

# MLHPD REVIEW OF THE OAKS

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February 12, 2024

To: Mr. Gerald Steen, President of the Madison County Board of Supervisors  
Mr. Karl Banks, Supervisor  
Mr. Paul Griffin, Supervisor  
Mr. Trey Baxter, Supervisor  
Mr. Casey Brannon, Supervisor  
Cc: Mr. Scott Weeks, Planning and Zoning Administrator  
Mr. Andy Clark, Planning and Zoning Attorney  
Mr. Steve Smith  
Mr. Kevin Watson  
Mr. Robert Germany  
Mr. Mike Espy, Madison County Attorney to the Board of Supervisors

From: Rita McGuffie, Chairman, Mannsdale Livingston Heritage Preservation District Commission (hereinafter referred to as MLHPD)

## **Letter of Findings and Recommendations**

Gentlemen:

As directed by the Board of Supervisors at the meeting on January 18, 2024, the MLHPD Commission held a public meeting in the Parish Hall of the Chapel of the Cross on January 30, 2024. Prior to the meeting, the Commission requested and received a copy of all of the documents which the Phillips produced to the Board of Supervisors electronically on January 25, 2024 with hard copies being given by Scott Weeks at the MLHPD meeting on January 30, 2024.

At said meeting, we received comments from the public, arguments from the Appellants' counsel and the Phillips' counsel, comments from the Planning and Zoning Administrator and the Planning and Zoning Attorney and extensive presentations by both of the Phillips. The proceedings were also videotaped and transcribed at the Phillips' request.

This was the fifth meeting of the MLHPD Commission with the Phillips. *Please see 5 sets of MLHPD minutes - Exhibit 2.* We carefully considered all of the information and all of the facts presented by the Phillips and their attorneys – including, but not limited to, information that normally might not be relevant. The Board of Supervisors charged us with the duty of resolving all issues. However, under Article 1900 of the Madison County Zoning Ordinance, it was impossible to approve the Phillips' Petition.



The Phillips contend that group housing is authorized in commercial areas within the District. From the inception of the MLHPD, the MLHPD Commission, the Planning and Zoning Board, and the Board of Supervisors have consistently denied similar requests. (*Exhibit 3 pages 97 and 98*) The Commission adhered to prior practice and denied the request for living quarters within Commercial zoning.

### RECOMMENDATION

MLHPD recommends the Madison County Board of Supervisors deny the Petitioners' Application for a Certificate Of Appropriateness for the Oaks.

1. MLHPD denied living quarters within commercial property in Livingston Township Legacy PUD on 2 previous occasions so the precedent is to deny.
2. The Active Senior Living use was removed to gain approval of Livingston Township Legacy PUD in 2011. (*Exhibit 3 page 97*)
3. It is a use that is either expressly or by implication prohibited in an Overlay Zone where more restrictive standards *shall* apply. (*Exhibit 3 page 96*)
4. The building is dissimilar to adjacent existing buildings.

**MOTION FROM MLHPD JANUARY 30, 2024:** *to deny the Oaks which is inappropriate and does not meet the standards of the Mannsdale Livingston Heritage Preservation District. Six (6) MLHPD Commission members voted "deny" and one (1) voted "present".*

The Board of Supervisors is tasked to vote on whether the Oaks is denied or approved. As an advisory Commission to the Board of Supervisors, the MLHPD Commission recommends the following:

- 1) That group housing proposals or living quarters within commercial zoning in parts of the district which have previously been prohibited, remain prohibited; and
- 2) That group housing units and/or living quarters within commercial zoning not be expanded to any other property within the MLHPD; and
- 3) That the Board of Supervisors support the Madison County Zoning Ordinance in regard to Article 1900 and the process it requires to ensure the purposes of the MLHPD are upheld; and
- 4) That the Board of Supervisors should carefully weigh potential problems since the Phillips have requested approval to build a residential facility in an entertainment district. The Phillips have stated that 90% of the occupants will be elderly disabled women. It is foreseeable that the proceedings and the hours in the entertainment district may create a nuisance for the elderly, disabled widows. It would be inequitable and

- unjust to the existing businesses to authorize a facility to be installed in the entertainment district and allow occupants of that facility to object to the hours, conduct, or noise or to request that the lawful activities presently conducted in Livingston be curbed in any manner in the future; and
- 5) That the Board of Supervisors should consider the precedent that MLHPD, Planning and Zoning Commission and Board of Supervisors have set in regard to living quarters within commercial zoning in the MLHPD. It could be deemed inequitable and unjust to existing business within MLHPD to allow the Oaks to have these group residential rental units.

### **FINDINGS**

- 1) The proposed usage is not allowed in the District -The Phillips propose to, initially, build a fifteen bed Personal Residential Assisted Living/Luxury Assisted Living facility adjacent to the recreated town of Livingston. **Section 1903** expressly prohibits apartments, residential condominiums, hotels, motels and boarding houses. **Section 1903** further provides that the list of prohibited items is not all inclusive. Other similar uses may be deemed inappropriate. The clear intent is to prevent group living quarters within the Mannsdale Livingston Heritage Preservation District. The designation of the facility as a Personal Care Assisted Living Facility does not change the character and nature of the facility. *(Exhibit 1)*
- 2) All applications for living quarters in commercial areas have been denied since the MLHPD was established - The MLHPD and the Board of Supervisors have each denied every petition for living quarters in commercial areas within the MLHPD since the inception of the District. Two requests for living quarters in commercial districts have been denied in Livingston. A developer's proposal to allow living quarters above commercial areas in the property on the corner of Gluckstadt Road and Highway 463 (where the dentist's office presently exists) was rejected at MLHPD's inception. The Commission cannot act in an arbitrary and capricious manner and must treat all applicants equally. The Commission believes it would be unjust and inequitable to authorize living quarters within commercial zoning for the Phillips when all other similar requests have been denied. This not discriminatory toward elderly or disabled tenants in that it applies to any person/people regardless of age or ability. *(Exhibit 3 page 97 and 98)*

- 3) The character of the proposed building is incongruent, inharmonious and out of character with existing visual features in the MLHPD. The facility is adjacent to Livingston, one of the historic areas upon which the District was created. Livingston is also part of the Gateway To History Scenic Byway which runs from the Natchez Trace to the Petrified Forest and down Highway 463 from Highway 22 to China Grove Church. Mr. Phillips stated during the review process, that construction access to the subject property will be through Livingston Township pursuant to an existing easement. Livingston preserved the original town square, the original cedar trees, the original well, and imported a historic church. Roofing material (other than flat roofing) in Livingston is cedar shake. Livingston is a modern recreation of the original 1800's Madison County seat. Modern amenities such as running water, paved roads and HVAC were added. By contrast, the building proposed by the Phillips is a thoroughly modern building, which is rectangular in shape. The front façade of the building has some antebellum overtones. The remainder of the building does not. The side of the building facing Livingston consists of a long white rectangle with two small windows. The proposed roof is not cedar shake .
- 4) The proposed use is also incompatible with the current uses in the recreated town of Livingston. Livingston is designated as a resort area with extended hours where liquor can be sold. Outdoor events, live bands, and wedding receptions are common. The Phillips have stated that ninety per cent of the residents will be elderly disabled women.
- 5) The documents originally submitted by the Phillips depicted five buildings on this five acre parcel. The present submission shows only one building and an abundance of green space. The Phillips present petition, if approved, would authorize the Phillips to build four additional buildings on the site without seeking additional approval from Planning and Zoning, MLHPD, or the Board of Supervisors. (*Exhibit 3 page 100*)
- 6) Other deficiencies exist in the documents and plans submitted by the Phillips. The Phillips have also not presented a grading plan. Culverts and fire hydrants are not depicted on the plan. Additional concerns were raised regarding provision of electricity to the site and the necessity of installing a transformer. Installation of a transformer may be delayed by Entergy for one hundred thirty weeks. The Phillips agreed to look into and address the issue.
- 7) Confusion remains regarding the type of use requested. The Phillips initially clarified the property as a "Luxury Assisted Living" facility on their Conditional Use application. No Certificate of Appropriateness Application was submitted to MLHPD during the first 4 reviews of the Oaks and the denial of August 14, 2023. At the hearing before the Board of Super-

visors, the Phillips' attorney stated that Oaks was an assisted living facility, however, their Supplemental Submittal verbiage (*Addendum 'B'*) addresses the use as a personal residential assisted living facility. At the public hearing on January 30, 2024, the Phillips described the property as an assisted living personal care home but still did not provide a Certificate of Appropriateness application which showed anything other than "personal residential assisted living" use. MLHPD Commission resolved the issue by treating it as a request for both uses. (*Exhibit 3 page 94, 95, 99*)

- 8) Confusion exists regarding the kind and type of services for which the residents of the facility may be charged - The Phillips advised the MLHPD Commission that residents of the facility would not be charged rent. The only charges would be for services requested or provided. Bob Germany produced documentation in the form of an assignment of rents given to secure payment of the indebtedness. (*Attached hereto and incorporated herewith by reference as "Addendum A" which was entered by Bob Germany in the MLHPD meeting on January 30, 2024*) The Commission could not resolve the discrepancy. (*Exhibit 1 Section 1903 page 13 and Exhibit 3 page 96*)
- 9) The MLHPD committee also considered other factors presented by the Phillips, their attorney, or the public.
  - a. Numerous individuals commented that waiting lists existed at many or all of the area homes, that there was a shortage of beds, that the closest facility to Flora was in Yazoo City. The proposed facility will have fifteen beds, ninety percent of which will be occupied by elderly disabled women. However, MLHPD Commission members have checked with St. Catherine's, the Orchard and Vitality senior services in the area and only the Blake has a waiting list.
  - b. Multiple individuals argued that it would be a "luxury facility". Mr. Phillips described a room where occupants could hang trophy game as an example of the luxury. No other direct comparisons were made as to the amenities offered by St. Catherines or the Blake and the subject facility. The Commission accepted Mr. Phillips' word. The luxuriousness or lack thereof is not a factor in determining whether the proposed use is allowed in the District.
  - c. Mr. Phillips stated he would be at the facility every day and act as "the sounding board". Unskilled help would be available to residents. The ratio of caregivers to nurses would be 5:1. The Commission considered all of these points while reviewing the Oaks,

but these factors cannot override the MLHPD regulations to make a case for locating this type of facility within the District.

- d. Mr. Phillips explained at length his employment history and his passion for caring for disabled individuals and his deeply held religious beliefs. The committee appreciates Mr. Phillips' beliefs and his declared dedication to his cause, however, they are not a factor in determining whether this use is allowed within MLHPD.
  - e. Mr. Phillips and/or his attorney intimated at the January 30, 2024 meeting of the MLHPD Commission that the members of the committee did not like and/or were attempting to discriminate against the elderly. The Commission feels obligated to refute the false allegation. As shown in *Exhibit 5 which is attached hereto and incorporated herein by reference*, throughout its history numerous members of the committee have been over the age of sixty-five and most of the members have cared for elderly and/or disabled relatives with love and compassion.
- 10) The Phillips have stated throughout their review that a national organization called Residential Assisted Living Academy is their guide on this project. RAL Academy is easily researched via the internet as well as the book RAL Academy offers called Senior Tsunami. (*Exhibit 3 pages 121-142*)
- 11) An article by The Real Estate Appraisal Institute shows that houses located within a half mile of an assisted living facility lose value. (*Exhibit 3 pages 101-120*)

### **Procedural History**

The MLHPD Commission met with the Oaks development team on five occasions, three of which were special meetings which the County requested MLHPD to schedule to accommodate this petitioner.

The Planning and Zoning Commission met with the Phillips prior to MLHPD on August 10, 2023 and approved the Oaks subject to approval by MLHPD. (*Exhibit 2 August 10, 2023 Planning and Zoning Minutes pages 62-66*).

The MLHPD Commission met with the Phillips on August 14, 2023. This was the 4<sup>th</sup> meeting with the Phillips. The Phillips again failed to provide an application for a Certificate of Appropriateness. That application must be submitted and is a prerequisite to MLHPD Commission review. *Section 1913.02* states petitioner . . .” *must submit an application.” (Exhibit 1 page 16)*

At that hearing, the Phillips stated that their Conditional Use application had changed. The Phillips failed to produce the revised application at that time or in the

future. The Phillips' refusal to produce the required documents limited the scope of the Commission's review.

The Phillips demanded that the Commission vote on the proposal without reviewing the reported alternate Conditional Use Application which they stated had been revised or the Certificate of Appropriateness Application. Mr. Phillips stated that he was standing on the information produced as his final and complete proposal. MLHPD voted to deny this proposal based on the fact that presentation was incomplete. The Application for a Certificate Of Appropriateness and the reportedly revised Conditional Use Application were not provided. Information about landscaping, side elevations, and other issues was also absent. The Conditional Use application requested that Luxury Assisted Living be authorized across the entire 5 acre property. This is a different use than is now shown on the Certificate of Appropriateness. *(Exhibit 3 pages 94, 95, and 99)*

On August 15, 2023, MLHPD sent its Letter of Findings and Recommendation to Mr. Scott Weeks to attach to the Oaks' submittal going forward. A copy of this Letter is attached hereto as *(Exhibit 4 pages 143-144)* and incorporated herein by reference.

On October 12, 2023, Mr. Clark contacted Rita McGuffie, Chairman, MLHPD about revisiting and reviewing new documents submitted by the Phillips. Mr. Clark further stated that MLHPD had certainly done its duty on this project and advised Ms. McGuffie that MLHPD could choose to stand on the August 14, 2023 denial or choose to revisit the issue. When Ms. McGuffie asked Mr. Clark whether the County considered this a new submittal, Mr. Clark said "no". When Ms. McGuffie asked Mr. Clark if the County considered this a reopening of the duly voted on and denied current submittal, Mr. Clark also replied "no". The Commission chose to stand on its denial. Contrary to statements made by Mr. Steve Smith at the October 19, 2023 Public Hearing at Planning and Zoning, MLHPD Commission did not meet and did not give the Oaks a list of 6 items to resubmit. Nor was there a list of 2 items MLHPD requested in its motion to deny. Mr. Smith misquoted MLHPD's motion for the denial of the Oaks on August 14, 2023 as only referencing landscaping and inappropriate side elevations and omitted pertinent verbiage that the proposal was incomplete. The Planning and Zoning Commission held a second Public Hearing and approved the Phillips' Petition on October 19, 2023. *(Exhibit 2-Minutes of Planning and Zoning Commission October 19, 2023 meeting pages 67-72 and Exhibit 4 - MLHPD Letter of Findings and Recommendations pages 143-144)*

Several neighboring landowners and Livingston Township merchants with 3 businesses appealed the October 19, 2023, Planning and Zoning Board's approval.

The Board of Supervisors held a Public Hearing on January 18, 2023. At the conclusion of that meeting, Mr. Steen made the motion to “send the Oaks back to MLHPD”. Mr. Steen indicated that MLHPD had not done its job.

The hearing on January 30, 2024 on the Phillips Application was scheduled and conducted as a result. The MLHPD commission fully complied with the Supervisor’s request.

The Commission requested and received from the Planning and Zoning Administrator a copy of the documents submitted by the Phillips. The date on their Certificate of Appropriateness application is October 16, 2023. The use shown on the October 16, 2023 application is “Personal Residential Assisted Living”. This is the application that was sent to MLHPD by the Planning and Zoning Administrator electronically on Thursday, January 25, 2024, was published on the County website for public view and was in the packet of hard copies given to MLHPD at the meeting on January 30, 2024. This is also the verbiage utilized throughout the Supplemental Submittal in Support of Conditional Use

*(Please see “Addendum B”).*

When asked about Certificate of Appropriateness Use, Mr. Smith stated that the Use had been altered but he did not give the Commission a revised application. Since the Zoning Ordinance for Madison County does not include any verbiage to address Personal Care Homes, the petitioner is stating that the Oaks would be subject to Mississippi State Department of Health (MSDH) classifications. In the MSDH guidelines, a Personal Residential Assisted Living Use contains verbiage from 2 separate classifications which could make regulating a Personal Residential Assisted Living use very difficult to going forward. Please see Mississippi State Department of Health classifications. *(Exhibit 3 page 99).*

During discussion of Overlay District regulations, Mr. Clark interjected that MLHPD which is an Overlay District does impose a different standard. *(See Madison County definition of “Overlay Zone” Exhibit 3 page 96)*

The adjoining property owners and merchants who would be most affected are objecting to this Conditional Use.

All Madison County Zoning Ordinance Sections referenced within this letter are attached by numerical order for your convenience as *Exhibit 1.*

**General Information:** *Please see Exhibit 5.*

**EXHIBIT 1**

**Relevant Zoning Sections**  
**Madison County Zoning Ordinance 2019**  
(Numerical Order - Pages 9-17)

**Section 1900 MLHPD**  
**Madison County Zoning Ordinance 2019**  
(Pages 18-26)



**SECTION 402 - PUBLIC/ QUASI-PUBLIC FACILITIES AND UTILITIES**

All public and quasi-public facilities and utilities, as defined under Article III of this Ordinance, may be located in any district in the County, provided:

- A. That all applicable requirements of federal, state and county laws shall be met.
- B. That all such proposed uses shall be subject to the procedures stated under Section 805 relative to Conditional Uses.
- C. No public or quasi-public facility or utility shall be located in any area where the proposed use would be incompatible with surrounding land uses.

**SECTION 801 - DUTIES, POWERS, AND LIMITATION OF POWERS OF THE ZONING ADMINISTRATOR IN THE ADMINISTRATION AND ENFORCEMENT OF THIS ORDINANCE**

**801.01 Duties of the Zoning Administrator:**

- A. Coordinate all matters relating to this Ordinance with, as appropriate, other County officials.
- C. Provide application forms to the public on matters relating to zoning.
- F. Receive and take appropriate action on all applications for dimensional variances, conditional use permits (special exceptions), and zoning amendments (rezoning).
- G. Receive and take appropriate action on all site plans submitted in accordance with Sections 807 through 810 of this Ordinance and the forwarding copies of site plans and associated materials to the proper individuals or bodies.

**804.08 -Granting of a "Use Variance"\* Prohibited:** Under no circumstances shall the Planning and Zoning Commission or the Board of Supervisors issue a variance to allow a use not permissible under the terms of this Ordinance in the District involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.

*\*A Use Variance definition is not shown in ZOMC definitions.*

**805.01** The Planning and Zoning Commission shall not grant a conditional use unless satisfactory provision and arrangement has been made concerning all of the following:

A. Ingress and egress to property and proposed structures thereon with particular reference to vehicular and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.

B. Off-street parking and loading areas.

C. Refuse and service areas.

D. Utilities, with reference to locations, availability, and compatibility.

E. Screening and buffering with reference to type, dimensions, and character.

F. Required yards and other open space.

**G. General compatibility with adjacent properties and other property in the district.**

H. Any other provisions deemed applicable by the Planning and Zoning Commission or the Board of Supervisors.

**805.03 Site Plan Required:** Every applicant for a conditional use permit shall submit a site plan in accordance with Sections 807 through 810 of this Ordinance.

**806.05 Public Hearing Required:**

A. Public Hearing Required: In accordance with Section 17-1-17 of the Mississippi Code of 1972, As Amended, a public hearing shall be held on any proposed amendment to the text of this Ordinance or the Official Zoning Map following at least fifteen days notice of the hearing in "---an official paper or a paper of general circulation in such county ---specifying the time, place and date of said hearing." The hearing shall be held in accordance with Section 811 of this Ordinance.

**Notification of Adjacent Property Owners:** The Zoning Administrator shall furnish a form letter for use by all applicants for rezoning in notifying all property owners within 160 feet in all directions (excluding the rights of way of streets or highways) from the lot lines of any parcel or parcels of land proposed for rezoning that such action is being proposed. The applicant for the rezoning shall furnish to the Zoning Administrator, with the completed application, the names and addresses of all persons owning land within this 160-foot distance from the subject property. The applicant for rezoning shall also be responsible for mailing, by certified mail (return receipt requested), the form letters (containing the date, time, location and purpose of the public hearing) to all such property owners. All letters to the

property owners shall be mailed at least fifteen days prior to the public hearing. The applicant shall then provide to the Zoning Administrator the return receipts for the certified letters and the Zoning Administrator shall attach these return receipts to the application. This notification of adjacent property owners is NOT required by State law. It is done as a courtesy to citizens owning property within the immediate area of the proposed amendments. Failure of any property owner to receive notification of a public hearing concerning a proposed rezoning shall NOT be grounds for contesting actions by the Madison County Board of Supervisors.

**806.09 Res Judicata:** Upon the submission of an application for a rezoning, and a determination by the Planning and Zoning Commission that said application should be denied, the Planning and Zoning Commission shall not accept a subsequent application to rezone the same property or any part thereof to the same classification until the expiration of one (1) year from the date of the decision of the Board denying said application. This is known as the doctrine of res judicata. However, if the application relates to the same property but seeks zoning to a different classification, the doctrine does not apply; and the Planning and Zoning Commission may consider such a proposed rezoning.

## **SECTION 807 - SITE PLAN REVIEW: PURPOSES AND WHEN REQUIRED**

**807.01 Purposes:** The purposes of site plan review are: to promote the health, safety and general welfare of the County; to insure that structures are built in accordance with the provisions of this Ordinance and the Standard Building Code; to conserve the value of existing buildings and structures; to prevent excessive dissimilarity and inappropriateness or poor quality of design in the exterior appearance of structures; to prohibit unsightly and unsuitable structures that would be out of harmony or incongruent with existing visual features within the district; and to prevent harm and damage to the County which will result from the absence of such review and manifest itself by:

- A. lower property values;
- B. decreased economic growth; or
- C. diminished future opportunities for land use and development.

**807.02 When Site Plan Review Is Required:** Site Plan Review shall be required for the following:

- C. All applications for conditional uses.

D. All public/quasi-public utilities and facilities. In accordance with Section 402, such public/quasi-public utilities and facilities shall be allowed only as conditional uses in any district.

## **SECTION 808 - SITE PLAN REVIEW PROCEDURES**

The Zoning Administrator shall act as the coordinator for the site plan review process. He shall advise all applicants for building permits if the proposed use requires the preparation and submission of a site plan and the official approval of that plan prior to the issuance of the permit. All applicants shall follow the procedures specified below:

**808.01 Consultation:** Prior to filing of an application for approval of a site plan, the applicant should meet and consult informally with the Zoning Administrator. This meeting will give the applicant an opportunity to secure guidance as to what will probably be required before incurring great expense in making a detailed site plan.

**808.02 Submission of Site Plan:** Eight (8) copies of each site plan shall be prepared and submitted to the Zoning Administrator.

Site plans shall be submitted by the 15th day of the month preceding the next regular meeting of the Planning and Zoning Commission at which the plan is to be reviewed, or it will not be placed on the Planning and Zoning Commission agenda for that meeting.

The Zoning Administrator shall notify the applicant of any deficiencies or omissions in the site plan. The site plan shall not be processed until all required data is provided as prescribed in Section 809 of this Ordinance.**809.01 Site Plan Specifications:** The following data shall be supplied by the applicant in connection with required site plans or as required by the Zoning Administrator:

B. The zoning of adjacent lots.

C. The names of owners of adjacent lots

H. A drainage plan showing all existing and proposed storm drainage facilities. The drainage plan shall indicate adjacent off-site drainage courses and projected storm water flow rates from off-site and on-site sources.

**810.05 Fire Safety:**

A. Are fire hydrants shown on the site plan and properly located to ensure fire protection for all structures?

**810.07 Elevations:**

A. Will the proposed structures maintain harmony and continuity with similar existing uses within the district and considering other like structures within 500

feet of the proposed structure as measured from each lot line of the proposed structure (excluding streets, alleys and other public rights-of-way?

B. Are the proposed structures incongruent or inharmonious in such a manner as to cause or provoke one or more of the following: lower property values; decreased economic growth; or diminished future opportunities for land use and development?

#### SECTION 1902 - CONDITIONAL USES AND STRUCTURES

A. Public or quasi-public facilities and utilities in compliance with Section 402 ***and other regulations of this Ordinance.***

B. Surface mining operations of a temporary nature, such as lake construction or land development.

C. Public or private, non-commercial (such as open space and recreational facilities within a residential subdivision with use limited to members/ residents of the subdivision) recreational or open space facilities. Country clubs are regulated as public/ quasi-public facilities.

#### SECTION 1903 - OTHER USES EXPRESSLY PROHIBITED IN THE MLHP OVERLAY DISTRICT

The following uses are expressly prohibited in the Mannsdale-Livingston Heritage Preservation District:

L. Apartments and/or residential condominiums.

O. Hotels, motels or boarding houses.

***This list of prohibited uses is not all inclusive as other uses may be deemed inappropriate upon review by the MLHP Overlay District and the Madison County Board of Supervisors and thereby are prohibited.***

#### SECTION 1909 - ESTABLISHMENT OF MANNSDALE-LIVINGSTON HERITAGE PRESERVATION COMMISSION

A Mannsdale-Livingston Heritage Preservation Commission is hereby established whose primary function shall be to review applications for Certificates of Appropriateness. This Commission shall also review all applications for rezoning, variances and special exceptions anywhere within the MHLP district. The Preservation Commission shall be an advisory body and shall forward their recommendations to the Board of Supervisors, who may accept or reject the recommendations of the Preservation Commission. The Madison County Zoning Administrator shall serve as an ex-officio member of the Mannsdale-Livingston Heritage Preservation Commission.

**1909.02 Duties of the Mannsdale-Livingston Heritage Preservation Commission:  
The MLHP Commission shall have the following responsibilities:**

- B. The Commission shall review all applications for Certificates of Appropriateness, and make recommendations to the Planning and Zoning Commission Board of Supervisors regarding all such applications.**
- C. Review of Applications for Rezoning, Variances, Conditional Uses, in the Mannsdale-Livingston Heritage Preservation Overlay District.**
- D. The MLHP Commission shall review all site plans in the MLHP Overlay district as required by this ordinance.**

**SECTION 1910 - REVIEW OF APPLICATIONS FOR REZONING, VARIANCES, CONDITIONAL USE IN THE MLHP OVERLAY DISTRICT**  
Both the Mannsdale-Livingston Heritage Preservation (MLHP) Commission and the Madison County Planning and Zoning Commission shall review applications for rezoning, variances and conditional uses. The MLHP Commission shall review these applications and submit their recommendations and findings to the Madison County Planning and Zoning Commission. The Planning and Zoning Commission shall also review such applications and forward their recommendations and findings, which may or may not be consistent with those of the MLHP Commission, to the Board of Supervisors.

**SECTION 1911 - SITE PLAN REVIEW REQUIRED FOR ANY PROPOSED NEW CONSTRUCTION IN THE MLHP OVERLAY DISTRICT**  
When any new construction (other than single-family dwellings) is proposed anywhere within the MLHP Overlay district, a site plan shall be prepared by persons responsible for initiating such action in accordance with Sections 807 through 810 of this Ordinance. Before an application may be considered for approval an architectural plan, landscaping plan including drainage, servicing plan, access plan, and exterior lighting plan must be submitted to the MLHP Commission. Dimensions, specific site feature and basic topography information shall be shown on the site plan. The MLHP Commission shall review site plans for such construction. The site plan is subject to review and approval by the Commission.

## **SECTION 1912 - PROCEDURES FOR REVIEW OF SITE PLAN**

From the date of receipt of a proposed site plan, the MLHP Commission shall have thirty (30) business days in which to review site plans and make a recommendation to the Planning and Zoning Commission then the Board of Supervisors. After reviewing all information relative to the site plan, the Mannsdale-Livingston Heritage Preservation Commission may recommend issuance of a Certificate of Appropriateness and issuance of a building permit or recommend denial by the Planning and Zoning Commission and the Board of Supervisors. If the Commission determines that the proposed building or structure is excessively similar or dissimilar to other like structures within the district and makes a specific finding that the structure as proposed would provoke one or more of the harmful effects as set forth in Section 807.01, and that such finding is not based upon personal preferences as to taste, then the Commission may recommend that no Certificate of Appropriateness be issued and that an application for a building permit be denied by the Planning and Zoning Commission and the Board of Supervisors. If the Commission recommends issuance of a Certificate of Appropriateness and a building permit, such recommendation shall be contingent upon final review and approval by the Planning and Zoning Commission and the Board of Supervisors.

## **SECTION 1913 - CERTIFICATE OF APPROPRIATENESS REQUIRED**

A Certificate of Appropriateness shall be required before any new construction (except single-family residences) can be undertaken within the MLHP Overlay District. Therefore:

- A. The Commission shall serve as an advisory body to recommend approval or denial by the Board of Supervisors of applications for Certificates of Appropriateness.
- B. In recommending approval and denial of applications for Certificates of Appropriateness, the Commission shall seek to accomplish the purposes of this ordinance.
- C. All decisions of the Commission shall be in writing and shall state the findings of the Commission, its recommendations, and the reasons therein.

1913.01 Purposes of a Certificate of Appropriateness: A "Certificate of Appropriateness" is a document issued by the Madison County Board of

Supervisors approving a proposed new construction in the MLHP Overlay district. The purposes of the Certificate of Appropriateness are:

- A. To conserve the values of existing buildings and structures.
- B. To prevent excessive uniformity and dissimilarity and inappropriateness or poor quality of design in the exterior appearance of structures.
- C. To prohibit unsightly and unsuitable structures that would be out of harmony or incongruent with the existing visual features within the district.
- D. To prevent harm and damage to the District which will result from the absence of such review and manifest itself by:
  - 1. lower property values;
  - 2. decreased economic growth; or
  - 3. diminished future opportunities for land use and development.

1913.02 Procedures for Consideration of Applications for Certificates of Appropriateness: Anyone desiring to undertake new construction (except single-family residences) in the MLHP Overlay district must submit an application (on a form provided by the office of the Zoning Administrator) for a Certificate of Appropriateness to the Madison County Zoning Administrator, who shall forward this application to the Chairperson of the Mannsdale-Livingston Heritage Preservation Commission. The Commission shall review the application and either recommend approval, denial, or make recommendations for changes and modifications as it deems necessary in order for the applicant to meet the standards and guidelines for the action to be performed. If the applicant's plans meet the approval of the Commission, the Chairman of the Commission shall sign the Certificate and it shall be forwarded to the Planning and Zoning Commission then the Board of Supervisors for review and final approval. Following approval by the Board of Supervisors, the Certificate shall be forwarded to the Building Official for issuance of a building permit.

If the Commission should reject the application or recommend changes and modifications not acceptable to the Applicant, the Applicant may appeal the Commission's decision directly to the Board of Supervisors.



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

**SECTION 1914 - HOURS OF OPERATION FOR PROPERTIES WITH UNDERLYING RESTRICTED COMMERCIAL ZONING**

Hours of commercial operation within the MLHP Overlay District will be as early as 6:00 A.M. to as late as 9:00 P.M. Exceptions to this will be considered by the MLHPC on an individual basis according to the nature of the business and the impact of extended hours upon the surrounding properties.

# ARTICLE XIX: MANNSDALE-LIVINGSTON HERITAGE PRESERVATION OVERLAY DISTRICT (MLHP)

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## SECTION 1900 - PURPOSE OF THIS OVERLAY DISTRICT

The Mannsdale-Livingston Heritage Preservation (MLHP) Overlay District is hereby created to preserve the integrity of the Mannsdale-Livingston area of Madison County. The area along what is now Mississippi Highway 463 is rich in beauty and historical significance. Pioneer families settled in this part of Madison County in the 1840's to 1890's establishing lavish plantations and sacred places of worship. Remnants of this lifestyle still grace the uniquely picturesque countryside. The Board of Supervisors of Madison County hereby recognizes that the Mannsdale-Livingston area is known for its extensive and concentrated historical buildings, including the Chapel of the Cross Church, built in 1848, which is nationally recognized as a significant historical church. Other structures dating back as far as the 1890's include, the old Chapel Rectory; the O'Keefe home; the Yerger home; and the Mann Plantation silo, carriage house and entrance pillars.

The second home built on the Annandale Plantation (circa 1920's) still stands. Also, the sites of Ingleside Plantation, the first Bennett Plantation home, the original China Grove Church, Glenarchy Academy (the one-room schoolhouse), Mannsdale Mercantile store, and the Mannsdale gin are located along this stretch of Highway 463. At the junction of Highways 463 and 22 still stand the old cedar trees, which lined the town square of the town of Livingston. Built beside Livingston Springs, Livingston was the first town in Madison County in 1824 and served as the first county seat for Madison County from 1828 to 1833.

This overlay district is designed to achieve the following goals:

- A. Protect, enhance and perpetuate buildings that represent distinctive and significant elements of the District's historical, cultural, social, economic, political, archaeological, and architectural identity;
- B. Insure the harmonious, orderly, and efficient growth and development of the District;
- C. Strengthen civic pride and cultural stability through neighborhood conservation;
- D. Stabilize the economy of the District through the continued use, preservation, and revitalization of its buildings;
- E. Protect and enhance the District's attractions to tourists and visitors and the support and stimulus to business and industry thereby provided;
- F. Promote the use of buildings for the education, pleasure, and welfare of the people of the District; and
- G. Provide a review process for the preservation and appropriate development of the District's buildings.

Insure a reasonable balance being struck whereby proposed development is encouraged while requiring management of their storm water in such a way as to protect the public health, safety and general welfare of the inhabitants of the District; protecting also downstream property owners and the public-at-large from excessive rate, volume and undesirable quality of storm water run-off.

In order to promote road traffic safety of this area and to preserve the historical character of this area, it is also the purpose of this district to prevent the overburdening of Mississippi Highway 463. The Central Mississippi Planning and Development District (CMPDD) is the organization recognized by the U. S. Department

of Transportation and the Mississippi Department of Transportation (MDOT) as responsible for transportation planning and policy-making in the Jackson Metropolitan Area. According to traffic projections performed by the CMPDD, there is no justification for widening Highway 463 inside the Mannsdale-Livingston Heritage Preservation District beyond its present two lanes for the foreseeable future. Finally, it is the intent of this district to preserve the historical, picturesque character of Mississippi Highway 463 and to require setbacks and landscaping as specified herein to insure that the unique setting is protected.

#### SECTION 1901 - USES PERMITTED SUBJECT TO UNDERLYING ZONING

The following uses are permitted outright in the MLHP overlay district subject to the underlying zoning:

- A. All agricultural uses permitted outright in underlying A-1 Agricultural zones and Residential Estate (R-1) zones and subject to the regulations of those zones.
- B. Single-family detached dwellings on less than two (2) acres (i.e., in underlying R-1A, R-1B, or R-2 zones) with only one principal dwelling per lot and customary accessory uses. No lot having an area of less than two (2) acres shall be platted if such lot is not served by a public or private sewage disposal system.
- C. Commercial uses in which the services performed and/or the merchandise offered for sale are conducted or displayed within enclosed buildings, except for the display of small articles (i.e., those that can generally be hand-carried by one or two persons) outside of the commercial use. Such uses may only be established in underlying commercial zones.
- D. Home Occupations.

#### SECTION 1902 - CONDITIONAL USES AND STRUCTURES

- A. Public or quasi-public facilities and utilities in compliance with Section 402 and other regulations of this Ordinance.
- B. Surface mining operations of a temporary nature, such as lake construction or land development.
- C. Public or private, non-commercial (such as open space and recreational facilities within a residential subdivision with use limited to members/ residents of the subdivision) recreational or open space facilities. Country clubs are regulated as public/ quasi-public facilities.

#### SECTION 1903 - OTHER USES EXPRESSLY PROHIBITED IN THE MLHP OVERLAY DISTRICT

The following uses are expressly prohibited in the Mannsdale-Livingston Heritage Preservation District:

- A. Big box retail establishments.
- B. Stand-alone bars (i.e., a bar that is not a part of a full-service restaurant), including dance halls, saloons and nightclub establishments.
- C. Manufactured or mobile homes. However, all manufactured or mobile homes existing at the time of passage of this amendment shall be subject to the provisions of Section 605 (Nonconforming Uses) of this Ordinance.
- D. Factory built dwellings.
- E. All warehousing uses, including self-storage warehouses or mini warehouses.

- F. All industrial or manufacturing zoning or uses.
- G. Mechanical garages as defined by this Ordinance.
- H. All commercial open-pit mining operations.
- I. Commercial feedlots.
- J. Billboards and other off-premise signs.
- K. Fast Food Restaurants Type 2 (those with drive through window or curb service).
- L. Apartments and/or residential condominiums.
- M. Service stations and convenience stores are not allowed, except on the Highway 463 corridor within 500 ft. of Highway 22.
- N. Commercial metal buildings.
- O. Hotels, motels or boarding houses.
- P. Bowling alleys or skating rinks.
- Q. Auto or truck dealerships.
- R. Bingo parlors or any other type of gambling establishment.
- S. Any establishment promoting or selling pornographic material including, but not limited to the following: strip clubs; gentlemen's clubs; topless bars; or adult book/video stores.

This list of prohibited uses is not all inclusive as other uses may be deemed inappropriate upon review by the MLHP Overlay District and the Madison County Board of Supervisors and thereby are prohibited.

#### SECTION 1904 - DIMENSIONAL REQUIREMENTS

1904.01 Minimum Lot Area, Minimum Lot Width, and Required Yards for Residential Uses in Underlying A-1 and R-1 Zones (Where Sewer Service Is Not Provided):

- A. Minimum Lot Area - Two (2) acres.
- B. Minimum Lot Width - 100 feet at the front building setback line.
- C. Minimum Yards:
  - 1. Front Yard - 50 feet.
  - 2. Side Yard - 25 feet
  - 3. Rear Yard - 50 feet

1904.02 Minimum Lot Area, Minimum Lot Width, and Required Yards for All Underlying Zones (Where Sewer Service is Provided): Same as the underlying district.

#### SECTION 1905 - FRONTAGE OF LOTS IN NEW RESIDENTIAL SUBDIVISIONS UPON MISSISSIPPI HIGHWAY 463 PROHIBITED

Lots in any new subdivision, other than a division of family property, containing two or more lots shall front on an interior circulation street. Frontage of lots in new subdivisions directly upon Mississippi Highway 463 is prohibited.

## **SECTION 1906 - FENCING OR LANDSCAPING REQUIRED FOR ALL NEW SUBDIVISIONS ALONG MISSISSIPPI HIGHWAY 463 OR OTHER ARTERIAL ROADS**

County zoning of all residential subdivisions in the MLHP Overlay district approved on or after the effective date of this amendment must front on an interior circulation street; the developer of such subdivisions shall provide a 100 foot landscaped or no cut buffer zone, or a 60 foot landscaped buffer zone with a black 6 foot high wrought iron fence along Mississippi Highway 463, Gluckstadt Road, Cedar Hill Road, Stribling Road or other arterial road which may be built in the future that crosses Highway 463 and borders the subdivision. The buffer zone shall be measured from the existing highway or road right of way. The proposed fence or landscaping is subject to review and approval by the Board of Supervisors.

## **SECTION 1907 - LANDSCAPING AND LIGHTING REQUIRED FOR ALL COMMERCIAL DEVELOPMENT IN MLHP OVERLAY DISTRICT**

Developers of any commercial use proposed following adoption of this amendment shall provide appropriate landscaping on Mississippi Highway 463 or along any arterial road bordering the proposed commercial development. Before rezoning commences, an architectural plan along with landscaping, exterior lighting, servicing, drainage, and access plans will be submitted to the MLHP Commission. In addition, lighting shall be compatible with the architectural design with NO high intensity lights permitted. A sufficient number of antique designed streetlights will be used to achieve the foot-candles required and lighting shall be of a moonlight color--amber lighting is not allowed. Exterior lighting will be designed to minimize light pollution of all the adjacent properties. A landscaped setback buffer zone of 80 ft. is required along Highway 463 and all arterial roads for all commercial zoned property within the district.

## **SECTION 1908 - NOISE POLLUTION**

Since the purpose of the MLHP Overlay District is to preserve the historic rural atmosphere of the district, commercial establishments within the district must ensure that their enterprise will not adversely affect surrounding properties with noise pollution. The MLHP Overlay District will review the effect of noise pollution when considering the appropriateness of any proposed commercial applications.

## **SECTION 1909 - ESTABLISHMENT OF MANNSDALE-LIVINGSTON HERITAGE PRESERVATION COMMISSION**

A Mannsdale-Livingston Heritage Preservation Commission is hereby established whose primary function shall be to review applications for Certificates of Appropriateness. This Commission shall also review all applications for rezoning, variances and special exceptions anywhere within the MHLP district. The Preservation Commission shall be an advisory body and shall forward their recommendations to the Board of Supervisors, who may accept or reject the recommendations of the Preservation Commission. The Madison County Zoning Administrator shall serve as an ex-officio member of the Mannsdale-Livingston Heritage Preservation Commission.

Membership on the Mannsdale-Livingston Heritage Preservation Commission shall be approved by the County and shall serve at the will and pleasure of the County. The Commission shall consist of nine (9) members from the voting membership of the Mannsdale Heritage Foundation as approved by the Mannsdale Heritage Foundation Board.

1909.01 Terms of the Mannsdale-Livingston Heritage Preservation Commission: The nine (9) members of the MLHP Commission shall serve for three, six and nine year terms, with three members rotating off after the first three years, three more members rotating off after six years, and the last three members rotating off after nine years. The intent of this section is to insure that there are always experienced members on the Commission.

1909.02 Duties of the Mannsdale-Livingston Heritage Preservation Commission: The MLHP Commission shall have the following responsibilities:

- A. To recommend amendments to the boundaries of the Mannsdale-Livingston Heritage Preservation District, which shall be shown on the Official Zoning Map of Madison County.
- B. The Commission shall review all applications for Certificates of Appropriateness, and make recommendations to the Planning and Zoning Commission Board of Supervisors regarding all such applications.
- C. Review of Applications for Rezoning, Variances, Conditional Uses, in the Mannsdale-Livingston Heritage Preservation Overlay District.
- D. The MLHP Commission shall review all site plans in the MLHP Overlay district as required by this ordinance.
- E. The Commission, subject to the requirements of the County, is authorized to apply for, receive, hold and spend funds from private and public sources, in addition to appropriations made by the County for the purpose for carrying out the provisions of this ordinance.
- F. The Commission is authorized to employ such staff or contract with technical experts or other persons, at the expense of the Mannsdale-Livingston Heritage Preservation Commission, as may be required for the performance of its duties and to obtain the equipment, supplies, and other materials necessary for its effective operation.

1909.03 Rules of Conduct of the Mannsdale-Livingston Heritage Preservation Commission:  
The Commission annually shall elect from its membership a chairman and vice-chairman. It shall select a secretary from its membership or its staff. If neither the chairman nor the vice-chairman attends a particular meeting, the remaining members shall select an acting chairman from the members in attendance at such meeting.

The Commission shall develop and adopt rules of procedure, which shall govern the conduct of its business, subject to the approval of the County. Such rules of procedure shall be a matter of public record.

The Commission shall keep minutes and records of all meetings and proceedings including voting records, attendance, resolutions, findings, determinations, and decisions. All such material shall be a matter of public record.

The chairman or any two (2) members may call a special meeting to consider an urgent matter.

All meetings of the Commission shall be open to the public at all times unless an executive session is declared in the manner provided by State law.

Voting by the Commission on all matters coming before that body shall be held in public except for voting during executive session.

The decision of a majority of the Commission members present and voting shall represent the decision of the Commission.

#### SECTION 1910 - REVIEW OF APPLICATIONS FOR REZONING, VARIANCES, CONDITIONAL USE IN THE MLHP OVERLAY DISTRICT

Both the Mannsdale-Livingston Heritage Preservation (MLHP) Commission and the Madison County Planning and Zoning Commission shall review applications for rezoning, variances and conditional uses. The MLHP Commission shall review these applications and submit their recommendations and findings to the Madison County Planning and Zoning Commission. The Planning and Zoning Commission shall also review such applications and forward their recommendations and findings, which may or may not be consistent with those of the MLHP Commission, to the Board of Supervisors.

#### SECTION 1911 - SITE PLAN REVIEW REQUIRED FOR ANY PROPOSED NEW CONSTRUCTION IN THE MLHP OVERLAY DISTRICT

When any new construction (other than single-family dwellings) is proposed anywhere within the MLHP Overlay district, a site plan shall be prepared by persons responsible for initiating such action in accordance with Sections 807 through 810 of this Ordinance. Before an application may be considered for approval an architectural plan, landscaping plan including drainage, servicing plan, access plan, and exterior lighting plan must be submitted to the MLHP Commission. Dimensions, specific site feature and basic topography information shall be shown on the site plan. The MLHP Commission shall review site plans for such construction. The site plan is subject to review and approval by the Commission.

#### SECTION 1912 - PROCEDURES FOR REVIEW OF SITE PLAN

From the date of receipt of a proposed site plan, the MLHP Commission shall have thirty (30) business days in which to review site plans and make a recommendation to the Planning and Zoning Commission then the Board of Supervisors. After reviewing all information relative to the site plan, the Mannsdale-Livingston Heritage Preservation Commission may recommend issuance of a Certificate of Appropriateness and issuance of a building permit or recommend denial by the Planning and Zoning Commission and the Board of Supervisors. If the Commission determines that the proposed building or structure is excessively similar or dissimilar to other like structures within the district and makes a specific finding that the structure as proposed would provoke one or more of the harmful effects as set forth in Section 807.01, and that such finding is not based upon personal preferences as to taste, then the Commission may recommend that no Certificate of Appropriateness be issued and that an application for a building permit be denied by the Planning and Zoning Commission and the Board of Supervisors. If the Commission recommends issuance of a Certificate of Appropriateness and a building permit,

such recommendation shall be contingent upon final review and approval by the Planning and Zoning Commission and the Board of Supervisors.

