

**MINUTES OF THE MEETING OF THE MADISON COUNTY
PLANNING AND ZONING COMMISSION HELD AND CONDUCTED ON
THURSDAY, THE 14th DAY OF JULY, 2016 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 14th day of July, 2016 at 9:00 a.m. in the Board Room of the Madison County Chancery and Administrative Building.

Present: Walter McKay
 Larry Miller
 Dr. Bill Howard
 Don Drane

Scott Weeks, Planning and Zoning Administrator

Absent: Rev. Henry Brown

The meeting was opened with prayer by Commissioner Larry Miller, and those present participated in pledging allegiance to our flag.

There first came on for consideration the minutes of the June 9, 2016 meeting of the Commission. Upon motion by Commissioner Howard to approve the minutes, seconded by Commissioner Miller, with all voting "aye," the motion to approve the June 9, 2016 minutes passed.

There next came on for consideration the petition of Morris Real Estate for a variance for to the maximum sign square footage of 125 square feet total to 156 square footage. This is for the Fleetway Fuel Center located at 1227 Gluckstadt Rd. Mr. Bradley Morris appeared on behalf of the Petition. Commissioner McKay explained to him that the square footage allowed by the ordinance was for the total amount which includes both sides and the sign on the building. Commissioner McKay informed him that his calculations only included one side so the proposed calculation was off by 57 ½ square feet. He said the correct square footage to be requested was for the ordinance allowed 125 square feet plus 81 square feet, or 206 total. Commissioner Drane inquired why this was not caught before today and Zoning Administrator Weeks explained that he had just seen the actual drawing for the first time that day. It was explained to Mr. Morris that he would need to come back requesting the proper amount. Upon motion by Commissioner McKay to deny the request for a variance of 31 square feet for improper calculations, seconded by Commissioner Howard, with all voting "aye," the motion to deny the variance passed.

There next came on for consideration the petition of Albert Redmond for a conditional use for a 4 acre or less mining operation. Zoning Administrator Weeks explained that the Board of Supervisors had already approved this petition because of the time constraints for the project but petitioner was going through the proper legal process in the meantime. Mr. Redmond was present to represent the petition. Upon motion by Commissioner Howard to approve the conditional use, seconded by Commissioner McKay, with all voting "aye," the motion to approve the conditional use passed.

There next came on for consideration the petition of MAK LLC for a special exception/conditional use to excavate a four (4) or less acre mining operation and build a pond. The property is zoned A-1 Agricultural District and is located on 3024 Hwy 22. Marcus Kirby appeared on behalf of the Petitioner. He explained that this was the wedding/bed & breakfast venue that was approved in 2015. He said they had utilized the dirt for the lake but there would be some left that would need to be removed. He said the contractor had estimated approximately 12,000 to 15,000 yards would need to be removed. He said it was a 3 acre lake and explained how there would be proper water available for the lake. Mr. Kirby confirmed that it would be a nice lake and they were going to take the remaining dirt off site. He agreed to limit the hours of operation. Upon Motion by Commissioner Howard to approve the conditional use subject to the following conditions: that the hours of operation be limited for safety purposes from 8 to 2, and after 4; that no operations would be conducted after dark or on Sundays; seconded by Commissioner Drane, with all voting "aye," the motion to approve the conditional use passed.

There next came on for consideration the petition of Wendon Moore to rezone R-1 Residential District to C-2 Residential District. This petition was properly advertised and promoted and the Commission held the public hearing regarding this matter. Mr. Moore was present on behalf of the petition which was originally continued from the June, 2016 meeting because Mr. Moore was not present. Mr. Moore explained that this rezoning request was to move his business from one side of the road to the other side. He confirmed that the land across the road was zoned Industrial and used for commercial purposes. Zoning Administrator Weeks explained that he had not received any calls in opposition to this Petition. No one was present to voice any concerns or opposition. Upon Motion by Commissioner Drane to approve the petition, seconded by Commissioner McKay, with all voting "aye," the motion to approve the petition to rezone passed.

There next came on for consideration the petition of Madison County Schools Transportation and Maintenance Facility for a conditional use for a public/quasi public facility. The property is zoned I-2 Industrial. Ryan Florreich, architect, appeared on behalf of the petitioner. He explained that this was located on 16th section land and would be a maintenance facility. Lisa Williams from Germantown Subdivision addressed the Commission and stated that she was not in opposition but she expressed concerns

regarding traffic and if a deceleration lane might be possible for safety reasons. Mr. Florreich stated that he was not an engineer and could not address that question. It was discussed that this would be suggested as part of the Motion to the Board of Supervisors that the Commission would like the County Engineer to take this issue into consideration and potentially involve MDOT if necessary for this request. Upon Motion by Commissioner Howard to approve the request for a conditional use with the added request to the Board of Supervisors to have the county engineer address any traffic concerns with the roadway (including a potential deceleration lane), seconded by Commissioner Miller, with all voting "aye," the motion to approve the conditional use passed.

There next came on for consideration the site plan for a C-Store located near Aulenbrock Drive and Yandell Road. The property is currently zoned C-2. Alton Clingdon, architect, appeared on behalf of the petitioner. He stated that the property is located just to the west of the Dollar General Store. Commissioner McKay stated that there were already 2 gas stations in the immediate area and he didn't see a need for the station and Mr. Clingdon stated that they were aware of the other stations in the area. Mr. Clingdon stated that the hydraulics had already been submitted.

The hours of operation would be 6AM to 10PM and this was discussed as a condition to the approval of the site plan. Questions were taken from those in attendance. Marshall Jackson appeared and stated that he resides in the nearby neighborhood of Bradshaw Ridge. He presented a list of concerns which is attached hereto as Exhibit "A" for reference. He stated that he had concern about the proximity of alcohol sales to the nearby child care facility. He also expressed concern about the food service proposed within the gas station, signage, canopy and lighting, as well as other concerns. Mr. Clingdon stated that the grease trap would run underground.

