson*, 215 So. 2d 414, 417 (Miss. 1968) (emphasis added; quoting the Maryland case of *Kroen v. Bd. of Zoning Appeals*, 209 Md. 420, 426, 121 A.2d 181, 184 (1956)). "An attack upon

a zoning ordinance, to be successful, must show affirmatively and clearly that it is arbitrary, capricious, discriminatory, or illegal.” *Kroen*, 209 Md. at 426, 121 A.2d at 184.

However, the Supreme Court has also looked to the most recent rezoning request as the controlling date. “In order to have property rezoned, the applicant must establish by clear and convincing evidence *that the character of the neighborhood has changed since the date of the last request for rezoning* and that a public need exists for rezoning.” *City of Jackson v. Aldridge*, 487 So. 2d 1345, 1346-47 (Miss. 1986) (emphasis added). In the *Aldridge* case, the city staff there could find no significant change in the land use since the last rezoning request, and the area there was overzoned for commercial uses; thus, the city could not recommend approval of the request. *Id.*

Though essentially legislative, over time the zoning process has acquired quasi-judicial trappings. No doubt this became inevitable the moment the power of judicial review came into being.

The hallmark of the exercise of judicial power is the enforcement of primary rules. Here, for example, we require adherence to the rule that no change in zoning classification may be made absent either a mistake in the original zoning or a change in circumstances in the neighborhood and a public need for the rezoning. To be sure, these rules are flexible, partaking more of the character of principles than rules. Because we enforce these principles, because *we direct that no rezoning shall occur except the requirements of these principles be met*, zoning has in fact become quasi-judicial.

Woodland Hills Conservation Asso. v. Jackson, 443 So. 2d 1173, 1181 (Miss. 1983) (emphasis added).

B. The Size of the Neighborhood.

As Mississippi has adopted the familiar test – mistake or change and need – in what has become known as the “modified Maryland rule,” or “modified Maryland doctrine.” *Nichols v. Madison Cnty. Bd. of Supervisors*, 953 So. 2d 1128, 1131 (Miss. Ct. App. 2006). Thus, a review of Maryland cases is helpful and instructional, particularly given that the Petitioners are asking

this County to consider evidence which is neither limited by time nor geographical scope – in fact, Petitioners request this Board to consider things which have been happening for a decade all over the County. Again, Petitioners cannot meet their heavy burden.

The Maryland Supreme Court has noted:

In demonstrating change in the neighborhood the applicant must show

"(a) what area reasonably constituted the 'neighborhood' of the subject property, (b) the changes which have occurred in that neighborhood since the comprehensive [or prior piecemeal] rezoning and (c) that these changes resulted in a change in the character of the neighborhood." *Montgomery v. Bd. of Co. Comm'rs for Prince George's Co.*, 256 Md. 597, 261 A. 2d 447 (1970). *See also Rockville v. Henley, supra; Clayman v. Prince George's Co.*, 266 Md. 409, 292 A. 2d 689 (1972); *Heller v. Prince George's Co., supra.*

Rockville v. Stone, 271 Md. 655, 661, 319 A.2d 536, 540 (1974). This is a common rule in Maryland, now adopted, as modified by adding a public need requirement, in Mississippi.

And the burden of proving change or mistake which rests on the applicant is quite onerous. In demonstrating change in the neighborhood, the applicant must show:

"(a) what area reasonably constituted the 'neighborhood' of the subject property, (b) the changes which have occurred in that neighborhood since the comprehensive rezoning and (c) that these changes resulted in a change in the character of the neighborhood." *Montgomery v. Bd. of Co. Comm'rs for Prince George's Co.*, 256 Md. 597, 261 A. 2d 447 (1970). *See also Clayman v. Prince George's Co.*, 266 Md. 409, 292 A. 2d 689 (1972); *Heller v. Prince George's Co., supra.*

Rockville v. Henley, 268 Md. 469, 473, 302 A.2d 45, 46-47 (1973).

As to what timeline a court should examine, or when a court may examine changes prior to a comprehensive rezoning, the Maryland Supreme Court has long held as follows:

It is quite correct, as argued by the applicants, that if there have been changes in the neighborhood since the comprehensive rezoning, the District Council may consider changes prior to the comprehensive rezoning to determine whether or not it will grant the application.

But, the District Council may only consider the changes *prior* to the comprehensive rezoning in reaching its decision in regard to the significance of the

subsequent change in the neighborhood and whether or not it would be in the public interest to grant the proposed rezoning. Where, however, there has been *no* change at all established since the last comprehensive rezoning, as in the present case, then it must be assumed that the legislative body, with the prior changes before it, confirmed the existing zoning notwithstanding such prior changes, when it adopted the new comprehensive rezoning ordinance retaining the existing zoning classification.

Chevy Chase Vill. v. Montgomery Cnty. Council, 258 Md. 27, 43-44, 264 A.2d 861, 869 (1970).

Petitioners have no offering of what should reasonable constitute the neighborhood, and their evidence offered is restricted neither in time nor in geography, and Petitioner's effort wholly fails. This Board should deny the rezoning.

CONCLUSION

If this Board were to grant the request for the proposed zoning change, it would be rendering a decision which is arbitrary and capricious, as well as unsupported by substantial evidence. For all these reasons, this Board should reject the recommendation of the Commission and deny the Petitioner's rezoning request in whole.

Respectfully submitted, this the 19th Day of December 2022.

/s/ John P. Scanlon
John P. Scanlon, MS Bar No. 101943
Mills. Scanlon. Dye & Pittman
Attorneys for Chestnut Hills
Homeowners Association, Inc.

CERTIFICATE OF SERVICE

I, John P. Scanlon, attorney for the Respondent Chestnut Hill hereby certify that I did submit this Response via hand delivery and electronic mail to the Clerk and Attorney for the Madison County Board of Supervisors and also serve the same in the same manner upon the Attorney for the Petitioners, Steve Smith.

Submitted, this the 19th Day of December 2022.

/s/ John P. Scanlon
John P. Scanlon, Esq.
MS Bar No. 101943