## SECTION 1913 - CERTIFICATE OF APPROPRIATENESS REQUIRED

A Certificate of Appropriateness shall be required before any new construction (except single-family residences) can be undertaken within the MLHP Overlay District. Therefore:

- A. The Commission shall serve as an advisory body to recommend approval or denial by the Board of Supervisors of applications for Certificates of Appropriateness.
- B. In recommending approval and denial of applications for Certificates of Appropriateness, the Commission shall seek to accomplish the purposes of this ordinance.
- C. All decisions of the Commission shall be in writing and shall state the findings of the Commission, its recommendations, and the reasons therein.

1913.01 Purposes of a Certificate of Appropriateness: A "Certificate of Appropriateness" is a document issued by the Madison County Board of Supervisors approving a proposed new construction in the MLHP Overlay district. The purposes of the Certificate of Appropriateness are:

- A. To conserve the values of existing buildings and structures.
- B. To prevent excessive uniformity and dissimilarity and inappropriateness or poor quality of design in the exterior appearance of structures.
- C. To prohibit unsightly and unsuitable structures that would be out of harmony or incongruent with the existing visual features within the district.
- D. To prevent harm and damage to the District which will result from the absence of such review and manifest itself by:
  1. lower property values;
  2. decreased economic growth; or
  3. diminished future opportunities for land use and development.

1913.02 Procedures for Consideration of Applications for Certificates of Appropriateness: Anyone desiring to undertake new construction (except single-family residences) in the MLHP Overlay district must submit an application (on a form provided by the office of the Zoning Administrator) for a Certificate of Appropriateness to the Madison County Zoning Administrator, who shall forward this application to the Chairperson of the Mannsdale-Livingston Heritage Preservation Commission. The Commission shall review the application and either recommend approval, denial, or make recommendations for changes and modifications as it deems necessary in order for the applicant to meet the standards and guidelines for the action to be performed. If the applicant's plans meet the approval of the Commission, the Chairman of the Commission shall sign the Certificate and it shall be forwarded to the Planning and Zoning Commission then the Board of Supervisors for review and final approval. Following approval by the Board of Supervisors, the Certificate shall be forwarded to the Building Official for issuance of a building permit.



If the Commission should reject the application or recommend changes and modifications not acceptable to the Applicant, the Applicant may appeal the Commission's decision directly to the Board of Supervisors.

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

1913.03 Expiration of Certificates of Appropriateness: Certificates of Appropriateness shall expire six (6) months after final approval of the Certificate by the Board of Supervisors if construction or other proposed action has not been initiated within such time.

#### SECTION 1914 - HOURS OF OPERATION FOR PROPERTIES WITH UNDERLYING RESTRICTED COMMERCIAL ZONING

Hours of commercial operation within the MLHP Overlay District will be as early as 6:00 A.M. to as late as 9:00 P.M. Exceptions to this will be considered by the MLHPC on an individual basis according to the nature of the business and the impact of extended hours upon the surrounding properties.

#### SECTION 1915 - SIGN REGULATIONS FOR PROPERTIES WITH UNDERLYING RESTRICTED COMMERCIAL ZONING

The term "sign" shall further mean and include every device, frame, letter, figure, character, mark, point, design, picture, trademark or reading matter, which is used or intended to be used to attract attention or convey information when the same is placed out of doors in view of the general public. The "sign" shall also include any sign that shall be painted, printed, or otherwise affixed or placed on the wall or roof of any building, fence or other structure.

1915.01 Allowable Exterior Signs and Maximum Area and Height for Signs in underlying C-1A Zones:

A. *Ground-mounted signs:*

1. No ground-mounted sign shall exceed a height of eight (8) feet above the surrounding grade (not including 6" curb) and shall not exceed an area of 70 square feet.
2. One ground mounted sign shall be allowed per project, except where the project fronts on two or more streets.
3. A set back of 20 feet from the face of curb or edge of the pavement is required for all ground mounted signs.

B. **Wall Mounted Signs:**

1. A sign at the wall of a building with the face parallel to and within 12 inches of the plane of building wall.
2. A maximum of 10 square feet for each wall mounted sign.

C. **Prohibited Signs:**

1. **Animated signs:** Any sign, which includes action or motion.
2. **Bench Sign:** An advertising message on any portion of a bench.

3. **Billboard:** An outdoor sign structure with poster panels, or bulletins, or electronic display, usually on a free-standing or ground sign. Typically, billboards exceed 100 square feet.
4. **Canopy Sign:** A sign mounted on and supported by a canopy, or found on the side of, below the roof line, or hanging beneath the canopy.
5. **Changeable Copy Sign (Manual):** A sign on which copy is changed manually with letters of changeable pictorial panels.
6. **Changing Sign (Automatic):** A sign such as an electronically or electrically controlled message center or reader board, where different copy changes are shown on the same lamp bank.
7. **Roof Top Mounted Sign**
8. **Flashing Sign:** Any sign which contains an intermittent or flashing light by means of animation, or an externally mounted intermittent light source.
9. **Marquee Sign:** A wall sign mounted on a permanent roof-like projection over the entry to an establishment.
10. **Seasonal or Special Occasion Temporary Sign:** A sign which is not permanent and is limited to a specific activity or in the celebration of holidays or other special events.

#### SECTION 1916 - SIGNS IN A-1 AND R-1, R-1A, R-1B AND R-2 RESIDENTIAL ZONES

This section of the Ordinance shall apply to all districts designated by the Zoning Ordinance as Agricultural (A-1) and R-1, R-1A, R-1B residential zones, such uses in PURD areas and churches in all zoning districts within the MLHP Overlay District.

##### 1916.01 Allowable Signs:

- A. One ground mounted sign or wall mounted sign which is one integral surface mounted unit is allowed at each entrance to a subdivision.
- B. One ground mounted sign or wall mounted sign which is one integral surface mounted unit is allowed per lot for public/quasi-public uses.

1916.02 **Size:** The area of one face of the sign portion of the sign at the entrance to a subdivision shall not exceed seventy (70) square feet. In no case shall total sign area exceed seventy (70) square feet per side if double faced.

##### 1916.03 Location:

- A. *Residential Signs:* shall be set back a minimum of (20') feet from the face of curb or edge of the pavement of any arterial street. In some instances a setback of more than twenty (20') feet may be required by the MLHP District Committee for safety reasons.
- B. *Church, Public or Semi-public Building or Park Signs:* Setback for these signs shall be one-half the distance of other buildings in the district.

## **EXHIBIT 2**

### **MINUTES**

#### **MLHPD:**

<b>May 8, 2023</b>	<b>Page 27-30</b>
<b>June 6, 2023</b>	<b>Page 31-35</b>
<b>July 31, 2023</b>	<b>Page 36-40</b>
<b>August 14, 2023</b>	<b>Page 41-48</b>
<b>January 30, 2024</b>	<b>Page 49-59</b>

#### **PLANNING AND ZONING COMMISSION:**

<b>Jan. 13, 2011</b>	<b>Page 60-61</b>
<b>August 10, 2023</b>	<b>Page 62-66</b>
<b>October 19, 2023</b>	<b>Page 67-72</b>

#### **MADISON COUNTY BOARD OF SUPERVISORS:**

<b>February 7, 2011</b>	<b>Page 73-75</b>
<b>January 18, 2024</b>	<b>Page 74-93</b>

**Mannsdale-Livingston Heritage Preservation District Minutes of Meeting  
Monday, May 8, 2023, 6:00pm**

**The monthly meeting of the Commission Members of the Mannsdale-Livingston Preservation District (hereafter MLHPD) was duly called, convened and conducted on Monday, May 8, 2023, 6:00pm at the Chapel of the Cross in Madison, Mississippi.**

**Rita McGuffie called the meeting to order. A roll call of the Commission Members of MLHPD was taken and the following Members present:**

**Carole Brand**

**Bill Buener**

**Phyllis Doby**

**David Landrum (by phone)**

**Rita McGuffie**

**Michael Yerger**

**Not in attendance:**

**Grant Brabham**

**Ken Primos**

**Donnie Young**

**Non-members present:**

**Keith Brown, Presenter for Palmetto**

**Brian Isonhood, Presenter for Palmetto**

**Daniel Wooldridge, Presenter for The Oaks Residence**

**Henry Greaves**

**Tisha Green**

**Page Two**

**ROLL CALL AND CERTIFICATION OF PROXIES**

Rita McGuffie called the meeting to order and there were no proxies. The roll call being complete, Rita started the meeting.

**PROOF OF NOTICE OF MEETING**

Notification of the meeting had been delivered to all Commission Members by email. No members objected to the meeting or indicated they had not received the email notice of said meeting.

**READING AND APPROVAL OF MINUTES OF PRIOR MEETING**

Emailed copies of the March 3, 2023 minutes with a separate email addendum listing non-members present were sent to all Commission Members. There being no corrections to said minutes, Phyllis Doby moved to approve. Motion was seconded by Michael Yerger with all Members present and David Landrum by phone voting to approve.

**NEW BUSINESS**

Keith Brown with Palmetto presented a sign request for his storefront in the Town of Livingston. The sign, Palmetto, The Men's Shoppe, is a 3' x 20" black sign which adheres to the guidelines set forth in the MLHPD document. Michael Yerger made the motion to approve the 3' x 20" Palmetto sign with a second by Bill Buener. All Members voted to approve.

Daniel Wooldridge, Wooldridge Architect in Madison submitted drawings from Flynn Architect in River Ridge, LA, for a proposed Assisted Care Facility, The Oaks Residence, located in the NW corner of the Town of Livingston. Mr. Wooldridge explained the owner, Chad Phillips of New Orleans, was not present as he thought the meeting was on Tuesday, May 09.

**Page Three**

**Mr. Wooldrige explained the facility to be in two stages. Building One to be 13,715SQ with 15 beds and Building Two to be 9,688SQ with 10 beds. The facility to be designated for the elderly, however, the residents to be completely mobile.**

**Carole Brand asked Mr. Wooldrige the age requirements for the facility and he advised this information forthcoming. In addition, Ms. Brand asked about ramps for the facility as none were shown on the plans, just steps.**

**David Landrum (via phone) explained that when the property was purchased in 2007 from the Greaves' Family, the family put in place a Special Warranty Deed, Book 2232, Page 0315, stating that for a period of fifty (50) years from the date of purchase the property to meet the standards and guidelines set forth by the Mannsdale Livingston Heritage Preservation District.**

**Rita McGuffie explained that MLHPD expressly prohibits apartments, condos and multi family housing.**

**Henry Greaves representing the Greaves' Family stated that his family was in support of MLHPD and their wishes were to adhere and preserve the historical significance of the area, hence the deed restrictions to the property.**

**Mr. Wooldridge stated that his clients were unaware of the deed restrictions.**

**With that said, Phyllis Doby made the motion to table the proposed Assisted Care Facility, The Oaks Residence, with a second by Michael Yerger. All Members voted "Aye".**

**It came before the Commission the request to send a letter to all Members regarding their desire "to serve" or "not to serve". Rita to send a letter to all**

**Members asking for their response on whether to serve or not to serve in this volunteer capacity. While we do understand conflicts, please consider your schedules when agreeing to serve.**

**Page Four**

**There being no further business, Michael Yerger made the motion to adjourn which was seconded by Bill Buener. All Commission Members voted "Aye" and the meeting was adjourned.**

*Rita McGuffie*  
-----  
Rita McGuffie

*June 6, 2023*  
-----  
DATE

**President MLHPD**

**Mannsdale-Livingston Heritage Preservation District Minutes of Meeting  
Tuesday, June 6, 2023, 6:00pm**

**The monthly meeting of the Commission Members of the Mannsdale-Livingston Heritage Preservation District (hereafter MLHPD) was duly called, convened and conducted on Tuesday, June 6, 2023, 6:00pm at the Chapel of the Cross in Madison, Mississippi.**

**Rita McGuffie called the meeting to order. A roll call of the Commission Members of MLHPD was taken and the following Members present:**

**Bill Buhner  
Phyllis Doby  
David Landrum (by phone)  
Rita McGuffie  
Michael Yerger**

**Not in attendance:**

**Carole Brand  
Grant Brabham  
Ken Primos  
Donnie Young**

**Non-members present:**

**John Wood, Fireworks Tent, Corner of 463 and Gluckstadt Road  
Chad Phillips, The Oaks, Personal Care Facility, NW Corner Town of Livingston  
Entergy Mississippi, Steven Gray, Legal Counsel  
Twenty-Five Concerned Citizens, Sign-In Sheet Attached**



**PAGE TWO**

**ROLL CALL AND CERTIFICATION OF PROXIES**

Rita McGuffie called the meeting to order and there were no proxies. The roll call being complete, Rita started the meeting.

**PROOF OF NOTICE OF MEETING**

Notification of the meeting had been delivered to all Commission Members by email. No members objected to the meeting or indicated they had not received the email notice of said meeting.

**READING AND APPROVAL OF MINUTES OF PRIOR MEETING**

Emailed copies of the May 8, 2023 minutes were sent to all Commission Members. There being no corrections to said minutes, Michael Yerger moved to approve. Motion was seconded by Bill Buhner with all Members present and David Landrum by phone voting to approve.

**NEW BUSINESS**

John Wood presented his request for a fireworks' tent, 30' x 60' on the corner of Highway 463 and Gluckstadt Road, the Village of Mannsdale.

Mr. Wood stated that he is no longer allowed to sell fireworks in Gluckstadt. The proposal for the tent to have spotlights and signs and would be run by teens who went to school in the area.

Rita McGuffie presented the architectural covenants for the Village of Mannsdale and stated that no building either temporary or permanent could be erected within the development without review by the architectural review board. Ms. McGuffie explained that the property was deed restricted and recorded with the County, a condition of the Village of Mannsdale C-1 zoning and to run with the land until 2053.

Mr. Wood stated that he had plenty of places that he could sell fireworks and would go somewhere else.

**PAGE THREE**

**MLHPD voted unanimously to table this matter in case Mr. Wood decided to come back with a new proposal at a later date.**

**Chad Phillips, the Oaks Residence, presented a proposal for Conditional Use for property located in the Livingston Township area, NW corner. Mr. Phillips stated that proposed personal care units were not apartment style and residents will not live independently as described in the definition for “assisted living” in the Zoning Ordinance for Madison County. Units are bed and bath only and are like nursing home/personal care home for the disabled.**

**David Landrum asked to address this request stating that he purchased the property from the Greaves’ family in 2007 and the family put a Special Warranty Deed in place for a period of fifty years. Mr. Landrum went on to say that this type of facility is not in keeping with the Historic Town of Livingston and would change the character of the town.**

**Mr. Phillips stated he wanted to break ground immediately. Ms. McGuffie advised that a checklist had to be followed:**

- 1) Correctly identify the use. Is it a nursing home, personal care home or assisted living facility? The application needs to show correct use as defined by Zoning Ordinance for Madison County. Noted: Mr. Phillips stated that the units consisted of bedroom and bath without a kitchen and were not “apartment style setting”.**
- 2) ADA Compliance**
- 3) Mark the required additional buffer on Highway 22 and show buffer landscaping.**
- 4) Show buffers between adjoining landowners and landscaping plan for all buffers/setbacks.**
- 5) Put in writing whether the land is part of Legacy PUD C-1. Indicate how this affects total greenspace, parking and total square footage.**
- 6) Put in writing about lighting, noise and hours of operation.**
- 7) Show screening for garbage and mechanical.**
- 8) Show required yard and open space not to include buffers /setbacks as open space.**

**PAGE FOUR**

**Adjoining landowners were present and objected to the proposal. Mr. Phillips has opened dialogue with the landowners.**

**It came before the Commission to table this request for additional information. Michael Yerger made the motion to table the project with a second by Bill Buhner and a unanimous vote by all.**

**Steven Gray, Entergy Mississippi, presented a proposal for a substation to be built in 2024 on property leased from Madison County School District, 511 Mannsdale Road. Mr. Gray included a letter from said school district stating that it had no objection to a substation being located on said property. Entergy showed that they would preserve and augment landscaping in the buffer area along Highway 463 so that the substation would be screened from view. The proposal showed a 100-foot buffer along the neighboring properties. In addition, Entergy stated that during the construction phase they would arrange for truck traffic to run during lower congested times; i.e., school drop off and pick up times and use other traffic calming measures. A public meeting to be held at the Chapel of the Cross Church the week of July 3 to discuss the project with the residents.**

**It came before the Commission to approve the proposed Entergy Substation located at 511 Mannsdale Road. Michael Yerger made the motion to approve the Entergy Substation with a second by Bill Buhner and a unanimous vote by all.**

**PAGE FIVE**

**There being no further business, Michael Yerger made the motion to adjourn which was seconded by Bill Buhner. All Commission Members voted "Aye" and the meeting was adjourned.**

*Rita McGuffie*  
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**Rita McGuffie**

*July 31, 2023*  
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**DATE**

**President MLHPD**

**Mannsdale-Livingston Heritage Preservation District Minutes of Meeting  
Monday, July 31, 2023, 6:00pm**

**The monthly meeting of the Commission Members of the Mannsdale-Livingston Heritage Preservation District (hereafter MLHPD) was duly called, convened and conducted on Monday, July 31, 2023, 6:00pm at the Chapel of the Cross in Madison, Mississippi.**

**Rita McGuffie called the meeting to order. A roll call of the Commission Members of MLHPD was taken and the following Members present:**

**Carole Brand (by phone)**

**Bill Buhner**

**Phyllis Doby**

**Rita McGuffie**

**Michael Yerger**

**Not in attendance:**

**Grant Brabham**

**David Landrum**

**Ken Primos**

**Donnie Young**

**Non-members present:**

**Chad and Crystal-Gardner Phillips, The Oaks, Personal Care Facility, NW Corner  
Town of Livingston**

**Madeline Waggoner, A+Signs, Ameritrade**

**Clinton Doby, President of Mannsdale Heritage Foundation**

**PAGE TWO**

**ROLL CALL AND CERTIFICATION OF PROXIES**

Rita McGuffie called the meeting to order. The roll call being complete, Rita started the meeting.

**PROOF OF NOTICE OF MEETING**

Notification of the meeting had been delivered to all Commission Members by email. No members objected to the meeting or indicated they had not received the email notice of said meeting.

**READING AND APPROVAL OF MINUTES OF PRIOR MEETING**

Emailed copies of the June 6, 2023, minutes were sent to all Commission Members. There being no corrections to said minutes, Phyllis Doby moved to approve. Motion was seconded by Michael Yerger with all Members present and Carole Brand by phone voting to approve.

**OLD BUSINESS**

Chad Phillips, came before the commission on June 6, 2023, to present the Oaks Residence located in the Livingston Township, NW corner. Mr. Phillips stated the proposed 15 personal care units, Phase 1, were not apartment style and residents would not live independently as described in the definition for "assisted living" in the Zoning Ordinance for Madison County. Units were to be bed and bath only and were to be like nursing home/personal care home for the disabled.

**PAGE THREE**

**Ms. McGuffie asked Mr. Phillips if he was aware of the documents required by MLHPD for any rezoning submittal. Mr. Phillips stated that he had been in contact with Scott Weeks, Planning and Zoning, and all required documents were sent to P & Z and that Andy Clark, County Attorney, concurred that the application for a luxury assisted living was the correct definition to use for the conditional use.**

**Mr. Phillips did not have the correct documentation required by MLHPD and Ms. McGuffie went over a checklist of items required in order for Mr. Phillips to move forward.**

**Mr. Phillips stated he wanted to break ground immediately. Ms. McGuffie advised that a checklist had to be followed:**

- 1) Correctly identify the use. Is it a nursing home, personal care home or assisted living facility? The application needs to show correct use as defined by Zoning Ordinance for Madison County. Noted: Mr. Phillips stated that the units consisted of bedroom and bath without a kitchen and were not "apartment style setting".**
- 2) ADA Compliance**
- 3) Mark the required additional buffer on Highway 22 and show buffer landscaping.**
- 4) Show buffers between adjoining landowners and landscaping plan for all buffers/setbacks.**
- 5) Put in writing whether the land is part of Legacy PUD C-1. Indicate how this affects total greenspace, parking and total square footage.**
- 6) Put in writing about lighting, noise and hours of operation.**
- 7) Show screening for garbage and mechanical.**
- 8) Show required yard and open space not to include buffers /setbacks as open space.**

**Phyllis Doby made the motion to table the discussion until all required documents were presented to the Commission. Michael Yerger seconded the motion with all Commission Members voting "Aye".**

**PAGE FOUR**

**NEW BUSINESS**

**Mr. Phillips and his wife, Tiffany-Gardner Phillips came before the commission to present a proposal for the Conditional Use as a “Personal Care Home”.**

**Mr. Phillips stated that he had sent all the required information listed above to Scott Weeks. Mr. Phillips also stated that he and Andy Clark had discussed the Conditional Use and that it needed to be a Personal Care Home as stated on the application form.**

**Ms. McGuffie asked Mr. Phillips for the information we requested from the June 6, 2023 meeting and Mrs. Phillips stated that they sent all the required information to Scott Weeks, as requested. When we inquired as to what was sent to Scott Weeks, the Phillips stated they were too pushed to provide all the information needed on such short notice. Given that the documents were not provided for the meeting, Mr. Phillips explained that the County did not have a zoning definition for a Personal Care Home, however, Andy Clark advised that the County to regulate the zoning per State of Mississippi guidelines.**

**It came before the commission a discussion on what the intended use was for the facility. Mr. Phillips said it was for 80+ year olds and skilled nursing required. In addition, kitchens were being added to the 15 units. Discussion continued that the Phillips plan to add Phase II, a Memory Care Facility. Total square footage for the two buildings to be 22,000.**

**Commission members were given partial and small hard copies of the Oaks information by the Phillips which were illegible. The Phillips presented pieces of the documents to the Commission Members on Mrs. Phillips cell phone which made it impossible to review.**

**Phyllis Doby made the motion to table the discussion with the stipulation, that if in fact, the Phillips had already provided Scott Weeks all the documents that were requested and discussed by MLHPD in our June 6, 2023, a special meeting to be held for the Oaks. Bill Buhner seconded the motion with all Commission Members voting “Aye”.**



**PAGE FIVE**

**Madeline Waggoner, A+ Signs, presented a proposal for an additional sign for Ameritrade located in the Town of Livingston. Ms. McGuffie advised Ms. Waggoner that Ameritrade already had a sign and that each business was allowed one sign.**

**There being no further business, Michael Yerger made the motion to adjourn which was seconded by Bill Buhner. All Commission Members voted "Aye" and the meeting was adjourned.**

*Rita McGuffie*  
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**Rita McGuffie**

*August 14, 2023*  
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**DATE**

**President MLHPD**

**Mannsdale-Livingston Heritage Preservation District Minutes of Meeting  
Monday, August 14, 2023, 6:00pm**

**The monthly meeting of the Commission Members of the Mannsdale-Livingston Preservation District (hereafter MLHPD) was duly called, convened and conducted on Monday, August 14, 2023, 6:00pm at the Chapel of the Cross in Madison, Mississippi.**

**Rita McGuffie called the meeting to order. A roll call of the Commission Members of MLHPD was taken and the following Members present:**

**Carole Brand  
Bill Buhner  
Phyllis Doby  
David Landrum  
Rita McGuffie  
Michael Yerger**

**Not in attendance:**

**Grant Brabham  
Ken Primos  
Donnie Young**

**Non-members presenting:**

**James "Chad" and Crystal Gardner Phillips, The Oaks, Personal Care Assisted Living Facility, NW Corner Town of Livingston  
Madeline Waggoner, A+Signs, Ameritrade  
Sign-In Sheet attached for non-members present**

**PAGE TWO**

**ROLL CALL AND CERTIFICATION OF PROXIES**

Rita McGuffie called the meeting to order. Ms. McGuffie stated that Donnie Young submitted a signed proxy prior to the meeting and due to David Landrum's ownership in the Town of Livingston, Mr. Landrum to recuse himself from voting on the proposed Oaks Residence.

The roll call being complete, Rita started the meeting.

**PROOF OF NOTICE OF MEETING**

Notification of the meeting had been delivered to all Commission Members by email. No members objected to the meeting or indicated they had not received the email notice of said meeting.

**READING AND APPROVAL OF MINUTES OF PRIOR MEETING**

Emailed copies of the July 31, 2023, minutes were sent to all Commission Members. There being no corrections to said minutes, Phyllis Doby moved to approve. Motion was seconded by Bill Buhner with all Members voting to approve.

**PAGE THREE**

**OLD BUSINESS**

**Chad and Crystal Gardner Phillips were asked to present their site plan for the Oaks Residence, a Personal Care Assisted Living Facility, located in the NW corner of the Town of Livingston. Ms. McGuffie stated that MLHPD to review the site plan submitted to P & Z, and approved on August 10, 2023, conditional upon the approval of MLHPD at their next meeting and Mr. Phillips confirmed that material before the MLHPD at this August 14, 2023, meeting was the same as the proposed presented to P & Z on August 10, 2023, and published on the Madison County website under "Active Cases". The only exception stated Mr. Phillips was that published "Active Cases", Page 1, shows Conditional Use requested as "Luxury Assisted Living" and has been replaced by "Personal Care Assisted Living". The Phillips could not produce a copy of this amended application nor give us the date that it was submitted.**

**Mrs. Phillips stated the Oaks Residence to be a Personal Care Assisted Living Facility to serve the elderly who have a hard time with daily life such as laundry, cooking and showering and who cannot live independently. She stated that statistics show that there is a need for this type of facility and that the age group 85+ to increase by 26% in the Jackson area, and that 85% of residents to come from within 10 miles of the facility. The purpose of this facility is to allow Seniors to continue their life in a respectful way and we need to respect the elderly so they can continue to be near family and friends. This facility will allow a senior to enjoy the small town feel where they can dine at the Mexican restaurant, enjoy tea on the porch and eat ice cream at the local ice cream store, all within walking distance. Mrs. Phillips explained the Oaks to be unique because it is 15 units, Phase 1, with no kitchens and will be tucked away on the property within the Town of Livingston. Mrs. Phillips stated The Town of Livingston is the perfect place and will allow a safe and secure environment for the elderly with a neighborhood feel.**

**Mr. Phillips stated the MS standard is 1 caretaker to 15 residents, however, the Oaks to have 1 caretaker for every 5 residents. The Oaks will not have a nursing station. The hours of operation were not submitted in writing, however,**

**PAGE FOUR**

**Mr. Phillips noted the facility to operate 24hrs/7days a week with the hours open to the public from 8 a.m. to 8 p.m.**

**Mrs. Phillips stated that the proposed site was large enough to tuck the facility on the property and not be obtrusive to adjacent landowners. Currently, the Phillips own 5.08 acres and Phase II to be a Memory Care Facility. The site plan shows commercial use at the front of the property; however, the Phillips were unable to produce a legal description showing whether the entire 5.08 acres are included in the application for Conditional Use as is required in ZOMC Section 806. Mrs. Phillips stated that the legal description had been submitted to P & Z, however, they did not have a copy nor had we received any documentation from P & Z to substantiate their statement.**

**Michael Yeager brought up for discussion the Oak's landscaping plan. From the landscaping information provided, the majority of their resources to be used on the front of the building with no landscaping on the sides, which is the view of adjoining property. MLHPD stated their concerns over the side elevations not being landscaped. In addition, MLHPD stated the required 80-foot additional landscape buffer is in place for every commercial development which ultimately softens the impact of commercial buildings. Ms. McGuffie indicated that previous commercial developers had all provided buffer landscaping plans for our review and reminded the petitioners that this had been requested at earlier meetings. The landscaping required within our buffer zones were not provided. MLHPD asked about existing trees that were verbally indicated to be left in place and the additional plantings required. Mr. Phillips stated that providing documentation for MLHPD to review this would require time and money and they had decided not to do anything at this time. The building to have a 6' fence along the back of the property in order to keep residents in the courtyard, however, there will not be fencing on the other three sides of the property.**

**PAGE FIVE**

**Ms. McGuffie asked about the windows on the sides of the building. Current site plan shows only two windows on each side. The question was brought up about each room not having a window by code. Mr. Phillips stated that additional windows/transoms might be added on the sides. At that time, Mr. Phillips stated that the plans had been submitted to Mississippi State Health Department and they had approved their plan.**

**A letter from the MS Health Department was not provided.**

**Given that discussion was taking place about the facility going under MS Health Department since the county does not have a zoning definition for a Personal Care Home, the question was asked what happens if the building was sold – what use to be allowed under Personal Care Home. Mrs. Phillips stated that several attorneys who were experts on this issue, had said the new owner would have to come back before P & Z for an approval on a new use. Discussion continued as to whether or not Personal Care Home to house addiction issues. Mrs. Phillips stated that she had served on the Board of the New Orleans' Mission for ten years. The NO Mission organization creates a safe place for drug addicts and abused individuals and the Phillips had no intention of using this facility as a rehab center. The intent for this facility is not to allow addicts or abused patients, but rather the elderly.**

**The question brought up many points of discussion since the County does not have verbiage in its ordinance for a Personal Care Home which concerns the property owners and businesses in the Town of Livingston. Discussion continued that if the property was sold, a new owner might have the right to use the building as a Personal Care Home for addicts, and therefore, would not be required to come back before P & Z for approval. Concerns were brought up that if a Personal Care Home allowed, would this set a precedent for opening up other facilities in the MLHPD.**

**PAGE SIX**

**Mrs. Phillips stated P & Z had approved the conditional use as a Personal Care Assisted Living Facility, however, Ms. McGuffie noted the information located on the County's website showed Luxury Assisted Living and not Personal Care Assisted Living Facility. Mr. Phillips stated that the County had been notified of this change of use, however, they were unable to advise the dates the Conditional Use had been changed nor did they have the document at the meeting. Ms. McGuffie asked if the property was part of the Legacy PUD, C-1 and Mr. Phillips confirmed yes. Mr. Phillips stated they were part of a network called Residential Assisted Living Academy.**

**Non-members attending the meeting asked questions about the fees per unit and Mr. Phillips stated between \$5,000- \$7,000 per month and that they were going to accept private insurance. Mr. Phillips went on to say that since he was the owner, he had the right to discount the units. Many parishioners of the Parkway Church, Pentecostal Church located on Reunion Parkway, felt the facility was needed in this area. Pastor Jason Dillon asked if we were able to amend the conditional use and add additional stipulations for the use. Ms. McGuffie advised Pastor Dillon and the other parishioners that we were an advisory board to the County and that we had no power to change zoning applications.**

**The Greaves family who sold the property to Livingston stated the Deed Restrictions were put in place to protect, enhance the historical values and intrinsic resources. The Deed Restrictions state that the property to follow MLHPD's ordinances. The Greaves family felt the facility is a boarding house which is prohibited since more than a single family is living under one roof and paying rent and that a Personal Care Home is prohibited due to no zoning ordinances.**

**Ms. McGuffie stated that we needed to continue our review and take a vote on the proposed Oaks.**

**PAGE SEVEN**

**Ms. McGuffie asked the Phillips if MDOT had issued an approval letter and they stated not at this time. They stated the entrance was from Highway 22 which is already in place. Construction to come through an easement across adjacent property within Livingston Township. At this time the original survey nor a civil engineering had been completed.**

**Ms. McGuffie asked about their statement on noise pollution. While no written statement was provided, Mr. Phillips stated the project to be compliant with noise ordinance.**

**Ms. McGuffie asked about Parking and they stated ADA compliant, a ramp to the sidewalk provided and bathrooms ADA compliant.**

**Ms. McGuffie asked about the roof pitch and they stated they believe it to be 12' on the front and 9' on the sides, however, this was not confirmed by the drawings.**

**Ms. McGuffie asked for the Certificate of Appropriateness application that is required under ZOMC Section 1913 and the Phillips responded with questions about whether there was a form to use but then stated they had sent the completed form to P & Z and that P & Z had already sent it to MLHPD.**

**Ms. McGuffie verified that no COA had been forwarded to MLHPD and the Phillips were unable to provide the copy.**

**Ms. McGuffie asked for the lighting plan and Mr. Phillips stated seven lanterns on the building. Mr. Phillips did not indicate the foot candles or the color of the lighting to be used to ensure it will comply with the MLHPD ordinance as per ZOMC Section 1907.**



**PAGE EIGHT**

**With no further discussion, Ms. McGuffie asked the Phillips if the proposal presented was their final proposal and they stated yes, and asked the Commission to vote yes or no.**

**Bill Buhner made the motion that based on the documents presented at the meeting, the proposal was incomplete. The Phillips failed to provide the proper landscaping, the sides of the building non-compliant which are visible to the adjoining properties, COA not produced and conditional use application showing Personal Care Assisted Living Facility to MLHPD was different than on County website, therefore, the motion was to deny the Conditional Use for the Oaks. Phyllis Doby seconded the motion with an "Aye" from Michael Yerger, Rita McGuffie and Donny Young by proxy. Carole Brand voted in favor and David Landrum was recused from voting.**

**It came before the commission, Madeline Waggoner, A+ Signs, presented a photo and size for Ameritrade's one building sign. The sign was a total of 4 square feet and within the guidelines set forth by MLHPD. The sign to be placed by Ameriprise entrance door upstairs and to be hung at the same height as adjoining signage. Michael Yerger made the motion to accept the design for Ameritrade's sign and Rita McGuffie seconded with all members voting Aye.**

**There being no further business, Michael Yerger made the motion to adjourn which was seconded by Bill Buhner. All Commission Members voted "Aye" and the meeting was adjourned.**

*Rita McGuffie*  
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Rita McGuffie

*January 30, 2024*  
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DATE

**President MLHPD**

**Mannsdale-Livingston Heritage Preservation District Minutes of Meeting  
Tuesday, January 30, 2024, 6:30pm**

**The monthly meeting of the Commission Members of the Mannsdale-Livingston Heritage Preservation District (hereafter MLHPD) was duly called, convened and conducted on Tuesday, January 30, 2024, 6:30pm, Chapel of the Cross in Madison, Mississippi.**

**Rita McGuffie called the meeting to order. A roll call of the Commission Members of MLHPD was taken and the following Members present:**

**Bill Buhner  
David Cado  
Phyllis Doby  
Tisha Green  
Rita McGuffie  
Ken Primos  
Michael Yerger**

**Not in attendance:**

**Carole Brand  
Donnie Young**

**Non-members presenting:**

**James "Chad" and Crystal Gardner Phillips, The Oaks, Personal Care Assisted Living Facility, NW Corner Town of Livingston  
Sign-In Sheet attached for non-members present**

**PAGE TWO**

**ROLL CALL AND CERTIFICATION OF PROXIES**

**Rita McGuffie called the meeting to order. The roll call being complete, Ms. McGuffie started the meeting.**

**PROOF OF NOTICE OF MEETING**

**Notification of the meeting had been delivered to all Commission Members by email. No members objected to the meeting or indicated they had not received the email notice of said meeting.**

**READING AND APPROVAL OF MINUTES OF PRIOR MEETING**

**Emailed copies of the August 14, 2023, minutes were sent to all Commission Members. There being no corrections to said minutes, Bill Buhner moved to approve. Motion was seconded by Michael Yerger with all Members voting to approve.**

**PAGE THREE**

**SCHEDULED MATTERS OF BUSINESS**

**Ms. McGuffie welcomed the two new board members, Tisha Green and David Cado. Ms Green, a longtime resident of the Mannsdale area, has worked with several groups in historical districts. Mr. Cado is a longtime resident of the Mannsdale area and is a Technical Specialist with Crawford Electric Supply.**

**Ms McGuffie stated the purpose of the meeting was to address the Oaks, Personal Residential Assisted Living proposal. MLHPD's primary function is to review applications for rezoning and special exceptions within the district, Sections 1909, 1909 2B, C and D, 1910, 1911, 1912, 1913 and 1903 01.**

**Mrs. Doby opened the meeting by stating why MLHPD was required to review the Oaks, Personal Residential Assisted Living, with Mr. and Mrs. Phillips. MLHPD held meetings with the petitioners for a Luxury Assisted Living during the months of May, June, July and August 2023. The meeting dated August 14, 2023 was the meeting where Mr. and Mrs. Phillips gave MLHPD an ultimatum to approve or deny. MLHPD denied the project and sent the discoveries to Scott Weeks, P & Z Administrator on August 15, 2023.**

**The Board of Supervisors held a Public Hearing on an appeal for the Oaks on January 18, 2024. During the meeting, President Steen stated MLHPD had not given the Oaks' proposal their due diligence and stated they had passed the buck and at that time, President Steen made the motion for MLHPD to address the Oaks and gave MLHPD two weeks to conduct a special meeting.**

**MLHPD received an email from Scott Weeks on Thursday, January 25, 2024 asking MLHPD to schedule a date to review the Oaks' proposal with Mr. and Mrs. Phillips. Rita McGuffie, MLHPD Chairperson, was able to secure a quorum for Tuesday, January 30, 2024, 6:30pm, Chapel of the Cross Church.**

**Ms. McGuffie sent an email to Scott Weeks at approximately 9am, January 26, confirming the date and time of the meeting.**

RESOLUTION MATTERS OF BUSINESS

Mr. White stated the two new board members, John Green and  
Mr. Green, a longtime resident of the Winterville area, has worked  
with several groups in historical districts. Mr. Green is a longtime resident of the  
Winterville area and is a technical specialist with Crawford Electric Supply.

Mr. White stated the purpose of the meeting was to address the Oaks. For  
several historical districts. Winterville's primary location is to re-  
view applications for rezoning and special exceptions within the district. See  
item 1000 2009 2010, 2011, 2012, 2013 and 2008 01.

Mr. White opened the meeting by stating why MHPD was required to review  
the Oaks. Historical districts. Winterville's primary location is to re-  
view applications for rezoning and special exceptions within the district. See  
item 1000 2009 2010, 2011, 2012, 2013 and 2008 01. Mr. White stated the purpose of the meeting was to address the Oaks. For  
several historical districts. Winterville's primary location is to re-  
view applications for rezoning and special exceptions within the district. See  
item 1000 2009 2010, 2011, 2012, 2013 and 2008 01.

The Board of Supervisors held a Public Hearing on an appeal for the Oaks on  
January 18, 2004. During the meeting, President Green stated MHPD had not  
given the Oaks proposal their due diligence and stated they had passed the  
ball and at that time, President Green made the motion for MHPD to address  
the Oaks and gave MHPD two weeks to conduct a special meeting.

Mr. White received an email from Scott Weeks on Thursday, January 22, 2004 asking  
Mr. White to schedule a date to review the Oaks proposal with Mr. and Mrs.  
Phillips. Mr. White stated MHPD Chairperson was also to secure a program for  
Thursday, January 20, 2004, 6:00pm, Chapel of the Cross Church.  
Mr. White sent an email to Scott Weeks at approximately 5pm, January 20,  
confirming the date and time of the meeting.

**PAGE FOUR**

**Ms. McGuffie stated the Commission Members had reviewed electronic previews of the Supplemental Submittal and had been handed hard copies by Planning and Zoning Administrator, Scott Weeks.**

**Mr. and Ms. Phillips engaged in an extensive presentation of their project.**

**Mr Cado asked Mr Phillips how far along they were with engineering, electrical, drainage, stormwater plans. Mr Phillips stated engineering should be done within a week. A drainage plan is on-site and two retention ponds are already on the property and he felt that stormwater and drainage would not be an issue. A definitive plan was not provided during the meeting. Mr Phillips also stated they plan to lease their lights from Entergy. In addition, Mr. Phillips explained they have an easement through the property and sewer not to be a problem. Mr. Cado told Mr. Phillips that it could take 130 weeks for delivery of electric system. Mr. Phillips told Mr. Cado that Sunny Sethi is their developer.**

**Michael Walker, who lives in Flora and is a medical director at a nursing home in Yazoo City and sees patients in the Blake, Ridgeland. He stated they were looking at clinic locations and Livingston was on their list to put a primary care clinic, but felt Madison was a better spot.**

**Mr Walker stated MLHPD was discriminating against the elderly people and by Federal Law we were not allowed to treat the elderly or disabled, gays and people of different color differently – they have a right to have a place to live.**

**Rashman Walker who lives in Reunion felt that if her Mother needed to go to a facility this would be a good option and a back-up plan.**

**Paula Sykes stated concerns about quality of life within this area and preserving property value, no hospitals, and questioned what other facilities would be added as a result of a Personal Care Home. In addition, she questioned the viability of a 15 bed facility.**

**PAGE FIVE**

**Kevin Watson, land owner in Chestnut Hill, questioned why the Phillips wanted the entire 5.08 acres under a Conditional Use. He went on to state the Oaks provides overnight occupancy and introduced ZOMC 402 that states proposed use cannot be incompatible with surrounding land uses. He referenced Real Estate Appraisal Institute article that addresses the fact that assisted living facilities located in a half mile radius of residential property reduces the value of the homes. In addition, he brought up for discussion the Residential Assisted Living Academy which the Phillips are part of and has been identified throughout this process as their guide for the Oaks. He urged everyone to get online and review RALA, a guide to financial wealth for an owner of an Assisted Living Facility.**

**Mr. Phillips said that his market analysis was based on what seniors are paying at the Blake.**

**Ms. Judi Fouladi spoke of her concern that this use will be expanded and would be an anchor for further uses of this nature. She urged MLHPD to put the emotional rhetoric aside and uphold the purpose of the District.**

**Mr. Bob Germany, representing the Greaves family and Sunny Place Trust, presented a packet to be entered which contained a loan document of the Phillips that identified an "assignment of rents." Mr. Germany explained that the Phillips assigned their "rents" to the bank and not their services which is opposite from what the Phillips have argued to MLHPD throughout their review process where they indicated that their tenants would be paying \$5000 to \$7000 per month for services only even though tenants would be occupying individual dwelling units 24/7. Mr. Phillips did not respond. Mr. Germany presented a large number of documents to MLHPD to be placed in record. MLHPD will present these to the Board of Supervisors to add to the County record and be attached to the Oaks going forward.**

**Mr. Yerger questioned the inconsistencies and confusion on the Certificate of Appropriateness application and the Conditional Use application.**

**PAGE SIX**

**Mr. Steve Smith, representing the Oaks, stated that the Certificate of Appropriateness (COA) application given to MLHPD tonight by the County was incorrect, but he did not provide a revised COA. Mr. Smith said their Supplemental Submission was thorough, but he also stated that he knew the COA stated use was not what they intended but then insisted it was just like the documents on record. Mr. Clark said he wasn't sure what was submitted or when. Ms. McGuffie interjected that COA application was dated October 16, 2023. Mr. Clark then said the Oaks has to do what the state says they can do but that is different from what they are presenting to MLHPD as a Conditional Use which is allowed in any zoning district.**

**Mr. Buhner showed photos he had taken from the west side of Livingston Township showing the architectural style of the rural 1800's original county seat for Madison County. Mr. Buhner stated that the Oaks doesn't look anything like the existing Livingston Township buildings. Mr. Phillips stated his building is designed to look like the French Quarter downtown New Orleans which is what Livingston looks like. Mr. Buhner responded that it does not.**

**Ms. McGuffie recounted that on December 1, 2010 Livingston Township developers for the first time proposed Active Senior Living. It met opposition and the General Development Plan was quickly revised January 6, 2011 with Senior Living removed. It was only after this revision that Livingston Township Legacy PUD was approved by the Board of Supervisors.**

**Mr. Yerger asked if the use stated on the Certificate of Appropriateness (COA) application in the Supplemental Submittal for personal residential assisted living was a classification under the Mississippi State Department of Health. Mr. Smith stated that is the wrong one. Mr. Smith stated that he had filed a thorough presentation with exactly what they are asking for. Several members of the Commission stated that was not what was given to MLHPD by the County for review tonight. Mr. Smith stated he knew that but did not give MLHPD Commission a revised COA. Mr. Clark interjected that he did not know when this was submitted and Ms. McGuffie stated the COA given to MLHPD by the County tonight was dated October 16, 2023. Mr. Clark stated that under state**



**PAGE SEVEN**

**regulations they are boxed in but a conditional use is different for a quasi public use and is permitted throughout the county.**

**Mr. Yerger pointed out that a Conditional Use must not adversely affect adjoining property.**

**Mr. Cado asked why the Phillips had limited the Oaks to 15 tenants. Mr. Phillips replied that if you go over 15 units, the state requires that the building be built under commercial regulations rather than residential codes.**

**Ms. McGuffie stated that there is precedent to deny living quarters in commercial zoning within MLHPD. Two requests for living quarters in a commercial area were denied in Livingston Township.**

**A member of the Greaves family who are adjoining land owners, stated that allowing this type of facility would devalue their property and would limit their future use. Ms. Phillips interjected that you would only know the Oaks was there if you looked in that direction.**

**Ms. Doby brought up Section 1903, Expressly Prohibited Uses in MLHPD last paragraph states that this list of prohibited uses is not all inclusive as other uses may be deemed inappropriate upon review by the MLHPD Overlay District and the Madison County Board of Supervisors and thereby are prohibited. Section 1903 lists apartments, hotels, motels, inns and boarding houses are expressly prohibited uses. She also stated that the Oaks has living quarters that are being rented. Ms. Doby pointed that living quarters were not allowed on the corner of Gluckstadt Road and Highway 463 as well.**

**Mr. Phillips asserted that a conditional use for a quasi-public facility is allowed, to which Mr. Watson replied that it must be consistent with the character of the neighborhood.**

**PAGE EIGHT**

**Mr. Phillips questioned whether there was residential use in the MLHPD to which Ms. Doby asked if he was referring to homes. Mr. Phillips asked if people lived in single family homes overnight. Ms. Doby stated there are residents in MLHPD. Mr. Phillips then compared the vet clinic with animals to people.**

**Ms. McGuffie then pointed out that MLHPD is an overlay zone and the more restrictive standards apply.**

**Mr. Smith asked Mr. Clark to answer for him. Mr. Clark stated that there are different things that apply to property in the district than do in other places. Mr. Watson added that would refer to no hotels, motels and boarding houses. Mr. Clark said that was correct and that he disagreed about the boarding house but that was just his opinion. Ms. McGuffie added that a overlay district does have different standards.**

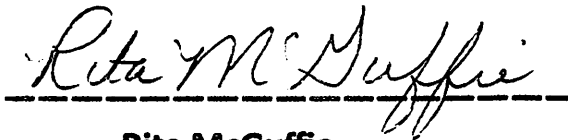
**Mr. Buhner summarized points that had been made:**

**Mannsdale Livingston Heritage Preservation District denied living quarters in commercial in Livingston Township Legacy PUD on 2 occasions so the precedent is to deny. The Active Senior Living use was removed to gain approval of Livingston Township Legacy PUD. It is a use that is either expressly or by implication prohibited by an overlay zone where more restrictive standards shall apply. The building itself is dissimilar to adjacent existing buildings. Mr. Buhner moved to deny the Oaks which is inappropriate and does not meet the standards of the Mannsdale-Livingston Heritage Preservation District.**

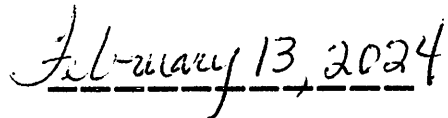
**Mr. Yerger seconded the motion. All members voted to deny except Mr. Primos who voted present. Then Mr. Primos stated that he was voting present because the proposal was incomplete and the Certificate of Appropriateness is wrong and the whole proposal is inadequate. Mr. Buhner asked Ms. Doby to restate the vote. Ms. Doby confirmed Mr. Primos vote of present and also confirmed that 6 members voted to deny.**

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**Ms. McGuffie asked if there was a motion to adjourn but was interrupted by Mr. Walker who stated that he is considering an urgent care clinic in the Township and wanted the MLHPD Commission to tell him if he could do that. Ms. McGuffie told him that any proposal must go through Mr. Weeks. Ms. McGuffie then asked again for a motion to adjourn until the next meeting on February 13, 2024. Mr. Buhner made the motion and Mr. Yerger seconded. Amidst much noise from the audience at that point Ms. Doby did not hear and reiterated the motion which Mr. Cado seconded. Ms. McGuffie asked All in favor to which all voted aye.**



**Rita McGuffie  
Chairman, MLHPD**



**DATE**

**SIGN IN SHEET**  
**MLHPD JANUARY 30, 2024 MEETING**

Arne Greaves

MARTINA GREAVES

JAMES PHILLIPS

Ryan McVaughy

JUDITH FOULADI

ROBERT DE COSTER

Zack Phillips

Matt Pulliam

Angie Pulliam

Cindy & Ricky Pulliam

Bridget Engle

PAUL SYKES

Clark Roberts

Kehe Ne

Micah Walker

Wesley Phillips

Melanie Huse

Lee Wheatley

Judy Wheatley

**SIGN IN SHEET**  
**MLHPD JANUARY 30, 2024 MEETING**

Sebastian & Cheryl Greaves

Charity Tutor

Cathy Craig

Kevin Watson

Bob Germany

Rashad Walker

Almine Bell

MINUTES OF THE MADISON COUNTY PLANNING AND ZONING  
COMMISSION HELD AND CONDUCTED ON THURSDAY, THE 13<sup>TH</sup> DAY OF  
JANUARY, 2011 AT 9:00 A.M. AT THE MADISON COUNTY  
COMPLEX BUILDING.