Mr. Clingdon stated that the lighting would be downward facing with nothing outwards or upward. However, the lighting schedule does not have that type fixture specified. Mr. Clingdon was requested to make that correction to the plan.

As for the service of food, there would be a display cooler with sandwiches but no plans for a restaurant or seating within the store. Zoning Administrator Weeks explained that the liquor issue would need to be addressed by Alcohol Beverage Control for MS.

John Shows, Esq. addressed the Commission next and stated that he was noting his objection to the petition because if its in the large piece of land that other things on today's agenda were on, he wanted a chance to review it to see if it met the potential restrictive covenants from 2006.

Mr. Clingdon stated that there was an easement for an overhead powerline so if any sign

is placed, it would definitely be within what is currently allowed by the ordinances. He said he would have to work with Entergy to determine what type of sign would be allowed. Jim Harreld addressed the Commission next and stated that he lives off of Stribling Road. He stated that the plans should include the sign and you can't just rely on the minutes on what is going to be allowed. Mr. Clingdon stated that he has been doing these plans for fifty (50) years and he had never had a problem and he felt like his plans were complete. He said if he was required to go ahead and seek a sign permit without approval for the project, it was asking his client to spend money out of pocket unnecessarily.

Commissioner Drane stated that they had an obligation to the community to insure the plans were complete. Mr. Clingdon stated that the sign would be within what is already allowed by the zoning ordinance so he didn't see what difference it would make. Upon Motion by Commissioner Howard to table the site plan pending additional information from the Petitioner, seconded by Commissioner Drane, with Commissioners Howard and Drane voting "aye," and Commissioners McKay and Miller voting "nay," the motion was tied.

Further discussion was had regarding the request. Upon Motion by Commissioner McKay to approve the site plan with Petitioner agreeing to update the site plan prior to the Board of Supervisor approval with better description of the lighting and sign, seconded by Commissioner Howard, with all voting "aye," the motion to approve the site plan passed with the condition that the site plan and lighting schedule be updated prior to Board of Supervisor approval.

There next came on for consideration the site plan of Cedarstone Commercial for a new business located on Aulebrock Drive. This was last tabled from the May, 2016 meeting. Mr. Jason Weeks, Esq. appeared on behalf of Petitioner. He explained that this had been tabled at both the April and May meeting. He said the Commission had asked that they try to work something out with the nearby homeowners who were opposed to the development. He said they had exchanged multiple correspondence with the homeowners' attorney (all of which were provided as exhibits to his request to be on July's agenda and copies of which were posted online and provided to all Commissioners) but they had not been able to reach an agreement.

Mr. Weeks further stated that there was still the outstanding issue of the restrictive covenants that were part of the original petition to rezone from 2006. He said it was undisputed that the covenants were not recorded and because they were not recorded, he felt that they were not proper and never took effect to bind his client as a subsequent purchaser. He referred the Commission to Mississippi Code Annotated §89-5-5 (also provided as part of his request) which in summary states that covenants not properly recorded are not in effect and do not bind subsequent property owners.

Mr. Weeks also informed the Commission that they had checked on the rear-facing materials as requested and it would cost over \$75,000 and would not be economically feasible for them to use that material on the back side of the building. Commissioner McKay stated that he appreciated their attempts to try and reach an agreement. He stated that the letters referenced an agreement on a few aspects and he inquired if those were still agreeable to the parties. Mr. Weeks stated that he would have to consult with his clients but at this point, he would want to go through each point by point to make sure the record was clear on what was being agreed to and not agreed to by the parties. Commissioner Howard stated the he understood the law but he felt they had a moral obligation to the homeowners under the circumstances and that certain things were agreed on and he would like to see them adhered to out of fairness to the parties.

John Shows, Esq. addressed the Commission next and explained that he represented some of the homeowners that lived near this property. His arguments were summarized in a handout he gave to each Commissioner at the meeting and a copy of which is attached hereto as Exhibit "B." He first questioned the legality of the original rezoning from 2006 and whether proper notice was posted in the paper and if an actual public hearing was held because he didn't think the minutes reflected same. He also stated that he felt the restrictive covenants that were part of the original petition in 2006 do apply because they were conditions on the rezoning of the property. Commissioner McKay stated that he disagreed the rezoning was improper and pointed out that there was no reference to the restrictions in the minutes. Zoning Commission Attorney Leah Ledford stated that there was no evidence that the original rezoning was improper and it had followed the proper legal process to be rezoned and that the public hearings were always held as part of the monthly Planning and Zoning meeting.

Commissioner Miller inquired regarding the ownership of the property in 2006 and a discussion was had regarding the proper owner at the time the property was rezoned. Jason Weeks addressed the Commission next in response and said any potential fraud regarding the ownership of the land in 2006 would be between the original owners and homeowners and not his client. He reiterated the code and that it was there to protect property owners who did their due diligence in running a title search and not binding them by property documents that were not legally recorded. He also pointed out that the property was zoned C-2 but this was a proposed office park which is allowed by C-1 so they were choosing less zoning than is allowed on the property.

Upon Motion by Commissioner Miller to approve the site plan as having met the requirements under the law and that because of Mississippi law the old covenants did not run with the land, seconded by Commissioner McKay, with Commissioners Miller and McKay voting "aye," and Commissioners Drane and Howard voting "nay," the motion did not pass. It was explained by Commission attorney Ledford that they could either pass the petition without a recommendation since there was a tie vote, or they could

discuss further and try to reach an agreement. Commissioner Drane inquired whether they could go back and undo the old zoning and Jason Weeks stated that it would create more legal issues because other businesses have already been allowed and currently operate commercial businesses on this land. Commissioner Howard inquired again whether an agreement could be reached between the parties on some of these issues. Jason Weeks stated that because Mr. Shows only represents a few homeowners in that area and not all of them or the Bradshaw Ridge HOA, he was not comfortable advising his client to put any kind of covenants on the land because that would potentially open them up to claims by other homeowners as well. He stated that he would like a decision one way or the other and if the Commission turned the petition down, he wanted to know on which zoning ordinances they were basing their decision.