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BE IT REMEMBERED that a meeting of the Madison County Planning and Zoning Commission was duly called, held and conducted on Thursday, the 13<sup>th</sup> day of January, 2011 at 9:00 a.m. in the Madison County Complex Building.

Present: Brad Sellers, Zoning Administrator  
Ken Steere  
Will Sligh  
William Amadio  
Reverend Bennie Lockett, Chairman  
Reverend Henry Brown

Absent: None

There first came on for consideration the minutes of the November 18, 2010 meeting of the Madison County Planning and Zoning Commission. Upon Motion by Commissioner Steere, seconded by Commissioner Amadio, with all voting "aye", Motion to approve the minutes passed.

There next came on for consideration the Petition of Livingston Township Rezoning Application. Zoning Administrator Sellers introduced the petition and provided a history of prior petitions in addition to known court proceeding in connection with the Livingston Development. The Petitioner, represented by Don Williams, explained to the Commission that the petition was a request for down grading with respect to the current plan as it concerns the subject development.

Kevin Clark, architect, in presentation of the preliminary development plan to the Commission, explained to the Commission that the PUD will consist of an approximate 50/50 split with respect to commercial and residential development. The phases, as proposed in the development plan submitted, consisted of Residential 1a and 1b in addition to Commercial 1a and 1b zoning classifications. The open space requirements mandated under the ordinance will exceed the minimum requirements. It is expected that the open space in each sub-zone will exceed 15%. Commissioner Steere inquired as to the changes as to the overall preliminary plan that was initially submitted. Mr. Williams advised the Commission that the amended plan is very close to that which was initially submitted. Mr. Williams and Mr. Clark next provided exhibits to the Commission demonstrating the proposed changes as presented.

Commissioner Steere inquired as to when the petitioner expected to begin construction and it was advised that construction was anticipated to begin in the Spring of 2011. Zoning Administrator Sellers advised the Commission that any plans insofar as the actual development will have to be submitted for approval with respect to each phase and that the Petitioner will be required to provide required information in submissions before the Planning Commission and the Board of Supervisors prior to any development work on the subject project of any significance.

John Robinson, who appeared in opposition, stated that he has opposed all prior applications to rezone and is currently involved in the prosecution of an appeal to the Mississippi Court of Appeals regarding this development. He advised the Commission that he opposes the petition for the reasons briefed in his appeal. However, he specifically advised the Commission that he has no objection to the down-zoning request which has been presented by the Petitioners. Exhibit "A" to these minutes, which is incorporated herein, contains the recommendations with respect to this petition from MLHPD. Upon motion by Commissioner Steere, seconded by Commissioner Amadio, with all voting "Aye", Petition to rezone Planned Unit Development District with R-1b and C-2 underlying districts to C-1 Commercial and R-1b Residential underlying districts, contingent upon all recommendations from MLHPD as set forth in Exhibit "A" to these minutes, passed.

There next came on for consideration the Petition of WRTM FM/ for special exception for communication tower on the west side of Highway 51 South, Section 33, T8N-R1E. Zoning Administrator Sellers introduced the petition to the Commission, wherein he advised that the tower would consist of a 350 foot guyed tower for primarily radio use. He also advised the Commission that the property subject of the petition is vacant. The Petitioner, Matthew Wesolowski, appeared and advised that although WRTM is his opposition, he is in favor of the petition and the petition is being waged due to recent FCC rule changes, which has allowed the Petitioner, previously and currently located in Warren County, to move their location to the Gluckstadt area. The tower will consist of FM antennae in addition to broadcasting equipment. No other intended purposes is expected, but the Petitioner did state that the County could have access to the tower for communication purposes at no fee. There are two other towers in the area, but there is no additional room on either tower for their services, which has prompted this petition. The Petitioner advised the Commission that there exists 700 feet of wooded buffer between the site and the closest major thoroughfare.

Commissioner Amadio stated that he received several complaints, which are embodied in Exhibit "B" hereto. Although based on the proposition this is not contained on the Land Use Plan, Sellers advised all that the Petition consists only of a request for a special exception and that special exceptions are not and cannot be contained on a land use plan. Upon Motion by Commissioner Amadio, seconded by Commissioner Steere, with Commissioner Brown voting "Nay" and all others voting "Aye", motion to recommend

**MINUTES OF THE MEETING OF THE MADISON COUNTY  
PLANNING AND ZONING COMMISSION HELD AND CONDUCTED ON  
THURSDAY, THE 10th DAY OF AUGUST, 2023 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 10th day of August, 2023, at 9:00 a.m. in the Madison County Complex Building.

Present:       Dr. Keith Rouser  
                  Bill Billingsley  
                  Rev. Henry Brown  
                  Jean McCarty  
                  Mandy Sumerall  
                  Scott Weeks, Planning and Zoning Administrator

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

There first came on for consideration the minutes of the July 13, 2023, meeting of the Commission. Upon motion by Commissioner McCarty, seconded by Commissioner Billingsley with all voting "aye," motion to approve the July 13, 2023, minutes passed.

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

There next came on for consideration the Application of Chad Phillips for a Conditional Use for Public/Quasi Public Facility (The Oaks-Assisted Living Facility) with Site Plan. The property subject to the application is at 3265 Highway 22, is zoned C-1 Commercial District with a Planned Unit Development ("PUD") overlay, and is in Supervisor District 4.

Prior to presentation, Attorney Clark advised the Commission that this property falls within the bounds of the Mannsdale-Livingston Historic Preservation District ("MLHPD"), that the Applicant's application was pending before the MLHPD Commission, and had been tabled by MLHPD. As such, the Applicant's application was running in conjunction with MLHPD review, and the Planning & Zoning Commission could table, deny, or approve the application. But, Attorney Clark advised that if approval was given by Planning & Zoning Commission, it should be contingent on any additions or suggestions may have as to the presentation and site plan.

Chad and Crystal-Gardner Phillips appeared as Applicants. Also present were Joey Flynn, architect, and Marcus Hall, engineer for the project. Ms. Gardner-Phillips advised that The Oaks is designed to serve seniors that are facing the challenges of aging, and Activities of Daily Life ("ADLs") including getting dressed, doing laundry, cooking meals, or travel to doctor



**MINUTES OF THE MEETING OF THE MADISON COUNTY  
PLANNING AND ZONING COMMISSION HELD AND CONDUCTED ON  
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Chad and Crystal-Gardner Phillips appeared as Applicants. Also present were Joey Flynn, architect, and Marcus Hall, engineer for the project. Ms. Gardner-Phillips advised that The Oaks is designed to serve seniors that are facing the challenges of aging, and Activities of Daily Life ("ADLs") including getting dressed, doing laundry, cooking meals, or travel to doctor

appointments. Ms. Gardener-Phillips advised that The Oaks adopts industry best practices, but is a smaller facility and environment with only fifteen (15) beds. Ms. Gardner-Phillips advised that they chose this particular location as it was compatible with the area, is tucked away on the site, but would allow the seniors it will serve to be close to area commercial attractions and residential neighborhoods, while still being close to their families. Ms. Gardner-Phillips advised that the architecture of structure itself is in character with the 1850's architecture of the MLHPD in order to blend in with the surrounding area.

Chad Phillips addressed the Commission and advised that market research showed a current need for an additional thirty (30) assisted living beds in order to meet the needs of seniors needing such services. Mr. Phillips addressed the various definitions and terminology of assisted living and personal care homes as defined by the Mississippi Department of Health, and stated that The Oaks is a personal care home assisted living as defined therein. Mr. Phillips stated that the key word in that definition applicable to The Oaks is "services." Mr. Phillips reiterated that The Oaks is not an apartment or condominium complex as the seniors cannot live completely on their own, and would be paying for services rendered at The Oaks.

Mr. Phillips advised that the market data shows that, even with approval of The Oaks, there would still be a need for at least ten (10) assisted living beds in the Madison County area. Mr. Phillips also advised that the statistical data shows that population of seniors over 75 years of age would increase by 26% in the coming years which will create even more need than there is now, with Ms. Gardner-Phillips adding that this increase is commonly known as a "Silver Tsunami" because no one is prepared for its coming.

Applicants addressed the site plan portion of their application, and stated that they purposely placed the structure on the rear of the property in order to maintain privacy of the facility, and not necessarily be visible.

Commissioner Billingsley inquired as to why the application had been tabled by the MLHPD Commission. Mr. Phillips responded that they were notified on a Friday of the MLHPD meeting on the following Monday, and thus submitted copies of their plans, but MLHPD advised that they needed the full-size plans for review. Commissioner Billingsley next inquired as to how many staff The Oaks would anticipate having. Mr. Phillips advised that state regulations allow a minimum of one (1) caregiver for every fifteen (15) residents, but that The Oaks would have one (1) caregiver for every five (5) residents during the day, and one (1) caregiver for every six (6) or (7) during the night in order to provide excellent care for the residents. Ms. Gardner-Phillips reiterated that The Oaks would be large enough to accommodate activities for the residents, but not so large as to require staff for other activities that some facilities offer. Commissioner Billingsley clarified that the largest number of staff that would be on site at any given time would be four (4) and the Applicants agreed. Commissioner Billingsley next inquired as to what types of security measures would be in place for the residents. The Applicants stated that in addition to coded and locked doors, The Oaks will have a device for the residents to wear like a wrist watch that allows the residents to call staff for assistance, is a geolocator, monitor for the residents' vitals, and alerts the caregivers if a resident is in distress, or has left a certain parameter of the facility.

Henry Greaves appeared in opposition, and stated that his family owned property adjacent to the proposed facility. Mr. Greaves stated that his family sold the property where The Oaks is to sit, and placed a fifty (50) year covenant that the property would be subject to the MLHPD District. Mr. Greaves argued that one of the deed restrictions is that there is to be single family dwellings only, and that he viewed The Oaks as a multi-family structure with fifteen (15) people under one roof. Mr. Greaves further argued that Section 1903 of the Madison County Zoning Ordinance prohibits apartments and/or residential condominiums, and that, although the residents will be paying for services, he believes the residents of The Oaks would be renters.

Attorney Clark advised that he was aware of the deed restrictions, but that there had been a subsequent filing lifting such restriction. Mr. Greaves opined that he believed it to still be in place.

Commissioner Billingsley inquired as to whether any of the Greaves family lived on the adjacent property, and Mr. Greaves advised that two (2) family members do live on the property to the West of the proposed facility.

Mr. Phillips inquired as to whether Mr. Greaves was aware that the subject property was zoned as C-1 Commercial District with a PUD overlay. Mr. Greaves acknowledged that he did, but that the rules of the MLHPD District must still be followed. The question arose as to whether development in the MLHPD District was restricted to single-family residential. Attorney Clark clarified that no such restriction exists in the MLHPD District and pointed to several existing commercial uses within the bounds of the MLHPD District.

Phyllis Doby appeared as a Commissioner of the MLHPD, and distributed the minutes of the July 31, 2023, MLHPD meeting. A copy of said minutes are attached hereto as **Exhibit "A."** Ms. Doby advised that MLHPD had met with the Applicants in June and July. She advised that the first time, the project was called a luxury assisted living home, and the second time, it was called a personal care home. Ms. Doby advised that, in June, MLHPD advised the Applicants of all information requested for review of the application. Ms. Doby stated that at the June meeting, the Applicants advised they had sent all requested information to Administrator Weeks, but that MLHPD did not get copies, and that Administrator Weeks advised that he did not receive all of the requested information either. As such, MLHPD tabled the application at their July meeting. Ms. Doby stated that for over 20 years, MLHPD has reviewed applications prior to review by the Planning & Zoning Commission, and that people in the community were asking why they had to submit to MLHPD first, but the Applicant had not. Attorney Clark advised that the normal course of action is for MLHPD to review an application first, and then forward their recommendations to the Planning & Zoning Commission. However, Attorney Clark advised that there have been instances of concurrent review by both commissions, and that there is no intent to bypass or overstep the MLHPD Commission by doing so here. Ms. Doby stated that she did not believe MLHPD had had time to do its due diligence in the community, and that she believed the property to be deed restricted.

Attorney Clark revisited the issue of the deed restriction, and read from a Termination of Covenants filed on August 20, 2007, and which references various covenants in Warranty Deeds and executed by numerous property owners. Mr. Greaves argued that document references an old

set of covenants and produced a Special Warranty Deed dated August 24, 2007, which he argued contained new covenants. A copy of Warranty Deeds at Book 233, Page 98; Book 271, Page 437; Book 310, Page 613; Termination of Covenants at Book 2232, Page 285; and Special Warranty Deed at Book 2232, Page 315 are attached hereto as collective Exhibit "B."

Mr. Phillips wished to clarify the timeline set forth by Ms. Doby. Mr. Phillips advised that they had met with MLHPD in May, June, and July, and had been tabled each time before they reached the architectural portion of the Application because of the question of whether The Oaks was apartments or condominiums.

Attorney Clark revisited the 2007 Special Warranty Deed produced by Mr. Greaves and acknowledged that said deed does have a fifty (50) year requirement that all improvements meet the standards of the MLHPD District, but does also acknowledge that the Greaves family understands that the Grantee (predecessor in title to Applicant) plans to include a commercial development on the property. Mr. Greaves acknowledged that there was an understanding that there would be commercial development, but that the idea was to bring back the Town of Livingston.

Commissioner Billingsley inquired as to whether the Special Warranty Deed has any restrictions as to where commercial development may be, and Attorney Clark advised that it did not, and only speaks to a +/-10.81 acre parcel of property. Commissioner Billingsley next asked whether, apart from the issue of the deed restriction, if there was other objection to the project. Mr. Greaves stated that he did not believe the project was complimentary to the rest of the Town of Livingston.

Commissioner McCarty inquired as to whether an assisted living facility is an acceptable commercial use in the overlay district. Ms. Gardner-Phillips stated that it is an acceptable use based upon a Conditional Use. Administrator Weeks added that assisted living is a Conditional Use in any zoning district as a Public/Quasi-Public Facility Utility.

Rita McGuffie appeared as a Commissioner of the MLHPD District. Ms. McGuffie stated that MLHPD was carefully considering the use. She reiterated that Applicant first presented the use as assisted living, and then later presented as personal care which is not defined in the Zoning Ordinance. As such, Ms. McGuffie stated that they were seeking additional information as to how such use would fit within the Zoning Ordinance.

Upon motion by Commissioner Billingsley to approve the Application of Chad Phillips for a Conditional Use for Public/Quasi Public Facility (The Oaks-Assisted Living Facility) with Site Plan, subject to the approval of the MLHPD Commission, seconded by Commissioner Brown, with all voting "aye," the motion to approve the Application of Chad Phillips for a Conditional Use for Public/Quasi Public Facility (The Oaks-Assisted Living Facility) with Site Plan, subject to the approval of the MLHPD Commission, was approved.

There next came on for consideration the Application of Berkshire Homes for a Variance to Rear Setbacks. The property subject to the application is Lot 1090 Heron's Bay of Caroline, and is in Supervisor District 2. Don McGraw and Todd Seymour, Manager of Berkshire Homes

appeared on behalf of the Applicant. Mr. McGraw advised that the Applicant is seeking a variance on the rear lot lines from 20' to 15' as the lot is an unusual shape with five (5) sides. Commissioner McCarty stated that she had viewed the subject lot, and that the rear actually abuts the side of the lot behind it, and the adjoining lot is also on a 15' variance. Upon motion by Commissioner McCarty to approve the Application of Berkshire Homes for a Variance to Rear Setbacks from 20' to 15' on Lot 1090 Heron's Bay of Caroline, seconded by Commissioner Billingsley, with all voting "aye," the motion to approve the Application of Berkshire Homes for a Variance to Rear Setbacks from 20' to 15' on Lot 1090 Heron's Bay of Caroline, was approved.

There next came on for consideration, the Application of Paul Hopper to re-zone +/-0.94 acres from A-1 Agricultural District to C-2 Highway Commercial District. The subject property is at 1534 Livingston Vernon Road Highway 43 and Endris Road, is zoned A-1 Agricultural District, and is in Supervisor District 4.

Prior to any presentation, Attorney Clark notified the Commission that Commissioner McCarty had informed him that she is a real estate appraiser and that Mr. Hopper is in the real estate business. Commissioner McCarty advised Attorney Clark that she has, on occasion, measured and appraised properties owned by Mr. Hopper, and wanted to know if that would be a conflict. Attorney Clark informed the Commission of such disclosure, and informed the Commission that he did not believe there to be any conflict as a re-zoning request has nothing to do with a home or property appraisal.

Paul Hopper appeared as the Applicant. Mr. Hopper advised that he is seeking re-zoning of +/-0.94 acres of his property from A-1 Agricultural District to C-2 Highway Commercial District. Mr. Hopper stated that the Madison County Land Use Map shows the entirety of his property to be C-2 Highway Commercial District and is unsure if there was a clerical error in the past which left a portion of his property as A-1 Agricultural District but that the current land use map does show it as being designated C-2. Mr. Hopper also stated that a Section line runs through his property, that the +/-0.94 acres is on the East side of the Section line, and that could be the cause for mistake in the past.

Administrator Weeks advised the Commission that he had done research back to the original 1964 zoning map, and all maps show this property as designated commercial. Attorney Clark reminded the Commission that one of the justifications for re-zoning is a mistake in the original zoning.

Upon motion by Commissioner Billingsley to approve the Application of Paul Hopper to re-zone +/-0.94 acres from A-1 Agricultural District to C-2 Highway Commercial District, seconded by Commissioner Brown, with all voting "aye," the Application of Paul Hopper to re-zone +/-0.94 acres from A-1 Agricultural District to C-2 Highway Commercial District, was approved.

There next came on for consideration the Application of Daniel Wooldridge to Re-Zone certain property from A-1 Agricultural District to C-2 Highway Commercial District. The property subject to the application is located on Highway 22, is zoned A-1 Agricultural District, and is in Supervisor District 4. Upon motion by Commissioner Billingsley to table the Application

**MINUTES OF THE MEETING OF THE MADISON COUNTY  
PLANNING AND ZONING COMMISSION HELD AND CONDUCTED ON  
THURSDAY, THE 19th DAY OF OCTOBER, 2023 AT 9:00 A.M. AT THE  
MADISON COUNTY COMPLEX BUILDING**

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**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 October, 2023, at 9:00 a.m. in the Madison County Complex Building.

Present:       Dr. Keith Rouser  
                  Rev. Henry Brown  
                  Jean McCarty  
                  Mandy Sumerall

Scott Weeks, Planning and Zoning Administrator

Absent:         Bill Billingsley

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

There first came on for consideration the minutes of the September 14, 2023, meeting of the Commission. Upon motion by Commissioner McCarty, seconded by Commissioner Brown with all voting “aye,” motion to approve the September 14, 2023, minutes passed.

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

There next came on for consideration the Application of Chad Phillips for a Conditional Use for Public/Quasi Public Facility (The Oaks-Assisted Living Facility) with Site Plan. The property subject to the application is at 3265 Highway 22, is zoned C-1 Commercial District with a Planned Unit Development (“PUD”) overlay, and is in Supervisor District 4.

Prior to presentation, Attorney Clark advised the Commission that this Application was previously before the Commission at its August 14, 2023, meeting, and the Commission approved it conditioned on review by the Mannsdale-Livingston Historic Preservation District (“MLHPD”). MLHPD met following the Commission meeting, and denied the Application. Such denial is attached to these minutes as **Exhibit “A.”** Since that time, the Phillips have engaged Steven H. Smith, Esq., and have supplemented their Application. Attorney Clark advised that he and Administrator Weeks had met with two (2) of the MLHPD Board members, and asked that they convene, and review the supplemental information provided by the Phillips. Attorney Clark advised that MLHPD had declined to meet and review, and instead rely on their August denial. *See* MLHPD Letter dated October 17, 2023, attached hereto as **Exhibit “B.”** Attorney Clark

reminded the Commission that MLHPD and Planning & Zoning Commission approval are not contingent, or dependent on each other, and that the Commission has an opportunity to listen to the presentation, and make their decision.

Steven H. Smith, Esq. appeared on behalf of the Applicants. Mr. Smith advised that the Application was filed on April 1, 2023, and seeks to construct an assisted living facility in the PUD at the Town of Livingston. Mr. Smith reminded the Commission that the property was zoned as C-1, and that an assisted living facility is permitted thereunder. Mr. Smith also reminded the Commission that this Application was unanimously approved by the Commission on August 10, 2023, conditioned upon approval from MLHPD.

Mr. Smith explained that MLHPD reviewed the Application on August 14, 2023, and denied it for two (2) reasons: “lack of information about landscaping,” and “site elevations for the building were inappropriate.” *See Exhibit “A.”* Mr. Smith advised that his clients had revised the plans, addressed both issues raised, and requested that MLHPD revisit the revised plans. Mr. Smith submitted a screenshot of a text message between Crystal Gardner-Phillips, and MLHPD Chair, Rita McGuffie, advising that the Applicant should communicate with the Commission, or the Board of Supervisors regarding further submission. *See Exhibit “C,”* attached hereto. Mr. Smith advised that since that text, the Applicant had communicated and cooperated with the Commission, and on October 12, 2023, submitted a Supplemental Submission in Support of Application for Conditional Use setting forth the revised plans. *See Exhibit “D,”* attached hereto. Mr. Smith advised that on October 13, 2023, he received an email from Administrator Weeks outlining six (6) issues raised by MLHPD, and immediately revised their plans and met each issue by October 16, 2023. *See Exhibit “E,”* attached hereto. Mr. Smith addressed each of the six (6) issues raised, and argued that the Applicants had met each of the issues in order to comply with the Zoning Ordinance.

Mr. Smith advised that on October 17, 2023, having not heard from MLHPD on the request to review the supplemental submissions, Attorney Clark requested Rita McGuffie confirm whether MLHPD would so review the submission. Mr. Smith advised that Ms. McGuffie responded that MLHPD would not review the submission, and rely on their August 14, 2023, decision. *See Exhibit “F.”*

Mr. Smith argued that the Applicant had addressed and met each and every request from MLHPD, and was fully compliant with all required provisions of the Zoning Ordinance.

Mr. Smith reiterated that the proposed facility would be an assisted living facility, with only fifteen (15) beds, and a ratio of caretakers to residents that is much lower than a larger facility that is permitted. Mr. Smith argued that the surrounding uses are all commercial, and that the proposed facility is a Public/Quasi-Public Facility under Section 402 that is permitted in a C-1 Commercial use district, and a Planned Unit Development (“PUD”), both of which are applicable to the subject property.

Mr. Smith advised that the Applicant has a leadership team known as Residential Assisted Living Academy that is one of the top teams in the country to assist entrepreneurs in all aspects of operating and managing assisted living facilities. Mr. Smith stated that national statistics show



that assisted living facilities received approximately 85% of their residents from within a fifteen (15) mile radius of the location of the facility. Mr. Smith asked the Commission to acknowledge the residential growth in Madison County, and advised that based on the survey conducted by the Applicants, there is a need for the proposed facility, especially with such a low caretaker/resident ratio.

Mr. Smith next addressed the licensing and regulatory requirements for the proposed facility. Mr. Smith advised that the Applicants will have to get a license from the Mississippi State Department of Health, and submit a plan to meet all required criteria. Mr. Smith pointed to Miss. Code Ann. §43-11-13 as setting forth standards required by the State in the construction, operation, and management of the proposed facility, and entitled Minimum Standards for Personal Care Homes Assisted Living. *See Exhibit "G,"* attached hereto.

Mr. Smith next addressed concerns about how no one could have expected that an assisted living facility would be located at the Town of Livingston, that it would be out of character with the area, or doesn't fit with the architecture of the area. Mr. Smith advised that the rezoning of the Livingston Township PUD had been appealed to the Mississippi Supreme Court, and was upheld. Mr. Smith presented an architectural rendering of the Livingston Township PUD, which he argued was known to property owners in the area since 2010. Mr. Smith pointed out that the architectural rendering shows the property now owned by the Applicants as labeled "Active Senior Retirement." *See Exhibit "H."*

In response to questions from Chairman Rouser, Mr. Smith advised that the facility would not have a garbage dumpster area, but separate receptacles for garbage. Mr. Smith also pointed out where the facility would be located in relation to adjacent commercial development, and other residential areas in the vicinity.

In response to question from Commissioner Sumerall regarding deed restrictions, Attorney Clark advised that in looking at the historical land records, the Greaves family owned this property for quite some time. They conveyed the property with deed restrictions that it would only be used for residential use, and houses not less than 2,400sf. Attorney Clark advised that there is a clear record of termination of those covenants/restrictions, and in the deed from the Greaves to Chestnut Developers, there is clear language that the Grantor and Grantee understand that the property will be used for commercial development, and that any use would comply with the MLHPD. *See Exhibit "I,"* attached hereto. Attorney Clark advised that there is no doubt that the property falls under the MLHPD, but that the inclusion of the language in the 2007 Special Warranty Deed regarding MLHPD compliance was really unnecessary because the Board of Supervisors had already created the MLHPD in 2003, and the Greaves property was already in the MLHPD District at the time of the 2007 conveyance to the predecessor in title to the Applicant. Attorney Clark advised that there have been three (3) amendments to the Zoning Ordinance since the 2003 creation of the MLHPD—being 2005, 2013, and 2019. Attorney Clark advised that any time there is an amendment to the Zoning Ordinance, the old ordinance is repealed. As such, the governing ordinance applicable to the subject property is the 2019 Zoning Ordinance.

Mr. Smith also responded to Commissioner Sumerall that there are no current plans for the additional property owned by the Applicants.

Greta Barber-Mills appeared in opposition. Ms. Barber-Mills advised that she, and her siblings are adjacent property owners, and have many concerns regarding the proposed use. Ms. Barber-Mills stated that the subject property is subject to the provisions of the MLHPD based on the 2007 Special Warranty Deed for a period of fifty (50) years, and that time has not passed. Ms. Barber-Mills argued that the Applicants are proceeding forward without the approval of MLHPD, which they are obligated to have. Ms. Barber-Mills argued that one of the objective of the MLHPD is to protect the integrity of the area, and to encourage premium architecture for new construction. Ms. Barber-Mills argued that the proposed architecture does not meet the standards of the MLHPD, and would be out of harmony with the existing structures. Ms. Barber-Mills further stated that the unspecified definition of a personal care home is worrisome as it is vague, and could open the door to unwanted services. As an example, Ms. Barber-Mills stated that one of the definitions of a personal care home under the Mississippi Department of Health is any facility operating 24 hours a day, 7 days a week, accepting individuals who require personal care services or mental care services. Ms. Barber-Mills inquired as to whether this would involve drug or alcohol rehab. Ms. Barber-Mills argued that they have no way of knowing what type of services would be provided, and do not want to leave the door open to see. Ms. Barber-Mills argued that the MLHPD prohibits overnight occupancy other than residential—no hotels, no apartments, no inns. Ms. Barber-Mills argued that the Applicant’s facility would house 15-30 occupants, and staff, which is in complete violation of the MLHPD. Ms. Barber-Mills argued that the rooms at the facility would be apartments—30 people living under the same roof for an extended period. Ms. Barber-Mills asked why have rules if they are not to be followed? Ms. Barber-Mills argued that all of the businesses at the Town of Livingston have met the requirements of the MLHPD, and has contributed greatly to the Town’s beauty and charm, and have enhanced the real estate value of the surrounding property. Ms. Barber-Mills argued that the Applicants would benefit from the rich history of the area, but that there appears to be a general disregard for the surrounding property owners and businesses due to the proposed building materials, lack of adequate landscaping, and a proper buffer zone between the Applicant’s property and the adjoining land. Ms. Barber-Mills argued that the Applicants wish to be a part of the high standards, but are unwilling to meet the same standards which they are obligated to meet.

Mr. Smith responded to Ms. Barber-Mills, and stated that she brought nothing of substance, or that could be proved. Mr. Smith stated that everything she raised had already been addressed or debunked. Mr. Smith reiterated that MLHPD had two (2) initial reasons for denial, and then an additional six (6) issues raised. Mr. Smith argued that the Applicant had met and addressed each of them, and that there is nothing left to address. Mr. Smith specifically denied that there would be any sort of drug or alcohol rehab at the facility. Mr. Smith further denied that this use is an apartment, condominium, or boarding house, but is an assisted living facility, which is allowed in any zoning district under the Zoning Ordinance. Mr. Smith argued that the proposed facility does not violate anyone’s integrity or does not go with the community. Mr. Smith argued that the hours of operation would be less than those allowed under MLHPD, as they would be open to the public from 8:00 a.m. to 8:00 p.m., whereas MLHPD hours of operation are 6:00 a.m. to 9:00 p.m.

Sebastian Greaves appeared in opposition. Mr. Greaves advised that he lives adjacent to the proposed facility. Mr. Greaves advised that he has a background in title, and runs title for timber companies, oil and gas companies, and real estate developers. Mr. Greaves advised that when his family was approached by the developers of the Town of Livingston in 2007, they

conveyed the subject property subject to restrictions. Mr. Greaves argued that there are legal issues here, and that the property is subject to the standards of MLHPD. Mr. Greaves argued that there is a legal issue, and a zoning issue. Mr. Greaves argued that boarding houses, apartments, and multi-family residences are not allowed. Mr. Greaves argued that the MLHPD has authority to grant general descriptions. Mr. Greaves argued that a Board of Supervisors resolution was approved, and defined boarding house. He argued that if you are paying for a room and a meal, it's a boarding house. Mr. Greaves argued that everyone knows this use is an apartment or a boarding house, and is not a single family dwelling. Mr. Greaves argued that when one goes into an area to rezone, you have to look at what restrictions are in place. As an example, he argued that if he were to go into Annandale Subdivision, you have to look at their covenants and restrictions. He argued this is no different as there is a deed with restrictions that is tied to the MLHPD charter. Mr. Greaves argued that MLHPD approval had not been gained, and approval of the facility would be in violation of the standards of the MLHPD. Mr. Greaves asked that a copy of the deed be admitted to the minutes. *See Exhibit "J."*

Ms. Barber-Mills stated that in response to Mr. Smith's statement that he does not know of anything else the Applicant could do, she believed that approval of the MLHPD is the starting point. She further argued that the proposed facility not being apartments is "splitting hairs," and that she disagreed that there are no longer covenants that need to be enforced or upheld.

Mr. Smith responded that there are no legal issues preventing the construction of the Applicant's facility. He argued that the "hocus-pocus" about covenants, things not being allowed, and improper zoning is wrong. He argued that arbitrary denial by MLHPD is not lawful, and that everything else set forth in opposition is a "scare tactic."

Sebastian Greaves responded that this is a legal issue because when you have restrictions in a deed, they must be abided by.

Loistine Worthy of the Greater Livingston Missionary Baptist Church appeared and stated that she was not in opposition or in favor of the Application. Ms. Worthy advised that they had just heard of this Application, and that the church simply wanted to be included so that they could make an informed decision of what they want. Of particular concern to Ms. Worthy was the rear of the property because it adjoins the church's graveyard.

Chad Phillips responded and advised that they are there to serve the community, and he would be happy to share their plans with the church. He stated that they had complied with the notice requirements of the Zoning Ordinance as far as posting signs, and running ads in the newspaper, and apologized if the church was unaware.

Crystal Gardner-Phillips appeared and advised that they had done their due diligence to ensure that they were not in violation of the Zoning Ordinance. Ms. Gardner-Phillips advised that they have worked diligently with MLHPD and had hired a historic architectural specialist to ensure that they proposed facility is true Greek Revival to ensure compatibility with the area. Ms. Gardner-Phillips reiterated that the Applicants are more than willing to discuss the matter further with those in opposition.

In response to question from Commissioner McCarty, Mr. Smith responded that this facility would not fall under the Mississippi Landlord-Tenant Act; the residents would not sign leases for specific space within the facility, and the facility would not fall under any rental ordinance of Madison County, but that the resident's bedrooms would be a part of the services that they are contracting for, and all of those matters would be regulated by the State Department of Health.

Rita McGuffie, MLHPD Chair, appeared and wanted to address the fact that their request that the Applicants approach Planning & Zoning first is simply standard procedure. In response to question from Commissioner McCarty as to whether there was a chance that MLHPD would reconsider its decision to stand on their August 14, 2023, denial, Ms. McGuffie stated that MLHPD had met with the Applicant on four (4) occasions, and MLHPD was concerned with the procedure of review because this was not a new submission, and was not a re-opening of a matter that they had already voted as being a final submission.

Upon motion by Commissioner McCarty to approve the Application of Chad Phillips for a Conditional Use for Public/Quasi Public Facility (The Oaks-Assisted Living Facility) with Site Plan, seconded by Commissioner Brown, with the vote being as follows:

Chairman Rouser	Aye.
Commissioner McCarty	Aye.
Commissioner Brown	Aye.
Commissioner Sumerall	Nay.

As such, the Application of Chad Phillips for a Conditional Use for Public/Quasi Public Facility (The Oaks-Assisted Living Facility) with Site Plan, was approved 3-1.

There next came on for consideration, the need to close the public hearing. Upon motion by Commissioner Brown to close the public hearing, seconded by Commissioner McCarty, with all voting "aye," the public hearing was so closed.

With there being no further business, the October 19, 2023, meeting of the Madison County Planning and Zoning Commission was recessed until October 20, 2023, at 9:00 a.m.

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Date

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Dr. Keith Rouser, Chairman



Following discussion, Mr. John Bell Crosby did offer and Mr. Paul Griffin did second a motion to approve the Minutes as presented with certain amendments which were read in open session, and to authorize the President to sign said Minutes after said corrections have been made. The vote on the matter being as follows:

Supervisor John Bell Crosby	Aye
Supervisor Tim Johnson	Aye
Supervisor D. I. Smith	Aye
Supervisor Karl M. Banks	Not Present and Not voting
Supervisor Paul Griffin	Aye

the matter carried by a majority vote of those present and the Minutes for the January 2011 term of the Board of Supervisors of Madison County together with the Minutes of the Special Called meeting of January 28, 2011 were and are hereby approved as amended.

SO ORDERED this the 7<sup>th</sup> day of February, 2011.

*In re: Approval of Consent Agenda Items*

WHEREAS, the Board President announced that he and Interim County Administrator Brad Seilers had conferred in advance of the meeting as to certain matters denominated "Consent Items" which bear Item numbers (2) through (3) on the Agenda and that the same appeared to be routine, non-controversial matters on which all Supervisors were likely to agree, and

WHEREAS, the Board President did explain that any Supervisor could, in advance of the call of the question, request that any item be removed from the Consent Agenda, and

WHEREAS, County Comptroller Quandice Green requested an additional item be added to the consent agenda, denominated Item (32) below, being Approval of Addenda No. 2 to U.S. Department of Energy - Energy Efficiency and Conservation Block Grant for the Madison County Detention Center, as set forth below, and

Therefore, Mr. Paul Griffin did offer and Mr. John Bell Crosby did second a motion to take the following actions on the Consent Agenda:

2. Acknowledge Legal Holiday - Monday, February 21, 2011, George Washington Birthday Holiday. All county officers and courthouses are authorized to close on said dates.
3. Authorize Board President to Execute Warranty Deed - St. Dominic Health Services, Inc.  
(A true and correct copy of said warranty deed may be found in the Miscellaneous Appendix to these Minutes.)
4. Approve Grass Maintenance Contract - Robolo Consultants, Inc.  
(A true and correct copy of said contract, is attached hereto as Exhibit A, spread hereupon and incorporate herein by reference, for a term of March 21, 2011 through March 20, 2014, and the Board President was and is hereby authorized to execute same.)
5. Acknowledge Credit Card Report for December 10, 2010 through January 10, 2011 - Sheriff's Department.  
(A true and correct copy of that certain memorandum dated January 24, 2011 from County Purchase Clerk Harly Crunk is attached hereto as Exhibit B, spread hereupon and incorporated herein by reference.)

President's Initials: \_\_\_\_\_

Date Signed: \_\_\_\_\_

*For Searching Reference Only: Page 2 of 25 (2/07/11)*

6. Authorize the Members of the Board, the County Engineer, the County Attorney, the Chancery Clerk, the County Administrator and the County Comptroller to Attend the MAS Annual Convention, June 20-23, 2011, Biloxi, MS for the Benefit of the County, and Approve Travel and Registration Expenses Thereto.
7. Authorize the Members of the Board, the County Engineer, the County Attorney, the Chancery Clerk, the County Administrator and the County Comptroller to Attend the NACO Legislative Conference, March 5-9, 2011, Washington, D.C. for the Benefit of the County, and Approve Travel and Registration Expenses Thereto.
8. Acknowledge Name Change for Old Sowell Road.  
(A true and correct copy of that certain map depicting the name change of Old Sowell Road to S. Taylor Road, N. Taylor Road, and Arnold Road is attached hereto as Exhibit C, spread hereupon and incorporated herein by reference.)
9. Approve Addenda No. 1 to Scott C. Woods & Assoc. Contract and Top Belle Building Services, LLC.  
(A true and correct copy of which is attached hereto as Collective Exhibit D, spread hereupon and incorporated herein by reference, for construction being performed and grant administration services at the Madison County Detention Center.)
10. Approve Zoning Matter - Livingston Township, LLC Petition to Rezone R-1B to C-2 Planned Unit Development District Superimposed Over a C-1 Zoning District.  
(A true and correct copy of the petition of Livingston Township, LLC seeking to Rezone 47.28 acres from R-1B to C-2 Planned Unit Development (PUD) District superimposed over a C-1 zoning district located in, Section 8, T8N, R1W, Madison County, Mississippi, may be found in the Miscellaneous Appendix to these Minutes.)
11. Approve Zoning Matter - Pass Go, LLC, H. Kelly Dabbs, Manager Petition to Redene C-1 Commercial District to C-2 Commercial District.  
(A true and correct copy of the petition of Pass Go, LLC, H. Kelly Dabbs, Manager, seeking to Redene .75 acres from C-1 Commercial District to C-2 Commercial District located at 1040 Gluckstadt Road in, Section 20, T8N, R2E, Madison County, Mississippi, may be found in the Miscellaneous Appendix to these Minutes.)
12. Acknowledge Receipt of Funds from the Secretary of State's office for Madison County's share of the Help Mississippi Vote Funds.
13. Acknowledge Letter of Appreciation from Rankin County Board of Supervisors and Rankin County Emergency Operations for Assistance During the Tornado Event that Struck Rankin County.  
(A true and correct copy of which may be found in the Miscellaneous Appendix to these Minutes.)
14. Approve File Transfers for Booking Process from Madison County Sheriff's Department to City of Canton Police Department.  
(A true and correct copy of that certain memorandum dated January 24, 2011 from Lt. Kelvin McKenzie of Canton Police Department requesting permission for same is attached hereto as Exhibit E, spread hereupon and incorporated herein by reference.)
15. Approve Request to Purchase Six Handheld Radios and One Mobile Radio from E911 Funds for Use by South Madison County Fire Protection District.  
(A true and correct copy of that certain memorandum dated January 24, 2011 from E911 Director Butch Hammeck requesting permission for same is attached hereto as Exhibit F, spread hereupon and incorporated herein by reference.)

*See Attached*  
No. 16

President's Initials: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

*For Searching Reference Only: Page 3 of 25 (2/07/11)*

**MINUTES OF THE BOARD OF SUPERVISORS  
OF MADISON COUNTY, MISSISSIPPI**

REGULAR MEETING OF JANUARY 18, 2024  
Adjourned from a meeting conducted JANUARY 2, 2024

BE IT REMEMBERED that the regular meeting of the Board of Supervisors of Madison County, Mississippi was duly convened, held and conducted on January 18, 2024 in the Board Room on the first floor of the Madison County Office Complex, 125 West North Street, Canton, Mississippi, as follows, to-wit:

The President of the Board, Gerald Steen presided and called the meeting to order. The following members were present that day:

Present:	Absent:
Supervisor Casey Brannon	
Supervisor Trey Baxter	
Supervisor Karl Banks	
Supervisor Gerald Steen	
Supervisor Paul Griffin	
Chancery Clerk Ronny Lott	
Chief Deputy Sheriff Jeremy Williams	

Also Present:  
County Administrator Greg Higginbotham  
Board Attorney Mike Espy  
Board Secretary/Chief Deputy Chancery Clerk Gena Permenter

The President of the Board announced that the members of the Board present constituted a quorum and declared the meeting duly convened. Duane Thompson opened the meeting with a prayer and Will Sligh led the members and the audience in the Pledge of Allegiance to the Flag of the United States of America.

***In re: Approval of Minutes from January 2, 2024***

WHEREAS, Chancery Clerk Ronny Lott did present the Board with the Minutes of the previous meeting of the Board of Supervisors having been conducted on January 2, 2024,

Mr. Steen did offer and Mr. Griffin did second a motion to approve the minutes of January 2, 2024 as presented, and authorize the Board President to execute same. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and the minutes of January 2, 2024 were and are hereby approved.

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

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President's Initials: \_\_\_\_\_

Date Signed: \_\_\_\_\_

*For Searching Reference Only: Page 1 of 18 (1/18/24)*



***In re: Entering into "Closed Session" to Determine Whether or not the Board Should Declare an Executive Session***

WHEREAS, the Board of Supervisors, after beginning the meeting in open session, determined that it was necessary to enter into closed session for a brief discussion to ascertain whether an Executive Session was needed as to discuss economic development and litigation.

Following discussion and pursuant to the terms of Miss. Code Ann. § 25-41-7, as amended, Mr. Griffin did offer and Mr. Banks did second a motion to make a closed determination upon the issue of whether or not to declare an Executive Session for the purpose of discussing economic development and litigation, with the following persons deemed necessary for Board discussions, deliberations, and recording of such Executive Session, to wit: members of the Board, Chancery Clerk Ronny Lott, Board Secretary/Chief Deputy Chancery Clerk Gena Permenter, County Administrator Greg Higginbotham, County Engineer Tim Bryan, Zoning Administrator Scott Weeks, Zoning Attorney Andy Clark, Comptroller Na'Son White, Board Attorney Mike Espy, Skip Jernigan, Esq., Chris Pace, Esq., MCEDA Director Joey Deason, Larkin Simpson, and Chief Deputy Sheriff Jeremy Williams. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and the Board took up the matter of entering into Executive Session.

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

***In re: Entering into Executive Session***

WHEREAS, the Board Attorney advised the Board that discussion of the proposed matters of business was properly the subject of executive session,

Following discussion, Mr. Griffin did offer and Mr. Banks did second a motion to enter into Executive Session to discuss economic development and litigation. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried by the unanimous vote of those present and Board President declared the Board to be in Executive Session for the consideration of such matters and Ronny Lott announced to the public the purpose for the Executive Session.

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

During Executive Session, Mr. Baxter did offer and Mr. Banks did second a motion to rescind a previous action authorizing payment related to the Catlett Road Project. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye

President's Initials: \_\_\_\_\_

Date Signed: \_\_\_\_\_

*For Searching Reference Only: Page 2 of 18 (1/18/24)*



9. **B&G - Approve Renewal of County Pest Control Agreement (Attached as Exhibit B)**
10. **CA - Approve Travel and Related Expenses for Mississippi Coroner Medical Examiner 2024 Winter Conference / Alex Breeland, Joel Shows & Donnie South / Flowood, MS / January 17-19, 2024**
11. **CA - Authorize Board President to Execute Request for Extension-EWP Project**
12. **CA - Authorize Board President to Sign Notice of Intent for Madison County Citizens Services**
13. **ChClrk - Approve 16th Section Land Leases**
14. **ChClrk - Acknowledge Department Of Revenue Certificate of 2023 Tax Loss Certificates (Attached as Exhibit C)**
15. **CirClrk - Acknowledge Certification of Candidate Petition Signatures County Registrar**
16. **ChClrk - Approve Request to Void Various Tax Sales (Attached as Exhibit D)**
17. **COMP - Approve MegaSite Alliance Fire Protection District Per Diem and Authorize Payment - January 2024**
18. **COMP - Declare Property as Surplus and Authorize Disposal**
19. **COMP - Approve Request for Payment From Mississippi Development Authority Industry Incentive Financing Revolving Fund**
20. **COMP - Approve ACA Electronic Filing Agreement with Delta Computer Systems Inc. (Attached as Exhibit E)**
21. **COMP - Approve Bozeman Road (MS 463 and North) Quarterly Report to DFA (\$5m SB 2971) and Authorize Board President to Execute**
22. **COMP - Approve Bozeman Road (Hwy 463) Quarterly Report to DFA (\$2.5m HB 1353) and Authorize Board President to Execute**
23. **COMP - Approve Reunion Parkway Quarterly Report to DFA (\$5m HB 1730) and Authorize Board President to Execute**
24. **COMP - Approve Reunion Parkway Quarterly Report to DFA (\$12m HB 603) and Authorize Board President to Execute**
25. **COMP - Approve Reunion Phase II Quarterly Report to DFA (\$8m SB 2002) and Authorize Board President to Execute**
26. **COMP - Approval of American Rescue Plan Quarterly Report**
27. **ElecCom - Approve Request for Reimbursement - Patricia Truesdale (Attached as Exhibit F)**
29. **EMA - Acknowledge Letter from Madison County Emergency Management (Attached as Exhibit G)**
30. **ENG - Approve Atmos Energy Utility Permit - Yandell Road**

President's Initials: \_\_\_\_\_

Date Signed: \_\_\_\_\_

*For Searching Reference Only: Page 4 of 18 (1/18/24)*

31. **ENG - Approve Telepak Networks, Inc. / cSpire Utility Permit - Hampton Crossing/ Caroline Blvd**
32. **ENG - Approve Comcast Utility Permit - Camden Lake Circle**
33. **PC - Approve January 2024 Procurement Card Reconciliation and Authorize Payment Thereof**
34. **PC - Approve January 2024 Travel Card Reconciliation and Authorize Payment Thereof**
35. **PC - Approval of Department Employee Authorized to Submit Purchase Requisitions**
36. **TA - Approve 2023 Amended Homesteads**
37. **TA - Approve 2023 Real Property Decreases**
38. **TC - Approve Fee Agreement with Capitol Staffing**
39. **TC - Approve Mississippi Secretary of State Application for Notary Service and Authorize Payment**
40. **TC - Approve Travel and Related Expenses for Collector of Revenue Training / Raymond, MS / April 22-26, 2024**
41. **TC - Approve Accounting and Advisory Agreement with Grantham Poole**
42. **TC - Approve Agreement with DivcoData (Diversified Companies, LLC)**

The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and each item was and is hereby approved, adopted, and authorized as described herein above.

SO ORDERED this the 18<sup>th</sup> day of day of January, 2024.

***In re: Approval of Travel and Related Expenses***

Following discussion, Mr. Griffin did offer and Mr. Steen did second a motion to approve travel and related expenses for EMA Director Albert Jones, III and Ms. Latashee McLaurin to attend the ESRI User Conference in San Diego, California to be held July 15-19, 2024. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and said travel and related expenses were and are hereby

**President's Initials:** \_\_\_\_\_

**Date Signed:** \_\_\_\_\_

***For Searching Reference Only: Page 5 of 18 (1/18/24)***

approved.

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

***In re: Appeal Hearing on Application for Conditional Use  
Public/Quasi Public Facility - The Oaks-Assisted Living Facility***

Mr. Baxter did offer and Mr. Banks did second a motion to open the public hearing for consideration of the Appeal of the Planning Commission's October 19, 2023 Action on the Application for Conditional Use Public/Quasi Public Facility/Assisted Living Facility submitted by Chad Phillips for public/quasi public facility in a C-1 Commercial District. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and said hearing was and is hereby opened.

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

Following discussion, Mr. Banks did offer and Mr. Baxter did second a motion to acknowledge documentation submitted by Mr. Steve Smith, found in the Miscellaneous Appendix to these Minutes. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and said documentation was and is hereby acknowledged.

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

Following discussion, Mr. Banks did offer and Mr. Griffin did second a motion to acknowledge documentation submitted by Mr. Curtis Collins, found in the Miscellaneous Appendix to these Minutes. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and said documentation was and is hereby acknowledged.

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

Thereafter, Mr. Banks did offer and Mr. Baxter did second a motion to acknowledge the drawing of The Oaks Assisted Living Facility, found in the Miscellaneous Appendix to these Minutes. The vote on the matter being as follows:

**President's Initials:** \_\_\_\_\_

**Date Signed:** \_\_\_\_\_

*For Searching Reference Only: Page 6 of 18 (1/18/24)*

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and said documentation was and is hereby acknowledged.

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

Thereafter, Mr. Banks did offer and Mr. Baxter did second a motion to acknowledge documentation submitted by Mr. J. Kevin Watson, found in the Miscellaneous Appendix to these Minutes. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and said documentation was and is hereby acknowledged.

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

Following further discussion, Mr. Griffin did offer and Mr. Banks did second a motion to close the public hearing. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and said public hearing was and is hereby closed.

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

Thereafter, Mr. Banks did offer a motion to approve said Application for Conditional Use for Public/Quasi Public Facility - The Oaks-Assisted Living Facility filed by Chad Phillips. Said motion failed for lack of a second.

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

Thereafter, Mr. Steen did offer and Mr. Banks did second a motion to request the Mannsdale-Livingston Historic Preservation District (MLHPD) to revisit their denial of the Application for Conditional Use for a Public/Quasi Public Facility - The Oaks-Assisted Living Facility filed by Chad Phillips, with a binding decision within two weeks. Prior to call of the motion, Mr. Griffin did offer and Mr. Brannon did second a substitute motion to deny the Application for Conditional Use. Mr. Griffin then withdrew his substitute motion and Mr. Brannon withdrew his second to said motion.

Thereafter, the Board President called for a vote on the original motion to request the Mannsdale-Livingston Historic Preservation District (MLHPD) to revisit their denial of the Application for Conditional Use for a Public/Quasi Public Facility - The Oaks-Assisted Living Facility filed by

**President's Initials:** \_\_\_\_\_

**Date Signed:** \_\_\_\_\_

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Chad Phillips, with a binding decision within two weeks. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and the Mannsdale-Livingston Historic Preservation District (MLHPD) was and is hereby requested.

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

***In re: Appointment to Madison County Planning & Zoning Commission***

Mr. Brannon did offer and Mr. Banks did second a motion to appoint Ms. Amanda Myers to the Madison County Planning & Zoning Commission. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and Ms. Amanda Myers was and is hereby appointed.

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

***In re: Award of Bid - Police Pursuit Package Vehicles***

At the request and recommendation of Purchase Clerk Kesha Jackson, Mr. Banks did offer and Mr. Steen did second a motion to acknowledge the bids received related to the Police Pursuit Package Vehicles. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and said bids were and are hereby acknowledged.

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

Thereafter, Mr. Griffin did offer and Mr. Banks did second a motion to award (10-14) Police Pursuit Package Vehicles at a cost of \$50,609.00 each. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye

President's Initials: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

*For Searching Reference Only: Page 8 of 18 (1/18/24)*

Supervisor Paul Griffin

Aye

the matter carried unanimously and said vehicle cost was and is hereby awarded.

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

Thereafter, Mr. Banks did offer and Mr. Griffin did second a motion to award the bid to Cannon Chevrolet Nissan of Greenwood as the lowest and best bidder. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and said bid was and is hereby awarded.

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

***In re: Approval as Sole Source Provider***

At the request and recommendation of Purchase Clerk Kesha Jackson, Mr. Griffin did offer and Mr. Banks did second a motion to approve Montgomery Technology Systems, LLC as the sole source provider for a MTI control system computer upgrade for the Madison County Sheriff's Department. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and Montgomery Technology Systems, LLC was and is hereby approved as a sole source provider.

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

Thereafter, Mr. Griffin did offer and Mr. Steen did second a motion to award and approve the computer system upgrade for the Madison County Sheriff's Department to Montgomery Technology Systems, LLC at a cost of \$35,130.00 and authorize Purchase Clerk to issue a purchase order for said amount. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and said cost was and is hereby awarded and Purchase Clerk was and is hereby authorized.

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

President's Initials: \_\_\_\_\_

Date Signed: \_\_\_\_\_

*For Searching Reference Only: Page 9 of 18 (1/18/24)*



***In re: Approval of Madison County Historic Courthouse Re-Roof Proposal***

At the request of Buildings & Grounds Director Drew Ridinger, Mr. Steen did offer and Mr. Banks did second a motion to approve the proposal of Belinda Stewart Architects, P.A. for the Madison County Historic Courthouse Re-Roofing Project, attached as **Exhibit H**. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and said proposal was and is hereby approved.

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

***In re: Acknowledgment of Mississippi Ethics Commission Advisory Opinion***

At the request and recommendation of Board Attorney Mike Espy, Mr. Griffin did offer and Mr. Steen did second a motion to acknowledge the Mississippi Ethics Commission Advisory Opinion Number 17-071-E, found in the Miscellaneous Appendix to these Minutes, as it relates to whether or not Supervisor Banks is required to recuse himself in matters regarding the Stribling Road Traffic Study. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and said opinion was and is hereby acknowledged.

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

***In re: Acknowledgment of Amended Stribling Road Traffic Analysis***

At the request and recommendation of County Engineer Tim Bryan, Mr. Griffin did offer and Mr. Banks did second a motion to acknowledge the amended Stribling Road Traffic Analysis, found in the Miscellaneous Appendix to these Minutes. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and said amended traffic analysis was and is hereby acknowledged.

**President's Initials:** \_\_\_\_\_

**Date Signed:** \_\_\_\_\_

*For Searching Reference Only: Page 10 of 18 (1/18/24)*

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

***In re: Approval of 2023 Annual Report of NPDES Phase II Stormwater Program***

At the request and recommendation of County Engineer Tim Bryan, Mr. Steen did offer and Mr. Banks did second a motion to approve the 2023 Annual Report of the NPDES Phase II Stormwater Program permit, authorize Board President to execute the same, and authorize County Engineer to submit the same to MDEQ. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and said annual report was and is hereby approved, Board President was and is hereby authorized, and County Engineer was and is hereby authorized.

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

***In re: Approval of Preliminary Plat - Northshore of Lake Caroline, Part Six***

At the request and recommendation of County Engineer Tim Bryan, Mr. Banks did offer and Mr. Baxter did second a motion to approve the preliminary plat of Northshore of Lake Caroline, Part Six consisting of approximately 22.41 acres with 19 lots, with no public infrastructure. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and said preliminary plat was and is hereby approved.

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

***In re: Approval of Final Plat - Northshore of Lake Caroline, Part Six***

At the request and recommendation of County Engineer Tim Bryan, Mr. Banks did offer and Mr. Baxter did second a motion to approve the final plat of Northshore of Lake Caroline, Part Six consisting of approximately 22.41 acres with 19 lots, with no public infrastructure. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and said final plat was and is hereby approved.

President's Initials: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

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SO ORDERED this the 18<sup>th</sup> day of January, 2024.

***In re: Approval of Travel and Related Expenses***

At the request and recommendation of County Engineer Tim Bryan, Mr. Banks did offer and Mr. Steen did second a motion to approve travel and related expenses for County Engineer Tim Bryan to attend the Deep South Institute of Transportation Engineers 2024 Winter meeting to be held February 1 - 2, 2024 in Pearl, Mississippi. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and said travel and related expenses were and are hereby approved.

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

***In re: Authorization to Advertise***

At the request and recommendation of County Engineer Tim Bryan, Mr. Griffin did offer and Mr. Banks did second a motion to advertise for the Yandell Road/Weisenberger Road Improvements Project. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and said advertising was and is hereby authorized.

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

***In re: Approval of Zoning Matter -  
Request to Place Mobile Home***

At the request and recommendation of Zoning Administrator Scott Weeks, Mr. Banks did offer and Mr. Griffin did second a motion to approve the request of Felicia Brown to place a mobile home on property owned by her located at 254 Mount Leopard Road due to medical hardship. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and Ms. Brown was and is hereby authorized.

President's Initials: \_\_\_\_\_

Date Signed: \_\_\_\_\_

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SO ORDERED this the 18<sup>th</sup> day of January, 2024.

***In re: Approval of Zoning Matter -  
Refund of Permit Fee***

At the request and recommendation of Zoning Administrator Scott Weeks, Mr. Griffin did offer and Mr. Banks did second a motion to authorize a refund of building permit fee in the amount of \$1,006.00 to Woodlands Construction due to a change in construction plans. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and said refund was and is hereby authorized.

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

***In re: Approval of MASIT Steering Committee  
Nomination***

At the request and recommendation of County Administrator Greg Higginbotham, Mr. Griffin did offer and Mr. Banks did second a motion to nominate County Administrator Greg Higginbotham to serve on the MASIT Steering Committee. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and County Administrator was and is hereby nominated.

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

***In re: Acknowledgment of Madison County Fastenal  
DIP Grant Closeout***

At the request and recommendation of County Administrator Greg Higginbotham, Mr. Banks did offer and Mr. Steen did second a motion to acknowledge the Madison County Fastenal (DIP) Grant closeout. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and said grant closeout was and is hereby acknowledged.

**President's Initials:** \_\_\_\_\_

**Date Signed:** \_\_\_\_\_

***For Searching Reference Only: Page 13 of 18 (1/18/24)***

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

**In re: Authorization for Public Defenders  
to Join PERS**

At the request and recommendation of County Administrator Greg Higginbotham, Mr. Steen did offer and Mr. Banks did second a motion to authorize Madison County Public Defenders to join PERS effective for pay period beginning January 28, 2024. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and Public Defenders were and are hereby authorized.

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

**In re: Authorization of Budgeted  
Donation to American Red Cross**

At the request and recommendation of County Administrator Greg Higginbotham, Mr. Banks did offer and Mr. Steen did second a motion to authorize a budgeted donation to the American Red Cross pursuant to MS Code 19-5-93. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and said donation was and is hereby authorized.

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

**In re: Approval of New Mileage Reimbursement  
Rate**

At the request and recommendation of County Administrator Greg Higginbotham, Mr. Banks did offer and Mr. Griffin did second a motion to approve the new mileage reimbursement rate effective January 1, 2024 pursuant to that certain memorandum from the Department of Finance and Administration, attached as **Exhibit I**. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and said mileage rate was and is hereby approved.

President's Initials: \_\_\_\_\_

Date Signed: \_\_\_\_\_

*For Searching Reference Only: Page 14 of 18 (1/18/24)*

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

***In re: Acknowledgment of Change  
in Coroner Fee***

At the request and recommendation of County Administrator Greg Higginbotham, Mr. Steen did offer and Mr. Banks did second a motion to acknowledge the change in coroner fee pursuant to MS Code 41-61-75. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and said coroner fee was and is hereby acknowledged.

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

***In re: Approval of Budget Amendments &  
Interfund Cash Transfers***

At the request and recommendation of Comptroller Na'Son White, Mr. Steen did offer and Mr. Banks did second a motion to approve the Madison County Budget Amendments & Interfund Cash Transfers, attached as **Exhibit J**. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and said budget amendments and interfund cash transfers were and are hereby approved.

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

***In re: Approval of Claims Docket &  
Payroll Docket***

At the request and recommendation of Comptroller Na'Son White, assuring the Board of Supervisors that all claims had been properly documented and where necessary, purchase orders were obtained in advance as required by law, Mr. Banks did offer and Mr. Griffin did second a motion to approve the following:

- (1) General Claims Docket
- (2) Payroll Docket 1 - December 29, 2023
- (3) Payroll Docket 1 - January 4, 2024

WHEREAS, the following is a summary of all claims and funds from which said claims are to be paid relative to the primary claims docket:

President's Initials: \_\_\_\_\_

Date Signed: \_\_\_\_\_

*For Searching Reference Only: Page 15 of 18 (1/18/24)*

Fund	Claim Nos.	No. of Claims	Amount
001	1135 to 1239	105	402,310.68
012	39 to 39	1	4,252.50
015	24 to 25	2	66,301.63
030	14 to 16	3	7,208.58
097	34 to 35	2	5,985.50
104	11 to 11	1	1,264.26
105	29 to 31	3	18,799.33
114	4 to 5	2	2,649.00
115	49 to 52	4	535.72
125	5 to 6	2	3,753.00
150	186 to 212	27	122,923.39
160	31 to 32	2	31,312.00
185	14 to 14	1	1,231.25
190	22 to 23	2	246.90
191	41 to 44	4	16,725.99
194	23 to 25	3	7,977.08
226	12 to 13	2	2,790.00
306	1 to 1	1	100,000.00
324	3 to 3	1	58,357.48
327	1 to 2	2	423,861.00
331	5 to 6	2	11,537.50
342	1 to 1	1	796,441.51
346	3 to 3	1	647,484.00
655	3 to 3	1	74,659.95
664	3 to 3	1	1,000.00
672	3 to 3	1	1,059.50
675	3 to 3	1	4,259.50
680	2 to 2	1	2,951.25
TOTAL ALL FUNDS		179	2,817,878.50

and further directed the Chancery Clerk to publish the Summary of Claims as required by law and approve the Claims Docket approving payment of said claims, found in the Miscellaneous Appendix to these Minutes. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried by the unanimous vote of those present, and said General Claims Docket and Payroll Docket were and are hereby approved, and the Chancery Clerk was and is instructed to issue pay warrants accordingly.

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

***In re: Approval of Planning & Zoning  
Commission Per Diem***

At the request and recommendation of Comptroller Na'Son White, Mr. Steen did offer and Mr. Banks did second a motion to approve the Planning and Zoning Commission per diem for January 2024, attached as **Exhibit K**. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye

President's Initials: \_\_\_\_\_

Date Signed: \_\_\_\_\_

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Supervisor Karl Banks  
Supervisor Paul Griffin

Aye  
Recused<sup>1</sup>

the matter carried by the unanimous vote of those present and said per diem was and is hereby approved.

SO ORDERED this the 18th day of January, 2024.

***In re: Approval of Claims of Fleetcor Technologies***

At the request and recommendation of Comptroller Na'Son White, Mr. Banks did offer and Mr. Griffin did second a motion to approve a supplemental claims docket dated January 11, 2024 containing the claims of Fleetcor Technologies and direct that invoice numbers should be attached to each claim listed on the supplemental docket and direct the Chancery Clerk to include said claims in the Summary of Claims to be published as required by law, found in the Miscellaneous Appendix to these Minutes. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Recused <sup>2</sup>
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried by the unanimous vote of those present and said Held Claims were and are hereby approved and the Chancery Clerk was and is instructed to issue pay warrants accordingly.

SO ORDERED this the 18th day of January, 2024.

***In re: Approval of December 2023  
Clerk of the Board Report***

At the request and recommendation of Comptroller Na'Son White, Mr. Banks did offer and Mr. Griffin did second a motion to approve the Clerk of the Board Report for the month of December 2023, found in the Miscellaneous Appendix to these Minutes. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and said report was and is hereby approved.

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

---

<sup>1</sup>Prior to consideration of this item of business, Mr. Griffin recused himself from the meeting, departed the meeting room and did not participate in discussion of deliberation of this matter whatsoever.

<sup>2</sup>Prior to consideration of this item of business, Mr. Steen recused himself from the meeting, departed the meeting room and did not participate in discussion of deliberation of this matter whatsoever.

President's Initials: \_\_\_\_\_

Date Signed: \_\_\_\_\_

*For Searching Reference Only: Page 17 of 18 (1/18/24)*



***In re: Acknowledgment of Inmate Meal Report***

At the request of Chief Deputy Sheriff Jeremy Williams, Mr. Banks did offer and Mr. Steen did second a motion to acknowledge the inmate meal report for December 2023, found in the Miscellaneous Appendix to these Minutes. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously and said report was and is hereby acknowledged.

SO ORDERED this the 18<sup>th</sup> day of January, 2024.

***In re: Acknowledgment of MDOC Invoices***

At the request of Chief Deputy Sheriff Jeremy Williams, Mr. Banks did offer and Mr. Steen did second a motion to acknowledge receipt of MDOC invoices for December 2023 in the amount of \$3,937.69, found in the Miscellaneous Appendix to these Minutes, and authorize Board President to execute the same. The vote on the matter being as follows:

Supervisor Casey Brannon	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Aye
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried unanimously vote of those present and said invoices were and are hereby acknowledged, and Board President was and is hereby authorized.

SO ORDERED this the 18th day of January, 2024.

THERE BEING NO FURTHER BUSINESS to come before the Board of Supervisors of Madison County, Mississippi, upon motion duly made by Supervisor Steen and seconded by Supervisor Baxter and approved by the unanimous vote of those present, the January 18, 2024 meeting of the Board of Supervisors was adjourned until January 26, 2024 at 9:00 a.m.

\_\_\_\_\_  
Gerald Steen, President  
Madison County Board of Supervisors

Date signed: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Ronny Lott, Chancery Clerk

President's Initials: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

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## **EXHIBIT 2**

### **MINUTES**

#### **MLHPD:**

<b>May 8, 2023</b>	<b>Page 27-30</b>
<b>June 6, 2023</b>	<b>Page 31-35</b>
<b>July 31, 2023</b>	<b>Page 36-40</b>
<b>August 14, 2023</b>	<b>Page 41-48</b>
<b>January 30, 2024</b>	<b>Page 49-59</b>

#### **PLANNING AND ZONING COMMISSION:**

<b>Jan. 13, 2011</b>	<b>Page 60-61</b>
<b>August 10, 2023</b>	<b>Page 62-66</b>
<b>October 19, 2023</b>	<b>Page 67-72</b>

#### **MADISON COUNTY BOARD OF SUPERVISORS:**

<b>February 7, 2011</b>	<b>Page 73-75</b>
<b>January 18, 2024</b>	<b>Page 74-93</b>

# Conditional Use Application and Certificate of Appropriateness Application

It was also stated that Oaks had submitted a new Conditional Use application for "Personal Care Assisted Living Home" but at the August 14, 2023 MLHPD meeting I attended, when asked, the Phillips could not produce the new Conditional Use application. (Item 6 August 15, 2023 Letter of Findings and Recommendations by MLHPD attached herewith).

Now on the application posted by Madison County on their website under the agenda for this meeting which has just recently been posted, their application for a Certificate of Appropriateness shows Use as "Personal Residential Assisted Living". Also on Page 1 of their Supplemental Submission posted on Madison County website for this meeting under Procedural History, the verbiage identifies the Oaks as a "personal care residential assisted living facility". Verbiage on page 3, paragraph 2 states that "the Oaks application is not for a residential use" even though their application lists Use as "residential" and talks about its 15 residents.

APPLICATION FOR CONDITIONAL USE

---

Applicant and Agency of Applicant: Mad Phillips, The Oaks Residence, Memory Assisted Living Street Address of Property (if different address):  Hwy 22 3675, Lumberton MS

APPLICATION DATE	Present Zoning of Property	Legal Description of Property	TAX PARCEL NUMBER	FLOOD ZONE	MAP/PLAN OF PROPERTY
<u>4-1-23</u>	<u>C-1 PUD</u>	<u>Sec (Exhibit A)</u>	<u>PAC-08-00102</u>	<u>X</u>	<u>Sec (Exhibit B)</u>

See Comment: As per Article 805 of the Madison County Zoning Ordinance.

Locally Submitted  
David Woodrider, Architect

9:33

Application submitted to Madison County Planning and Development Commission on \_\_\_\_\_  
 Recommendation of Madison County Planning and Development Commission on Petition \_\_\_\_\_  
 Next Hearing date as established by the Madison County Board of Supervisors \_\_\_\_\_  
 Final disposition of Petition \_\_\_\_\_

APPLICATION FOR CERTIFICATE OF APPROPRIATENESS  
 CERTIFICATE OF APPROPRIATENESS  
 MADISON COUNTY HISTORIC HERITAGE PRESERVATION COMMISSION DISTRICT

APPLICANT NAME: James Phillips and Cynthia Gaudner Phillips  
 APPLICANT ADDRESS: 3675 Hwy 22, Lumberton, MS 39096  
 APPLICANT TELEPHONE: 662-835-1111  
 DATE SUBMITTED TO PLANNING COMMISSION: 10/10/23

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

PLEASE SPECIFY PROPOSED USE OR USES OF THIS SUBJECT PROPERTY FOR WHICH CERTIFICATE OF APPROPRIATENESS IS REQUESTED. IF MORE THAN ONE USE, INDICATE ON THE REQUESTED SITE PLAN THE LOCATION OF EACH PROPOSED USE.  
 CHECK LIST ALL OF THE FOLLOWING THAT APPLY:  
 Use Address Only As Special Exception  
 Public gathering facility or other special purpose use or other assisted living.  
 (Consistent with the Zoning Ordinance for such use and as shown on the site plan.)  
 Create special use:  
 \_\_\_\_\_  
 (Specify zoning category of a temporary type: Place Streets)

SITE PLAN REQUIRED: A site plan is required for all proposed buildings or structures (except single family dwellings) on the MLHPD District. If the applicant proposes the submission of plans under the MLHPD, the applicant shall submit a site plan that is consistent with the Madison County Subdivision Regulations. All site plans required for construction on a single lot shall be prepared in accordance with Article 807 (4-1-1) and 807 of the Madison County Zoning Ordinance.

Previously submitted:  
 \_\_\_\_\_

ADDITIONAL INFORMATION REQUIRED FOR DETERMINATION OF ALL CERTIFICATE OF APPROPRIATENESS:  
 1. Provide a site plan for the proposed use.  
 2. Provide a site plan for the proposed use.

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**APPLICATION FOR CERTIFICATE OF APPROPRIATENESS/**

**CERTIFICATE OF APPROPRIATENESS:**

**MANSDALE-LIVINGSTON HERITAGE PRESERVATION (MHLR) DISTRICT**

APPLICANT NAME: *James Phillips and Crystal Gardner - Phillips*  
APPLICANT ADDRESS: *282 Lake Village Dr. Madison, CO, REI, LLC*  
APPLICANT TELEPHONE NUMBER: *601-955-7911*  
DATE SUBMITTED TO ZONING ADMINISTRATOR: *10/16/23*  
*ms 39110*

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

*see 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:

- **Uses Allowed Only As Special Exceptions:**
- **Public/quasi-public facility or utility:** *personal residential assisted living*
- **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 MHLR District. If the applicant proposes the subdivision of land inside the MHLR, 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.

## DEFINITIONS

### FROM Cambridge Dictionary :

Definition of “rent”:

A fixed amount of money that you pay regularly for the use of a room, house, car, television, etc. that someone else owns.

The Oaks provides a room it owns to “residents” for a fixed amount of money to be paid regularly. ***The Oaks also has living quarters in a commercial building which is not a Permitted Use in MLHPD.***

### FROM MADISON COUNTY ZONING ORDINANCE:

**Boarding House:** A building other than a hotel or motel, where, for compensation and by prearrangement for definite periods, meals and/or lodging are provided for three or more but not exceeding twelve persons (other than family members) on a weekly or monthly basis.

**Conditional Use:** A land use which would not generally be appropriate in a particular zoning district, but which, with certain restrictions or conditions, would in the judgement of the Board of Supervisors promote the public health, safety, morals, or general welfare of the County and ***would not adversely affect adjacent properties.*** A permit (building permit or change of use permit) granted by the Board of Supervisors for the initiation of a conditional use (with the necessary restrictions included) will not change the zoning of the property involved and will allow such use to continue as long as the specific use granted by the conditional use remains the same. Also referred to as a Special Exception.

**Dwelling:** Any building, or portion thereof, or manufactured home, which is designed to be used for ***human habitation.***

**Dwelling Unit:** ***A room or group of rooms*** occupied or intended to be occupied as separate ***living quarters.***

**Overlay Zone:** A zoning district that is superimposed over more than one base-zoning district and is intended to protect certain features and buildings. ***Where standards of the overlay zone and base-zoning district are different, the more restrictive standards shall apply.***

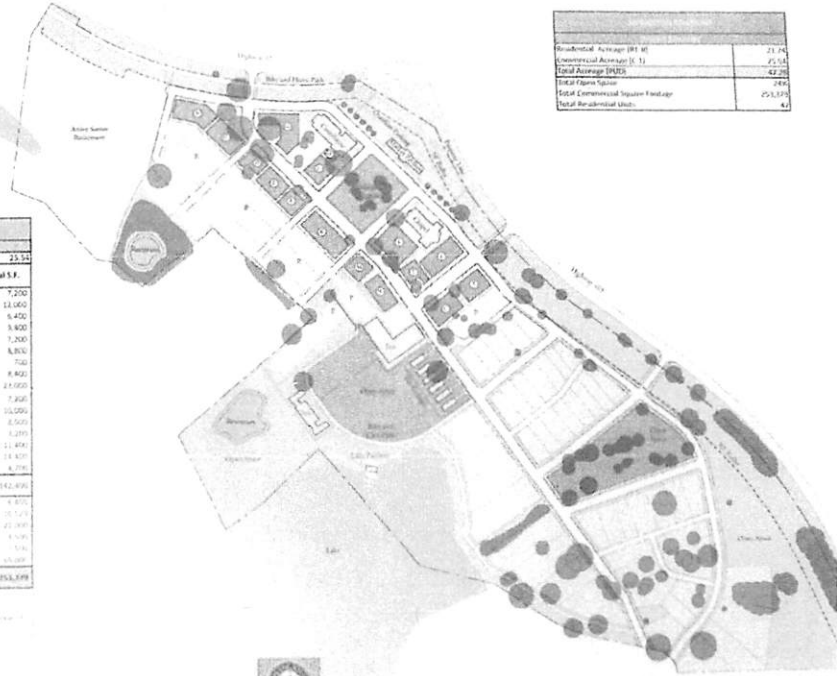
# December 1, 2010 Draft Proposing Senior Living and January 6, 2011 Revised General Development Plan - no Senior Living

## LIVINGSTON TOWNSHIP GENERAL DEVELOPMENT PLAN

Lot Type	Stories	Loading	# Units
40	1.5 to 2	14	18
50	2 to 2.5	1	9
60	2 to 2.5	5	5
80+	2 to 2.5	17	14
<b>Total # Units</b>			<b>47</b>
<b>Units per acre</b>			<b>7.15</b>

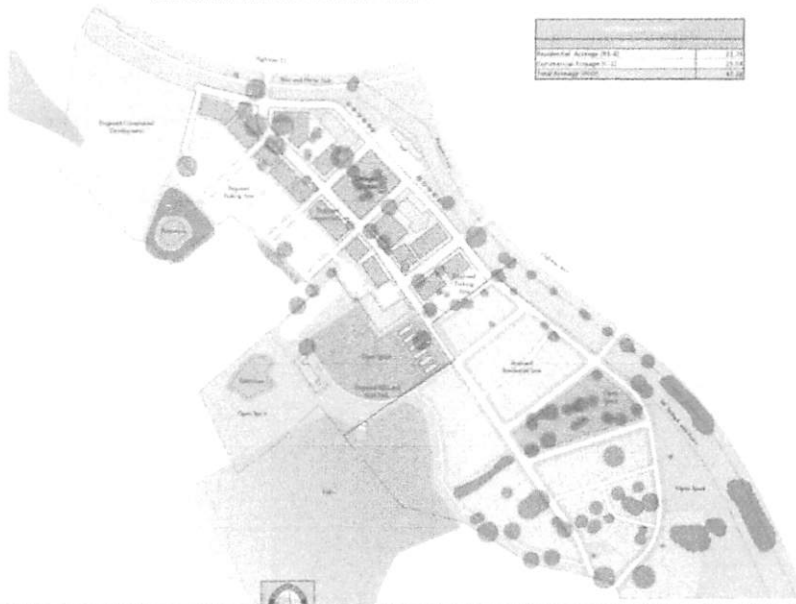
Residential Average (R1 M)	21.74
Commercial Average (C-1)	25.54
<b>Total Average (M/CS)</b>	<b>42.28</b>
<b>Total Floor Space</b>	<b>454</b>
<b>Total Commercial Square Footage</b>	<b>25,139</b>
<b>Total Residential Units</b>	<b>47</b>

BLDG	Stories	Floor			Total S.F.
		Floor 1 Retail	Floor 2 Restaurant	Floor 3 Office	
B	1	7,200			7,200
C	2	3,000	3,000	6,000	12,000
D	2	3,000	3,000	3,000	9,000
E	2	4,900	4,900	4,900	14,700
F	2	3,000	3,000	3,000	9,000
G	2	8,300	800	800	9,900
H	1	700			700
I	1	4,300		4,300	8,600
J	3	4,500	3,700	3,200	11,400
K	2	3,000	3,000	5,000	11,000
L	2	5,000	5,000		10,000
M	1	8,500			8,500
N	1	2,200			2,200
O	2	3,700	5,700		9,400
P	2	2,100	2,100		4,200
Q	2	2,100	2,100		4,200
<b>Subtotal</b>		<b>71,000</b>	<b>26,400</b>	<b>45,200</b>	<b>142,600</b>
Trigge	2	4,400			8,800
Southface	8	4,817		13,777	18,594
W	4	5,500	4,300	11,700	21,500
X	4	4,570			18,280
Y	1	8,000			8,000
Z	1	12,000			12,000
<b>Total Commercial S.F.</b>		<b>182,487</b>	<b>40,800</b>	<b>62,677</b>	<b>285,964</b>



## GENERAL DEVELOPMENT PLAN

Residential Average (R1 M)	21.74
Commercial Average (C-1)	25.54
<b>Total Average (M/CS)</b>	<b>42.28</b>
<b>Total Floor Space</b>	<b>454</b>
<b>Total Commercial Square Footage</b>	<b>25,139</b>
<b>Total Residential Units</b>	<b>47</b>



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# 2002 document showing residential living quarters in commercial was deleted as a Permitted Use in the preliminary document establishing MLHP Overlay District in 2003

## Exhibit A

MHF Minutes of 12-2-02

The Board of MHF met Dec 2, 2002 with the following persons present Clinton and Phyllis Doby, Charlie Craig, Rita McGuffie, Al Doly, Lee Dewees, Carlton O'Keefe, Barbara Kroeze, and guest Tom Dewees.

The meeting was called to order and the minutes from the previous two meetings were approved.

The bulk of the meeting concerned the rezoning of 25 acres of Cress-Primos property from agricultural-residential to commercial. Clint Doby guided us through the November '02 Overlay that dealt with zoning district regulations. The following changes in the document as it was printed were requested to be made:

Definitions:

- Supermarket--20,000 square feet of floor space including storage but less than 50,000 square feet
- Boundries of the District- add 1000 feet each side of the road from the center line of the road
- Uses permitted-delete residential living quarters above retail space.
- Uses allowed upon review-add service stations and convenience stores only within 500 feet of Hwy 22
- Uses expressly prohibited-add condominiums, hotels, boarding houses, dance halls.
- Fencing and landscaping- add buffer zones and lighting so as not to pollute adjoining properties with light.
- Reviewing site plans- the MLH commission shall have 30 days.
- Addition of a paragraph concerning storm water handling- limiting run-off rate to be equal to or less than predevelopment and controlled so as not to create a flooding problem at any street, drive or culvert within 500 feet.
- Changes made in the architectural standards were:  
Screening of gas pumps; exterior light fixtures not to pollute adjacent properties; delete range of cost on brick.
- Changes requested in Signage:  
No roof signs.  
Size of signs identifying Subdivisions at their Entrance- is limited to 70 square feet and no higher than 8 feet. The maximum height of all commercial entrance signs is 8 feet and is to be measured from the surrounding grade. The word immediate is to be deleted from the entrance sign description for both 463 and Gluckstadt roads.

Serious questions were voiced about having a second entrance on 463. It was suggested having a shift in the original entrance and keeping only one entrance to this property on 463.

We will request that agreements concerning the property be deed restricted or whatever legal stipulation will suffice to ensure the restrictions go with the land in perpetuity.

# Mississippi State Department of Health Classifications

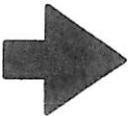
*Miss. Code Ann. §43-11-13*

## 5 CLASSIFICATION



**Personal Care Home - Residential Living** The terms "Personal Care Home - Residential" and "Residential Personal Care Home" shall mean any place or facility operating 24 hours a day, seven (7) days a week, accepting individuals who require personal care services or individuals, who due to functional impairments, may require mental health services to compensate for activities of daily living. Regulation by the licensing agency for such facilities are governed by the "Regulations Governing Licensure of Personal Care Homes - Residential".

*Miss. Code Ann. §43-11-13*



**Personal Care Home - Assisted Living** The terms "Personal Care Home - Assisted Living" and "Assisted Living Personal Care Home" shall mean any place or facility operating 24 hours a day, seven (7) days a week, accepting individuals who require assisted living services as governed by the regulations herein.

*Miss. Code Ann. §43-11-13*

## 6 TYPES OF LICENSE

**Regular License.** A license shall be issued to each facility that meets the requirements as set forth in these regulations.

*Miss. Code Ann. §43-11-13*

**Provisional License.** Within its discretion, the licensing agency may issue a provisional license only if the licensing agency is satisfied that preparations are being made to qualify for a regular license and that the health and safety of residents will not be endangered.

*Miss. Code Ann. §43-11-13*

## 7 APPLICATION OR RENEWAL OF LICENSE

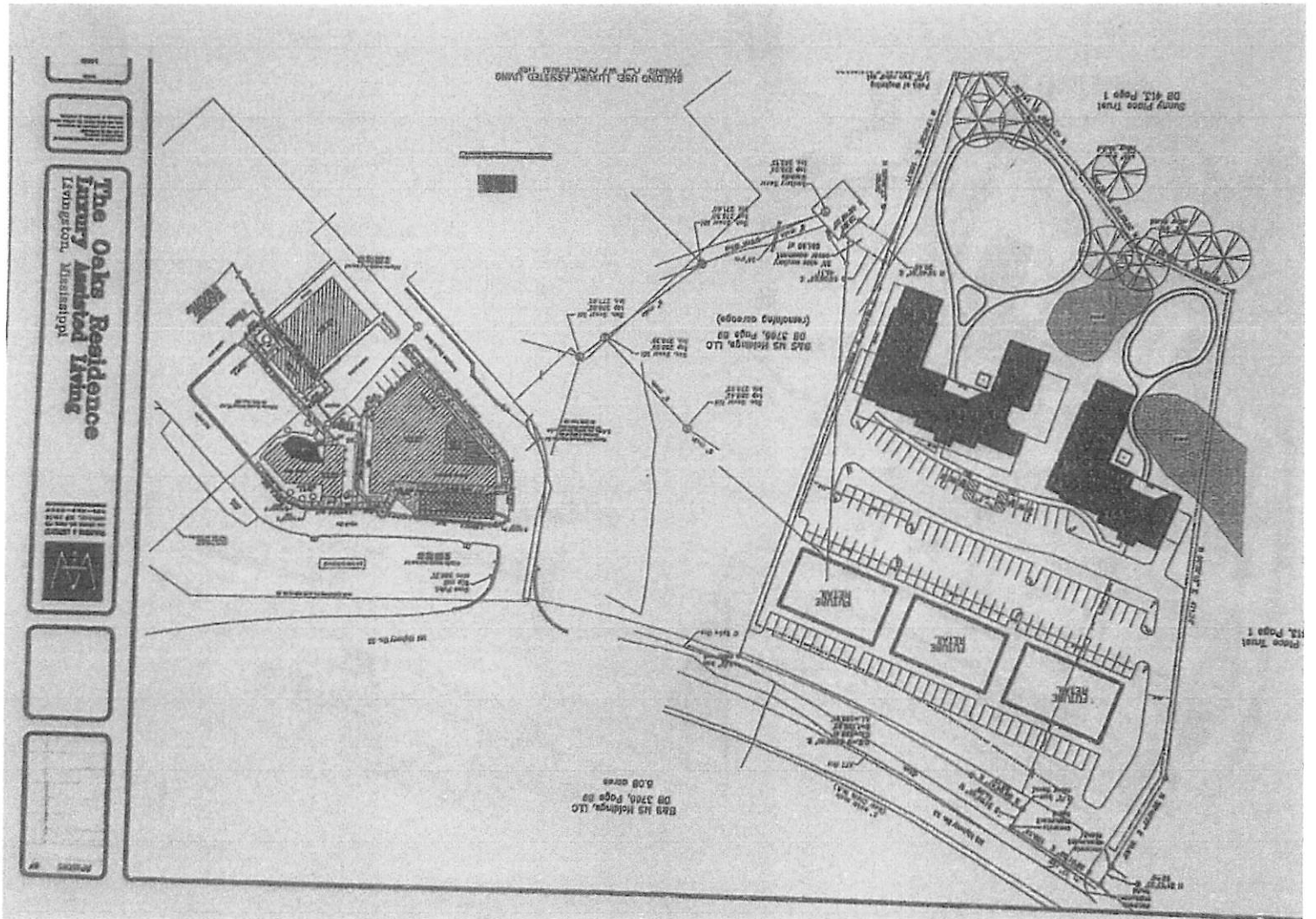
**Application.** Application for a license or renewal of a license shall be made in writing to the licensing agency, on forms provided by the licensing agency, which shall contain such information as the licensing agency may require.

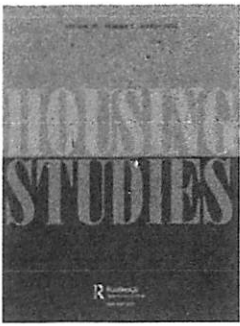
7

 [msdh.ms.gov](https://msdh.ms.gov)



Oaks Proposal showing 5 buildings - 4 are now shown only as Future Use





## Neighbouring house transaction response to assisted living facilities and nursing homes

Velma Zahirovic-Herbert & Karen M. Gibler

To cite this article: Velma Zahirovic-Herbert & Karen M. Gibler (2020) Neighbouring house transaction response to assisted living facilities and nursing homes, *Housing Studies*, 35:2, 195-213, DOI: [10.1080/02673037.2019.1594714](https://doi.org/10.1080/02673037.2019.1594714)

To link to this article: <https://doi.org/10.1080/02673037.2019.1594714>



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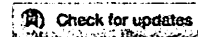


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- 101 -



## Neighbouring house transaction response to assisted living facilities and nursing homes

Velma Zahirovic-Herbert<sup>a</sup> and Karen M. Gibler<sup>b,c</sup>

<sup>a</sup>Department of Financial Planning, Housing and Consumer Economics, University of Georgia, Athens, GA, USA; <sup>b</sup>School of Construction Economics & Management, University of the Witwatersrand, Braamfontein, Johannesburg, South Africa; <sup>c</sup>Department of Real Estate, Georgia State University, Atlanta, GA, USA

### ABSTRACT

Senior group housing that offers services signals that its residents have physical and/or cognitive limitations, which may be viewed as a neighbourhood disamenity. Buyers may discount house values near group homes due to negative perception of the residents or the structure. Most senior group home residents come from the surrounding community; therefore, residents of neighbourhoods with a large proportion of older residents may perceive nearby senior housing as desirable. We employ a system of equations to examine the influence of assisted living and nursing homes on single-family house sales prices and time-on-the market. The results indicate that the presence of a senior group home, especially a nursing home, within one-half mile has a significant negative effect on single-family house prices. The effect is most evident in neighbourhoods with few elderly residents. A clustering effect is present in non-distressed sales. The scale of a nearby senior group home contributes to a longer marketing duration, especially for distressed sales.