Commissioner Miller made another motion to approve with the same tie vote resulting. Commissioner McKay made a motion to pass the site plan to the Board of Supervisors without a recommendation due to the tie vote. Upon substitute motion by Commissioner Drane to table the site plan until the next meeting when a majority vote would be present, seconded by Commissioner Howard, with all voting "aye," the motion to table the site plan passed. Jason Weeks inquired regarding an assurance of a majority vote at the next meeting and was told by the Commissioners that they could not offer an assurance that all would be present. Commissioner Drane noted the Commission's duty to all involved to not pass things to the Board of Supervisors without a recommendation.

There next came on for consideration the site plan of Building D at Livingston which will be used for office space. This was approved by the MLHPD at their June 13, 2016 meeting. A letter from the MLHPD is attached hereto for reference as Exhibit "C." Andy Clark, Esq. appeared on behalf of the Petitioner. Commissioner McKay stated that he did not think the site plan in their material met all of the specifications required for a site plan review. Zoning Administrator Weeks stated that this was an ongoing project and the specifics were included in the original master plan that had been approved, and this was just for the building itself. He presented a site plan showing the location of the proposed building within the previously approved site plan. Upon Motion by Commissioner Howard to approve the site plan contingent upon the things requested in MLHPD's letter attached as Exhibit "C," seconded by Commissioner Miller, with all voting "aye," the motion to approve the site plan passed.

There next came on for consideration the petition for a storage facility on Aulenbrock Drive. This petition was last tabled from the April meeting. Andy Clark, Esq. appeared on behalf of Petitioner. He explained that his client had negotiated and reached a tentative agreement on this matter but negotiations stopped once the issue of the potential original restrictive covenants came into play (which were discussed at length earlier in the meeting). He reiterated the arguments set forth earlier by Jason Weeks and the MS Code that doesn't bind subsequent property owner as to unrecorded covenants.

He also stated that the Madison County Zoning Ordinances actually provide that an approved site plan then becomes law once approved by the Board of Supervisors. He pointed out that with a rezoning approval, the language does not state that so he felt like the change in rezoning on this property from 2006 had no restrictions or conditions listed in the minutes and therefore, it did not become the law. He stated that his client had met all the requirements under the ordinances for a site plan and he was asking for approval. Mr. Clark further stated that the owners were present and they could attest to the meeting and agreement reached with the adjacent homeowners before a stale mate was reached over the potential covenants issue.

Mr. John Shows, Esp. appeared on behalf of the three adjacent homeowners. He stated that he felt that the original rezoning in 2006 was a conditional rezoning and cited a Mississippi Supreme Court case, *Old Canton Hills Homeowners Ass'n v. May & Jackson*, 749 So.2d 54 (Miss. 1999), which states that conditional zoning is legal and can be done by the local municipality. Commission attorney Ledford explained that conditional rezoning was legal and discussed the distinguishing factor of this situation where the conditions were not part of the original rezoning minutes. Mr. Shows said his clients had met with and come to a tentative agreement but they wanted to see what the Commission was going to do on the covenants issue. Commissioner Howard stated that he would like to see the parties reach an agreement. Upon motion by Commissioner Howard to table the petition until a majority vote is present but stating that he would encourage the parties to work out an agreement, seconded by Commissioner McKay, with all voting "aye," the motion to table the petition passed.

There next came on for discussion the payment of attorney fees for June, 2016. The Commissioners requested more specific entries to which Commission attorney Ledford agreed. Upon Motion by Commissioner Howard, seconded by Commissioner McKay, with all voting "aye," the motion to approve the attorney fees for June, 2016 passed.

There next came on for discussion the setting of the August, 2016 meeting. The second Thursday of the month is August 11, 2016 and all agreed to this date. Upon motion by Commissioner Miller, seconded by Commissioner Drane, with all voting "aye," the motion to set the August, 2016 meeting for August 11, 2016 passed.

With there being no further business, the July 14, 2016 meeting was adjourned.

8-11-16

Date

Walter McKay

(Chairman)

Exhibit "A"

Convenience Store - Yandell Road

Aesthetic Design complete with landscaping.

Exterior construction appears to meet requirements for 23 ac Covenants.

23 ac Covenants, have a 100' requirement for surrounding facilities to be presented on plans.

Beer sales: In close proximity to child care facility and school?

Signage: No signage presented? Monument? Freestanding? Canopy?

Traffic: Ability for traffic entrance and exit, will facility present a traffic problem?

Lighting: Request all exterior lights change to Low pollution light emission and "Dark Sky Compliant"

Canopy lighting not defined per plans?

Flood lighting not located on plans, nor defined?

Exterior building lighting plan details (10) ten 100w metal halide lights with 10% up lighting (located with "X").

Kitchen: Plans to provide (3) three meals a day?

Site plan shows a 1000 gallon grease trap with no planed method to access for disposal and landscaping will block access. How will the grease trap be accessed for disposal?

Dumpsters: Plans don't adequately describe their construction, please enclose in brick matching store and lock gates closed when not accessed. Request six (6) feet minimum height.

**RESPONSE TO CEDARSTONE COMMERCIAL
REQUEST FOR SITE PLAN**

1. Covenants were the basis of the rezoning. There would be no C-2 zoning if these covenants had not been agreed upon by the applicant and owners of the property in their rezoning request.

Cedarstone can not have it both ways. Either the property is zoned C-2 with covenants or the property is not zoned C-2.

2. Secondly, the covenants are binding on the County. The County can require that parties who file site plans to conform such proposed use and site plans to these specific covenants.