### ARTICLE HISTORY

Received 6 September 2018  
Accepted 11 March 2019

### KEYWORDS

House price; time-on-the-market; senior housing

## Introduction

Group housing facilities may affect surrounding single-family residential values either positively or negatively due to the type of residents they house, their scale in relation to the neighbourhood and the facilities' appearance. Seniors housing developments that offer services to help with activities of daily living or health (such as assisted living facilities and nursing homes) signal that they house residents with physical and/or cognitive limitations. In addition, senior housing may be indistinguishable from other group facilities that house residents with emotional, mental or drug-related problems as well as those that house former criminals. Group homes of all types operate at a higher density than traditional single-family housing. Purpose-built facilities may resemble rental multi-family buildings or institutions rather than the surrounding single-family residential structures.

On the other hand, nearby senior group housing may be attractive to some residential buyers who regard senior neighbours as quiet and desirable. Single-family houses can be converted to residential care homes that house a limited number of residents without changing the exterior of the structure and maintaining consistency with the neighbourhood appearance. In addition, many older people conceptualize of aging in place as changing houses but remaining in the same neighbourhood because of their sense of attachment and social connection (Wiles et al., 2012). The majority of senior group home residents are drawn from the surrounding community, and hence house buyers may place a premium on houses that are located close to senior group housing that would allow them to age in place in the neighbourhood. Familiarity with neighbourhood facilities and services and being close to friends and family can assist with positive ageing and lessen the propensity to move. People move a median distance of 7.4 miles to enter a freestanding assisted living facility in the United States and a median of 8.5 miles to enter a combined independent living and assisted living facility (Coe & Wu, 2016), and hence considerable demand for senior housing is generated in the local area. A study of older movers in the Netherlands similarly finds that 49% of those moving to adapted housing (e.g. an apartment building with services or housing near an institution that provides services) stay in the same neighbourhood (Bloem *et al.*, 2008).

The provision of a range of housing alternatives at the neighbourhood level supports public policies whose goal is to allow seniors to age integrated within their communities as much as possible (Rosenberg & Everitt, 2001). In the United States, state regulatory agencies control the licensing and operation of these facilities, but local governments control their location through land use regulations. These local bodies determine in which neighbourhoods to allow these facilities as well as the acceptable scale. Opposition may arise because of ageism by which younger people attempt to protect their self-image and avoid reminders of their mortality by applying negative stereotypes to older adults, distancing themselves from the threat of becoming frail and dying (Nelson, 2005). Ageism as well as concern about development affecting safety, traffic congestion, density, neighbourhood appearance, service cost and property values can lead to protests of 'not in my backyard' (NIMBY), which can pressure regulators to directly or indirectly exclude senior group homes from residential neighbourhoods (Kling, 2002; Scally, 2012).

In 2014, an estimated 1.16 million Americans of 65 years and older resided in 15,600 nursing homes and 776,000 in 30,200 residential care communities (assisted living, personal care homes, adult care homes, board care homes and adult foster care) (Harris-Kojetin *et al.*, 2016). Although the share of the population of 65 years and older residing in nursing homes has been declining in recent decades, the proportion residing in other residential care facilities such as assisted living has been growing. The number of people aged 65 years and older is projected to more than double from 40.3 million in 2010 to 83.7 million in 2050, increasing the proportion of the American population aged 65 years and older from 13.0 to 20.9%. Countries throughout the world are experiencing similar demographic shifts. Although 50 countries had a higher proportion of people aged 65 years and older than the United States in 2010, by 2050, 98 countries are expected to have older populations than the United States (US Census Bureau, 2014).

Researchers in Asia, Europe and North America are examining the changing preferences and likelihood of elderly residents to move, including various types of seniors housing (Abramsson & Andersson, 2016; Bloem *et al.*, 2008; Bohle *et al.*, 2014; Peace *et al.*, 2011; Robison *et al.*, 2014; Weeks *et al.*, 2012). Despite technological innovations that could improve the ability of residents to age in place in their own homes (Barlow & Venables, 2004), the demand for seniors housing will likely grow. Communities will increasingly be approached with applications to build or convert buildings to provide group housing for older residents.

To explore whether homebuyers value group homes for the elderly in close proximity to their houses, we employ a system of equations to examine the influence of assisted living and nursing homes on single-family house sales prices and time-on-the-market in one Florida community. Florida has long been a popular destination for active early retirees, which has resulted in an older population who are the target for assisted living, nursing home and life care communities despite the residents' relatively low disability rate (Smith *et al.*, 2012). Florida has the highest percentage of residents aged 65 years and older in the United States at about 17.3% in 2010 (US Census Bureau, 2014). Thus, Florida communities have experienced longer and stronger demand for the development of neighbourhoods that allow retirees to age in place. It, therefore, affords the opportunity to examine the effect that land use policies and the development of group homes for the aged has on neighbourhood house prices. While some of the earlier studies on group homes examine several type of housing including rehabilitation homes, our study focuses on facilities that primarily house seniors. In addition, our approach overcomes some of the limitations of the previous analysis of the influence of group homes on house values by incorporating greater neighbourhood controls, examining a larger number of transactions, and accounting for time-on-the-market.

## Background

Research on the house price influencing both positive and negative neighbourhood externalities is well established. A hedonic approach is often used to isolate the relative contribution of individual neighbourhood characteristics to house prices negotiated between buyers and sellers. Among the types of developments that have been examined for the effect of proximity are correctional facilities, abandoned buildings, churches, schools, retail and commercial buildings (summarized in Sirmans *et al.*, 2005), as well as subsidized housing for low-income residents (such as Deng, 2011; Santiago *et al.*, 2001; Schwartz *et al.*, 2006), mobile home parks (Munneke & Slawson Jr., 1999), multi-family rental apartments (Grether & Mieszkowski, 1980; Song & Knaap, 2004) and architecturally significant houses (Ahlfeldt & Mastro, 2012). Some neighbouring uses tend to influence house prices positively and others negatively.

In one of the first studies of the influence of group homes on the surrounding housing market, Farber (1986) uses just 74 house sales to compare transaction prices within 1200 feet of nine group homes for the mentally disabled or emotionally disturbed in Shreveport-Bossier City, Louisiana with transaction prices in neighbourhoods without group homes. All the group homes in the study were converted into

single-family residences. Farber finds no effect of a group home on housing prices in high socioeconomic markets; however, the group home in these neighbourhoods may have increased the time on the market. When group homes were located in below average socioeconomic areas where housing markets were weak, there was a significant increase in the price of houses sold nearby. These results suggest that the surrounding price increases were due to the conversions improving the quality of the structures rather than the type of group housing. Both the time-on-the-market effect in the high socioeconomic market and the price effect in the below average socioeconomic market diminish with straight line distance from the group home.

Galster and Williams' (1994) study produces mixed results. Four single-family and duplex dwellings converted to group homes for up to three severely mentally disabled tenants each in Newark and Mt. Vernon, Ohio, show no significant influence on sales prices of single-family houses within two blocks. In contrast, prices of homes proximate to newly constructed apartment complexes of one to two buildings with up to five apartments each for similar tenants were 40% lower near two of the complexes, whereas prices were unchanged near three other similar apartment complexes. Thus, it is difficult to discern from this study whether scale of group facilities is relevant to understanding their price effect on neighbouring properties.

A later study (Colwell *et al.*, 2000) finds single-family houses experience a decline in value following the announcement of a group home for mentally handicapped tenants within sight or 200 feet. The results are based on a sample of 641 sales in an Illinois community with seven group homes. This implies a negative effect for the closest properties' prices.

Galster *et al.*'s (2004) examination of 11 Colorado special care homes for residents with physical, mental or behavioural disabilities includes one senior special care home with eight beds and one personal care boarding home with four beds. The homes were located in previously vacant, sometimes deteriorated properties in lower value or declining neighbourhoods. Overall, they find a positive price effect within 1001–2000-foot rings around the sites; however, they do not separate out the senior special care home for individual evaluation. In addition, the price effect of the property renovations cannot be isolated from the group home use occupying the site.

Three studies that focus on subsidized group housing's effect on surrounding house prices produced mixed results. Funderburg & MacDonald (2010) find a short-lived increase in appreciation rates of housing located within one-half mile of newly constructed units (including assisted living) for elderly tenants in Iowa. They suggest that the positive effects are partially attributable to the developments being buffered from surrounding single-family houses. An earlier study (Carroll & Claretie, 1999) considers three public housing projects designated for elderly tenants. The results indicate that the projects have an initial negative impact on nearby house prices, but the effect is neither substantial nor long lasting. Rabięga *et al.* (1984) employ a simple regression that reveals little price effect from new elderly subsidized multi-family rental apartments on 208 single-family house transactions in Portland, Oregon.

To help understand the reason why group homes may have a negative effect on neighbourhood house prices, Gerdner & Borell (2003) surveyed Swedish neighbours about their opposition to group homes for children, adolescents and adults with

various social, emotional, psychiatric or substance abuse-related problems. The fears expressed by neighbours mostly centre around general feelings of insecurity, fear of increased damage to property and criminal offenses, a drop in real estate values and the fear of more drugs and negative role models for the youth of the community. It is unclear if any such fears would extend to seniors housing that may contain memory units to house elderly residents with dementia; however, interviews with residents of a continuing care retirement community reveal that those living in independent units tend to avoid visiting friends who have moved to the assisted living or dementia care units (Hrybyk *et al.*, 2012).

The studies of other types of housing that could be considered detrimental to the neighbourhood have shown that not only the presence, but number or concentration of units can exacerbate the negative price effects. Galster *et al.* (1999) find a positive price effect associated with a small number of subsidized housing sites within 2000 feet of single-family houses that becomes negative when a certain threshold is reached. Evidence suggests that impacts of subsidized rental properties on owner-occupied house prices are often subject to cluster and threshold effects, and hence the effect can be expected to become significant only when a critical threshold in the area is reached or when a significant number of sites cluster in the area. The critical point of these threshold effects is not constant across space but is context specific (Koschinsky, 2009).

Thus, the previous research shows little, if any, systematic and long-lasting influence of a variety of types of group homes on surrounding single-family houses. The group homes considered are generally few in number with a correspondingly small number of transactions available for analysis. Meanwhile, surveys indicate that seniors housing that caters to the frail may carry a negative stigma that could make living nearby undesirable even for other seniors. The studies of the price influence of mixing other types of housing into single-family neighbourhoods have produced mixed results that may be subject to cluster and threshold effects. Analysis for a larger number of transactions taking place in an area that contains numerous group housing facilities for seniors may provide clearer results.

## Method

### *Model*

The housing market consists of sellers and buyers dealing in bulky, high cost heterogeneous goods that require expensive and time-consuming searches to match buyers' preferences with available units at an agreeable price. Potential buyers must trade off the cost of an identified house with the cost of continued search and potential discovery of an alternative that provides greater utility. The seller must decide between accepting an offer or the cost of rejecting the offer and waiting to see if a better offer will emerge. Therefore, search and matching models of the housing market envision price and selling time as jointly determined outcomes so that various market and property characteristics lead to combined price and selling time effects. This argues for taking simultaneous selling time effects into account when conducting empirical hedonic price analysis.

A common way to estimate real estate prices is to employ the standard hedonic pricing model proposed by Rosen (1974). The hedonic model must be modified to

incorporate the impacts of the various market imperfections on house price. One way of accounting for the impact of the search process on simultaneous determination of house selling price and selling time is to estimate a system of equations for selling price and marketing duration. A fundamental econometric problem arises, however, because the theory implies that both price and selling time are simultaneously determined by identical factors.

The empirical structure used in this study follows Turnbull & Zahirovic-Herbert (2012), framing the model with the structure implied by applied consumer demand theory; that is, the seller utility maximization model yields the seller's choice of expected sales price and selling time as functions of the same set of variables (seller preferences, property characteristics and market conditions).

Assuming a semi-log form<sup>1</sup> for expected sales price and for expected selling time, then adding the jointly distributed stochastic errors  $\varepsilon_p$  and  $\varepsilon_\tau$ , the realized sales price and marketing duration are:

$$\ln P = \sum_i \alpha_i x_i + \varepsilon_p \quad (1)$$

$$\ln \tau = \sum_i \beta_i x_i + \varepsilon_\tau \quad (2)$$

As the mathematical structure of this problem is similar to the consumer's problem in demand theory, which produces demand equations that are functions of the same variables, the sales price and selling time, Eqs. (1) and (2), are also the functions of the same set of variables for the seller search problem, summarized here as the vector  $\mathbf{x}$ . Price and selling time are co-determined, which implies that the error terms can be correlated across the equations, which requires the two equations to be estimated as a seemingly unrelated system. The vector  $\mathbf{x}$  can be expanded to capture all relevant variables that contribute to sales price and selling time.

The sales price of a single-family house is a function of a series of structural, locational and time-specific attributes as well as financial characteristics relevant to sales conditions during the study period (Malpezzi, 2003). The physical characteristics of the house and lot included are shown to have a systematic and significant relationship with house price in the previous studies (Sirmans *et al.*, 2005; Zhang *et al.*, 2016). We also include broader neighbourhood characteristics and local market conditions along with our variables of interest, the location relative to senior housing. Because of the recent recession and recovery, controls are needed to account for the influence of foreclosure status on sales price. The model must also control for changing economic conditions and unobserved neighbourhood characteristics. The resulting model is:

$$\ln Price = c + \varphi S + \beta H + \delta N + \phi F + \gamma T + \eta C + \varepsilon \quad (3)$$

$$\ln SellingTime = c + \varphi S + \beta H + \delta N + \phi F + \gamma T + \eta C + \varepsilon \quad (4)$$

where  $S$  represents the measures for nearby seniors housing, the focus of the study;  $H$  represents a vector of house structural characteristics (including the lot);  $N$  signifies specific neighbourhood and local housing market characteristics;  $F$  provides



foreclosure related measures;  $T$  is a time trend variable for month and year of sale; and  $C$  provides fixed effects for geographic location.

### Variables

The dependent variables in this model are the natural logarithm of house transaction price and selling time. We create a series of variables to examine the influence of the presence of group housing for seniors on single-family house transactions. Consistent with the distance of price influences found in the previous studies on group housing (Carroll & Clauretje, 1999; Funderburg & MacDonald, 2010; Galster *et al.*, 2004; Rabiega *et al.*, 1984), we draw circle with a radius of one-half mile around each transaction to create a dummy variable that indicates if any nursing home or assisted living facility is located within that radius (*GroupHome*).<sup>2</sup> To account for the variety in type of facility and scale, we use a dummy variable to identify whether the closest facility within the circle is a nursing home or assisted living facility and a continuous measure of the number of beds/residents the nearest facility can house (*SizeNearGroupHome*). As a measure of concentration of group homes in a neighbourhood, we calculate the number of assisted living and nursing homes within the circle (*NumGroupHomes*). As older residents may have a different opinion about the desirability of having alternative senior housing options nearby, there could be some age-related neighbourhood selection effects, and hence we create a variable to measure the interaction of the presence of a facility within one-half mile and the percentage of the census tract population aged 65 years and older (*GroupHomexAge65*). Variables used in the analysis are defined in Table 1.

House size is measured by the natural logarithm of the number of square feet of heated space (*SFHeated*), number of bedrooms and number of full and half bathrooms (*BathsFull*; *BathsHalf*). The age of the house as well as age squared (*AgeSq*) are included. To account for house and lot amenities, we identify the presence of a fireplace, home security system, garage, swimming pool and deeded access to water. The size of the lot is grouped into categories.

We use a model similar to Turnbull *et al.* (2006) to capture the atypicality effect. We create two variables that calculate the magnitude to which the subject house is larger or smaller than the average living area in the houses for sale in the surrounding neighbourhood. We index all houses within a one-quarter mile radius of house  $i$  by  $J$ . The standardized measure of relative house size is:

$$\text{Localsize}_i = \frac{\text{Livingarea}_i - \sum_{j \in J} \text{Livingarea}_j / N_j}{\sum_{j \in J} \text{Livingarea}_j / N_j} \quad (5)$$

where  $N_j$  is the number of surrounding houses in the neighbourhood  $J$ . To allow for asymmetric relative house size effects on selling price, we define the relative size variables  $\text{Larger}_i$  and  $\text{Smaller}_i$  as the absolute values of the positive and negative values of  $\text{Localsize}_i$ , respectively.

$$\text{Larger}_i = \begin{cases} 0, & \text{if } \text{Localsize}_i \leq 0 \\ |\text{Localsize}_i|, & \text{if } \text{Localsize}_i > 0 \end{cases} \quad (6)$$

**Table 1.** Variable descriptions.

Variable	Description
<i>Dependent variables</i>	
Price	Sales price in US dollars
SellingTime	Number of days between listing contract and closing
<i>Senior group home measures</i>	
GroupHome	Nursing home or assisted living within 1/2 mile (Yes/No)
NumGroupHomes	Number of nursing homes and assisted living within 1/2 mile
NursingHome	Nearest facility within 1/2 mile is nursing home (Yes/No)
SizeNearGroupHome	Number of licensed beds in nearest facility within 1/2 mile
GroupHomex65	Interaction term of nursing home or assisted living within 1/2 mile and percentage of the census tract population aged 65 years and older
<i>House characteristics</i>	
SFHeated	Heated space in house in square feet
Age	Years since house constructed
Bedrooms	Number of bedrooms
BathsFull	Number of full bathrooms
BathsHalf	Number of half bathrooms
Fireplace	At least one fireplace (Yes/No)
HomeSecurity	Home security system (Yes/No)
Garage	At least one-car garage (Yes/No)
SwimPool	Private swimming pool (Yes/No)
WaterAccess	Deeded access to water such as lake (Yes/No)
LotQrtToLessHalfAcre	Lot 1/4 to less than 1/2 acre (Yes/No)
LotHalfToLessOneAcre	Lot 1/2 to less than 1 acre (Yes/No)
LotOneToLessFiveAcre	Lot 1 acre to less than 5 acres (Yes/No)
Smaller	Negative deviations from the local mean living area (heated)
Larger	Positive deviations from the local mean living area (heated)
<i>Neighbourhood and local market conditions</i>	
CommunityPool	Community swimming pool (Yes/No)
HOA	Home Owners Association (Yes/No)
MallDistance	Distance to shopping mall in miles
ListingDensity	Index of competing listings weighted by days
Competition	Index of competing listings
<i>Foreclosure measures</i>	
BankOwned	Bank owned (Yes/No)
ShortSale	Short sale (Yes/No)

$$\text{Smaller}_i = \begin{cases} 0, & \text{if } \text{LocalSize}_i \geq 0 \\ \text{LocalSize}_i, & \text{if } \text{LocalSize}_i < 0 \end{cases} \quad (7)$$

Following Turnbull and Dombrow (2006), an atypical house is defined as one that is at least 20% larger or smaller in living area than the average house for sale in the neighbourhood. Financial conditions surrounding foreclosures are accounted for by whether the sale is a bank-owned house or short sale.

Neighbourhood amenities are composed of community pool and homeowner's association (HOA). Distance to the major shopping mall in the county is included as a locational variable. Turnbull and Dombrow (2006) present how local market conditions that measure spatial competition and externality effects can be applied to the housing market and, hence, control for local supply conditions in estimating price and selling time equations. For example, the sales price is explained, in part, by the concentration of competing listings in the neighbourhood. The previous studies find that neighbourhood competition variables such as these are typically significant in

market outcomes (Turnbull & Dombrow, 2006; Turnbull *et al.*, 2006; Zahirovic-Herbert & Turnbull, 2008). To account for this influence, the price equation incorporates a measure of listing density and the selling time equation employs a modified measure of localized competition. These measures for each house are as follows:

$$\text{ListingDensity} = \sum \frac{(1-D(i,j))^2 O(i,j)}{s(i) - l(i) + 1} \quad (8)$$

$$\text{Competition} = \sum (1-D(i,j))^2 O(i,j) \quad (9)$$

Here,  $l(i)$  and  $s(i)$  are the listing date and sales date for house  $i$ , respectively, so that selling time is now,  $s(i) - l(i) + 1$ .  $D(i,j)$  is the distance in miles between houses  $i$  and  $j$ .  $O(i,j)$  represents the overlapping marketing time for contemporaneously listed houses  $i$  and  $j$ , and is defined as:

$$\min[s(i), s(j)] - \max[l(i), l(j)] + 1.$$

Houses with overlapping listing periods located within one-quarter mile and not more than 20% larger or smaller than the subject house are used to calculate these measures of competition.

Similar to Greenstone & Gayer (2009), we choose a fixed effects approach to overcome omitted variables bias. Fixed effects analysis controls for omitted variables by including a large set of dummy variables for small groups of observations, in our case, observations that are within a small geographic area. These dummy variables pick up the effects of any time-invariant unobserved variables on house prices, allowing for unbiased estimates of any remaining variables that differ either among houses within the chosen scope of the fixed effects or over time.

## Data

Multiple listing service data for single-family detached house transactions in the cities of Lake Mary, Longwood, and Sanford, as well as in parts of unincorporated Seminole County, Florida is used in the analysis. Seminole County is part of the greater Orlando metropolitan area. Approximately, 12% of its residents in 2010 were of 65 years or older (US Census Bureau, 2018), a lower proportion than in the state-wide population. The sales took place between 2008 and 2016, from the bottom of the economic cycle through the recovery period. The volume of house sales in the area and single-family house median sales price declined until 2011 and then steadily climbed during this period but remained below the peak previously reached in 2006 (Florida Housing Data Clearinghouse, 2018).

The Florida Agency for Health Care Administration provides the location and number of beds in each nursing home and assisted living facility with complete records on licensing since 2010. The study area within Seminole County contains 21 facilities that were operating within one-half mile of a house sale during the study period – 5 nursing homes and 16 assisted living facilities.<sup>3</sup> The assisted living facilities

= 110 -

range in size from 5 to 220 licensed beds with an average of 75, whereas the nursing homes contain from 114 to 240 licensed beds with an average of 143.

Assisted living facilities and nursing homes are defined and licensed by the State of Florida. An assisted living facility provides meals, personal care and supportive services in a residential setting for five or more disabled or older adults. To reside in a standard facility, a person must meet residency criteria, which means they cannot have conditions that require 24-h nursing supervision. Nursing homes are residential facilities where a person lives or where a person can stay temporarily for respite care or recuperation. Services include 24-h a day nursing care, personal care, meals, therapy and social activities. A doctor must authorize a nursing home admission.

In addition to obtaining an operating license from the State, assisted living facilities and nursing homes must abide by location restrictions and permitting requirements in local land use ordinances. In unincorporated Seminole County, assisted living facilities are allowed in agricultural as well as residential zoning districts (including single family), whereas nursing homes are allowed only in multiple family, commercial and office districts. The Board of Adjustment is directed to avoid approving permits for assisted living facilities that would create an overconcentration and inadvertently create an institutional setting in a neighbourhood. In Lake Mary, adult congregate living facilities and nursing homes are allowed in multiple family, commercial, industrial and the downtown centre district. In Sanford, the location restrictions depend on the size of the residential facility. Assisted living facilities housing up to six residents are allowed in all residential as well as mixed use, commercial, agricultural and planned development districts, whereas those with seven or more residents and nursing homes are not allowed in single-family districts. Sanford also attempts to prevent concentrations of group homes through the permitting process. Longwood allows group homes in all residential as well as neighbourhood commercial mixed-use districts, but with restrictions on size and requirements for buffering for larger facilities. Nursing homes are allowed only in infill, mixed use and public/institutional districts. The result of these land use regulations is that assisted living facilities are scattered throughout Seminole County in a variety of zoning districts and neighbourhoods, whereas nursing homes are also scattered but restricted to fewer districts. The dispersed nature of the facilities increases the probability that a substantial number of single-family house transactions occur in proximity to at least one facility.

To narrow the analysis to single-family detached house sales during the study period and eliminate errors and outliers, we remove transactions from the MLS database for other types of residential structures, observations with missing values on variables used in the analysis, houses with a reported closing date before the house was constructed, those indicating no bedrooms or more than seven bedrooms, no full bathrooms or more than five full bathrooms, more than two half bathrooms and lots of five acres or more. We also remove outliers in terms of listing and selling prices, size, age and marketing time. The cleaned data set is composed of 9588 single-family detached house transactions that took place between January 2008 and March 2016 that were geocoded and merged with US Census data and senior group home data.

The average house in the cleaned sample is approximately 25 years old and contains almost 2000 square feet (183.13 square metres) with three to four bedrooms

**Table 2.** Summary statistics.

Variable	Mean	Std. Dev.	Min	Max
(n = 9588)				
<i>Dependent variables</i>				
Price	191,696.30	96,174.57	42,900.00	440,000.00
SellingTime	65.26	69.53	1.00	365.00
<i>House characteristics</i>				
Age	24.91	17.04	0.00	90.00
SFHeated	1971.20	643.23	680.00	4516.00
Bedrooms	3.50	0.69	1.00	7.00
BathsFull	2.20	0.60	1.00	5.00
BathsHalf	0.22	0.42	0.00	2.00
Fireplace	0.35	0.48	0.00	1.00
HomeSecurity	0.24	0.43	0.00	1.00
Garage	0.92	0.27	0.00	1.00
SwimPool	0.30	0.46	0.00	1.00
WaterAccess	0.05	0.22	0.00	1.00
LotQrtToLessHalfAcre	0.29	0.46	0.00	1.00
LotHalfToLessOneAcre	0.05	0.22	0.00	1.00
LotOneToLessFiveAcre	0.04	0.18	0.00	1.00
<i>Neighbourhood and local market conditions</i>				
CommunityPool	0.05	0.21	0.00	1.00
HOA	0.61	0.49	0.00	1.00
MallDistance	6.61	3.00	0.92	13.76
<i>Foreclosure measures</i>				
BankOwned	0.24	0.43	0.00	1.00
ShortSale	0.17	0.38	0.00	1.00
<i>Senior group home measures</i>				
GroupHome	0.16	0.37	0.00	1.00
NumGroupHomes	0.24	0.62	0.00	4.00
(n = 1504)				
NursingHome	0.13	0.29	0.00	1.00
SizeNearGroupHome	68.27	55.68	5.00	240.00

and at least two bathrooms (summary statistics are provided in Table 2). The majority are located on lots containing less than one-quarter acre of land. Almost all the houses have a garage. Almost one-fourth report a home security system and just over one-third a fireplace. Only 5% have deeded access to water, most commonly a lake or pond; however, almost one-third have a private swimming pool and just fewer than 5% have access to a community pool. Almost two-thirds of the houses are located in communities with a HOA. Houses are located an average 6.61 miles (10.64 km) from the shopping mall. In a reflection of the time period included in the study, almost one-fourth of the transactions are bank owned houses and 17% are short sales. The houses were marketed for an average of 65 days before selling for an average price of \$191,696.

As for the variables of interest, 1504 (13%) of the single-family houses sold during the study period have at least one senior group home located within one-half mile with a maximum of four within that distance. Because of the larger number of assisted living facilities in the area, it is more likely that the closest facility to a given transaction is an assisted living group home (87%).

## Results

The full results of a regression analysis of a base model plus additional models reflecting the introduction of senior group home variables are provided in the

Appendix A. All the physical house characteristics in the base model contribute to price as expected with larger and newer houses selling for higher prices. Additional full bathrooms add value. Amenities such as a garage, fireplace, home security system and deeded access to water increase the price of a single-family house. Larger lots achieve higher prices. Buyers value swimming pools. Buyers place higher value on the smaller houses within a neighbourhood, with the larger houses 'pulling up' the smaller houses' values; similarly, houses that are 'overbuilt' for the neighbourhood do not command a proportionately higher price. Locations close to the shopping mall tend to command a higher price. The listing density variable is negative but very small, indicating that more competitive markets result in only slightly lower transaction prices. Houses being sold through a short sale or as bank owned after a foreclosure sell at a discount.

The *SellingTime* model reveals that older houses and those with more bathrooms sell more slowly as do those that are atypically large or small for the neighbourhood or located on lots of one acre or more. The competition variable is significant but very small, indicating that more competitive markets result in only slightly longer time-on-market. Short sales take less time, whereas bank-owned properties take longer to sell than non-distressed properties.

The results for the senior group home variables of interest are summarized in Table 3. Column 1 contains the model estimates for *Price* and column 2 *SellingTime* for the full sample. The price model's  $R^2$  is 89% and the time-on-market model's is 39%. The results in column 1 indicate that the presence of at least one assisted living facility or nursing home within one-half mile of house has a significant negative effect, reducing house price by almost 10%. If the facility is a nursing home, the negative influence on price is even greater. As assisted living facilities in this area may contain only five to six residents in a converted house or more than 100 in a purpose-built facility, whereas a majority of nursing homes house more than 100 residents, we also examine whether the size of the nearest facility is a factor contributing to the negative influence of group homes for seniors on house prices. As the results indicate, the size of the nearest facility has a very small, but significant effect, moderating the discount associated with proximity to a senior group home. The number of group homes within a one-half mile radius has a negative, but insignificant effect on price.

The availability of alternative housing to allow aging in place in the neighbourhood may be more important to older residents, and hence more older people may choose to buy houses in areas close to assisted living and nursing homes. To examine whether neighbourhood age composition moderates the senior group housing effect on price, we include an interaction term in the model. The positive sign on the interaction term indicates that houses in neighbourhoods with a larger older population (more than 20% aged 65 years and older) experience a smaller negative price effect from a nearby senior group home than houses in those neighbourhoods with a younger population. Looking at the time it takes to sell a house, only the size of the nearest facility within one-half mile has a significant effect, resulting in a longer time-on-market.

As our study period starts at the bottom of the economic cycle, the data includes a large number of distressed sales. Both the bank-owned and short-sale variables are significant in the equations, indicating bank-owned properties take longer to sell and

**Table 3.** SUR results for senior group home variables.

Dependent variable	Full sample		No distressed sales	
	ln(Price)	ln(SellingTime)	ln(Price)	ln(SellingTime)
GroupHome	-0.099*** (0.019)	-0.087 (0.106)	-0.066*** (0.023)	-0.009 (0.113)
NumGroupHomes	-0.018** (0.008)	-0.016 (0.043)	-0.023** (0.010)	0.014 (0.056)
NursingHome	-0.033** (0.017)	0.048 (0.093)	-0.038* (0.019)	0.029 (0.110)
SizeNearGroupHome	0.000*** (0.000)	0.001** (0.001)	0.000*** (0.000)	0.001* (0.001)
GroupHomex65	0.002*** (0.001)	-0.003 (0.005)	0.002** (0.001)	-0.011* (0.006)
Observations	9588	9588	5590	5590
R <sup>2</sup>	0.894	0.385	0.886	0.486

Notes: Columns 1 and 2 present the results for the full sample. Columns 3 and 4 present the results for the reduced sample excluding distressed sales (bank owned and short sales). Standard errors are represented in parentheses. \* $p < .10$ , \*\* $p < .05$ , \*\*\* $p < .01$ .

eventually sell at a lower price, whereas short sales take place more quickly, but also at a lower price, on average, than the market. To examine the behaviour of only the non-distressed transactions, we remove the short sales and bank-owned properties and run the regression on the reduced model with the 5590 non-distressed sales, producing the results in columns 3 and 4 of Table 3. The results indicate that the relationship of sales price to the variables of interest holds with some change in the magnitude of the coefficients. Among non-distressed properties, the negative effect of the number of group homes is sufficient to be significant. Meanwhile, the significance of the size of the nearest group home on marketing time is reduced for non-distressed sales.

## Discussion and conclusion

As the US population ages, the demand for group homes for seniors is likely to grow. Although the majority of Americans would prefer to age in place in their current homes, those who do move into more supportive housing often want to remain in the same geographic area. They would prefer to move locally and hence they can retain their friendships as well as relationships with doctors and other professionals. This demand for supportive housing and a desire to keep aging residents in the community puts pressure on local communities to allow the location of group housing for seniors in existing residential neighbourhoods. Communities in Florida are at the forefront of this demographic trend and have responded by creating zoning regulations that allow smaller assisted living facilities to be located in a wide range of districts subject to review to prevent geographic concentration. The permitted locations of nursing homes and larger assisted living facilities vary by jurisdiction. The implementation of these regulations in the context of public support and opposition has resulted in group housing for seniors scattered throughout these communities.

The growth in the number of senior group facilities and the dispersion of assisted living facilities into communities, while serving a growing demand, may also have unintended consequences on surrounding property values. If neighbourhood residents

perceive senior group homes as desirable neighbours, even perhaps a future home for themselves, then houses located nearby should be valued as highly or more so than houses in neighbourhoods that do not contain a senior group home. On the other hand, if residents perceive that group housing is a negative influence on the neighbourhood, either because of the higher occupancy than a single-family house, the size of the physical facility, or the image of frail residents, then surrounding house values will suffer.

The results of our analysis of single-family detached house sales in one Florida community indicate that the presence of a senior group home has a negative influence on house prices within one-half mile. The negative effect is felt most strongly in neighbourhoods with few older residents. This negative influence is exacerbated if the facility is a nursing home. The detrimental effect of nursing homes on single-family house prices is more significant for distressed sales. Meanwhile, there is some evidence of a clustering or threshold effect on price for non-distressed properties. A larger nearby senior group home contributes to a longer time on the market, especially for short sales and bank-owned properties.

The negative price effects of locating senior group homes near single-family houses may be attributable to several sources. One possibility is the classic NIMBY response to any other use than single-family in an otherwise homogeneous neighbourhood. Although everyone may want housing options to exist for aging residents, younger and healthier residents may want those options to be offered somewhere else because they do not feel it is fair that they shoulder the burden. Residents may anticipate negative externalities from the facilities such as congestion from commuting staff and visiting families as well as a high number of ambulance calls. In a youth-oriented culture, people may not perceive themselves as belonging in a neighbourhood where frail older people, sometimes with diminished cognitive abilities, use walkers and wheelchairs to navigate the sidewalks. This would explain the negative influence of senior facilities on house prices and the stronger influence in neighbourhoods housing more younger residents. It could also contribute to the stronger influence of nursing homes.<sup>4</sup> Ageism is a societal problem that is difficult to combat on a local level. Some of the negative effect could also be due to lack of knowledge among members of the general population about the different types of seniors housing and who lives in seniors housing as compared to other types of group homes.<sup>5</sup>

Local governments will face increasing pressure in the future to allow the provision of a range of housing alternatives for aging residents in their communities. The communities in this study have implemented land use regulations that allow smaller facilities to be considered in a range of zoning districts with the stated objective to avoid overconcentration. However, the moderating effect of the size of a nearby facility on the negative price influence indicates that small-scale facilities dispersed in the community do not have less negative impact than larger facilities of the same type. This may encourage local governments to follow a segregation approach, grouping all types of seniors housing from independent living to nursing homes in a zoning classification separate from other residential uses. This may not be possible in the United States where the Fair Housing Act may be interpreted as requiring local governments to allow assisted living and other housing for people with disabilities in residential zones; however, courts have upheld permit denials due to site problems



such as parking and inadequate access for safety vehicles (Hoffman & Landon, 2012; Menkin, 2001; Salkin, 2003). If communities use zoning to exclude group homes for elderly residents from residential neighbourhoods, developers are forced to locate in commercial zones where higher land prices put upward pressure on the cost of housing and care or else to locate in green fields that do not provide connections for the residents to the broader community and contributes to sprawl (Hoffman & Landon, 2012). Nursing homes are already restricted mostly to multiple family and commercial zoning districts. Thus, local officials must find a way to allow the development of a range of senior housing to accommodate older residents while garnering community support and maintaining the value of other residential properties.

Further research is needed to develop a complete picture of the influence group homes for seniors have on single-family house prices. First, the model can be expanded to consider the location of additional types of group homes to determine if house buyers differentiate among the types of residents in each facility. Adjustments can be made for topography, natural features and street design to determine which houses are located within sight distance of a senior group home as a refinement to the group home influence measures. In addition, the model can be tested outside of Florida in communities that may apply different land use regulations to senior group housing. The study can also be replicated in other countries experiencing similar demographic changes as the United States.

## Notes

1. A formal functional form test was not conducted, but the semi-log form utilized is commonly employed in this type of study (Deng, 2011; Galster et al., 2004; Koschinsky, 2009; Santiago et al., 2001; Schwartz *et al.*, 2006; Song & Knaap, 2004; Zhang *et al.*, 2016). A Breusch–Pagan test ( $\chi^2(1) = 0.008, p = .930$ ) indicates that heteroscedasticity is not present, and multi-collinearity does not appear to be a problem ( $VIF < 10$ ) for all the variables except Age and AgeSq.
2. We tested the addition of a continuous distance measure, but it was insignificant in both the price and the selling time equations.
3. One assisted living facility received its initial license September 2010, another September 2011, and a third October 2014. These facilities are considered in calculating group home influences on prices within one-half mile from their date of licensure. Another assisted living facility opened in the area in September 2017, but no sales took place within one-half mile from October 2017 through the end of the study period. No nursing homes or assisted living facilities within the study area are known to have closed during the study period.
4. As the location of nursing homes is more restricted than for assisted living facilities, some of the negative influence on house prices may reflect other uses located near the nursing home in the same zoning district.
5. For example, there is no federal definition of an assisted living facility in the United States and state standards vary widely (Kling 2002). There is even less commonality of terms internationally (Howe et al., 2013).

## Acknowledgement

An earlier version of this article received the American Real Estate Society 2018 award for the best article on seniors housing sponsored by the National Investment Center for Seniors Housing and Care (NIC).

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## Appendix A: Complete SUR results

Dependent variable	Base model		Full sample		No distressed sales	
	ln(Price)	ln(SellingTime)	ln(Price)	ln(SellingTime)	ln(Price)	ln(SellingTime)
<i>Senior group home measures</i>						
GroupHome			-0.099*** (0.019)	0.087 (0.106)	-0.066*** (0.023)	-0.009 (0.133)
NumGroupHomes			-0.012 (0.008)	-0.016 (0.043)	-0.0238* (0.010)	0.014 (0.056)
NursingHome			-0.033** (0.017)	0.048 (0.093)	-0.038* (0.019)	0.029 (0.110)
SizeNearGroupHome			0.000*** (0.000)	0.001** (0.001)	0.000*** (0.000)	0.001* (0.001)
GroupHomex65			0.002*** (0.001)	-0.003 (0.005)	0.002** (0.001)	-0.011 (0.006)
<i>House characteristics</i>						
Age	-0.013*** (0.001)	0.007** (0.003)	-0.013*** (0.001)	0.065** (0.003)	-0.011*** (0.001)	0.012*** (0.004)
AgeSq	0.000*** (0.000)	-0.000 (0.000)	0.000*** (0.000)	-0.000 (0.000)	0.000*** (0.000)	-0.000** (0.000)
LnSFHeated	0.871*** (0.016)	0.023 (0.091)	0.875*** (0.016)	0.042 (0.092)	0.834*** (0.020)	0.171 (0.116)
Smaller	0.228*** (0.025)	0.754*** (0.139)	0.228*** (0.025)	0.773*** (0.139)	0.142*** (0.031)	1.119*** (0.176)
Larger	-0.254*** (0.015)	0.429*** (0.084)	-0.254*** (0.015)	0.420*** (0.084)	-0.223*** (0.018)	0.474*** (0.104)
Bedrooms	-0.008* (0.004)	0.000 (0.022)	-0.008** (0.004)	-0.024 (0.022)	-0.010** (0.005)	0.023 (0.028)
BathsFull	0.031*** (0.005)	0.123*** (0.027)	0.031*** (0.005)	0.123*** (0.027)	0.034*** (0.006)	0.146*** (0.034)
BathsHalf	-0.015*** (0.005)	0.140*** (0.027)	-0.014*** (0.005)	0.143*** (0.027)	-0.015** (0.006)	0.159*** (0.034)
Fireplace	0.030*** (0.005)	-0.016 (0.026)	0.030*** (0.005)	-0.017 (0.026)	0.040*** (0.006)	-0.012 (0.032)
HomeSecurity	0.028*** (0.005)	-0.002 (0.027)	0.028*** (0.005)	-0.028 (0.027)	0.037*** (0.005)	-0.024 (0.031)
Garage	0.134*** (0.008)	-0.075* (0.044)	0.133*** (0.008)	-0.073* (0.044)	0.136*** (0.010)	-0.158*** (0.060)
SwimPool	0.093*** (0.005)	-0.043 (0.026)	0.094*** (0.005)	-0.045* (0.026)	0.094*** (0.006)	-0.044 (0.032)
WaterAccess	0.056*** (0.009)	-0.022 (0.047)	0.057*** (0.008)	-0.023 (0.047)	0.057*** (0.009)	-0.028 (0.053)

(continued)

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Continued.

Dependent variable	Base model		Full sample		No distressed sales	
	ln(Price)	ln(SellingTime)	ln(Price)	ln(SellingTime)	ln(Price)	ln(SellingTime)
LotQrtToLessHalfAcre	0.055*** (0.005)	0.015 (0.027)	0.055*** (0.005)	0.015 (0.027)	0.052*** (0.006)	-0.004 (0.033)
LotHalfToLessOneAcre	0.097*** (0.010)	0.044 (0.053)	0.096*** (0.010)	0.044 (0.053)	0.102*** (0.011)	0.005 (0.064)
LotOneToLessFiveAcre	0.210*** (0.012)	0.162** (0.066)	0.210*** (0.012)	0.166** (0.067)	0.186*** (0.014)	0.059 (0.080)
<i>Neighbourhood and local market conditions</i>						
CommunityPool	0.035*** (0.010)	0.010 (0.054)	0.039*** (0.010)	0.016 (0.054)	0.059*** (0.012)	-0.002 (0.070)
HOA	0.081*** (0.006)	-0.041 (0.034)	0.079*** (0.006)	-0.042 (0.034)	0.054*** (0.008)	-0.050 (0.044)
MallDistance	-0.014*** (0.002)	0.020 (0.013)	-0.015*** (0.002)	0.020 (0.013)	-0.012*** (0.003)	0.028* (0.017)
ListingDensity	-0.000** (0.000)		-0.000** (0.000)		-0.000 (0.000)	
Competition		0.000*** (0.000)		0.000*** (0.000)		0.000*** (0.000)
<i>Foreclosure measures</i>						
BankOwned	-0.225*** (0.005)	0.077*** (0.026)	-0.224*** (0.005)	0.081*** (0.027)		
ShortSale	-0.183*** (0.005)	-0.638*** (0.033)	-0.183*** (0.005)	-0.636*** (0.033)		
Month and year of sale	Yes	Yes	Yes	Yes	Yes	Yes
Census tract	Yes	Yes	Yes	Yes	Yes	Yes
Constant	5.546*** (0.129)	2.565*** (0.716)	5.543*** (0.129)	2.444*** (0.720)	6.016*** (0.164)	1.472 (0.936)
Observations	9588	9588	9588	9588	5590	5590
R <sup>2</sup>	0.893	0.384	0.894	0.385	0.886	0.486

Notes: Columns 1 and 2 present the results for the full sample base model containing no senior group home variables. Columns 3 and 4 present the results for the full sample including senior group home variables. Columns 5 and 6 present the results for a reduced sample excluding distressed sales (bank owned and short sales). Standard errors are represented in parentheses. Coefficients for variables that capture year and date sold and census tract location are not reported here.

\* $p < .10$ , \*\* $p < .05$ , \*\*\* $p < .01$ .

Did you know there are others just like you who have thought long and hard about taking the leap into the residential assisted living business?

The benefits of this industry and the incredible real estate opportunity it provides are HUGE, but sometimes taking the leap and actually getting started requires hearing from others and knowing that if they made it, so can you!

You don't have to look far to find real stories from real people just like you finding fulfillment and achieving financial security through residential assisted living.

These people became students of the proven formula offered through the RALAcademy and have opened thriving assisted living homes.

Now, with the Residential Assisted Living Business Accelerator Home Study Course, you can get immediate insight into how you can convert your residential home into an assisted living housing for seniors, and turn your home into a successful business while creating a healthy income stream for life!

If you have ever considered operating your own Residential Assisted Living Home, this is for you.

## **What does it cost to live in a Residential Assisted Living home?**

The average in America today is \$4,300 per month for a private room in assisted living. That includes everything from Medicare, Medicaid, to the highest privately paid. The idea of \$4,300 is average but you're more than likely going to be above average. You wouldn't want to put mom in an average place, when you pull up you don't even want to slow down the car.

Average or above, so \$4,300 to \$6,000 a month is what people pay for private assisted living homes. That's the sweet spot, that's the focus, that's what we teach people how to do. That's what you should plan on paying if you're going to move into somebody else's home. If you want to live for free, start your own home.