My clients believe this issue of the validity of the covenants should be addressed by the Commission and if valid, then the site plans need to be adjusted to conform to the covenants.

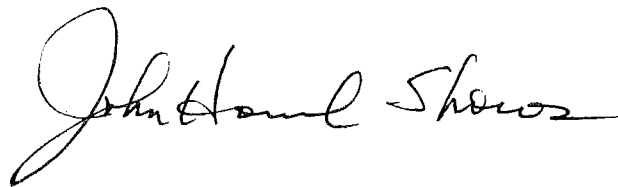
3. Attached are our proposed covenants showing the agreed issues and the unagreed issues. We believe they are reasonable. The primary issues which no agreement has been reached are:

1. Buffer zone/fence
2. EFIS on back of building
3. Restrictions on use of premises
4. Hours of operation
5. Storage of hazardous material on site
6. Attorney's fees to specifically enforce covenants

The proposed covenants are attached as **Exhibit A**.

4. My clients object to the metal siding on the rear of the proposed buildings. In the May minutes, there is testimony by a citizen that Mack Haik agreed to change their site plan to conform to the Commission's request regarding siding. Minutes reflect that Mack Haik agreed to use EFIS (copy of Minutes attached as **Exhibit B**). Cedarstone should also be required to put stucco on the rear of their building. The covenants attached to the Zoning Petition specifically prohibit metal siding.

5. Copies of the plat of subdivision for part 2 and part 3 (amended of Bradshaw Ridge) are attached hereto as **Exhibit C**. Please note that there is a 20 foot buffer between the plat description of the property platted and the lot lines. The fence along part 3 (amended) is in the Buffer zone.

A handwritten signature in black ink that reads "John Paul Shows". The signature is written in a cursive style with a large initial 'J' and a long, sweeping underline.

Prepared By:

John Howard Shows, MS Bar #6776
2950 Layfair Drive, Suite 101
Flowood, MS 39232
Telephone: (601) 664-0044

Return To:

Shows & Smith Law Firm PLLC
2950 Layfair Drive, Suite 101
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State of Mississippi
County of Madison

**COVENANTS AND RESTRICTIONS
OFFICE WAREHOUSE**

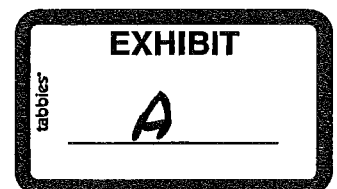
Grantor:

WCTN, LLC,
a Mississippi limited liability company
396 Business Park Drive
Suite A
Madison, Mississippi 39110
(601) 519-5533

INDEXING INSTRUCTIONS:

SW ¼ of the NW ¼ and the SW ¼ of the NE ¼ of Section 27, T8N, R2E
Madison County, Mississippi

Lots 117, 118 and 119 of Bradshaw Ridge, Part Two, Plat Cabinet D, Slide 198 and
Lots 64, 65, 66 and 67 of Bradshaw Ridge, Part Three, amended, Plat Cabinet E, Slide 8



**COVENANTS AND RESTRICTIONS
OFFICE WAREHOUSE**

WHEREAS, WCTN, LLC, a Mississippi limited liability company (hereafter “Owner”) is the Owner of that property described on **Exhibit A** hereto;

WHEREAS, the property described on **Exhibit A** hereto is zoned C-2 Commercial by Madison County, Mississippi;

WHEREAS, the Owner has filed a site plan with Madison County, Mississippi;

WHEREAS, the property described on **Exhibit A** hereto is contiguous and adjacent to Bradshaw Ridge Part Two and Bradshaw Ridge Part Three (amended);

WHEREAS, homeowners in Bradshaw Ridge Part Two and Part Three have requested that Owner provide certain Covenants and Restrictions to protect and preserve the residential neighborhood development of Bradshaw Ridge Part Two and Part Three;

WHEREAS, Owner has agreed to certain Covenants and Restrictions regarding the development of the property described on **Exhibit A** hereto.

THEREFORE, for Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner agrees to subject the property described on **Exhibit A** to the following Covenants and Restrictions:

A. Buffer Zone.

1. **A Buffer Zone of twenty (20) feet shall be provided for along and adjacent to the Bradshaw Ridge Part Two and Part Three. Owner shall plant *Elaeagnus Angustifolia*, commonly known as “Russian Olive” every seven (7) feet along with other suitable plantings to include another species of *Elaeagnus*.**

4. **Owner shall construct a twelve (12) foot high fence along the boundary of**

Bradshaw Ridge Part Two and Part Three on the rear lot lines of Lots 117, 118 and 119 of Bradshaw Ridge Part Two, Plat Cabinet D, Slide 198 and Lots 64, 65, 66 and 67 of Bradshaw Ridge, Part Three (amended), Plat Cabinet E, Slide B.

5. The Buffer Zone of twenty feet (20) feet shall be owned by Owner and maintained by Owner. This Buffer Zone is granted as a license to the homeowners and no homeowner in Bradshaw Ridge Part Two or Part Three may claim a portion of the Buffer Zone by adverse possession.

B. Colors for Office Warehouse Buildings.

1. **The roof of the office warehouse buildings shall be a neutral color and the sides of the office warehouse buildings shall be a neutral color, either tan, light gray or an off white. The front, back and sides of the office warehouse building shall have a brick façade at least four (4) feet in height. The rollup doors on the front shall also be a neutral color.**

3. No building shall be more than one story in height.

C. Restrictions on Use.

No part of the property described on **Exhibit A** hereto shall be used as, or for:

1. **a childcare facility.**
2. a business that produces loud music or outside activities that create noise.
3. **a liquor store.**
4. **a restaurant for full service or fast food or casual dining.**
5. **a cafeteria, delicatessen, coffee shop or coffee bar.**
6. **a food carryout service.**
7. **the sale of beer, wine or alcoholic beverages of any type.**

8. a convenience store or gas station.
9. a facility to store any type of equipment. (as long as it is stored within the building)
10. a facility to sell any type of equipment. (as long as it is stored within the building)
11. **a facility to sell building materials or paint.**
12. a fireworks stand.
13. a billboard.

D. Hours of Operation; Lighting and Security.

1. **The office warehouse buildings may be occupied from 8:00 A.M. to 6:00 P.M. Monday through Saturday.**

2. The lighting of the storage facility will be LED motion activated, low pollution light emission and shall be "Dark Sky Compliant". The lighting shall be located on the property so as not to directly shine on homes and yards adjacent and contiguous to the property described on **Exhibit A** hereto.

5. All trash dumpsters or bins shall be located away from the perimeter of the storage facility and away from the homeowners of Bradshaw Ridge Part Two and Part Three.

(We agreed to their proposal to construct a brick façade around the dumpsters)

6. **The storage of hazardous or explosive or incendiary material is prohibited on the property described on Exhibit A.**

E. Enforcement.

1. These covenants may be specifically enforced by any homeowner in Bradshaw Ridge Subdivision who owns a lot adjacent to or contiguous with the Property described on **Exhibit A** hereto or by the Homeowners Association of Bradshaw Ridge Subdivision.

2. **If a lot owner or the Bradshaw Ridge Homeowners Association has to specifically enforce these covenants, then such lot owners or Homeowners Association shall be entitled to recover their reasonable attorney fees and costs incurred in pursuit of such specific performance suit.**

F. Binding Effect of Covenants.

1. These are covenants and restrictions which run with the property described on **Exhibit A** hereto.

2. These covenants shall bind Owner and all of Owner's assigns, representatives and grantees as well as any lessee of Owner.

3. These covenants shall be binding for twenty-five (25) years from the date these covenants are recorded in the land records of the Chancery Clerk of Madison County, Mississippi.

4. These covenants are specifically for the benefit of each Owner of Lots 117, 118 and 119 of Bradshaw Ridge Part Two, Plat Cabinet D, Slide 198 and Lots 64, 65, 66 and 67 of Bradshaw Ridge Part Three (amended), Plat Cabinet E, Slide 8. Each of the Owners of these lots shall be entitled to specifically enforce these covenants.

5. These covenants also are for the benefit of the Homeowners Association of Bradshaw Ridge Subdivision.

G. Site Plan Approval.

Owner covenants that Owner or any grantee or assignee of Owner will construct the office warehouse buildings as shown on the site plan as shown on **Exhibit B** hereto with the buildings and parking to be constructed as shown on **Exhibit B** hereto.

Witness the signatures of Owner, this the _____ day of _____, 2016.

WCTN, LLC

By: _____

Its: _____

STATE OF MISSISSIPPI

COUNTY OF _____

Personally appeared before me, the undersigned authority in and for the said county and state, on this _____ day of _____, 2016, within my jurisdiction, the within named _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed in the above and foregoing instrument and acknowledged that he executed the same in his representative capacity and that by his signature on the instrument, and as the act and deed of the person or entity upon behalf of which he acted, executed the above and foregoing instrument, after first having been duly authorized so to do.

NOTARY PUBLIC

My commission expires:

MINUTES OF THE MEETING OF THE MADISON COUNTY
PLANNING AND ZONING COMMISSION HELD AND CONDUCTED ON
THURSDAY, THE 19th DAY OF MAY, 2016 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 19th day of May, 2016 at 9:00 a.m. in the Board Room of the Madison County Chancery and Administrative Building.

Present: Walter McKay
Larry Miller
Rev. Henry Brown
Dr. Bill Howard

Scott Weeks, Planning and Zoning Administrator

Absent: Don Drane

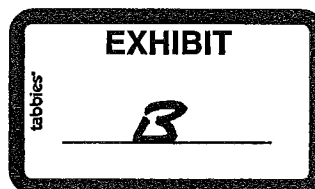
The meeting was opened with prayer by Rev. Brown, and those present participated in pledging allegiance to our flag.

There first came on for consideration the minutes of the April 14, 2016 meeting of the Commission. Upon motion by Commissioner Miller to approve the minutes, seconded by Commissioner Brown, with all voting "aye," the motion to approve the April 14, 2016 minutes passed.

There next came on for consideration the petition of Mak Haik for a conditional use to sell pre-owned vehicles. The property is located between I-55 and Calhoun Station Parkway. The petitioner is requesting three car dealership locations and a site plan has been provided for the Chrysler, Jeep, Dodge and Chevrolet dealerships being proposed. Allen Grant appeared on behalf of Petitioner as the architect for the petitioner. Andrew Leeper with the Mak Haik Jackson, MS location also appeared on behalf of Petitioner. He explained this the businesses would consist of 70% new and 30% used vehicles. The used vehicles will undergo a 125 point inspection process and be certified used vehicles. No one was present to oppose the development. Upon motion by Commissioner Howard to approve the motion for a conditional use, seconded by Commissioner Brown, with all voting "aye," the motion to approve the conditional use passed.

There next came on for consideration the site plan of Mak Haik for their businesses as just approved. Commissioner McKay inquired regarding the siding on the buildings and stated that he would like to see EIFS on the whole building, including the back, to make it look more upscale, to which Petitioner agreed. Upon motion by Commissioner Howard to approve the site plan, seconded by Commissioner Brown, with all voting "aye," the motion to approve the site plan passed.