## **How can people afford Residential Assisted Living?**

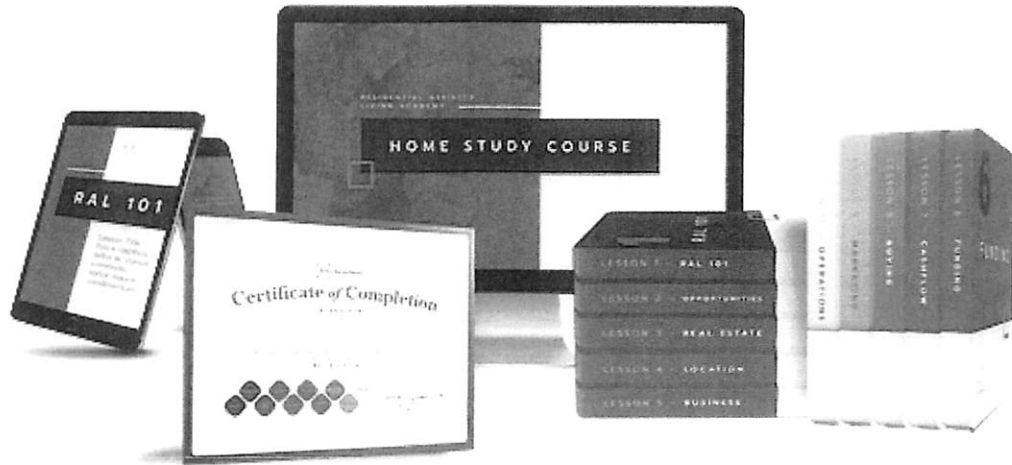
Five, six, \$8,000 a month, that's a lot of money. How do people afford it? We don't focus on Medicare and Medicaid. We focus on private-pay, so whether it be longterm care insurance or an individual's income stream from their pension, social security, or liquidating assets — like their own home or other assets and investments — to pay for their assisted living. This is what people typically do for assisted living.

Even if there is a senior who doesn't have access to those assets, it's their kids who are taking care of the costs.

So, how do people afford it? Frankly, they take care of it any way they can because they love mom and dad. The seniors we serve have families who make sure their parents have the very best care.

Can I do residential assisted living with or without my own money?

Can I use my own house for residential assisted living?



Sign up for the [Residential Assisted Living Academy's Online Training Course](#) and learn how to create a financial legacy for your family while also providing a real solution to a real need for real people.

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 Register for our free RAL 101 Introduction Course below.

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## Residential Assisted Living

# What it is and how it works!

RAL is an opportunity to create a financial legacy for your family while providing a real solution to a real need for real people.



## Your Success Is Within Reach

Is this your first time hearing about Residential Assisted Living? Do you want to know how it works, or how it will work for you?

-125-

This free training will answer every question and will give you peace of mind and confidence as you move forward into the lucrative world of Residential Assisted Living.

**GET ACCESS NOW!**



## **Fastest Way to Get Started**

Waiting on Residential Assisted Living is costing you money. Success-minded people are reaping the benefits while you're on the sidelines.

Our team of experts wants to help you get in the game so you can take your next step toward RAL success.

Are you ready to find out if NOW is the right time for you?

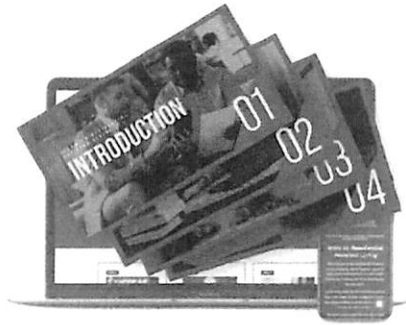
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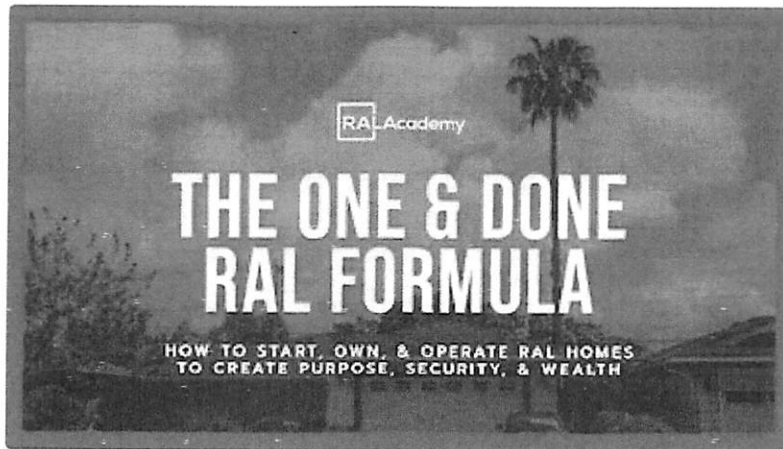
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**THE RAL BLUEPRINT**

The RAL formula, explained

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REVIEWS FROM RALACADEMY STUDENTS

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# Mary

Mary attended the RAL online course and then attended the in-person 3-Day Fast Track weekend. There was so much new information and being around the support team was so valuable to bounce ideas and questions off of others.

“There are so many different ways to get into the industry, it doesn’t have to be all in. You could own the real estate, you could be a placement agent, you can be a caregiver. There are so many different avenues that even if you think I could never do that, there is a level for everyone and they tell you about each level here.”

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# FREQUENTLY ASKED QUESTIONS

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The average in America today is \$4,300 per month for a private room in assisted living. That includes everything from Medicare, Medicaid, to the highest privately paid. The idea of \$4,300 is average but you’re more than likely going to be above average. You wouldn’t want to put mom in an average place, when you pull up you don’t even want to slow down the car.

Average or above, so \$4,300 to \$6,000 a month is what people pay for private assisted living homes. That's the sweet spot, that's the focus, that's what we teach people how to do. That's what you should plan on paying if you're going to move into somebody else's home. If you want to live for free, start your own home.

---

**+ How can people afford Residential Assisted Living?**

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**+ Can I do residential assisted living with or without my own money?**

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**+ Can I use my own house for residential assisted living?**

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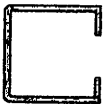
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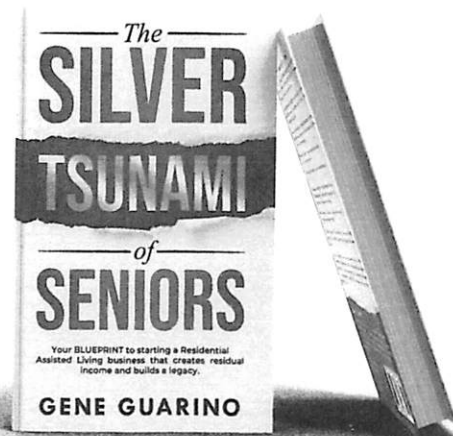
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In this 190-page comprehensive guide, he provides a complete A-Z overview of HOW TO Start a RAL business. Gene Guarino has built a national brand, recognition, and source for all things RAL.

His Assisted Living Family of companies consist of RAL Academy, the nation's premiere 3-day accelerated course for owning, operating and investing in RAL homes. In addition, he is founder of the RAL National Association, Family Legacy Homes, and the annual RAL National Convention.

He has trained thousands of people across the country how to turn single family homes into cash cows for financial freedom.

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RALAcademy

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If you are considering launching a business in residential assisted living, you're probably wondering where to start.

Over the years our experts have spent countless hours developing and perfecting what we've learned to better equip people just like you as you move toward this lucrative senior housing industry.

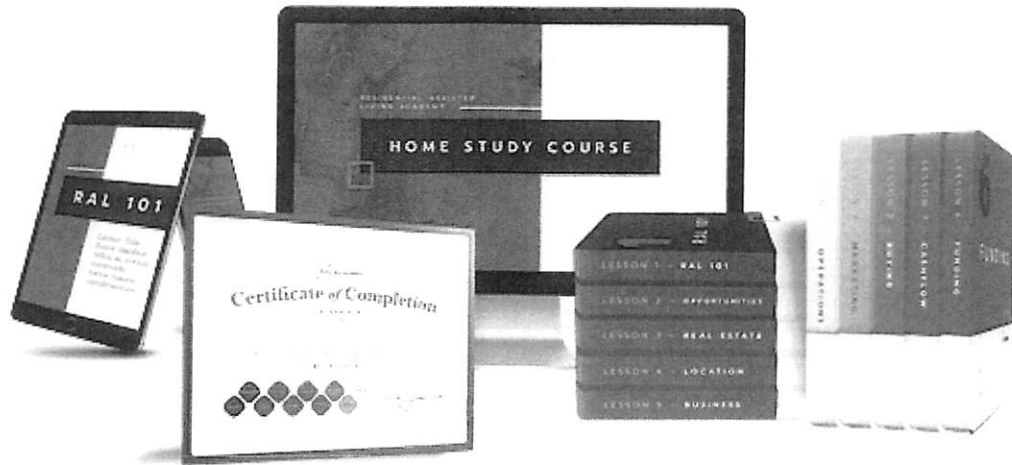
In reality, if you set out to build this business, we can teach you how to accomplish the following:

- Identify locations where RALs are primed to thrive
- Determine if your current properties are suitable for a RAL
- Attract and partner with the right investors and partners to bring your property to reality
- Build a team of qualified individuals
- Market to right clients

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Sincerely,

RALAcademy Team



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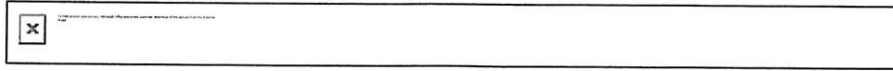
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## Why should I be there?

Learn how to turn one single-family home into \$5,000, \$10,000 even \$15,000 of monthly recurring cash-positive revenue..

## What's it all about?

Creating life-changing income and making financial freedom and family tradition.



Take The First Step

## One deal that will set you up for the rest of your life.

*"You're working way too hard and we want to show you how to make more money in less time. Identifying a problem gives you an opportunity to create a solution. The bigger the problem, the better!"*

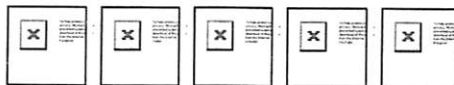
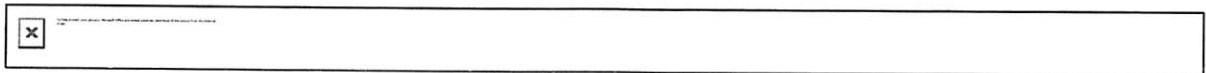
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*This big problem for a huge segment of the U.S. population means a HUGE opportunity for you.*

*Our passion is showing people just like you how to leverage one transaction to get exactly what you want — and that one deal will deliver financial freedom."*

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What if you could yield an additional \$10,000 or more each month? We're here to tell you that this is entirely possible in the Residential Assisted Living business opportunity.

### The numbers tell the story.

- The average cost for a private room in an Assisted Living Facility in the US is over \$4,000 per month.
- A single family home can net you \$10,000 per month or more!
- There are 77 million Baby Boomers in the United States and their #1 dilemma is housing!

If you have ever considered breaking into residential assisted living, you don't want to miss out on the [RALAcademy's Online Training](#) and get hands-on access to the RAL Formula that we developed.

Right now you can access our Residential Assisted Living Accelerator Certified Home Study Course and get immediate insight into how you can convert your residential home into a home built for assisted housing and senior living, and turn your home into a successful business while creating a healthy income stream for life!

[Sign up for the Residential Assisted Living Business Accelerator Home Study Course](#)

If you have ever considered operating your own Residential Assisted Living Home, then this is for you. Learn how to create a financial legacy for your family while also providing a real solution to a real need for real people.

**Start Enjoying BIG Cash Flow**

Sincerely,

RALAcademy Team

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**Are you looking for a way to Do Good & Do Well financially?**

We have an meaningful solution to this!

**What if you could start a business with HIGH monthly NET cash flow?**

This 'what if' is actually a reality through residential assisted living. Get the free course now.

**Discover How to 10x Your Income with Only One Single-Family Home**

Jump into our FREE introductory video course for residential assisted living and discover the next big real estate investment driven by the US population — not Wall Street.

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Residential assisted living is the next big boom in real estate and it is driven entirely by the US population.

**This free, 7-part course will take you from thinking you know what RAL is all the way to being able to explain exactly why it works!**

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Discover the 3 ways to get involved with residential assisted living and the 5 keys to Residential Assisted Living success!



Learn the definitions of RAL, see the real estate opportunity, and discover why you're in the right place at the right time.



Learn the secrets to getting 2X the rent by filling your home with long-term, low-impact tenants.



Get into the nitty gritty of Residential Assisted Living income/expenses and breaking down the numbers to discover how much you can really make.



Gain insight into mastering the most critical element of Residential Assisted Living success: identifying the right location.



How to conduct renovations, building your team, filling your home with residents, and getting paid.



Learn exactly what systems you'll need for long-term success, how to move fast, and next steps to get started.

[Get Immediate Access](#)

Sincerely,

RALAcademy Team

[Website](#) | [Phone](#) | [Email](#)



Operate Your Own Residential Assisted Living Home

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Residential Assisted Living Academy 315 W. Elliot Rd., Suite 107-605 Tempe, Arizona 85284 United States (480) 704-3065

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**EXHIBIT 4**

**LETTERS**

**MLHPD Letter of Findings  
And Recommendations  
August 15, 2023 -**

Page 1-2

**Mississippi Department of  
Archives and History Letter  
February 6, 2024**

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**Mississippi Heritage Trust Letter  
February 14, 2024**

Page 5

**Planning and Zoning Attorney  
Memorandum to MLHPD  
August 11, 2023**

Page 6-9

August 15, 2023

To: Scott Weeks, Planning and Zoning Administrator

From: Rita McGuffie, Mannsdale-Livingston Heritage Preservation District Commission

Re: The Oaks

Dear Mr. Weeks:

The Mannsdale-Livingston Heritage Preservation District Commission held its meeting on August 14, 2023 at 6 pm at the Chapel of the Cross, Madison, Mississippi. Petitioners Chad and Crystal Phillips presented their proposal for The Oaks Personal Care Assisted Living Home Conditional Use Application and Site Plan.

**FINDINGS:**

1. Petitioner has previously come before MLHPD with illegible and incomplete submittals.
2. MLHPD meets the 2nd Monday of each month if there is business to address within the District. However, MLHPD called special meetings on June 6, 2023 and July 31, 2023 to accommodate this petitioner.
3. At the July 31, 2023 meeting the petitioner came before MLHPD with an illegible incomplete submittal during which the petitioner said they had submitted some of the missing items to the Planning and Zoning Administrator and Mr. Weeks had failed to forward. However, they did not bring these items to the meeting themselves either. MLHPD tabled the review in that small hard copies were illegible for the items we review under the guidelines of the Zoning Ordinance for Madison County (ZOMC). Several times Ms. Phillips tried to present items on her cell phone. Ms. Phillips stated that she was very familiar with the ZOMC and referenced she had conferred with P&Z Attorney in depth about this proposal. Proposal was tabled and petitioner was given opportunity to come back with legible documents that could be reviewed.
4. Planning and Zoning moved forward with the Public Hearing on the Oaks on August 10, 2023, and approved this project conditional upon approval by MLHPD at its next meeting on August 14, 2023.
5. At the August 14, 2023 meeting MLHPD asked Mr. Phillips whether the information shown on the Madison County website under Active Planning and Zoning Cases was the complete and final submittal for the Oaks and was, in fact, the information that was presented to Planning and Zoning Commission for review at the Public Hearing on August 10, 2023, and was the exact submittal that was brought to MLHPD on August 14, 2023. Mr. Phillips confirmed that this was his complete and final submission information that was presented to Planning and Zoning, shown for the public on Madison County website and was presented to MLHPD on August 14, 2023.
6. The Conditional Use application shown on the Madison County website listed the Use applied for was Luxury Assisted Living. Petitioners stated that the requested Use had been changed to Personal Care Assisted Living and an amended Conditional Use application had been submitted to Planning and Zoning but they did not have a copy of it to include with their proposal. MLHPD pointed out that there is no definition/reference in ZOMC for this new verbiage. Mr. Phillips stated that his entire property is under the Conditional Use Application which is for a Conditional Use on an underlying C-1 zoning. He stated that he had the legal description required to be submitted along with this application, but could not produce it. Under ZOMC Section 1910 MLHPD shall review Conditional Use applications.
7. When MLHPD asked for the Application for Certificate of Appropriateness that is required under ZOMC Section 1913, they responded with questions about whether there was a form to use but then stated that they had sent the completed form to P&Z and that P&Z had

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already sent it to MLHPD. Ms. McGuffie verified that no Certificate of Appropriateness had been forwarded to us and the petitioners could not provide a copy from their files.

8. The petitioners do not have approval letter from MDOT for the entrance from Highway 22 at this time. Construction would come through an easement across adjacent property within Livingston Township.
9. Petitioner has stated throughout review process that emphasis has been placed on the front elevation of the building. MLHPD has had concerns over the side elevations from the beginning since they would be in view of existing adjoining property. Petitioner has not chosen to address this during the submittal process. The very long white side wall has 2 small windows which are out of proportion to the elevation. No landscaping has been shown on the material we have been presented. MLHPD voiced its concern that these elevations will not be softened by landscaping or screened from view of adjoining property. Petitioner indicated they have chosen to use their resources for the front elevation and the interior.
10. From our first time to meet with Mr. Phillips, MLHPD expressed the importance of the required 80 foot additional landscape buffer for every commercial development to the overall look and feel of the entire District. This is one of the means by which the Overlay District can soften the impact of development. We indicated that every Commercial project has provided a detailed 80 foot landscaping plan for MLHPD to review as to its appropriateness for that particular site. MLHPD suggested Mr. Phillips provide photographs of existing trees that he wants to leave in place along with any plans for additional plantings/features to attach to submittal for our required review. Mr. Phillips stated at July 31st and August 14th meetings that this would require time and money and he had decided not to do anything. Under residential projects in the District, developer has the option of a 100 foot natural buffer or a 60 foot landscaped and maintained buffer. Commercial shall have 80 foot *landscaped* buffer. (ZOMC Section 1907)
11. Hours of operation were not submitted in writing. Mr. Phillips stated that occupancy would be 24 hour but open to the public from 8 am to 8 pm.
12. No written statement was included concerning compliance to noise pollution. Mr. Phillips verbally confirmed that the project would be compliant with noise ordinance.
13. Also verbally, Mr. Phillips indicated no security fencing will be installed except maybe on rear patio.
14. Also verbally, Mr. Phillips stated that there is no nursing station proposed.
15. MLHPD pointed out that a few units did not have Mississippi State Department of Health required outside exposure.
16. Since Planning and Zoning Public Hearing Meeting came prior to MLHPD being able to provide their review, in order to provide a cohesive county review MLHPD verified with Mr. Phillips that the information provided on August 14 was the same material that was presented to the county at Planning and Zoning Public Hearing on August 10 and published on the Madison County website. References for MLHPD review include: ZOMC Sections 1907, 1910, 1911, 1912, 1913.
17. Following Mr. Phillips statement that he stands by his proposal as presented, a motion was brought before MLHPD to deny this proposal based on the fact that presentation tonight is incomplete, there is a lack of information about landscaping and the side elevations which can be viewed by adjoining landowners are not appropriate. The motion was seconded and carried with David Landrum recusing himself from voting.

#### RECOMMENDATION:

MLHPD recommends that this Conditional Use/Site Plan for the Oaks Personal Care Assisted Living facility as presented by James "Chad" Phillips and Crystal Gardner Phillips be denied.

Rita McGuffie, MLHPD

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2/6/2024

Madison County Board of Supervisors  
125 West North Street  
P. O. Box 608  
Canton, MS 39046

Re: Certificate of Appropriateness (COA) Review for Mannsdale-Livingston Heritage  
Preservation District

Dear members of the board:

A member of the Mannsdale-Livingston Heritage Preservation Commission contacted MDAH recently and requested we provide comment regarding the pending review of the COA for the proposed construction of The Oaks, a personal residential assisted living facility, in the Township of Livingston. While we have no regulatory authority in this particular matter, as the State Historic Preservation Office we are charged with assisting communities throughout the state in the administration of their local preservation policies. Under the guidance of the Secretary of the Interior's Preservation Brief 36, *Protecting Cultural Landscapes: Planning, Treatment and Management of Historic Landscapes*, preservation is defined as the act or process of applying measures necessary to sustain the existing form, integrity, and materials of an historic feature.

The junction of Highways 463 and 22 is the location of what was the town of Livingston, the first town and county seat in Madison County. Livingston and Highway 463's surrounding rural landscape are noted in the purpose statement of the Mannsdale-Livingston district ordinance as important features of the district.

After review of the Mannsdale-Livingston district ordinance, two main stipulations provide for the protection of the viewsheds and preservation of historic integrity. Additionally, one of the purposes of the certificates of appropriateness is to prohibit unsuitable structures that would be out of harmony or incongruent with the existing visual features within the district. While MDAH has not been provided any renderings or site plans regarding the proposed design, we do believe the new construction of a 13,000 square foot living facility would be inappropriate in terms of scale and massing for the surrounding landscape and setting. Therefore, it is the opinion of MDAH staff that the construction of this size facility would not be in keeping with the historic vernacular landscape to the greater Mannsdale-Livingston Heritage District.

Please do not hesitate to contact me if you have any questions or require additional guidance.

Sincerely,

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*Barry White*

Barry White  
Deputy State Historic Preservation Officer  
Director, Historic Preservation Division  
601-576-6953  
bwhite@mdah.ms.gov

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## MISSISSIPPI HERITAGE TRUST

P.O. BOX 577 • JACKSON, MS 39205 • P. 601.354.0200

preservation@mississippiheritage.com • mississippiheritage.com

February 14, 2024

Madison County Board of Supervisors  
P. O. Box 608  
Canton, MS 39046

Dear Members of the Board,

I am writing to express my concern regarding the proposed construction of The Oaks, an assisted living facility in the Township of Livingston. As stated in the ordinance that established the Mannsdale-Livingston Heritage Preservation District, the rural character of Livingston and Highways 463 and 22 are defining features of the district. The construction of a 13,000 square-foot assisted living facility would be inappropriate in terms of scale and massing for the surrounding area and detract from the historic vernacular landscape of the greater Mannsdale-Livingston Heritage District.

When the Madison County Board of Supervisors adopted the ordinance that established the Mannsdale-Livingston Heritage Preservation District, it empowered the Mannsdale-Livingston Heritage Preservation Commission to review proposed development in the historic preservation district to ensure that new construction would be in keeping with the character of the district. The members of the Mannsdale-Livingston Heritage Preservation Commission, who volunteer their time for the betterment of the community, have acted in accordance with that mandate in voting to deny a Certificate of Appropriateness for a new development that is not in keeping with the character of the historic preservation district. I urge you to uphold their decision.

Sincerely,

Lolly Rash  
Executive Director

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**LAW OFFICES OF ANDY J. CLARK, PLLC**  
**567 HIGHWAY 51 NORTH, SUITE C RIDGELAND, MS**  
**39157**

P-601-622-7334

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**August 11, 2023**

To: Rita McGuffie, Chair  
Mannsdale-Livingston Historic Preservation Commission

Scott Weeks, Administrator  
Madison County Planning & Zoning Commission

From: Andy J. Clark, Esq.  
Counsel to Madison County Planning & Zoning Commission

cc: A. Mike Espy, Esq.  
Counsel to Madison County Board of Supervisors

**RE: The Oaks-Assisted Living Facility Conditional Use-Public/  
Quasi-Public Facility**

**MEMORANDUM OPINION**

Rita:

I write to further address certain issues raised at the August 10, 2023, meeting of the Planning & Zoning Commission regarding the above-referenced Application.

**Issue:**

Is an assisted living facility, such the one proposed by the Application for Conditional Use for a Public/Quasi-Public Facility (with Site Plan) submitted by Chad Phillips permitted in the Mannsdale-Livingston

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Historic Preservation District, as set forth in the Madison County Zoning Ordinance?

**Brief Answer:**

Yes.

**Governing Ordinance Provisions:**  
Article III: Interpretations and Definitions

andy@andyjclark.com

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Page 1 of 4

Article XIX: Mannsdale Livingston Historic Preservation District-  
Section 1901(c)

Article XXI: General Commercial District (C-1) **Analysis:**

**Background:**

The property for this proposed Assisted Living Facility lies just west of the corner of Highway 463 and Highway 22, is zoned as C-1 General Commercial District with a PUD overlay, is in Supervisor District 4, and lies within the bounds of the Mannsdale-Livingston Historic Preservation District. Applicant seeks this conditional use in order to construct and run an assisted living facility.

**Definitions:**

Article III defines **Public/Quasi-Public Facilities and Utilities** as:

Any building, structure, system, use, or combination of uses, which is customarily and ordinarily provided by either public or private agencies, groups, societies, corporations, or organizations, whose purpose is the provision of necessary and desirable goods and/or services for the general public health, safety, and welfare. Such uses shall include, but not be limited to:

...

E. Convalescent homes or nursing homes.

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Article III defines **Nursing Home** as:

Those health facilities where persons are housed and furnished with meals and continuing nursing services for a fee. Also known as Convalescent Home or Rest Home.

Article III defines **Assisted Living** as:

Assisted refers to a type of physical assistance rather than monetary assistance. In assisted living facilities, residents live independently in apartment or condominium style accommodation, and may be assisted by the provision of meals, housekeeping, security and social programs. Additional planned care, such as bathing, dressing and assistance with medication may also be provided.

**Question raised: *Is this an inappropriate use since apartments and condominiums are specifically prohibited in MLHPD?***

**Answer:** No.

Article III defines **Apartment** as:

A dwelling unit located in a multiple family structure for occupancy by one family only, either rented or leased to the occupants.

Article III defines **Dwelling, Multiple Family** as: Page 2 of 4

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Any residential building or portion thereof which is occupied by three or more families living independently of each other. The term "multiple-family dwelling" shall be understood to include apartment houses or "complexes" and condominiums.

Article III defines **Condominium** as:

Real property consisting of an undivided interest in common or a portion of a parcel of real property, plus a separate interest in space in a residential, office, commercial or other land use.

As for the proposed assisted living facility, it cannot be considered an "apartment" because the facility is not a "multi-family structure" in a residential building. Rather, it is a proposed commercial building in a commercial designated district. Such use is only appropriate, and may

only be approved by Application for Conditional Use for a Public/Quasi-Public Facility.

Without question, the proposed assisted living facility cannot be considered a "condominium," as the residents will not own any interest in any portion of the real property.

It is important to note here that apartments and condominiums are only allowed in certain residential zoning designations. They are not permitted in commercial zoning designations. As such, that is the reason that Nursing Homes, Convalescent Homes, Rest Homes, and Assisted Living Facilities are only permitted as a Conditional Use for a Public/Quasi-Public Facilities and Utilities in all zoning designations, including commercial designations.

**Question raised: *Is this use prohibited by Deed Restriction?***

**Answer:** No.

This property was previously deed restricted to only allow 2000 sf. single family residences by the Greaves family and others. See Deeds, attached to this memo as collective **Exhibit "A."** However, those covenants and restrictions were specifically terminated to allow for commercial purposes. See Termination of Covenants attached to this memo as collective **Exhibit "B."** Moreover, the Special Warranty Deed from the Greaves family to Chestnut Hill, LLC (predecessor in title to the Applicant) specifically states that the Grantor (Greaves) knew of the Grantee's (Chestnut's) plans to develop the property commercially. See Special Warranty Deed attached to this memo as **Exhibit "C."**

**Question raised: *What if the owners go out of business and sell? Doesn't that open the door for any type of commercial use of the property?***

**Answer:** No.

Article IV, Section 406.14 states:

Upon change in use of a structure or parcel and prior to issuance of a privilege license, a zoning verification must be completed by the Madison County Administrator, or their appointee. The proposed use of the property should comply with the zoning regulations for that type use including, but not limited to, off-street parking and access and buffer

screening as deemed appropriate to protect the health, safety, and welfare of the general public.

As such, any change of use in the property or building would have to come back before Planning & Zoning for approval.

Page 3 of 4

### **Conclusion**

Based on the analysis set forth above, I am of the opinion that the Application for Conditional Use for a Public/Quasi-Public Facility with Site Plan is proper.

I hope you find this information helpful and informative as MLHPD reviews this application.

---

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~~Mississippi Code of Ethics 25-41-5 Official meeting of Public Bodies~~

(a) "Public body" means any executive or administrative board, commission, authority, council, department, agency, bureau or any other policymaking entity, or committee thereof, of the State of Mississippi, or any political subdivision or municipal corporation of the state, whether the entity be created by statute or

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## **EXHIBIT 5**

### **GENERAL INFORMATION**

The Mannsdale-Livingston Heritage Preservation District Commission was created at the inception of the Mannsdale-Livingston Heritage Preservation Overlay District which was approved in 2003 and became a part of Madison County Zoning regulations. In order to have representation of the Mannsdale/Livingston community concerning the MLHP Overlay District, the advisory group was an important facet of the negotiations leading up to the formation of the MLHP Overlay District. This District was created with 100 percent of the landowners signing in favor of the regulations set forth in the preliminary document. The MLHP Overlay District was recognized by the Mississippi Heritage Trust as one of the 10 Most Endangered areas. Governor Phil Bryant signed the Gateway to History Scenic Byway into existence recognizing the historic relevance of the area and identifying its intrinsic resources. Mississippi State Department of Archives and History has worked on projects in this area including providing information regarding the original county seat for Madison County which is the land where Livingston Township is located and whose architectural standards reflect design and materials that have provided a venue which offers visitors a re-creation of the original county seat. Livingston Township developers have indicated to MLHPD that the Township has resort status. We do not have confirmation of this in writing, but this information should be available from the appropriate governing body and may already be in the county's record.

MLHPD Commission is strictly voluntary. MLHPD Commission is an advisory Commission and as such reviews proposals in the District to advise the County whether proposals fit the standard of the MLHP Overlay District regulations. The Commission sends the County our findings and recommendations. The Board of Supervisors is the final authority for approval of any project within Madison County. MLHPD Commission MLHPD Commission has not received nor expended county funds.

Mississippi Code of Ethics 25-41-3 Official meeting of Public Bodies

(a) "Public body" means any executive or administrative board, commission, authority, council, department, agency, bureau or any other policymaking entity, or committee thereof, of the State of Mississippi, or any political subdivision or municipal corporation of the state, whether the entity be created by statute or

executive order, which is supported wholly or in part by public funds or expends public funds, and any standing, interim or special committee of the Mississippi Legislature. The term "public body" includes the governing board of a charter school authorized by the Mississippi Charter School Authorizer Board and the board of trustees of a community hospital as defined in Section 41-13-10. There shall be exempted from the provisions of this chapter:

MLHPD meetings and votes are held in public. MLHPD Commission shall keep minutes and records of all meetings and proceedings including voting records, attendance, resolutions, findings, determinations and decisions. All such material shall be a matter of public record. Section 1903.03. (*Exhibit 1*) The Chairman of MLHPD Commission is the contact with the County. Section 1913.02 (*Exhibit 1*) Since MLHPD Commission members are not County employees and do not have phones or emails provided by the County, their personal information is only provided by their individual consent.

MLHPD Commission has served Madison County since 2003 and helped protect the treasured historic resources within the District while diligently working with developers to ensure projects enhance the District. Many of our current and past MLHPD Commission members have been in their 60s and 70s and fit into the category of "seniors". MLHPD certainly does not discriminate against seniors and many Commission members know first hand the responsibilities of caring for aging relatives. For the petitioner or his representative to infer that MLHPD denial is based on anything more than upholding the standards of the Madison County Zoning Ordinance Article 1900 is entirely unwarranted.

In response to the directive from the Madison County Board of Supervisors on January 18, 2024 (*Exhibit 2*) at the Public Hearing on the appeal of Planning and Zoning Commission's approval on the Oaks to "send back" the proposal to MLHPD for further review, MLHPD called a special meeting on January 30, 2024 at 6:30pm at the Chapel of the Cross in Madison, Mississippi, which is our regular meeting place. Mr. Steen's directive included a time limit of 2 weeks for MLHPD to meet and review. A quorum of MLHPD Commission members (Ken Primos, David Cado, Bill Buhner, Rita McGuffie, Phyllis Doby, Michael Yerger and Tisha Green) was present as well as Mr. Scott Weeks, ex-officio as Planning and Zoning Administrator, Mr. Andy Clark, Planning and Zoning Attorney, Mr. Trey Baxter, Madison County Supervisor and Mr. Casey Brannon, Madison County Supervisor.



MLHPD Commission members Donnie Young and Carole Brand were unable to attend. MLHPD received its first information from the County on Thursday, January 25, 2024, which was an electronic copy of a Supplemental Submittal in Support of Conditional Use from Mr. Weeks for MLHPD Commission members to be able to reference ahead of the meeting so that we could be informed and ready for the upcoming meeting. By Friday, January 26, 2024, MLHPD had established a quorum and scheduled our regular meeting venue for Tuesday January 30, 2024 at 6:30pm. Mr. Weeks was emailed as soon as this meeting was confirmed on Friday morning, January 26, 2024 with all pertinent information concerning the upcoming MLHPD meeting. Mr. Weeks, as Planning and Zoning Administrator, is the coordinator for projects as per Section 808, 801.01 A, F and G and 1913.02 (*Exhibit 1*)

Under the Zoning Ordinance for Madison County, MLHPD's review duties are outlined in Sections 1909, 1909.02 B, C and D, 1910, 1911, 1912, 1913, 1903.01 (*Exhibit 1*). MLHPD's primary function shall be to review applications for Certificates of Appropriateness. This Commission shall also review all applications for rezoning, variances and special exceptions anywhere within the MLHP District. Section 1909 (*Exhibit 1*).

#### SECTION 1913 - CERTIFICATE OF APPROPRIATENESS REQUIRED

A Certificate of Appropriateness *shall be required* before any new construction (except single-family residences) can be undertaken within the MLHP Overlay District. Therefore:

A. The Commission shall serve as an advisory body to recommend approval or denial by the Board of Supervisors of applications for Certificates of Appropriateness.

B. In recommending approval and denial of applications for Certificates of Appropriateness, the Commission shall seek to accomplish the purposes of this ordinance.

C. All decisions of the Commission shall be in writing and shall state the findings of the Commission, its recommendations, and the reasons therein

***1913.01 Purposes of a Certificate of Appropriateness: A "Certificate of Appropriateness" is a document issued by the Madison County Board of Supervisors approving a proposed new construction in the MLHP Overlay district. The purposes of the Certificate of Appropriateness are:***

***A. To conserve the values of existing buildings and structures.***

***B. To prevent excessive uniformity and dissimilarity and inappropriateness or poor quality of design in the***

*exterior appearance of structures.*

*C. To prohibit unsightly and unsuitable structures that would be out of harmony or incongruent with the existing visual features within the district.*

*D. To prevent harm and damage to the District which will result from the absence of such review and manifest itself by:*

*1. lower property values;*

*2. decreased economic growth; or*

*3. diminished future opportunities for land use and development.*

1913.02 Procedures for Consideration of Applications for Certificates of Appropriateness: Anyone desiring to undertake new construction (except single-family residences) in the MLHP Overlay district ***must submit an application*** (on a form provided by the office of the Zoning Administrator) for a Certificate of Appropriateness to the Madison County Zoning Administrator, who shall forward this application to the Chairperson of the Mannsdale-Livingston Heritage Preservation Commission. The Commission shall review the application and either recommend approval, denial, or make recommendations for changes and modifications as it deems necessary in order for the applicant to meet the standards and guidelines for the action to be performed. If the applicant's plans meet the approval of the Commission, the Chairman of the Commission shall sign the Certificate and it shall be forwarded to the Planning and Zoning Commission then the Board of Supervisors for review and final approval. Following approval by the Board of Supervisors, the Certificate shall be forwarded to the Building Official for issuance of a building permit.

If the Commission should reject the application or recommend changes and modifications not acceptable to the Applicant, the Applicant may appeal the Commission's decision directly to the Board of Supervisors.

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

805.01 The Planning and Zoning Commission shall not grant a conditional use unless satisfactory provision and arrangement has been made concerning all of the following:

A. Ingress and egress to property and proposed structures thereon with particular reference to vehicular and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.

B. Off-street parking and loading areas.

C. Refuse and service areas.

D. Utilities, with reference to locations, availability, and compatibility.

E. Screening and buffering with reference to type, dimensions, and character.

F. Required yards and other open space.

**G. General compatibility with adjacent properties and other property in the district.**

H. Any other provisions deemed applicable by the Planning and Zoning Commission or the Board of Supervisors.

**ADDENDUM “ A”**

**Submittal by Bob Germany  
MLHPD Meeting  
January 30, 2024**

**Assignment of Rents  
Loan Document**

**Page 158-166**

**Deeds**

**Page 167-177**



Madison County, MS  
 I CERTIFY THIS INSTRUMENT FILED/RECORDED  
 9/12/2023 2:48:12 PM  
 INST. 989246 PAGE 1 OF 9  
 BOOK T - 4369/173  
 WITNESS MY HAND AND SEAL  
 Ronny Lott, C.C. BY: RGK D.C.

WHEN RECORDED MAIL TO: THE FIRST BANK, P.O. Box 15549, Hattiesburg, MS 39404, Tel. (601) 268-8998

SEND TAX NOTICES TO: THE FIRST BANK, P.O. Box 15549, Hattiesburg, MS 39404, Tel. (601) 268-8998

This ASSIGNMENT OF RENTS prepared by: Sara McRaney, Loan Processor, THE FIRST BANK, 801 Baptist Drive, Madison, MS 39110, (655) 257-2265

INDEXING INSTRUCTIONS: 5.08 ACRES LOCATED IN SECTION 8, TOWNSHIP 8 NORTH, RANGE 1 EAST, MADISON COUNTY, MISSISSIPPI..

FOR RECORDER'S USE ONLY

**ASSIGNMENT OF RENTS**

GRANTOR: CPOR REI LLC, 282 Lake Village Drive, MADISON, MS 39110, Tel. (504) 251-1576

LENDER: THE FIRST BANK, Madison, 801 Baptist Drive, Madison, MS 39110, Tel. (601) 605-2728

THIS ASSIGNMENT OF RENTS dated August 11, 2023, is made and executed between CPOR REI LLC, whose address is 282 LAKE VILLAGE DR, MADISON, MS 39110-6522 (referred to below as "Grantor") and THE FIRST BANK (referred to below as "Lender").

**ASSIGNMENT.** For valuable consideration, Grantor hereby assigns, grants a continuing security interest in, and conveys to Lender all of Grantor's right, title, and interest in and to the Rents from the following described Property located in MADISON County, State of Mississippi:

See EXHIBIT A, which is attached to this Assignment and made a part of this Assignment as if fully set forth herein.

The Property or its address is commonly known as 3625 HIGHWAY 22, FLORA, MS 39071-9396.

**CROSS-COLLATERALIZATION.** In addition to the Note, this Assignment secures all obligations, debts and liabilities, plus interest thereon, of either Grantor or Borrower to Lender, or any one or more of them, as well as all claims by Lender against Borrower and Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Borrower or Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

THIS ASSIGNMENT IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS AND (2) PERFORMANCE OF ANY AND ALL OBLIGATIONS OF BORROWER AND GRANTOR UNDER THE NOTE, THIS ASSIGNMENT, AND THE RELATED DOCUMENTS. THIS ASSIGNMENT IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

**GRANTOR'S WAIVERS.** Grantor waives all rights or defenses arising by reason of any "one action" or "anti-deficiency" law, or any other law which may prevent Lender from bringing any action against Grantor, including a claim for deficiency to the extent Lender is otherwise entitled to a claim for deficiency, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale.

**BORROWER'S WAIVERS AND RESPONSIBILITIES.** Lender need not tell Borrower about any action or inaction Lender takes in connection with this Assignment. Borrower assumes the responsibility for being and keeping informed about the Property. Borrower waives any defenses that may arise because of any action or inaction of Lender, including without limitation any failure of Lender to realize upon the

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**ASSIGNMENT OF RENTS  
(Continued)**

Loan No: 1070003956

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Property, or any delay by Lender in realizing upon the Property. Borrower agrees to remain liable under the Note with Lender no matter what action Lender takes or fails to take under this Assignment.

**PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Assignment or any Related Documents, Grantor shall pay to Lender all amounts secured by this Assignment as they become due, and shall strictly perform all of Grantor's obligations under this Assignment. Unless and until Lender exercises its right to collect the Rents as provided below and so long as there is no default under this Assignment, Grantor may remain in possession and control of and operate and manage the Property and collect the Rents, provided that the granting of the right to collect the Rents shall not constitute Lender's consent to the use of cash collateral in a bankruptcy proceeding.

**GRANTOR'S REPRESENTATIONS AND WARRANTIES.** Grantor warrants that:

**Ownership.** Grantor is entitled to receive the Rents free and clear of all rights, loans, liens, encumbrances, and claims except as disclosed to and accepted by Lender in writing.

**Right to Assign.** Grantor has the full right, power and authority to enter into this Assignment and to assign and convey the Rents to Lender.

**No Prior Assignment.** Grantor has not previously assigned or conveyed the Rents to any other person by any instrument now in force.

**No Further Transfer.** Grantor will not sell, assign, encumber, or otherwise dispose of any of Grantor's rights in the Rents except as provided in this Assignment.

**LENDER'S RIGHT TO RECEIVE AND COLLECT RENTS.** Lender shall have the right at any time, and even though no default shall have occurred under this Assignment, to collect and receive the Rents. For this purpose, Lender is hereby given and granted the following rights, powers and authority:

**Notice to Tenants.** Lender may send notices to any and all tenants of the Property advising them of this Assignment and directing all Rents to be paid directly to Lender or Lender's agent.

**Enter the Property.** Lender may enter upon and take possession of the Property; demand, collect and receive from the tenants or from any other persons liable therefor, all of the Rents; institute and carry on all legal proceedings necessary for the protection of the Property, including such proceedings as may be necessary to recover possession of the Property; collect the Rents and remove any tenant or tenants or other persons from the Property.

**Maintain the Property.** Lender may enter upon the Property to maintain the Property and keep the same in repair; to pay the costs thereof and of all services of all employees, including their equipment, and of all continuing costs and expenses of maintaining the Property in proper repair and condition, and also to pay all taxes, assessments and water utilities, and the premiums on fire and other insurance effected by Lender on the Property.

**Compliance with Laws.** Lender may do any and all things to execute and comply with the laws of the State of Mississippi and also all other laws, rules, orders, ordinances and requirements of all other governmental agencies affecting the Property.

**Lease the Property.** Lender may rent or lease the whole or any part of the Property for such term or terms and on such conditions as Lender may deem appropriate.

**Employ Agents.** Lender may engage such agent or agents as Lender may deem appropriate, either in Lender's name or in Grantor's name, to rent and manage the Property, including the collection and application of Rents.

**Other Acts.** Lender may do all such other things and acts with respect to the Property as Lender may deem appropriate and may act exclusively and solely in the place and stead of Grantor and to have all of the powers of Grantor for the purposes stated above.

**No Requirement to Act.** Lender shall not be required to do any of the foregoing acts or things, and the fact that Lender shall have performed one or more of the foregoing acts or things shall not require Lender to do any other specific act or thing.

**APPLICATION OF RENTS.** All costs and expenses incurred by Lender in connection with the Property shall be for Grantor's account and Lender may pay such costs and expenses from the Rents. Lender, in its sole discretion, shall determine the application of any and all Rents received by it; however, any such Rents received by Lender which are not applied to such costs and expenses shall be applied to the Indebtedness. All expenditures made by Lender under this Assignment and not reimbursed from the Rents shall become a part of the Indebtedness secured by this Assignment, and shall be payable on demand, with interest at the Note rate from date of expenditure until paid.

**FULL PERFORMANCE.** If Grantor pays all of the Indebtedness when due and otherwise performs all the obligations imposed upon Grantor under this Assignment, the Note, and the Related Documents, Lender shall execute and deliver to Grantor a suitable satisfaction of this Assignment and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Property. Any termination fee required by law shall be paid by Grantor, if permitted by applicable

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**ASSIGNMENT OF RENTS  
(Continued)**

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law.

**LENDER'S EXPENDITURES.** If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Assignment or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Assignment or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Rents or the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Assignment also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon the occurrence of any Event of Default.

**DEFAULT.** Each of the following, at Lender's option, shall constitute an Event of Default under this Assignment:

**Payment Default.** Borrower fails to make any payment when due under the indebtedness.

**Other Defaults.** Borrower or Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Assignment or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower or Grantor.

**Default on Other Payments.** Failure of Grantor within the time required by this Assignment to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

**Default in Favor of Third Parties.** Borrower, any guarantor or Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's, any guarantor's or Grantor's property or ability to perform their respective obligations under this Assignment or any of the Related Documents.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Borrower or Grantor or on Borrower's or Grantor's behalf under this Assignment or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Defective Collateralization.** This Assignment or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

**Death or Insolvency.** The dissolution of Grantor's (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Borrower's or Grantor's existence as a going business or the death of any member, the insolvency of Borrower or Grantor, the appointment of a receiver for any part of Borrower's or Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower or Grantor.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or Grantor or by any governmental agency against the Rents or any property securing the indebtedness. This includes a garnishment of any of Borrower's or Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower or Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower or Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Property Damage or Loss.** The Property is lost, stolen, substantially damaged, sold, or borrowed against.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the indebtedness.

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**ASSIGNMENT OF RENTS  
(Continued)**

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**Adverse Change.** A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

**Insecurity.** Lender in good faith believes itself insecure.

**RIGHTS AND REMEDIES ON DEFAULT.** Upon the occurrence of any Event of Default and at any time thereafter, Lender may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

**Accelerate Indebtedness.** Lender shall have the right at its option without notice to Borrower or Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty that Borrower would be required to pay.