There next came on for consideration the petition of Dawn and Bennie Street for a



conditional use to excavate a lake and remove the excess material. The property is located on the Southwest corner of Goodloe Rd and Hwy 43N. This will be a 4 acre or less permit and their site plan is included. Mrs. Street appeared and stated that they intend to make this a 4 acre lake that will eventually be a larger lake. They have provided their plans and all necessary documents in support of their request, including their hours of operation which limit operation for school/work traffic and no Sunday operations. Those in opposition were asked to come forward. Jake Ritchie spoke first and explained he was the attorney hired by Rayford Pool who is an adjacent landowner to this property. He is concerned about how this will affect his property value and how the water will be maintained. He said his client is also has safety concerns because of traffic and dust created by the operations. Mr. Ritchie stated that according to the zoning ordinances, the County is to protect the health, safety and welfare of the citizens and these issues meet these concerns. Mrs. Street spoke in response to these concerns and stated that this is their home and they intend for this to be a nice lake that increases their property value. They did another lake in the area in the past and it enhanced the property value. She said there is a clear water shed coming off of Hwy 43 and it will provide plenty of water for the lake. She pointed out there is another dirt pit being operated nearby on Goodloe Rd. and that this is a public road that sees a lot of truck traffic already so this wouldn't change the conditions of the road. This is a one year permit only and they will be done within that time. She further elaborated on their history in owning the property for 15 years and that they only intend to increase the value. Commissioner McKay inquired regarding the bond and Mrs. Street stated they had put up a \$1,000 bond per acre to ensure the work was done properly, including reclaiming the edges and making the property look nice. Commissioner McKay also inquired regarding the water and Mrs. Street stated there is a ditch that floods that will provide water to the lake and the dirt will be used to make a dam for the lake and the excess will be hauled away and sold. James Parker addressed the Commission next and stated that he lives at 2355 Hwy 43N and is concerned about flooding from the nearby creek and how this may affect his property. He lives south of the proposed property. Mrs. Street stated that the maps provided showed that this land would not be affected by these operations. Nancy Isonhoo spoke next and she lives on Quail Rd. She stated there was already a mining pit being operated on Goodloe Rd. and another nearby and there wasn't a need for another pit mining operation. She also stated there was a lake that was done nearby and its nothing but a big empty hole and she didn't want to have to see that again. Commissioner Howard stated that he was concerned about the lake being well maintained. Mr. Street stated that they farm and live in this area and they wouldn't do anything to negatively effect their property value or be at odds with their neighbors. He further pointed out that he is in the land business and does this for a living and so he has plenty of experience to ensure this is done correctly. Commissioner McKay stated that DEQ would be the proper entity to oversee and enforce their permit. Upon Motion by Commissioner Brown, seconded by Commissioner Miller, with Commissioner Brown, Miller and McKay voting "aye," and Commissioner Howard voting "nay," the motion to approve the conditional use and site plan passed.

There next came on for consideration the site plan of Cedarstone Commercial for a new business located on Aulenbrock Drive. Jason Weeks appeared on behalf of Petitioner, along with Brad Williford. He stated that this was an office warehouse space that was being proposed and it was tabled from the April 14, 2016 Commission hearing. He stated that he was recently retained to represent the Petitioner due to the issues with the surrounding homeowners that they had not been able to resolve. He stated that the land was properly zoned for this and it was a site plan

review only. Commissioner McKay stated that he was absent at the April meeting and would like to know what was at issue between the parties. Mr. Weeks stated that there had been a long list of items sent to his client that he felt were unreasonable and not economically feasible for his client. He stated that they had agreed to move the dumpsters away from the landowners and the only lighting in the rear would be from the exit signs required by code. He said they had requested a 12 foot fence with razor wire on top and other things they couldn't agree to and they felt their site plan met the ordinances for this zoning. Commissioner McKay inquired regarding the building facade and why they couldn't put it on the parts that would be seen by the homeowners and that it appeared to be a reasonable request. Mr. Weeks stated that this zoning was already in a place when most of the homeowners moved and they should have taken note of the commercial zoning prior to purchasing their property. Dr. Howard inquired regarding the landscaping and Mr. Weeks stated that it was open landscaping of 20 feet as required by the ordinances. Rick Eisenberger with John Shows' office addressed the Commission next on behalf of Bradshaw Ridge Subdivision. He stated that the Petition when the land was originally rezoned in 2006 had covenants that were attached that would affect this site plan and stated that he was representing the Bradshaw Ridge subdivision in opposition to this site plan. He stated they had just received this Petition and would like time to discuss with the homeowner and try to work out an agreement so they would like the Petition to be tabled. He also denied that the landowner had tried to meet and work anything out since the last meeting. He said it was unclear whether the covenants had been recorded but that they stated there was to be EIFS siding used and no metal (which is on the current site plan) and the landscaping was supposed to be more of a buffer for the homeowners. He stated they were also concerned because the current site plan doesn't address rear setbacks. Marshall Jackson, a resident of Bradshaw Ridge, spoke next and stated that he was concerned about the new location of the dumpsters because they were now located directly behind his home. Lisa Walters, a Gluckstadt resident of Germantown Subdivision, spoke next and inquired regarding the covenants issue. She stated that she had inquired this issue in the past and was concerned about how it affects zoning. Commission attorney Ledford stated that new procedures were being discussed to help ensure the recording of any covenants agreed to in zoning matters. She further stated that unrecorded covenants may not be enforceable and this legal issue was currently being reviewed. Commissioner Howard stated that in his opinion the covenants should remain in effect because they were a condition to the rezoning, regardless of whether they were filed. James Harreld addressed the Commission and stated that he is a Gluckstadt resident who resides on Stribling Rd. He stated that the other petitioner, Mak Haik, had agreed to add more siding without question and he didn't think it was right that the current petitioner wouldn't agree to same. Crystal Hunt addressed the Commission next and stated that although she was glad they had moved the dumpsters away from her property, she was concerned for the other homeowners. He also stated that they were currently getting a survey done because some of the land behind the neighborhood fence may actually belong to the HOA and she wanted that issue to be noted. Tammy Harreld addressed the Commission next and inquired regarding the lost documents and stating that she felt that the Planning and Zoning Office had lost documents in the past that cost the county citizens a lot of money and that concerned her. She stated that she would like to see the process changed to ensure this didn't happen anymore. She further stated that she felt the Commission attorney always sided with the developer and that concerned her. Commission attorney Ledford stated that this was not an issue with the Planning and Zoning office but instead covenants that had not been filed by the property owner. She also

reiterated that the County had no authority to file or enforce covenants, that was the duty of the landowner. She further stated that she was bound by the law and had no personal interest in either side's position. Commissioner Miller spoke next and stated that he didn't appreciate the accusations being made by Mrs. Harreld regarding prior Commission decisions. Upon Motion by Commissioner Howard to table the site plan pending further discussions between the petitioners and those in opposition, seconded by Commissioner Miller, with all voting "aye," the motion to table the site plan passed.

There next came on for discussion the payment of attorney fees for April, 2016. Upon Motion by Commissioner Brown, seconded by Commissioner Miller, with all voting "aye," the motion to approve the attorney fees for April, 2016 passed.

There next came on for discussion the setting of the June, 2016 meeting. The second Thursday of the month is June 9 and all agreed to this date. Upon motion by Commissioner Brown, seconded by Commissioner Howard, with all voting "aye," the motion to set the June, 2016 meeting for June 9, 2016 passed.

With there being no further business, the May 19, 2016 meeting was adjourned.

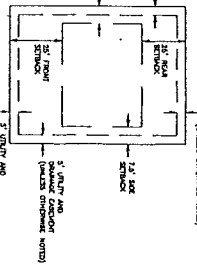
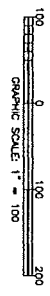
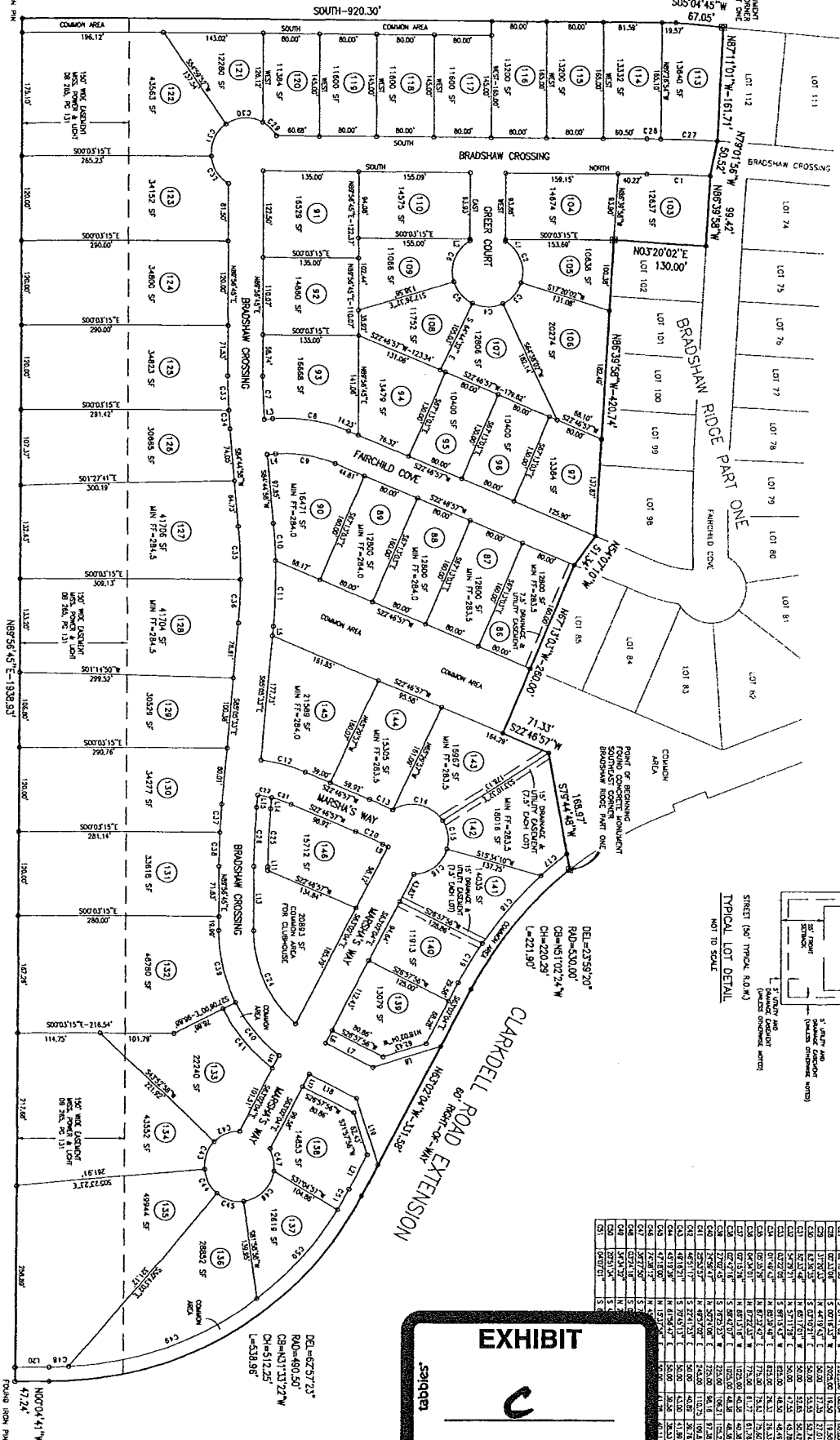
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Walter McKay
(Chairman)