**Collect Rents.** Lender shall have the right, without notice to Borrower or Grantor, to take possession of the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender shall have all the rights provided for in the Lender's Right to Receive and Collect Rents Section, above. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

**Appoint Receiver.** Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

**Other Remedies.** Lender shall have all other rights and remedies provided in this Assignment or the Note or by law.

**Election of Remedies.** Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Assignment, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

**Attorneys' Fees; Expenses.** If Lender institutes any suit or action to enforce any of the terms of this Assignment, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Assignment:

**Amendments.** This Assignment, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Assignment. No alteration of or amendment to this Assignment shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Caption Headings.** Caption headings in this Assignment are for convenience purposes only and are not to be used to interpret or define the provisions of this Assignment.

**Governing Law.** This Assignment will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Mississippi without regard to its conflicts of law provisions. This Assignment has been accepted by Lender in the State of Mississippi.

**Choice of Venue.** If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of Madison County, State of Mississippi.

**Joint and Several Liability.** All obligations of Borrower and Grantor under this Assignment shall be joint and several, and all references to Grantor shall mean each and every Grantor, and all

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**ASSIGNMENT OF RENTS  
(Continued)**

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references to Borrower shall mean each and every Borrower. This means that each Grantor signing below is responsible for all obligations in this Assignment. Where any one or more of the parties is a corporation, partnership, limited liability company or similar entity, it is not necessary for Lender to inquire into the powers of any of the officers, directors, partners, members, or other agents acting or purporting to act on the entity's behalf, and any obligations made or created in reliance upon the professed exercise of such powers shall be guaranteed under this Assignment.

**Merger.** There shall be no merger of the interest or estate created by this Assignment with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

**Interpretation.** (1) In all cases where there is more than one Borrower or Grantor, then all words used in this Assignment in the singular shall be deemed to have been used in the plural where the context and construction so require. (2) If more than one person signs this Assignment as "Grantor," the obligations of each Grantor are joint and several. This means that if Lender brings a lawsuit, Lender may sue any one or more of the Grantors. If Borrower and Grantor are not the same person, Lender need not sue Borrower first, and that Borrower need not be joined in any lawsuit. (3) The names given to paragraphs or sections in this Assignment are for convenience purposes only. They are not to be used to interpret or define the provisions of this Assignment.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Assignment unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Assignment shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Assignment. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Assignment, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**Notices.** Any notice required to be given under this Assignment shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Assignment. Any party may change its address for notices under this Assignment by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

**Powers of Attorney.** The various agencies and powers of attorney conveyed on Lender under this Assignment are granted for purposes of security and may not be revoked by Grantor until such time as the same are renounced by Lender.

**Severability.** If a court of competent jurisdiction finds any provision of this Assignment to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Assignment. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Assignment shall not affect the legality, validity or enforceability of any other provision of this Assignment.

**Successors and Assigns.** Subject to any limitations stated in this Assignment on transfer of Grantor's interest, this Assignment shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Assignment and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Assignment or liability under the indebtedness.

**Time is of the Essence.** Time is of the essence in the performance of this Assignment.

**Waive Jury.** All parties to this Assignment hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

**Waiver of Homestead Exemption.** Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Mississippi as to all indebtedness secured by this Assignment.

**Waiver of Right of Redemption.** NOTWITHSTANDING ANY OF THE PROVISIONS TO THE

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**ASSIGNMENT OF RENTS  
(Continued)**

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CONTRARY CONTAINED IN THIS ASSIGNMENT, GRANTOR HEREBY WAIVES ANY AND ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY ORDER OR JUDGMENT OF FORECLOSURE ON GRANTOR'S BEHALF AND ON BEHALF OF EACH AND EVERY PERSON, EXCEPT JUDGMENT CREDITORS OF GRANTOR, ACQUIRING ANY INTEREST IN OR TITLE TO THE PROPERTY SUBSEQUENT TO THE DATE OF THIS ASSIGNMENT.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Assignment. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Assignment shall have the meanings attributed to such terms in the Uniform Commercial Code:

**Assignment.** The word "Assignment" means this ASSIGNMENT OF RENTS, as this ASSIGNMENT OF RENTS may be amended or modified from time to time, together with all exhibits and schedules attached to this ASSIGNMENT OF RENTS from time to time.

**Borrower.** The word "Borrower" means CPOR REI LLC, CPOR Holdings LLC and CPOR Assisted Living LLC.

**Event of Default.** The words "Event of Default" mean any of the events of default set forth in this Assignment in the default section of this Assignment.

**Grantor.** The word "Grantor" means CPOR REI LLC.

**Guarantor.** The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

**Guaranty.** The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

**Indebtedness.** The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Lender to enforce Grantor's obligations under this Assignment, together with interest on such amounts as provided in this Assignment. Specifically, without limitation, Indebtedness includes all amounts that may be indirectly secured by the Cross-Collateralization provision of this Assignment.

**Lender.** The word "Lender" means THE FIRST BANK, its successors and assigns.

**Note.** The word "Note" means the promissory note dated August 11, 2023, in the original principal amount of \$2,500,000.00 from Borrower to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. The maturity date of the Note is August 11, 2028.

**Property.** The word "Property" means all of Grantor's right, title and interest in and to all the Property as described in the "Assignment" section of this Assignment.

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

**Rents.** The word "Rents" means all of Grantor's present and future rights, title and interest in, to and under any and all present and future leases, including, without limitation, all rents, revenue, income, issues, royalties, bonuses, accounts receivable, cash or security deposits, advance rentals, profits and proceeds from the Property, and other payments and benefits derived or to be derived from such leases of every kind and nature, whether due now or later, including without limitation Grantor's right to enforce such leases and to receive and collect payment and proceeds thereunder.

THE UNDERSIGNED ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS ASSIGNMENT, AND NOT PERSONALLY BUT AS AN AUTHORIZED SIGNER, HAS CAUSED THIS ASSIGNMENT TO BE SIGNED AND EXECUTED ON BEHALF OF GRANTOR ON AUGUST 11, 2023.

GRANTOR:

CPOR REI LLC

By:

  
CRYSTAL GARDNER PHILLIPS, Member of CPOR REI LLC

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ASSIGNMENT OF RENTS  
(Continued)

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LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF MISSISSIPPI )  
 ) SS  
COUNTY OF MADISON )

This record was acknowledged before me on the 14th day of AUGUST, 20 23, by CRYSTAL GARDNER PHILLIPS, Member of CPOR REI LLC.

Adam P. Fox  
NOTARY PUBLIC

My Commission Expires:  
02-04-2027



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**EXHIBIT "A"**

**5.08 acres located in Section 8, Township 8 North, Range 1 East, Madison County, Mississippi, and being further described as follows:**

**Commencing at a ½" iron rebar found marking the northwest corner of Lot 67 of Chestnut Hill, Part 1D as referenced in Plat Cabinet "E" at slide 141B and 142A and as recorded in the office of the Chancery Clerk of Madison County at Canton, Mississippi and thence run North 52 degrees 46 minutes 44 seconds West for a distance of 2,014.07 feet to a ½" iron rebar set and also being the Point of Beginning of the tract herein described:**

**From the POINT OF BEGINNING thence run North 78 degrees 41 minutes 31 seconds West for a distance of 29.76 feet to a ½" iron rebar found; thence run North 42 degrees 47 minutes 56 seconds West for a distance of 141.39 feet to a ½" iron rebar found; thence run North 38 degrees 28 minutes 33 seconds West for a distance of 87.83 feet to a ½" iron rebar found; thence run North 66 degrees 09 minutes 08 seconds West for a distance of 105.85 feet to a ½" iron rebar set; thence run North 06 degrees 39 minutes 18 seconds East for a distance of 471.74 feet to a ½" iron rebar set; thence run North 30 degrees 49 minutes 27 seconds East for a distance of 99.83 feet to a concrete monument found on the south right-of-way line of MS Highway #22; thence run North 31 degrees 17 minutes 23 seconds East, along said right-of-way, for a distance of 19.96 feet to a concrete monument found; thence run South 59 degrees 01 minutes 33 seconds East, along said right-of-way, for a distance of 100.19 feet to a concrete monument found; thence run South 31 degrees 09 minutes 45 seconds West, along said right-of-way, for a distance of 19.99 feet to a ½" iron rebar found; thence run South 58 degrees 54 minutes 47 seconds East, along said right-of-way, for a distance of 58.72 feet to a ½" iron rebar set; thence run along a curve to the left with the following data: Chord Bearing of South 65 degrees 09 minutes 05 seconds East, Chord Length of 256.41 feet, Radius of 1,195.92 feet, Arc Length of 256.91 feet to a ½" iron rebar set; thence run South 18 degrees 40 minutes 38 seconds West for a distance of 618.30 feet back to the POINT OF BEGINNING and being 5.08 acres, more or less.**

**TOGETHER WITH THE FOLLOWING EASEMENTS:**

**20' wide Sanitary Sewer Easement**

**861.90 square feet located in Section 8, Township 8 North, Range 1 East, Madison County, Mississippi, and being further described as follows:**

**Commencing at a ½" iron rebar found marking the northwest corner of Lot 67 of Chestnut Hill, Part 1D as referenced in Plat Cabinet "E" at slide 141B and 142A and as recorded in the office of the Chancery Clerk of Madison County**

at Canton, Mississippi and thence run North 52 degrees 46 minutes 44 seconds West for a distance of 2,014.07 feet to a 1/2" iron rebar set; thence run North 18 degrees 40 minutes 38 seconds East for a distance of 186.71 feet to a 1/2" iron rebar set and also being the Point of Beginning of the tract herein described:

From the POINT OF BEGINNING thence continue North 18 degrees 40 minutes 38 seconds East for a distance of 20.46 feet to a 1/2" iron rebar set thence run South 59 degrees 08 minutes 23 seconds East for a distance of 48.11 feet to a 1/2" iron rebar set; thence run South 46 degrees 49 minutes 20 seconds West for a distance of 20.80 feet to a 1/2" iron rebar set; thence run North 59 degrees 08 minutes 23 seconds West for a distance of 38.08 feet back to the POINT OF BEGINNING and being 861.90 square feet, more or less.

**AND,**  
**50' wide Ingress/Egress Easement**

0.27 acres (11,700 square feet) located in Section 8, Township 8 North, Range 1 East, Madison County, Mississippi, and being further described as follows:

Commencing at a 1/2" iron rebar found marking the northwest corner of Lot 67 of Chestnut Hill, Part 1D as referenced in Plat Cabinet "E" at slide 141B and 142A and as recorded in the office of the Chancery Clerk of Madison County at Canton, Mississippi and thence run North 52 degrees 46 minutes 44 seconds West for a distance of 2,014.07 feet to a 1/2" iron rebar set; thence run North 18 degrees 40 minutes 38 seconds East for a distance of 518.30 feet to a 1/2" iron rebar set and also being the Point of Beginning of the tract herein described:

From the POINT OF BEGINNING thence continue North 18 degrees 40 minutes 38 seconds East for a distance of 50.00 feet to a 1/2" iron rebar set; thence run along a curve to the left with the following data: Chord Bearing of South 76 degrees 33 minutes 00 seconds East, Chord Length of 227.74 feet, Radius of 1,245.92 feet, Arc Length of 228.06 feet to a 1/2" iron rebar set; thence run South 05 degrees 01 minutes 39 seconds West for a distance of 50.07 feet to a 1/2" iron rebar set; thence run along a curve to the left with the following data: Chord Bearing of North 76 degrees 36 minutes 42 seconds West, Chord Length of 239.63 feet, Radius of 1,245.92 feet, Arc Length of 239.97 feet back to the POINT OF BEGINNING and being 0.27 acres (11,700 square feet), more or less.

Catal Gardner Phillips

MADISON COUNTY MISSISSIPPI  
CERTIFY THIS INSTRUMENT WAS FILED ON 07/22/2023 2:48:12 PM AND RECORDED IN T BOOK 4388 PAGE 173

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Indexing Instructions: NE ¼ of the NW ¼ of Section 17, Township 8 North, Range 1 East; SW ¼ of the NE ¼, NW ¼ of the SE ¼, NE ¼ of the SW ¼, and the SE ¼ of the NW ¼, all in Section 8, Township 8 North, Range 1 East, Madison County, Mississippi.

543470

SPECIAL WARRANTY DEED

FOR AND IN CONSIDERATION of the sum and amount of TEN DOLLARS (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt and sufficiency all of which is hereby acknowledged, Vary T. Greaves, Eleanor Godfrey Greaves Sutherland, being one and the same as Eleanor Godfrey Greaves, and Henry William Harrington Greaves, as Trustees of the Sunnysplace Trust, and for the benefit of Stephen Arne Decatur Greaves, Eleanor Godfrey Greaves, Sebastian Peyton Thrower Greaves, Greta Barbour Greaves, and Henry William Harrington Greaves, by virtue of Warranty Deed from Stephen Arne Decatur Greaves, Eleanor Godfrey Greaves, Sebastian Peyton Thrower Greaves, Greta Barbour Greaves, and Henry William Harrington Greaves (collectively, the "Grantor") do hereby sell, convey and specially warrant unto Chestnut Hill, LLC, a Mississippi limited liability company (the "Grantee"), the following described property lying and being situated in Madison County, Mississippi, and more particularly described as follows, to-wit:

SEE EXHIBIT A

This conveyance is made subject to any and all easements, rights of way, restrictive or protective covenants and all prior mineral reservations of record.

This conveyance is made subject to the following covenant that for a period of fifty (50) years from the date of this instrument, all uses and improvements on said 10.81-acre tract (Parcel 2 on Exhibit A) will meet the standards of the Manssdale-Livingston Heritage Preservation District. This covenant runs with the land and shall be solely for the benefit of the immediately

adjacent property owner holding fee simple title to that property presently owned by Grantor; provided, however, if Grantor subdivides the property adjacent to said 10.81-acre tract, then this covenant shall only benefit the fee simple owners of property having a common boundary with the 10.81-acre tract. Grantor acknowledges that Grantee's plans include a commercial development on the property.

The ad valorem taxes for the current year 2007 due upon the property were prorated as of the date hereof and are hereby assumed by Grantee.

WITNESS THE SIGNATURE OF THE GRANTORS, this the 24 day of August, 2007.

GRANTOR:

Sunnyplace Trust

By: Vary T. Greaves  
Vary T. Greaves, Trustee

By: Eleanor Godfrey Greaves Sutherland  
Eleanor Godfrey Greaves Sutherland,  
being one and the same as Eleanor Godfrey  
Greaves, Trustee

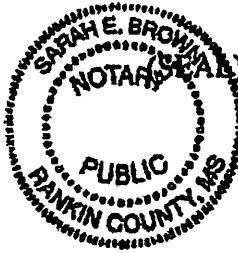
By: Henry William Harrington Greaves  
Henry William Harrington Greaves, Trustee

STATE OF MISSISSIPPI  
COUNTY OF Madison

Personally appeared before me, the undersigned authority in and for the said county and state, on this 24th day of August, 2007, within my jurisdiction, the within named Vary T. Greaves, who acknowledged that she is one of the Trustees of the Sunnyplace Trust and that in said representative capacity she executed the above and foregoing instrument for and on behalf of said Trust and as its act and deed, after having first been duly authorized by said Trust so to do.

Sarah Brown  
Notary Public

My Commission Expires:  
August 7, 2009



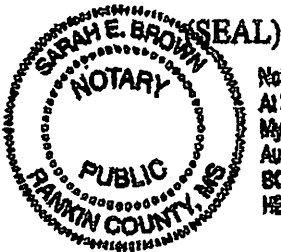
Notary Public State of Mississippi  
At Large  
My Commission Expires  
August 7, 2009  
BONDED THRU  
HEIDEN, BROOKS & GARLAND, INC

STATE OF MISSISSIPPI  
COUNTY OF Madison

Personally appeared before me, the undersigned authority in and for the said county and state, on this 24th day of August, 2007, within my jurisdiction, the within named Eleanor Godfrey Greaves Sutherland, being one and the same as Eleanor Godfrey Greaves, who acknowledged that she is one of the Trustees of the Sunnyplace Trust and that in said representative capacity she executed the above and foregoing instrument for and on behalf of said Trust and as its act and deed, after having first been duly authorized by said Trust so to do.

Sarah Brown  
Notary Public

My Commission Expires:  
August 7, 2009



Notary Public State of Mississippi  
At Large  
My Commission Expires  
August 7, 2009  
BONDED THRU  
HEIDEN, BROOKS & GARLAND, INC



STATE OF MISSISSIPPI  
COUNTY OF Hinds

Personally appeared before me, the undersigned authority in and for the said county and state, on this 24<sup>th</sup> day of August, 2007, within my jurisdiction, the within named **Henry William Harrington Greaves**, who acknowledged that he is one of the Trustees of the Sunnyplace Trust and that in said representative capacity he executed the above and foregoing instrument for and on behalf of said Trust and as its act and deed, after having first been duly authorized by said Trust so to do.

*Powell G. Ogletree, Jr.*  
Notary Public

My Commission Expires:  
\_\_\_\_\_

(SEAL)



GRANTORS' ADDRESS: Sunnyplace Trust  
c/o Trustees  
P.O. Box 517  
Madison, MS 39130  
TELEPHONE NUMBER: (601) 879-8132

GRANTEE'S ADDRESS: Chestnut Hill, LLC  
601 Crescent Blvd., Ste. 100  
Ridgeland, MS 39157  
TELEPHONE NUMBER: (601) 898-4710

Prepared by and after recording return to:

Adams and Reese LLP  
Attn: Jim McNamara *13<sup>00</sup>#606*  
P.O. Box 24297  
Jackson, MS 39225-4297  
(601) 353-3234

## Exhibit A

## Parcel 1:

Commence at the southwest corner of the Northwest Quarter of the Northeast Quarter of Section 17, Township 8 North, Range 1 East, Madison County, Mississippi, said corner being marked by a long existing concrete monument and said corner being 1,329.21' South and 2,648.22' West of the corner common to Sections 8, 9, 16 and 17, Township 8 North, Range 1 East, Madison County, Mississippi, said section corner being marked by a long existing concrete monument with aluminum cap. Said corner that is the point of beginning hereof is also the point of beginning of the legal description of that certain 131.31 acre parcel of land conveyed by Houston C. Primos, *et al*, to Chestnut Hill, LLC, by General Warranty Deed filed for record in the office of the Chancery Clerk of Madison County, Mississippi, at Canton, Mississippi, as Instrument 535031 and in Book 2192 beginning at Page 494 thereof, reference to which is hereby made for all purposes. Said corner that is the corner common to said Sections 8, 9, 16 and 17 is the corner that is the point of beginning of the legal description of that certain 326.45 acre parcel of land conveyed by Philwood, L.P., to Chestnut Developers, LLC, by General Warranty Deed filed for record in the office of said Chancery Clerk as Instrument 515358 and in Book 2102 beginning at Page 580 thereof, reference to which is hereby made for all purposes; run thence South 89° 48' 21" West along the south line of the Northeast Quarter of the Northwest Quarter of said Section 17 and along the boundary of said 131.31 acre parcel of land for a distance of 422.01' to a corner on the boundary thereof, said corner being also the point of beginning of the legal description of the parcel of land that is more particularly described as follows, to-wit:

Run thence North 00° 10' 05" West along the boundary of said 131.31 acre parcel of land for a distance of 1,014.57' to a point; run thence South 56° 50' 33" West for a distance of 226.11' to a point; run thence South 19° 52' 54" West for a distance of 343.52' to a point; run thence South 00° 15' 52" East for a distance of 568.90' to a point on the south line of the Northeast Quarter of the Northwest Quarter of said Section 17; run thence North 89° 48' 21" East along the south line of the Northeast Quarter of the Northwest Quarter of said Section 17 for a distance of 306.47' to the point of beginning.

The above described parcel of land contains 6.12 acres, more or less, and is situated in the Northeast Quarter of the Northwest Quarter (NE1/4 NW1/4) of Section 17, Township 8 North, Range 1 East, Madison County, Mississippi. The reference meridian for the survey of the parcel of land described in this legal description is based on the Mississippi State Plane Coordinate System, West Zone NAD83(93) system established by observation of the "Fan Reset" triangulation station by Ricky L. Nelson, P.L.S. The concrete monument with aluminum cap marking the corner common to Sections 8, 9, 16 and 17, Township 8 North, Range 1 East, Madison County, Mississippi, has grid coordinates of North: 1107874.0721, East: 2334802.2961, the scale factor is 0.999951672731 and the convergence angle to True North is plus (clockwise) 00° 04' 00".

-171-

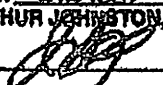

**Parcel 2:**

Commence at the corner common to Sections 8, 9, 16 and 17, Township 8 North, Range 1 East, Madison County, Mississippi, said corner being marked by a long existing concrete monument with aluminum cap, said corner being the corner that is the point of beginning of the legal description of that certain 326.45 acre parcel of land conveyed by Philwood, L.P., to Chestnut Developers, LLC, by General Warranty Deed filed for record in the office of the Chancery Clerk of Madison County, Mississippi, at Canton, Mississippi, as Instrument 515358 and in Book 2102 beginning at Page 590 thereof, reference to which is hereby made for all purposes. From said point of commencement, run thence South  $89^{\circ} 45' 15''$  West along the line common to said Sections 8 and 17 for a distance of 1,336.09' to a long existing iron rod with aluminum cap; run thence North  $00^{\circ} 16' 15''$  West for a distance of 950.66 feet to a long existing concrete monument at a fence corner marking the southernmost corner of that certain 13.89 acre parcel of land conveyed by P. W. Bozeman and Dudley R. Bozeman to Gus A. Primos, et al, by Warranty Deed filed for record in the office of the Chancery Clerk of Madison County, Mississippi, in Canton, Mississippi, as Instrument 25312 and in Book 256 beginning at Page 495, reference to which is hereby made for all purposes; run thence North  $34^{\circ} 22' 31''$  West along the boundary line common to said 326.45 acre parcel of land and said 13.89 acre parcel of land for a distance of 1,446.84' to the northeast corner of said 13.89 acre parcel of land, said corner being on the south margin of the Old Livingston-Brownsville Road, as said south margin is now (April, 2007) laid out and established; run thence North  $51^{\circ} 31' 02''$  West for a distance of 78.94' to a point on the west margin of the Old Livingston-Brownsville Road, as said west margin is now laid out and established, said point being also the point of beginning of the legal description of the parcel of land that is described as follows, to-wit:

Run thence South  $10^{\circ} 42' 00''$  West for a distance of 71.28' to a point; run thence South  $47^{\circ} 57' 00''$  West for a distance of 211.02' to a point on the northeast boundary line of that 4 acre parcel of land conveyed by Vary T. Greaves and Elmore D. Greaves to the Trustees of the Livingston Missionary Baptist Church by Quitclaim Deed filed for record in the office of the Chancery Clerk of Madison County, Mississippi, at Canton, Mississippi, as Instrument 515358 and in Book 2102 beginning at Page 590 thereof, reference to which is hereby made for all purposes; run thence North  $47^{\circ} 32' 00''$  West along the northeast boundary line of said 4 acre parcel of land for a distance of 324.63' to the northernmost corner of said 4 acre parcel of land; run thence South  $50^{\circ} 39' 00''$  West along the northwest boundary line of said 4 acre parcel of land for a distance of 266.56' to a point; run thence North  $47^{\circ} 25' 20''$  West for a distance of 108.65' to a point; run thence North  $78^{\circ} 36' 36''$  West for a distance of 55.28' to a point; run thence North  $42^{\circ} 37' 17''$  West for a distance of 141.43' to a point; run thence North  $38^{\circ} 35' 33''$  West for a distance of 87.91' to a point; run thence North  $66^{\circ} 50' 35''$  West for a distance of 105.30' to a point; run thence North  $06^{\circ} 40' 26''$  East for a distance of 472.83' to a point; run thence North  $31^{\circ} 05' 12''$  East for a distance of 99.24' to a concrete right-of-way marker on the south right-of-way line of Mississippi Highway 22, said marker being at a terminus of an offset in said right-of-way line; run thence along said south right-of-way line of Mississippi Highway 22 as follows: run thence North  $30^{\circ} 47' 08''$  East for a distance of 20.00' to a point; run thence South  $59^{\circ} 12' 52''$  East for a distance of 100.00' to a point; run thence South  $30^{\circ} 47' 08''$  West for a distance of

20.00' to a point; run thence South 59° 12' 52" East for a distance of 58.70' to the point of curvature of a curve to the left subtending a central angle of 14° 54' 39" and having a radius of 1,195.92 feet with the radius point of this curve being North 30° 47' 08" East of this point; run thence southeasterly along this curve to the left counterclockwise for an arc distance of 311.23 feet (chord bearing and distance: South 66° 40' 11" East, 310.35 feet) to the intersection of said south right-of-way line of Mississippi Highway 22 with the said west margin of the Old Livingston-Brownsville Road; leaving said south right-of-way line of Mississippi Highway 22, run thence South 41° 12' 00" East along said west margin of the Old Livingston-Brownsville Road for a distance of 477.02' to a point; run thence South 50° 19' 00" East along said west margin of the Old Livingston-Brownsville Road for a distance of 201.96' to the point of beginning.

The above described parcel of land contains 10.81 acres, more or less, and is situated in the Southwest Quarter of the Northeast Quarter (SW1/4 NE1/4), in the Northwest Quarter of the Southeast Quarter (NW1/4 SE1/4), in the Northeast Quarter of the Southwest Quarter (NE1/4 SW1/4) and in Southeast Quarter of the Northwest Quarter (SE1/4 NW1/4), all in Section 8, Township 8 North, Range 1 East, Madison County, Mississippi. The reference meridian for the survey of the parcel of land described in this legal description is based on the Mississippi State Plane Coordinate System, West Zone NAD83(93) system established by observation of the "Fan Reset" triangulation station by Ricky L. Nelson, P.L.S. The concrete monument with aluminum cap marking the corner common to Sections 8, 9, 16 and 17, Township 8 North, Range 1 East, Madison County, Mississippi, has grid coordinates of North: 1107874.0721, East: 2334802.2961, the scale factor is 0.999951672731 and the convergence angle to True North is plus (clockwise) 00° 04' 00".

MADISON COUNTY MS This instrument was  
 filed for record AUG. 22, 2007 at 8:11 AM.  
 Book 2232 Page 315  
 ARTHUR JOHNSTON, C. G.  
 BY:  D.C. 

- 173 -



Madison County, MS  
 I CERTIFY THIS INSTRUMENT FILED/RECORDED  
 7/12/2023 10:17:05 AM  
 INST. 985331 PAGE 1 OF 4  
 BOOK W - 4349/288  
 WITNESS MY HAND AND SEAL  
 Ronny Lott, C.C. BY: RGK D.C.

This instrument prepared by and should be returned to:

ROBERT D. HARRISON, MSB#2029  
 717 Rice Road, Suite H  
 Ridgeland, Mississippi 39157  
 (601) 957-0002

**INDEXING INSTRUCTIONS:**     **Madison County, Mississippi**  
**Section 8, T8N, R1E - entire section**

**WARRANTY DEED**

**GRANTORS' ADDRESS/PHONE:**

4829 Sheridan Avenue  
 Metairie, Louisiana 70002  
 504-236-4826

**GRANTEE'S ADDRESS/PHONE:**

282 Lake Village Drive  
 Madison, Mississippi 39110  
 504-251-1576

FOR AND IN CONSIDERATION of the sum of Ten Dollars (\$10.00) cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, the undersigned **SHARON DIPAOLA GARDNER, acting in her capacity as the surviving Co-Trustee of the GLENN M. GARDNER AND SHARON GARDNER LIVING TRUST**, does hereby sell, convey, and warrant unto **CPOR REI, LLC, a Mississippi limited liability company**, the following described land and property lying and being situated in Madison County, Mississippi, more particularly described as follows, to-wit:

**5.08 acres located in Section 8, Township 8 North, Range 1 East, Madison County, Mississippi, and being further described as follows:**

- 174 -

Commencing at a ½" iron rebar found marking the northwest corner of Lot 67 of Chestnut Hill, Part 1D as referenced in Plat Cabinet "E" at slide 141B and 142A and as recorded in the office of the Chancery Clerk of Madison County at Canton, Mississippi and thence run North 52 degrees 46 minutes 44 seconds West for a distance of 2,014.07 feet to a ½" iron rebar set and also being the Point of Beginning of the tract herein described:

From the POINT OF BEGINNING thence run North 78 degrees 41 minutes 31 seconds West for a distance of 29.76 feet to a ½" iron rebar found; thence run North 42 degrees 47 minutes 56 seconds West for a distance of 141.39 feet to a ½" iron rebar found; thence run North 38 degrees 28 minutes 33 seconds West for a distance of 87.83 feet to a ½" iron rebar found; thence run North 66 degrees 09 minutes 08 seconds West for a distance of 105.85 feet to a ½" iron rebar set; thence run North 06 degrees 39 minutes 18 seconds East for a distance of 471.74 feet to a ½" iron rebar set; thence run North 30 degrees 49 minutes 27 seconds East for a distance of 99.83 feet to a concrete monument found on the south right-of-way line of MS Highway #22; thence run North 31 degrees 17 minutes 23 seconds East, along said right-of-way, for a distance of 19.96 feet to a concrete monument found; thence run South 59 degrees 01 minutes 33 seconds East, along said right-of-way, for a distance of 100.19 feet to a concrete monument found; thence run South 31 degrees 09 minutes 45 seconds West, along said right-of-way, for a distance of 19.99 feet to a ½" iron rebar found; thence run South 58 degrees 54 minutes 47 seconds East, along said right-of-way, for a distance of 58.72 feet to a ½" iron rebar set; thence run along a curve to the left with the following data: Chord Bearing of South 65 degrees 09 minutes 05 seconds East, Chord Length of 256.41 feet, Radius of 1,195.92 feet, Arc Length of 256.91 feet to a ½" iron rebar set; thence run South 18 degrees 40 minutes 38 seconds West for a distance of 618.30 feet back to the POINT OF BEGINNING and being 5.08 acres, more or less.

Being the same land and property described and conveyed in Warranty Deed recorded in Book 4315 at Page 314 of the Madison County land records.

**TOGETHER WITH THE FOLLOWING EASEMENTS:**

1. 20' wide Sanitary Sewer Easement described and conveyed in the aforementioned Warranty Deed recorded in Book 4315 at Page 314, being appurtenant to the 5.08 acre parcel described herein.

2. 50' wide Ingress/Egress Easement described and conveyed in the aforementioned Warranty Deed recorded in Book 4315 at Page 314, being appurtenant to the 5.08 acre parcel described herein.

Excepted from the warranty of this conveyance are:

1. Prior recorded reservations and conveyances of oil, gas and other minerals in, on and under the subject property.
2. Ad valorem taxes for the current year and subsequent years not yet due and payable.
3. Terms and conditions of Decree of Chancery Court establishing the Persimmon Burnt Corn Water Management District in Minute Book 37 at Page 524.
4. Declaration of Covenants, Conditions and Restrictions for Livingston Township, dated December 6, 2018, recorded in Book 3695 at Page 115.
5. Covenant for meeting standards of the Manssaldale-Livingston Heritage Preservation District contained in Special Warranty Deed dated August 24, 2007, recorded in Book 2232 at Page 315.
6. Reciprocal Easement Agreement dated February 27, 2019, recorded in Book 3695 at Page 182.
7. Right of Way and Easement Deed to Centerpoint Energy Resources Corp. d/b/a Centerpoint Energy Mississippi Gas dated July 23, 2014, recorded in Book 3109 at Page 716.
8. Matters depicted on the plat of survey of the subject property prepared by Baird Engineering, Inc., dated February 17, 2023.

Grantor and Grantee acknowledge that the ad valorem taxes for the present year were prorated on an estimated basis using the tax information for the preceding year. If this proration proves to be inaccurate upon receipt of the actual tax statement for the present year, Grantor and Grantee shall adjust this proration based on the actual tax figures.

DATED, this the 10 day of July, 2023.

GLENN M. GARDNER AND SHARON  
GARDNER LIVING TRUST

By: Sharon Dipaola Gardner  
SHARON DIPAOLO GARDNER,  
Surviving Co-Trustee

STATE OF MS

COUNTY/PARISH OF Madison

THIS instrument was acknowledged before me on this the 10 day of July, 2023, by SHARON DIPAOLO GARDNER, acting in her capacity as the surviving Co-Trustee of the GLENN M. GARDNER AND SHARON GARDNER LIVING TRUST.

[Signature]  
NOTARY PUBLIC



My Commission Expires: \_\_\_\_\_

MADISON COUNTY, MS, RONNY LOTT  
I CERTIFY THIS INSTRUMENT WAS FILED ON 7/12/2023 10:17:05 AM AND RECORDED IN W BOOK 4349 PAGE 288





Madison County, MS  
 I CERTIFY THIS INSTRUMENT FILED/RECORDED  
 7/12/2023 10:17:05 AM  
 INST. 985331 PAGE 1 OF 4  
 BOOK W - 4349/288  
 WITNESS MY HAND AND SEAL  
 Ronny Lott, C.C. BY: RGK D.C.

This instrument prepared by and should be returned to:

ROBERT D. HARRISON, MSB#2029  
 717 Rice Road, Suite H  
 Ridgeland, Mississippi 39157  
 (601) 957-0002

**INDEXING INSTRUCTIONS:**     **Madison County, Mississippi**  
**Section 8, T8N, R1E - entire section**

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282 Lake Village Drive  
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**-178-**

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**TOGETHER WITH THE FOLLOWING EASEMENTS:**

1. **20' wide Sanitary Sewer Easement** described and conveyed in the aforementioned Warranty Deed recorded in Book 4315 at Page 314, being appurtenant to the 5.08 acre parcel described herein.

2. 50' wide Ingress/Egress Easement described and conveyed in the aforementioned Warranty Deed recorded in Book 4315 at Page 314, being appurtenant to the 5.08 acre parcel described herein.

Excepted from the warranty of this conveyance are:

1. Prior recorded reservations and conveyances of oil, gas and other minerals in, on and under the subject property.
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8. Matters depicted on the plat of survey of the subject property prepared by Baird Engineering, Inc., dated February 17, 2023.

MADISON COUNTY, MS RONYN LOTT  
I CERTIFY THIS INSTRUMENT WAS FILED ON 7/12/2023 10:17:05 AM AND RECORDED IN W BOOK:4349 PAGE:288

Grantor and Grantee acknowledge that the ad valorem taxes for the present year were prorated on an estimated basis using the tax information for the preceding year. If this proration proves to be inaccurate upon receipt of the actual tax statement for the present year, Grantor and Grantee shall adjust this proration based on the actual tax figures.

DATED, this the 10 day of July, 2023.

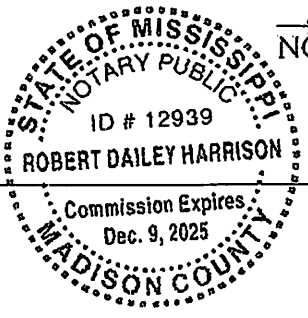
**GLENN M. GARDNER AND SHARON  
GARDNER LIVING TRUST**

By: Sharon Dipaola Gardner  
**SHARON DIPAOLA GARDNER,**  
Surviving Co-Trustee

STATE OF MS  
COUNTY/PARISH OF Madison

THIS instrument was acknowledged before me on this the 10 day of July, 2023, by SHARON DIPAOLA GARDNER, acting in her capacity as the surviving Co-Trustee of the GLENN M. GARDNER AND SHARON GARDNER LIVING TRUST.

[Signature]  
NOTARY PUBLIC



My Commission Expires: \_\_\_\_\_

-181-

## **ADDENDUM “B”**

### **Supplemental Submittal in Support of Conditional Use**

**LAW OFFICES OF ANDY J. CLARK, PLLC**  
**567 HIGHWAY 51 NORTH, SUITE C**  
**RIDGELAND, MS 39157**


P-601-622-7334

andy@andyjclark.com

---

**October 18, 2023**

**To: Madison County Planning & Zoning Commission**  
**Scott Weeks, Administrator**

**From: Andy J. Clark, Esq.**   
**Counsel**

**cc: A. Mike Espy, Esq.**  
**Counsel to Madison County Board of Supervisors**

**RE: The Oaks-Assisted Living Facility**  
**Conditional Use-Public/Quasi-Public Facility**

---

**MEMORANDUM**

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**Commissioners:**

I apologize in advance for the length and short timing of this memorandum, but due to recent developments late yesterday, I wanted to advise you fully on this matter ahead of tomorrow's meeting.

As you will recall, Crystal and Chad Phillips appeared at our August 10, 2023, meeting, and presented their Application for Conditional Use for Public/Quasi Public Facility (The Oaks-Assisted Living Facility with Site Plan). This Application was approved 5-0, conditioned upon approval by the Mannsdale-Livingston Historic Preservation District Commission ("MLHPD"). For your easy reference, I attach the minutes from that meeting as **Exhibit 1**.

Following our meeting, I wrote a Memorandum Opinion to MLHPD addressing certain issues raised at our meeting. See attached **Exhibit 2**.

MLHPD met on August 14, 2023, and denied the Application for reasons set forth in their letter to Scott Weeks dated August 15, 2023. See attached **Exhibit 3**.

The Phillips' retained counsel, Steve Smith, Esq. to assist them through the process, and have submitted supplemental documentation in an attempt to cure the reasons that MLHPD denied their application.

appointments. Ms. Gardener-Phillips advised that The Oaks adopts industry best practices, but is a smaller facility and environment with only fifteen (15) beds. Ms. Gardner-Phillips advised that they chose this particular location as it was compatible with the area, is tucked away on the site, but would allow the seniors it will serve to be close to area commercial attractions and residential neighborhoods, while still being close to their families. Ms. Gardner-Phillips advised that the architecture of structure itself is in character with the 1850's architecture of the MLHPD in order to blend in with the surrounding area.

Chad Phillips addressed the Commission and advised that market research showed a current need for an additional thirty (30) assisted living beds in order to meet the needs of seniors needing such services. Mr. Phillips addressed the various definitions and terminology of assisted living and personal care homes as defined by the Mississippi Department of Health, and stated that The Oaks is a personal care home assisted living as defined therein. Mr. Phillips stated that the key word in that definition applicable to The Oaks is "services." Mr. Phillips reiterated that The Oaks is not an apartment or condominium complex as the seniors cannot live completely on their own, and would be paying for services rendered at The Oaks.

Mr. Phillips advised that the market data shows that, even with approval of The Oaks, there would still be a need for at least ten (10) assisted living beds in the Madison County area. Mr. Phillips also advised that the statistical data shows that population of seniors over 75 years of age would increase by 26% in the coming years which will create even more need than there is now, with Ms. Gardner-Phillips adding that this increase is commonly known as a "Silver Tsunami" because no one is prepared for its coming.

Applicants addressed the site plan portion of their application, and stated that they purposely placed the structure on the rear of the property in order to maintain privacy of the facility, and not necessarily be visible.

Commissioner Billingsley inquired as to why the application had been tabled by the MLHPD Commission. Mr. Phillips responded that they were notified on a Friday of the MLHPD meeting on the following Monday, and thus submitted copies of their plans, but MLHPD advised that they needed the full-size plans for review. Commissioner Billingsley next inquired as to how many staff The Oaks would anticipate having. Mr. Phillips advised that state regulations allow a minimum of one (1) caregiver for every fifteen (15) residents, but that The Oaks would have one (1) caregiver for every five (5) residents during the day, and one (1) caregiver for every six (6) or (7) during the night in order to provide excellent care for the residents. Ms. Gardner-Phillips reiterated that The Oaks would be large enough to accommodate activities for the residents, but not so large as to require staff for other activities that some facilities offer. Commissioner Billingsley clarified that the largest number of staff that would be on site at any given time would be four (4) and the Applicants agreed. Commissioner Billingsley next inquired as to what types of security measures would be in place for the residents. The Applicants stated that in addition to coded and locked doors, The Oaks will have a device for the residents to wear like a wrist watch that allows the residents to call staff for assistance, is a geolocator, monitor for the residents' vitals, and alerts the caregivers if a resident is in distress, or has left a certain parameter of the facility.

Henry Greaves appeared in opposition, and stated that his family owned property adjacent to the proposed facility. Mr. Greaves stated that his family sold the property where The Oaks is to sit, and placed a fifty (50) year covenant that the property would be subject to the MLHPD District. Mr. Greaves argued that one of the deed restrictions is that there is to be single family dwellings only, and that he viewed The Oaks as a multi-family structure with fifteen (15) people under one roof. Mr. Greaves further argued that Section 1903 of the Madison County Zoning Ordinance prohibits apartments and/or residential condominiums, and that, although the residents will be paying for services, he believes the residents of The Oaks would be renters.

Attorney Clark advised that he was aware of the deed restrictions, but that there had been a subsequent filing lifting such restriction. Mr. Greaves opined that he believed it to still be in place.

Commissioner Billingsley inquired as to whether any of the Greaves family lived on the adjacent property, and Mr. Greaves advised that two (2) family members do live on the property to the West of the proposed facility.

Mr. Phillips inquired as to whether Mr. Greaves was aware that the subject property was zoned as C-1 Commercial District with a PUD overlay. Mr. Greaves acknowledged that he did, but that the rules of the MLHPD District must still be followed. The question arose as to whether development in the MLHPD District was restricted to single-family residential. Attorney Clark clarified that no such restriction exists in the MLHPD District and pointed to several existing commercial uses within the bounds of the MLHPD District.

Phyllis Doby appeared as a Commissioner of the MLHPD, and distributed the minutes of the July 31, 2023, MLHPD meeting. A copy of said minutes are attached hereto as **Exhibit "A."** Ms. Doby advised that MLHPD had met with the Applicants in June and July. She advised that the first time, the project was called a luxury assisted living home, and the second time, it was called a personal care home. Ms. Doby advised that, in June, MLHPD advised the Applicants of all information requested for review of the application. Ms. Doby stated that at the June meeting, the Applicants advised they had sent all requested information to Administrator Weeks, but that MLHPD did not get copies, and that Administrator Weeks advised that he did not receive all of the requested information either. As such, MLHPD tabled the application at their July meeting. Ms. Doby stated that for over 20 years, MLHPD has reviewed applications prior to review by the Planning & Zoning Commission, and that people in the community were asking why they had to submit to MLHPD first, but the Applicant had not. Attorney Clark advised that the normal course of action is for MLHPD to review an application first, and then forward their recommendations to the Planning & Zoning Commission. However, Attorney Clark advised that there have been instances of concurrent review by both commissions, and that there is no intent to bypass or overstep the MLHPD Commission by doing so here. Ms. Doby stated that she did not believe MLHPD had had time to do its due diligence in the community, and that she believed the property to be deed restricted.

Attorney Clark revisited the issue of the deed restriction, and read from a Termination of Covenants filed on August 20, 2007, and which references various covenants in Warranty Deeds and executed by numerous property owners. Mr. Greaves argued that document references an old



set of covenants and produced a Special Warranty Deed dated August 24, 2007, which he argued contained new covenants. A copy of Warranty Deeds at Book 233, Page 98; Book 271, Page 437; Book 310, Page 613; Termination of Covenants at Book 2232, Page 285; and Special Warranty Deed at Book 2232, Page 315 are attached hereto as collective **Exhibit "B."**

Mr. Phillips wished to clarify the timeline set forth by Ms. Doby. Mr. Phillips advised that they had met with MLHPD in May, June, and July, and had been tabled each time before they reached the architectural portion of the Application because of the question of whether The Oaks was apartments or condominiums.

Attorney Clark revisited the 2007 Special Warranty Deed produced by Mr. Greaves and acknowledged that said deed does have a fifty (50) year requirement that all improvements meet the standards of the MLHPD District, but does also acknowledge that the Greaves family understands that the Grantee (predecessor in title to Applicant) plans to include a commercial development on the property. Mr. Greaves acknowledged that there was an understanding that there would be commercial development, but that the idea was to bring back the Town of Livingston.

Commissioner Billingsley inquired as to whether the Special Warranty Deed has any restrictions as to where commercial development may be, and Attorney Clark advised that it did not, and only speaks to a +/-10.81 acre parcel of property. Commissioner Billingsley next asked whether, apart from the issue of the deed restriction, if there was other objection to the project. Mr. Greaves stated that he did not believe the project was complimentary to the rest of the Town of Livingston.

Commissioner McCarty inquired as to whether an assisted living facility is an acceptable commercial use in the overlay district. Ms. Gardner-Phillips stated that it is an acceptable use based upon a Conditional Use. Administrator Weeks added that assisted living is a Conditional Use in any zoning district as a Public/Quasi-Public Facility Utility.

Rita McGuffie appeared as a Commissioner of the MLHPD District. Ms. McGuffie stated that MLHPD was carefully considering the use. She reiterated that Applicant first presented the use as assisted living, and then later presented as personal care which is not defined in the Zoning Ordinance. As such, Ms. McGuffie stated that they were seeking additional information as to how such use would fit within the Zoning Ordinance.

Upon motion by Commissioner Billingsley to approve the Application of Chad Phillips for a Conditional Use for Public/Quasi Public Facility (The Oaks-Assisted Living Facility) with Site Plan, subject to the approval of the MLHPD Commission, seconded by Commissioner Brown, with all voting "aye," the motion to approve the Application of Chad Phillips for a Conditional Use for Public/Quasi Public Facility (The Oaks-Assisted Living Facility) with Site Plan, subject to the approval of the MLHPD Commission, was approved.