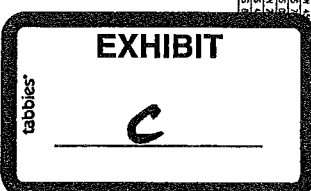
BRADSHAW RIDGE PART TWO

NORTH 1/2 OF SECTION 21, TOWNSHIP 8 NORTH, RANGE 2 EAST
MADISON COUNTY, MISSISSIPPI

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PREPARED BY:
BANKS ENGINEERING & SURVEYING, INC.
CONSULTING ENGINEERS & LAND SURVEYORS
119 LONE HOLE DRIVE SUITE B, MADISON, MS 38110

SHEET 1 OF 2

Ex "C"

**APPLICATION FOR CERTIFICATE OF APPROPRIATENESS/
CERTIFICATE OF APPROPRIATENESS:
MANNSDALE-LIVINGSTON HERITAGE PRESERVATION (MHL) DISTRICT**

APPLICANT NAME: **Livingston Township Fund One, LLC**
APPLICANT ADDRESS: **116 Livingston Church Road, Suite B, Flora, MS 39071**
APPLICANT TELEPHONE NUMBER: **601-622-7334**
DATE SUBMITTED TO ZONING ADMINISTRATOR: **May 31, 2016**

LOCATION OF PROPERTY FOR WHICH CERTIFICATE OF APPROPRIATENESS IS REQUESTED: **(PLEASE ATTACH MAP INDICATING BOUNDARIES OF PROPERTY INVOLVED AND/ OR A LEGAL DESCRIPTION).**

"Building D" at Town of Livingston as depicted on attached General Development Plan Legal Description attached.

PLEASE SPECIFY PROPOSED USE OR USES OF THE SUBJECT PROPERTY FOR WHICH CERTIFICATE OF APPROPRIATENESS IS REQUESTED: **(IF MORE THAN ONE USE, INDICATE ON THE REQUIRED SITE PLAN THE LOCATION OF ALL THE PROPOSED USES).**

CHECK LIST ALL OF THE FOLLOWING THAT APPLY: **Commercial Office**

Uses Allowed Only As Special Exceptions:

- Public/ quasi-public facility or utility: Specify: _____
- Commercial uses (See Zoning Ordinance for uses allowed as special exceptions) Please describe specific uses: _____

- Surface mining operations of a temporary type: Please describe: _____

SITE PLAN REQUIRED: A site plan is required for all proposed buildings or structures (except single-family dwellings) in the MLHP District. If the applicant proposes the subdivision of land inside the MLHP, he/she must submit a subdivision plat in accordance with the Madison County *Subdivision Regulations*. All site plans (required for construction on a single lot) shall be prepared in accordance with Sections 402.16-19 and 505 of the Madison County Zoning Ordinance.

Previously submitted

ADDITIONAL INFORMATION REQUIRED FOR DEVELOPMENT OF ALL COMMERCIAL PROPERTIES:

1. Detailed lighting plan for grounds and buildings.
2. Detailed landscaping plan.

Approval of this application for a Certificate of Appropriateness is required under Section 402.16-21 of the Madison County Zoning Ordinance. The Mannsdale-Livingston Heritage Preservation Commission will review this application and make a recommendation to the Board of Supervisors as to whether a Certificate of Appropriateness should be issued to the applicant. For approval of this application, the applicant must demonstrate that the proposed building or structure is not excessively similar or dissimilar to other like buildings or structures in the MLHP district and that the proposed building/structure or use would not provoke one of the harmful effects listed below:

- Lower property values;
- Decreased economic growth; and/ or
- Diminished future opportunities for land use and development.

No building permit shall be issued by the County Building Official for any proposed construction in the MLHP district without a Certificate of Appropriateness.

CERTIFICATE OF APPROPRIATENESS

Following review of the above application for a Certificate of Appropriateness with the required site plan and all supporting information, the Chairman of the Mannsdale-Livingston Heritage Preservation Commission may sign this Certificate indicating a recommendation for approval of the application and issuance of a Certificate. However, if the application for issuance of a Certificate is recommended for *denial*, the applicant shall have the right to appeal the recommendation of the Commission directly to the Board of Supervisors. *The Minutes of the Commission shall accompany the application indicating specific findings in this case, whether recommended for approval or denial.*

We, the Mannsdale-Livingston Heritage Preservation Commission, have reviewed the above application for a Certificate of Appropriateness with the required site plan and do hereby recommend issuance of this Certificate to the Applicant.


Chairman
Mannsdale-Livingston Heritage Preservation Commission

7-13-16
Date

APPROVED BY THE MADISON COUNTY BOARD OF SUPERVISORS:

President

Date

BUSINESS
"D"

A certain parcel of land being situated in the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 8, T8N-R1E, Madison County, Mississippi, and being more particularly described as follows:

Commence at the Northwest corner of Lot 67, Chestnut Hill, Part 1D, a subdivision according to the map or plat thereof, on file and of record in the office of the Chancery Clerk of Madison County at Canton, Mississippi, as now recorded in Plat Cabinet E at Slides 141B and 142A and run thence North 40 degrees 11 minutes 38 seconds West for a distance of 1,900.04 feet to the POINT OF BEGINNING of the parcel of land herein described; from said POINT OF BEGINNING, run thence North 43 degrees 45 minutes 45 seconds West for a distance of 40.00 feet to a point; run thence North 46 degrees 14 minutes 15 seconds East for a distance of 121.50 feet to the Point of Curvature of a 1637.02229 degree curve bearing to the right having a central angle of 90 degrees 00 minutes 00 seconds and a radius of 3.50 feet; run thence southeasterly along the arc of said curve an arc length of 5.50 feet to the Point of Tangency of said curve; said curve having a chord bearing of South 88 degrees 45 minutes 45 seconds and a chord distance of 4.95 feet; run thence South 43 degrees 45 minutes 45 seconds East for a distance of 36.50 feet to a point; run thence South 46 degrees 14 minutes 15 seconds West for a distance of 125.00 feet to the POINT OF BEGINNING, containing 4,997.4 square feet, more or less.