There next came on for consideration the Application of Berkshire Homes for a Variance to Rear Setbacks. The property subject to the application is Lot 1090 Heron's Bay of Caroline, and is in Supervisor District 2. Don McGraw and Todd Seymour, Manager of Berkshire Homes

appeared on behalf of the Applicant. Mr. McGraw advised that the Applicant is seeking a variance on the rear lot lines from 20' to 15' as the lot is an unusual shape with five (5) sides. Commissioner McCarty stated that she had viewed the subject lot, and that the rear actually abuts the side of the lot behind it, and the adjoining lot is also on a 15' variance. Upon motion by Commissioner McCarty to approve the Application of Berkshire Homes for a Variance to Rear Setbacks from 20' to 15' on Lot 1090 Heron's Bay of Caroline, seconded by Commissioner Billingsley, with all voting "aye," the motion to approve the Application of Berkshire Homes for a Variance to Rear Setbacks from 20' to 15' on Lot 1090 Heron's Bay of Caroline, was approved.

There next came on for consideration, the Application of Paul Hopper to re-zone +/-0.94 acres from A-1 Agricultural District to C-2 Highway Commercial District. The subject property is at 1534 Livingston Vernon Road Highway 43 and Endris Road, is zoned A-1 Agricultural District, and is in Supervisor District 4.

Prior to any presentation, Attorney Clark notified the Commission that Commissioner McCarty had informed him that she is a real estate appraiser and that Mr. Hopper is in the real estate business. Commissioner McCarty advised Attorney Clark that she has, on occasion, measured and appraised properties owned by Mr. Hopper, and wanted to know if that would be a conflict. Attorney Clark informed the Commission of such disclosure, and informed the Commission that he did not believe there to be any conflict as a re-zoning request has nothing to do with a home or property appraisal.

Paul Hopper appeared as the Applicant. Mr. Hopper advised that he is seeking re-zoning of +/-0.94 acres of his property from A-1 Agricultural District to C-2 Highway Commercial District. Mr. Hopper stated that the Madison County Land Use Map shows the entirety of his property to be C-2 Highway Commercial District and is unsure if there was a clerical error in the past which left a portion of his property as A-1 Agricultural District but that the current land use map does show it as being designated C-2. Mr. Hopper also stated that a Section line runs through his property, that the +/-0.94 acres is on the East side of the Section line, and that could be the cause for mistake in the past.

Administrator Weeks advised the Commission that he had done research back to the original 1964 zoning map, and all maps show this property as designated commercial. Attorney Clark reminded the Commission that one of the justifications for re-zoning is a mistake in the original zoning.

Upon motion by Commissioner Billingsley to approve the Application of Paul Hopper to re-zone +/-0.94 acres from A-1 Agricultural District to C-2 Highway Commercial District, seconded by Commissioner Brown, with all voting "aye," the Application of Paul Hopper to re-zone +/-0.94 acres from A-1 Agricultural District to C-2 Highway Commercial District, was approved.

There next came on for consideration the Application of Daniel Wooldridge to Re-Zone certain property from A-1 Agricultural District to C-2 Highway Commercial District. The property subject to the application is located on Highway 22, is zoned A-1 Agricultural District, and is in Supervisor District 4. Upon motion by Commissioner Billingsley to table the Application

of Daniel Wooldridge to Re-Zone certain property from A-1 Agricultural District to C-2 Highway Commercial District, seconded by Commissioner Brown, with all voting "aye," the motion to table the Application of Daniel Wooldridge to Re-Zone certain property from A-1 Agricultural District to C-2 Highway Commercial District, was approved.

There next came on for consideration, the need to close the public hearing. Upon motion by Commissioner Brown to close the public hearing, seconded by Commissioner Billingsley, with all voting "aye," the public hearing was so closed.

There next came on for discussion, the setting of the September, 2023 meeting. September 14th, 2023, was suggested. Upon motion by Commissioner Brown, seconded by Commissioner McCarty, with all voting "aye," the motion to set the September, 2023 meeting for September 14, 2023, was approved.

With there being no further business, the August 10, 2023, meeting of the Madison County Planning and Zoning Commission was adjourned.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Dr. Keith Rouser, Chairman

**Mannsdale-Livingston Heritage Preservation District Minutes of Meeting  
Monday, July 31, 2023, 6:00pm**

**The monthly meeting of the Commission Members of the Mannsdale-Livingston Preservation District (hereafter MLHPD) was duly called, convened and conducted on Monday, July 31, 2023, 6:00pm at the Chapel of the Cross in Madison, Mississippi.**

**Rita McGuffie called the meeting to order. A roll call of the Commission Members of MLHPD was taken and the following Members present:**

**Carole Brand (by phone)**

**Bill Buhner**

**Phyllis Doby**

**Rita McGuffie**

**Michael Yerger**

**Not in attendance:**

**Grant Brabham**

**David Landrum**

**Ken Primos**

**Donnie Young**

**Non-members present:**

**Chad and Crystal-Gardner Phillips, The Oaks, Personal Care Facility, NW Corner Town of Livingston**

**Madeline Waggoner, A+Signs, Ameritrade**

**Clinton Doby, President of Mannsdale Heritage Foundation**

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**EXHIBIT "A"**

**PAGE TWO**

**ROLL CALL AND CERTIFICATION OF PROXIES**

Rita McGuffie called the meeting to order. The roll call being complete, Rita started the meeting.

**PROOF OF NOTICE OF MEETING**

Notification of the meeting had been delivered to all Commission Members by email. No members objected to the meeting or indicated they had not received the email notice of said meeting.

**READING AND APPROVAL OF MINUTES OF PRIOR MEETING**

Emailed copies of the June 6, 2023, minutes were sent to all Commission Members. There being no corrections to said minutes, Phyllis Doby moved to approve. Motion was seconded by Michael Yerger with all Members present and Carole Brand by phone voting to approve.

**OLD BUSINESS**

Chad Phillips, came before the commission on June 6, 2023, to present the Oaks Residence located in the Livingston Township, NW corner. Mr. Phillips stated the proposed 15 personal care units, Phase 1, were not apartment style and residents would not live independently as described in the definition for "assisted living" in the Zoning Ordinance for Madison County. Units were to be bed and bath only and were to be like nursing home/personal care home for the disabled.

**PAGE THREE**

**Ms. McGuffie asked Mr. Phillips if he was aware of the documents required by MLHPD for any rezoning submittal. Mr. Phillips stated that he had been in contact with Scott Weeks, Planning and Zoning, and all required documents were sent to P & Z and that Andy Clark, County Attorney, concurred that the application for a luxury assisted living was the correct definition to use for the conditional use.**

**Mr. Phillips did not have the correct documentation required by MLHPD and Ms. McGuffie went over a checklist of items required in order for Mr. Phillips to move forward.**

**Mr. Phillips stated he wanted to break ground immediately. Ms. McGuffie advised that a checklist had to be followed:**

- 1) Correctly identify the use. Is it a nursing home, personal care home or assisted living facility? The application needs to show correct use as defined by Zoning Ordinance for Madison County. Noted: Mr. Phillips stated that the units consisted of bedroom and bath without a kitchen and were not "apartment style setting".**
- 2) ADA Compliance**
- 3) Mark the required additional buffer on Highway 22 and show buffer landscaping.**
- 4) Show buffers between adjoining landowners and landscaping plan for all buffers/setbacks.**
- 5) Put in writing whether the land is part of Legacy PUD C-1. Indicate how this affects total greenspace, parking and total square footage.**
- 6) Put in writing about lighting, noise and hours of operation.**
- 7) Show screening for garbage and mechanical.**
- 8) Show required yard and open space not to include buffers /setbacks as open space.**

**Phyllis Doby made the motion to table the discussion until all required documents were presented to the Commission. Michael Yerger seconded the motion with all Commission Members voting "Aye".**

**PAGE FOUR**

**NEW BUSINESS**

**Mr. Phillips and his wife, Tiffany-Gardner Phillips came before the commission to present a proposal for the Conditional Use as a "Personal Care Home".**

**Mr. Phillips stated that he had sent all the required information listed above to Scott Weeks. Mr. Phillips also stated that he and Andy Clark had discussed the Conditional Use and that it needed to be a Personal Care Home as stated on the application form.**

**Ms. McGuffie asked Mr. Phillips for the information we requested from the June 6, 2023 meeting and Mrs. Phillips stated that they sent all the required information to Scott Weeks, as requested. When we inquired as to what was sent to Scott Weeks, the Phillips stated they were too pushed to provide all the information needed on such short notice. Given that the documents were not provided for the meeting, Mr. Phillips explained that the County did not have a zoning definition for a Personal Care Home, however, Andy Clark advised that the County to regulate the zoning per State of Mississippi guidelines.**

**It came before the commission a discussion on what the intended use was for the facility. Mr. Phillips said it was for 80+ year olds and skilled nursing required. In addition, kitchens were being added to the 15 units. Discussion continued that the Phillips plan to add Phase II, a Memory Care Facility. Total square footage for the two buildings to be 22,000.**

**Commission members were given partial and small hard copies of the Oaks information by the Phillips which were illegible. The Phillips presented pieces of the documents to the Commission Members on Mrs. Phillips cell phone which made it impossible to review.**

**Phyllis Doby made the motion to table the discussion with the stipulation, that if in fact, the Phillips had already provided Scott Weeks all the documents that were requested and discussed by MLHPD in our June 6, 2023, a special meeting to be held for the Oaks. Bill Buhner seconded the motion with all Commission Members voting "Aye".**

**PAGE FIVE**

**Madeline Waggoner, A+ Signs, presented a proposal for an additional sign for Ameritrade located in the Town of Livingston. Ms. McGuffie advised Ms. Waggoner that Ameritrade already had a sign and that each business was allowed one sign.**

**There being no further business, Michael Yerger made the motion to adjourn which was seconded by Bill Buhner. All Commission Members voted "Aye" and the meeting was adjourned.**

*Rita McGuffie*  
-----  
**Rita McGuffie**

*8-9-2023*  
-----  
**DATE**

**President MLHPD**



2

REC-233 JUL 68

10903

STATE OF MISSISSIPPI  
COUNTY OF MADISON

WARRANTY DEED

INDEXED

FOR AND IN CONSIDERATION OF TEN DOLLARS (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, we, VARY F. GREAVES and husband ELMORE D. GREAVES, Grantors, subject to the protective covenants and exceptions hereinafter set forth, do hereby convey and warrant unto JOHN H. COLDFEE, that certain real property lying and being situated in Madison County, Mississippi, and being more particularly described as EXHIBIT "A" which is annexed to and hereby made a part of this Warranty Deed by reference as fully as if copied herein full.

This conveyance is subject to, and the Grantors do hereby impose and establish the following protective covenants restricting the future usage of the property described on EXHIBIT "A" hereto, to-wit:

Such property shall be used only for single family residential purposes. No building or structure which is inconsistent with single-family residential usage, or intended for or adapted to business purposes shall ever be erected, placed, permitted or maintained on such property or any part thereof. No improvement or structure, whatsoever, other than a first class private dwelling house, of not less than two thousand (2,000) square feet in size, barns, patio walls, swimming pool, garage, carport, servants' quarters, guest houses, and other customary outbuildings consistent with single-family residential houses may be erected, placed or maintained on the subject property. The density of construction of single-family residences shall never exceed one (1) residence per two (2) acres of land.

*For  
Termination  
of Covenants  
see Book  
2232/285  
pp  
9. C. Calhoun  
By: J. DC  
Blaney*

MADISON  
COUNTY

- 195 -

EXHIBIT "B"

WR 285 WR 99

Grantors reserve to themselves one-half (1/2) of all oil, gas and other minerals presently owned by Grantors in, on and under the subject property.

WITNESS OUR SIGNATURES this the 19<sup>th</sup> day of October, 1967

Walter T. Graves  
WALTER T. GRAVES

Blanche D. Graves  
BLANCHE D. GRAVES

WALTER T. GRAVES  
P.O. BOX 248  
MADISON MS 39110  
(601)-878-8132  
(GRANTOR)

BLANCHE D. GRAVES  
P.O. BOX 248  
MADISON MS 39110  
(601)-878-8132  
(GRANTOR)

STATE OF MISSISSIPPI  
COUNTY OF HINDS

PERSONALLY appeared before me, the undersigned authority in and for the aforementioned jurisdiction, WALTER T. GRAVES and husband, BLANCHE D. GRAVES, who acknowledged to me that they did sign and deliver the foregoing instrument on the day and date therein contained as and for their own act and deed.

GIVEN UNDER MY HAND and official seal this the 19<sup>th</sup> day of

1967  
Notary Public  
Commission Expires:  
[Signature]  
WALTER T. GRAVES  
P.O. BOX 248  
MADISON MS 39110  
(601)-878-8132  
(GRANTOR)

[Signature]  
NOTARY PUBLIC

EXHIBIT "A"  
DEED

A tract of land containing 12.00 acres, more or less, lying and being situated in Section 27, Township 8 North, Range 1 East, Madison County, Mississippi and being more particularly described as follows:

Commencing at a concrete monument marking the Southeast corner of Northeast Quarter of Section 27, Township 8 North, Range 1 East, Madison County, Mississippi; thence run North for a distance of 4871.03 feet; thence run East for a distance of 2704.77 feet to a point in the center of a stream of water known as Livingston Branch or Church Creek, said point being the POINT OF BEGINNING of that tract of land described by quitclaim deed from Gary T. Graves and Elmore D. Graves to the Trustees of the Livingston Missionary Baptist Church; thence run the following courses of said conveyance; North 49 degrees 45 minutes 00 seconds East for a distance of 489.04 feet to a point; thence run North 47 degrees 11 minutes 00 seconds East for a distance of 55.15 feet to a point; thence run North 47 degrees 38 minutes 00 seconds East for a distance of 388.00 feet to a point; thence run South 50 degrees 23 minutes 00 seconds East for a distance of 451.20 feet to a point, said point being a corner of the aforementioned conveyance and said point being the POINT OF BEGINNING of the following described tract of land; thence run East for a distance of 389.07 feet to a point; thence run North 68 degrees 40 minutes 20 seconds East for a distance of 388.71 feet to a concrete E.O.W. marker on the Southernly E.O.W. line of Mississippi Highway No. 22, said marker being the beginning of an offset in said E.O.W. line; thence following said offset in said E.O.W. line run North 31 degrees 02 minutes 10 seconds East for a distance of 30.00 feet; thence run South 49 degrees 57 minutes 20 seconds East for a distance of 140.00 feet; thence run South 31 degrees 02 minutes 10 seconds East for a distance of 20.00 feet to the point of terminus in said offset; thence run South 59 degrees 57 minutes 40 seconds East; continuing along said E.O.W. line for a distance of 53.70 feet to a point of curvature in said line; thence run southeasterly and along an arc of a curve to the left in said E.O.W. line for a distance of 214.00 feet, said curve having a radius of 1194.00 feet and a chord of South 08 degrees 28 minutes 00 seconds East with a distance of 313.10 feet to a point; thence run North 41 degrees 12 minutes 00 seconds East for a distance of 474.11 feet to a point; thence run South 50 degrees 10 minutes 00 seconds East for a distance of 281.00 feet to a point; thence run South 10 degrees 45 minutes 00 seconds East for a distance of 71.00 feet to a point; thence run South 47 degrees 57 minutes 00 seconds East for a distance of 212.00 feet to a point on a property line of the aforementioned tract conveyed to the Trustees of the Livingston Missionary Baptist Church; thence run North 47 degrees 28 minutes 00 seconds East and along the previously called line for a distance of 384.00 feet to a point; thence run South 50 degrees 23 minutes 00 seconds East for a distance of 381.00 feet back to the POINT OF BEGINNING of the above described tract of land.

Prepared by  
Kutledge and Associates, Inc

October 13, 1997

2-1184-2

SIGNED FOR IDENTIFICATION:

*Wm. T. Weaver*  
Wm. T. Weaver, P.O. Box 203  
Madison, MS 39110  
(601)-679-6132

*Elmore D. Graves*  
Elmore D. Graves, P.O. Box 206  
Madison, MS 39110  
(601)-679-6132

STATE OF MISSISSIPPI, County of Madison



I, Billy V. Cooper, Clerk of the Chancery Court of said County, certify that the within instrument was filed  
this 13th day of October, 1997, at 12:20 P.M., and  
is a true and correct copy of the original as the same appears on Page 22 of  
this instrument.  
WITNESSED my hand and the seal of said Court this 13th day of October, 1997.  
BILLY V. COOPER, Clerk  
*Billy V. Cooper*

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EX 271-57 44766

STATE OF MISSISSIPPI  
COUNTY OF MADISON

**WARRANTY DEED**

FOR AND IN CONSIDERATION OF TEN DOLLARS (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, I, John H. Coletto, Grantor, subject to the protective covenants and exceptions hereinafter set forth, do hereby convey and warrant unto ELMORE G. GRAVES, that certain real property lying and being situated in Madison County, Mississippi, and being more particularly described on EXHIBIT "A" which is annexed to and hereby made a part of this Warranty Deed by reference as fully as if copied herein full.

This conveyance is subject to, and the Grantor does hereby impose and establish the following protective covenants restricting the future usage of the property described on EXHIBIT "A" hereto, to-wit:

Such property shall be used only for single family residential purposes. No building or structure which is inconsistent with single-family residential usage, or intended for or adapted to business purposes shall ever be erected, placed, permitted or maintained on such property or any part thereof. No improvement or structure whatsoever, other than a first class private dwelling house, of not less two thousand (2,000) square feet in size, barns, patio walls, swimming pool, garage, carport, servants' quarters, guest houses, and other customary outbuildings consistent with single-family residential houses may be erected, placed or maintained on the subject property. The density of construction of single-family residences shall never exceed one (1) residence per two (2) acres of land.

no 271-438

Grantor conveys all oil, gas and other minerals presently owned by Grantor in, on and under the subject property.

WITNESSE MY HANDS this the 12<sup>th</sup> day of May, 1930.

*[Handwritten signature]*  
JOHN H. COLVERT

JOHN H. COLVERT  
P. O. BOX 241  
SARASOTA, FL 29208  
(407) 556-4377  
(CHIEF)

STATE OF MISSISSIPPI  
COUNTY OF HINDS

PERSONAL appeared before me, the undersigned authority in and for the aforementioned jurisdiction, JOHN H. COLVERT, who acknowledged to me that he did sign and deliver the foregoing instrument on the day and date therein mentioned as and for his own act and deed.

GIVEN UNDER MY HAND and official seal this the 12<sup>th</sup> day of May, 1930.

*[Handwritten signature]*  
ROBERT FURBER  


My Commission Expires:

2/2/33

BERNARD G. CHAVEN  
P. O. BOX 248  
SARASOTA, FL 29120  
(407) 579-4133  
(CHIEF)

EX-271-439

EXHIBIT 'A'

DESCRIPTION

A tract of land containing 12.00 acres, more or less, lying and being situated in Section 8, Township 8 North, Range 1 East, Madison County, Mississippi and being more particularly described as follows:

Commencing at a concrete monument marking the southeast corner of Section 17, Township 8 North, Range 1 East, Madison County, Mississippi; thence run North for a distance of 471.43 feet; thence run West for a distance of 2704.77 feet to a point in the corner of a parcel of water known as Livingston Branch or Church Creek, said point being the POINT OF BEGINNING of that tract of land described by said title deed from Wm. V. Graves and Misses E. Graves to the trustees of the Livingston Missionary Baptist Church; thence run the following courses of said conveyance: South 43 degrees 43 minutes 00 seconds West for a distance of 420.04 feet to a point; thence run North 47 degrees 11 minutes 00 seconds West for a distance of 14.18 feet to a point; thence run North 47 degrees 32 minutes 00 seconds West for a distance of 326.00 feet to a point; thence run North 50 degrees 20 minutes 00 seconds West for a distance of 341.20 feet to a point; said point being a corner of the aforementioned conveyance and said point being the POINT OF BEGINNING of the following described tract of land; thence run West for a distance of 304.97 feet to a point; thence run North 04 degrees 40 minutes 20 seconds West for a distance of 249.71 feet to a concrete P.O.B. marker on the formerly E.O.S. line of Mississippi Highway No. 23, said marker being the beginning of an offset in said P.O.B. line; thence following said offset in said P.O.B. line run North 31 degrees 02 minutes 10 seconds West for a distance of 30.00 feet; thence run South 58 degrees 57 minutes 30 seconds West for a distance of 100.00 feet; thence run South 31 degrees 43 minutes 10 seconds West for a distance of 22.00 feet to the point of termination in said offset; thence run South 88 degrees 57 minutes 30 seconds West containing along said P.O.B. line for a distance of 58.70 feet to a point of curvature in said line; thence run southeasterly and along an arc of a curve to the left in said P.O.B. line for a distance of 214.00 feet, said curve having a radius of 1120.00 feet and a chord of South 08 degrees 20 minutes 00 seconds West with a distance of 211.10 feet to a point; thence run South 41 degrees 12 minutes 00 seconds West for a distance of 474.13 feet to a point; thence run South 50 degrees 10 minutes 00 seconds West for a distance of 201.00 feet to a point; thence run South 30 degrees 42 minutes 00 seconds West for a distance of 70.00 feet to a point; thence run South 47 degrees 57 minutes 00 seconds West for a distance of 211.30 feet to a point on a property line, all the aforementioned tract conveyed to the trustees of the Livingston Missionary Baptist Church; thence run North 47 degrees 32 minutes 00 seconds West and along the previously called line for a distance of 324.00 feet to a point; thence run North 50 degrees 20 minutes 00 seconds West for a distance of 341.20 feet back to the POINT OF BEGINNING of the above described tract of land.

Prepared by  
Kutledge and Associates, Inc.

W. G. BAX  
MEMPHIS, MISSISSIPPI  
(602) 333-0377



STATE OF MISSISSIPPI, County of Madison:  
I certify that the within instrument was filed by record in my office this 6 day  
of Aug, 1960, at 11:05 o'clock A.M., and was duly recorded  
on the 118 page of 271 Book No. 271, Page 437.  
ELLAV A. COOPER, CHANCERY CLERK BY: J. Cole D.C.

102036

102036

STATE OF MISSISSIPPI  
COUNTY OF MADISON

WARRANTY DEED

FOR AND IN CONSIDERATION OF TEN DOLLARS (\$10.00), each in hand paid, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, I, ELEANOR G. GREAVES, Grantor, subject to the protective covenants and exceptions hereinafter set forth, do hereby convey and warrant unto E. A. D. GREAVES, that certain real property lying and being situated in Madison County, Mississippi, and being more particularly described on EXHIBIT "A" which is annexed to and hereby made a part of this Warranty Deed by reference as fully as if copied herein full.

This conveyance is subject to, and the Grantor does hereby impose and establish the following protective covenants restricting the future usage of the property described on EXHIBIT "A" hereto, to-wit:

Such property shall be used only for single-family residential purposes. No building or structure which is inconsistent with single-family residential usage, or intended for or adapted to business purposes shall ever be erected, placed, permitted or maintained on such property or any part thereof. No improvement or structure whatsoever, other than a first class private dwelling house, of not less two thousand (2,000) square feet in size, barns, patio walls, swimming pool, garage, carport, servant's quarters, guest houses, and other customary outbuildings consistent with single-family residential houses may be erected, placed or maintained on the subject property. The density of construction of single-family residences shall never exceed one (1) residence per two (2) acres of land.

310-614

Grantor conveys all oil, gas and other minerals presently owned by Grantor in, on and under the subject property.

WITNESSE MY SIGNATURE this the 1st day of July, 1998.

*[Signature]*  
ERANOR G. CREAVES

Ernanor G. Creaves  
P. O. Box 288  
Madison, Mississippi 39130-0288  
(601) 878-6132  
(CREAVES)

STATE OF MISSISSIPPI  
COUNTY OF MADISON

ERANOR G. CREAVES appeared before me, the undersigned authority in and for the aforementioned jurisdiction, ERANOR G. CREAVES, who acknowledged to me that she did sign and deliver the foregoing instrument on the day and date therein mentioned as and for her own act and deed.

GIVEN UNDER MY HAND and official seal this the 1st day of July, 1998.



*[Signature]*  
Notary Public

By commission expires: \_\_\_\_\_

U. A. D. Creaves  
P. O. Box 805  
Madison, Mississippi 39130-0805  
(601) 878-6132  
(CREAVES)



MS 310 615

**EXHIBIT**

**DESCRIPTION**

A book of bank certificates 10.00 each, serial no. 1214 and 1215, dated 10/15/1915, issued by the State Bank of Mississippi, and being now permanently deposited in this office.

Containing a complete account showing the full amount of the deposit of \$10.00, made by the State Bank of Mississippi, on the 15th day of October, 1915, in the name of the State Bank of Mississippi, and being now permanently deposited in this office. The book contains two certificates, one for \$5.00 and one for \$5.00, each dated 10/15/1915, and each payable to the order of the State Bank of Mississippi. The book also contains a statement of the account, showing the full amount of the deposit, and a receipt for the same. The book is in good condition and is well preserved.

Prepared by  
Caldwell and Associates, Inc.

Signed for Identification



Elmer G. Coverts  
P. O. Box 258  
Madison, Mississippi 39120  
(601) 577-4122



STATE OF MISSISSIPPI, County of Madison  
I certify that the within instrument was filed for record in my office this 7 day  
of July, 1915, at 11:05 o'clock A. M., and was duly recorded  
on the 121 page of 310 Book No. 615.  
J.M. D. V. 1915  
BILLY W. COOPER, CLERK OF COURTS BY: B. White C.C.

8.8N-1E

513166  
TERMINATION OF COVENANTS

This day, Vary T. Greaves, Elmore D. Greaves, John M. Colette, Eleanor G. Greaves, S. A. D. Greaves, and the Trustees of Sunnyplace Trust (the "Undersigned") enter into this Termination of Covenants ("Termination") for the purpose of terminating the covenants set forth in certain instruments filed in the land records of the Office of the Chancery Clerk of Madison County, Mississippi, as follows:

WHEREAS, the Vary T. Greaves and Elmore D. Greaves executed a Warranty Deed to John M. Colette conveying certain property in Madison County, Mississippi and creating certain covenants set forth in that instrument filed of record in Book 231 at Page 69 of the office of the Chancery Clerk of Madison County, Mississippi;

WHEREAS, the John M. Colette executed a Warranty Deed to Eleanor G. Greaves conveying certain property in Madison County, Mississippi and creating certain covenants set forth in that instrument filed of record in Book 271 at Page 437 of the office of the Chancery Clerk of Madison County, Mississippi;

WHEREAS, the Eleanor G. Greaves executed a Warranty Deed to S. A. D. Greaves conveying certain property in Madison County, Mississippi and creating certain covenants set forth in that instrument filed of record in Book 310 at Page 613 of the office of the Chancery Clerk of Madison County, Mississippi;

WHEREAS, the property subject to the covenants described in the above deeds (collectively "the Covenants") is presently owned by the Trustees of the Sunnyplace Trust; and,

WHEREAS, all persons and entities having an interest in and to the property subject to the Covenants desire to terminate the Covenants to allow the sale of the property free and clear of the Covenants and to allow the property to be used for commercial or other purposes that would not be compatible with the prior Covenants that are terminated by this Agreement.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the sum of Ten Dollars (\$10.00) cash in hand paid and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

1. Termination of Covenants. The undersigned terminate, rescind and declare null and void the Covenants.
2. Agreement to Allow Commercial Use. The undersigned agree that the property previously subject to the Covenants may be used for commercial and other purposes and is not restricted to residential purposes or subject to any other restrictions or covenants whatsoever.

SO COVENANTED AND AGREED this the 20<sup>th</sup> day of August, 2007.

Vary T. Greaves  
Vary T. Greaves

Elmore D. Greaves  
Elmore D. Greaves

[Signature]  
John M. Collette

[Signature]  
Eleanor C. Greaves Sutherland

[Signature]  
S. A. D. Greaves

Sunnyplace Trust

By: Vary T. Greaves  
Vary T. Greaves, Trustee

By: [Signature]  
Eleanor C. Greaves Sutherland, Trustee

By: [Signature]  
Henry William Harrington Greaves, Trustee

Prepared by and after recording return to:

Geo Ogletree  
Adams and Reese LLP 97<sup>th</sup> 2001  
Box 24297  
Jackson, MS 39225-4297

498448-1

State of Mississippi  
County of Madison

Personally appeared before me, the undersigned authority in and for the aforesaid jurisdiction on this the 24th day of August, 2007, the within named Vary T. Greaves, individually, who after being by me duly sworn acknowledged that she executed the above and foregoing instrument.

Sarah Brown  
Notary Public

My Commission Expires:

August 7, 2009

(SEAL)



Notary Public - State of Mississippi  
At Large  
My Commission Expires :  
August 7, 2009  
BONDED TRUST  
SARAH E. BROWN & GARLAND, INC.

State of Mississippi  
County of Madison

Personally appeared before me, the undersigned authority in and for the aforesaid jurisdiction on this the 24th day of August, 2007, the within named Vary T. Greaves, who after being by me duly sworn acknowledged that she is one of the Trustees of the Sunnyplace Trust, and that she executed the above and foregoing instrument for and on behalf of said Trust in her representative capacity as its act and deed after having first been duly authorized by said Trust so to do.

Sarah Brown  
Notary Public

My Commission Expires:

August 7, 2009

(SEAL)



Notary Public State of Mississippi  
At Large  
My Commission Expires :  
August 7, 2009  
BONDED TRUST  
SARAH E. BROWN & GARLAND, INC.

498448-1

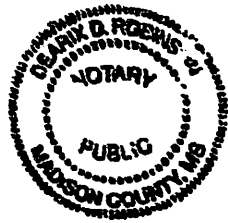
State of Mississippi  
County of Hinds

Personally appeared before me, the undersigned authority in and for the aforesaid jurisdiction on this the 20 day of August, 2007, the within named Eleanor G. Greaves Sutherland, individually, who after being by me duly sworn acknowledged that he executed the above and foregoing instrument.

Devin D Robinson  
Notary Public

My Commission Expires:  
Notary Public State of Mississippi At Large  
My Commission Expires July 18, 2008  
Bonded thru Holder, Brooks & Garland, Inc.

(SEAL)



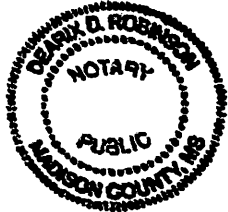
State of Mississippi  
County of Hinds

Personally appeared before me, the undersigned authority in and for the aforesaid jurisdiction on this the 20 day of August, 2007, the within named Eleanor Godfrey Greaves Sutherland, who after being by me duly sworn acknowledged that she is one of the Trustees of the Sunnyplace Trust, and that she executed the above and foregoing instrument for and on behalf of said Trust in her representative capacity as its act and deed after having first been duly authorized by said Trust so to do.

Devin D Robinson  
Notary Public

My Commission Expires:  
Notary Public State of Mississippi At Large  
My Commission Expires July 18, 2008  
Bonded thru Holder, Brooks & Garland, Inc.

(SEAL)



498448-1

State of Mississippi  
County of Hinds

Personally appeared before me, the undersigned authority in and for the aforesaid jurisdiction on this the 27 day of August, 2007, the within named Henry William Harrington Greaves, who after being by me duly sworn acknowledged that he is one of the Trustees of the Sunnyplace Trust, and that he executed the above and foregoing instrument for and on behalf of said Trust in his representative capacity as its act and deed after having first been duly authorized by said Trust so to do.

David W. Ogle, Jr.  
Notary Public

My Commission Expires:

\_\_\_\_\_



[The remainder of this page is intentionally left blank.]

State of Mississippi  
County of Madison

Personally appeared before me, the undersigned authority in and for the aforesaid jurisdiction on this the 24th day of August, 2007, the within named, Elmore D. Groves, individually, who after being by me duly sworn acknowledged that he executed the above and foregoing instrument.

Sarah Brown

My Commission Expires:  
August 7, 2009



Notary Public State of Mississippi  
My Commission Expires ;  
August 7, 2009  
SIGNED TRUE!  
FIDEL, WOODS & GARLAND, INC.

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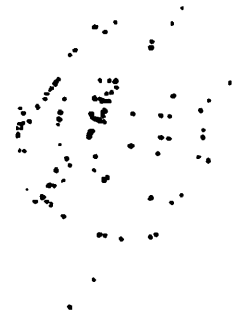
State of Mississippi  
County of Asht

Personally appeared before me, the undersigned authority in and for the aforesaid jurisdiction on this the 20<sup>th</sup> day of August, 2007, the within named, John M. Colette, individually, who after being by me duly sworn acknowledged that he executed the above and foregoing instrument.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:  
3-18-2011

(SEAL)



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State of Mississippi  
County of Hinds

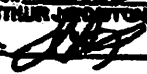

Personally appeared before me, the undersigned authority in and for the aforesaid jurisdiction on this the 22<sup>nd</sup> day of August, 2007, the within named, S. A. D. Graves, individually, who after being by me duly sworn acknowledged that he executed the above and foregoing instrument.

  
Notary Public

My Commission Expires:  
3-18-2011

(SEAL)

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MADISON COUNTY MS. This instrument was  
filed for record AUG. 22. 2007 at Hinds  
Book 2232 Page 285  
ARTHUR J. BOSTON, C.C.  
BY:  D.C. 

8-24-2007

BOOK 2232 PAGE 0315

**Indexing Instructions: NE ¼ of the NW ¼ of Section 17, Township 8 North, Range 1 East; SW ¼ of the NE ¼, NW ¼ of the SE ¼, NE ¼ of the SW ¼, and the SE ¼ of the NW ¼, all in Section 8, Township 8 North, Range 1 East, Madison County, Mississippi.**

**543470**

**SPECIAL WARRANTY DEED**

**FOR AND IN CONSIDERATION of the sum and amount of TEN DOLLARS (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt and sufficiency all of which is hereby acknowledged, Vary T. Greaves, Eleanor Godfrey Greaves Sutherland, being one and the same as Eleanor Godfrey Greaves, and Henry William Harrington Greaves, as Trustees of the Sunnypace Trust, and for the benefit of Stephen Arne Decatur Greaves, Eleanor Godfrey Greaves, Sebastian Peyton Thrower Greaves, Greta Barbour Greaves, and Henry William Harrington Greaves, by virtue of Warranty Deed from Stephen Arne Decatur Greaves, Eleanor Godfrey Greaves, Sebastian Peyton Thrower Greaves, Greta Barbour Greaves, and Henry William Harrington Greaves (collectively, the "Grantor") do hereby sell, convey and specially warrant unto Chestnut Hill, LLC, a Mississippi limited liability company (the "Grantee"), the following described property lying and being situated in Madison County, Mississippi, and more particularly described as follows, to-wit:**

**SEE EXHIBIT A**

**This conveyance is made subject to any and all easements, rights of way, restrictive or protective covenants and all prior mineral reservations of record.**

**This conveyance is made subject to the following covenant that for a period of fifty (50) years from the date of this instrument, all uses and improvements on said 10.81-acre tract (Parcel 2 on Exhibit A) will meet the standards of the Manssdale-Livingston Heritage Preservation District. This covenant runs with the land and shall be solely for the benefit of the immediately**

-212-

adjacent property owner holding fee simple title to that property presently owned by Grantor; provided, however, if Grantor subdivides the property adjacent to said 10.81-acre tract, then this covenant shall only benefit the fee simple owners of property having a common boundary with the 10.81-acre tract. Grantor acknowledges that Grantee's plans include a commercial development on the property.

The ad valorem taxes for the current year 2007 due upon the property were prorated as of the date hereof and are hereby assumed by Grantee.

WITNESS THE SIGNATURE OF THE GRANTORS, this the 24 day of August, 2007.

GRANTOR:

Sunnyplace Trust

By: Vary T. Greaves  
Vary T. Greaves, Trustee

By: Eleanor Godfrey Greaves Harrington  
Eleanor Godfrey Greaves Harrington,  
being one and the same as Eleanor Godfrey  
Greaves, Trustee

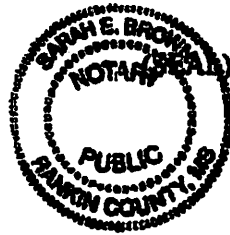
By: Henry William Harrington Greaves  
Henry William Harrington Greaves, Trustee

STATE OF MISSISSIPPI  
COUNTY OF Madison

Personally appeared before me, the undersigned authority in and for the said county and state, on this 24<sup>th</sup> day of August, 2007, within my jurisdiction, the within named Vary T. Greaves, who acknowledged that she is one of the Trustees of the Sunnyplace Trust and that in said representative capacity she executed the above and foregoing instrument for and on behalf of said Trust and as its act and deed, after having first been duly authorized by said Trust so to do.

Sarah Brown  
Notary Public

My Commission Expires:  
August 7, 2009



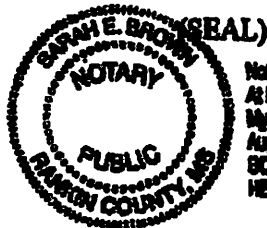
Notary Public State of Mississippi  
At Large  
My Commission Expires  
August 7, 2009  
BONDED THRU  
HEIDEN, BROOKS & GARLAND, INC

STATE OF MISSISSIPPI  
COUNTY OF Madison

Personally appeared before me, the undersigned authority in and for the said county and state, on this 24<sup>th</sup> day of August, 2007, within my jurisdiction, the within named Eleanor Godfrey Greaves Sutherland, being one and the same as Eleanor Godfrey Greaves, who acknowledged that she is one of the Trustees of the Sunnyplace Trust and that in said representative capacity she executed the above and foregoing instrument for and on behalf of said Trust and as its act and deed, after having first been duly authorized by said Trust so to do.

Sarah Brown  
Notary Public

My Commission Expires:  
August 7, 2009



Notary Public State of Mississippi  
At Large  
My Commission Expires  
August 7, 2009  
BONDED THRU  
HEIDEN, BROOKS & GARLAND, INC

STATE OF MISSISSIPPI  
COUNTY OF Hinds

Personally appeared before me, the undersigned authority in and for the said county and state, on this 29<sup>th</sup> day of August, 2007, within my jurisdiction, the within named **Henry William Harrington Greaves**, who acknowledged that he is one of the Trustees of the Sunnyplace Trust and that in said representative capacity he executed the above and foregoing instrument for and on behalf of said Trust and as its act and deed, after having first been duly authorized by said Trust so to do.

*Powell G. Ogletree, Jr.*  
Notary Public

My Commission Expires:

\_\_\_\_\_

(SEAL)



GRANTORS' ADDRESS: Sunnyplace Trust  
c/o Trustees  
P.O. Box 517  
Madison, MS 39130  
TELEPHONE NUMBER: (601) 879-8132

GRANTEE'S ADDRESS: Chestnut Hill, LLC  
601 Crescent Blvd., Ste. 100  
Ridgeland, MS 39157  
TELEPHONE NUMBER: (601) 898-4710

Prepared by and after recording return to:

Adams and Reese LLP  
Attn: Jim McNamara *13<sup>00</sup>  
#606*  
P.O. Box 24297  
Jackson, MS 39225-4297  
(601) 353-3234

## Exhibit A

## Parcel 1:

Commence at the southwest corner of the Northwest Quarter of the Northeast Quarter of Section 17, Township 8 North, Range 1 East, Madison County, Mississippi, said corner being marked by a long existing concrete monument and said corner being 1,329.21' South and 2,648.22' West of the corner common to Sections 8, 9, 16 and 17, Township 8 North, Range 1 East, Madison County, Mississippi, said section corner being marked by a long existing concrete monument with aluminum cap. Said corner that is the point of beginning hereof is also the point of beginning of the legal description of that certain 131.31 acre parcel of land conveyed by Houston C. Primos, et al, to Chestnut Hill, LLC, by General Warranty Deed filed for record in the office of the Chancery Clerk of Madison County, Mississippi, at Canton, Mississippi, as Instrument 635031 and in Book 2192 beginning at Page 494 thereof, reference to which is hereby made for all purposes. Said corner that is the corner common to said Sections 8, 9, 16 and 17 is the corner that is the point of beginning of the legal description of that certain 326.45 acre parcel of land conveyed by Philwood, L.P., to Chestnut Developers, LLC, by General Warranty Deed filed for record in the office of said Chancery Clerk as Instrument 515358 and in Book 2102 beginning at Page 590 thereof, reference to which is hereby made for all purposes; run thence South 89° 48' 21" West along the south line of the Northeast Quarter of the Northwest Quarter of said Section 17 and along the boundary of said 131.31 acre parcel of land for a distance of 422.01' to a corner on the boundary thereof, said corner being also the point of beginning of the legal description of the parcel of land that is more particularly described as follows, to-wit:

Run thence North 00° 10' 05" West along the boundary of said 131.31 acre parcel of land for a distance of 1,014.57' to a point; run thence South 56° 50' 33" West for a distance of 226.11' to a point; run thence South 19° 52' 54" West for a distance of 343.52' to a point; run thence South 00° 15' 52" East for a distance of 588.90' to a point on the south line of the Northeast Quarter of the Northwest Quarter of said Section 17; run thence North 89° 48' 21" East along the south line of the Northeast Quarter of the Northwest Quarter of said Section 17 for a distance of 308.47' to the point of beginning.

The above described parcel of land contains 6.12 acres, more or less, and is situated in the Northeast Quarter of the Northwest Quarter (NE1/4 NW1/4) of Section 17, Township 8 North, Range 1 East, Madison County, Mississippi. The reference meridian for the survey of the parcel of land described in this legal description is based on the Mississippi State Plane Coordinate System, West Zone NAD83(93) system established by observation of the "Fan Reset" triangulation station by Ricky L. Nelson, P.L.S. The concrete monument with aluminum cap marking the corner common to Sections 8, 9, 16 and 17, Township 8 North, Range 1 East, Madison County, Mississippi, has grid coordinates of North: 1107874.0721, East: 2334802.2981, the scale factor is 0.999951672731 and the convergence angle to True North is plus (clockwise) 00° 04' 00".


**Parcel 2:**

Commence at the corner common to Sections 8, 9, 16 and 17, Township 8 North, Range 1 East, Madison County, Mississippi, said corner being marked by a long existing concrete monument with aluminum cap, said corner being the corner that is the point of beginning of the legal description of that certain 326.45 acre parcel of land conveyed by Philwood, L.P., to Chestnut Developers, LLC, by General Warranty Deed filed for record in the office of the Chancery Clerk of Madison County, Mississippi, at Canton, Mississippi, as Instrument 515358 and in Book 2102 beginning at Page 590 thereof, reference to which is hereby made for all purposes. From said point of commencement, run thence South 89° 45' 15" West along the line common to said Sections 8 and 17 for a distance of 1,336.09' to a long existing iron rod with aluminum cap; run thence North 00° 16' 15" West for a distance of 950.68 feet to a long existing concrete monument at a fence corner marking the southernmost corner of that certain 13.89 acre parcel of land conveyed by P. W. Bozeman and Dudley R. Bozeman to Gus A. Primos, et al, by Warranty Deed filed for record in the office of the Chancery Clerk of Madison County, Mississippi, in Canton, Mississippi, as Instrument 25312 and in Book 256 beginning at Page 495, reference to which is hereby made for all purposes; run thence North 34° 22' 31" West along the boundary line common to said 326.45 acre parcel of land and said 13.89 acre parcel of land for a distance of 1,446.84' to the northeast corner of said 13.89 acre parcel of land, said corner being on the south margin of the Old Livingston-Brownsville Road, as said south margin is now (April, 2007) laid out and established; run thence North 51° 31' 02" West for a distance of 78.94' to a point on the west margin of the Old Livingston-Brownsville Road, as said west margin is now laid out and established, said point being also the point of beginning of the legal description of the parcel of land that is described as follows, to-wit:

Run thence South 10° 42' 00" West for a distance of 71.26' to a point; run thence South 47° 57' 00" West for a distance of 211.02' to a point on the northeast boundary line of that 4 acre parcel of land conveyed by Vary T. Greaves and Elmore D. Greaves to the Trustees of the Livingston Missionary Baptist Church by Quitclaim Deed filed for record in the office of the Chancery Clerk of Madison County, Mississippi, at Canton, Mississippi, as Instrument 515358 and in Book 2102 beginning at Page 590 thereof, reference to which is hereby made for all purposes; run thence North 47° 32' 00" West along the northeast boundary line of said 4 acre parcel of land for a distance of 324.63' to the northernmost corner of said 4 acre parcel of land; run thence South 50° 39' 00" West along the northwest boundary line of said 4 acre parcel of land for a distance of 266.56' to a point; run thence North 47° 25' 20" West for a distance of 108.65' to a point; run thence North 78° 38' 38" West for a distance of 55.28' to a point; run thence North 42° 37' 17" West for a distance of 141.43' to a point; run thence North 38° 35' 33" West for a distance of 87.91' to a point; run thence North 66° 50' 35" West for a distance of 105.30' to a point; run thence North 06° 40' 26" East for a distance of 472.83' to a point; run thence North 31° 05' 12" East for a distance of 99.24' to a concrete right-of-way marker on the south right-of-way line of Mississippi Highway 22, said marker being at a terminus of an offset in said right-of-way line; run thence along said south right-of-way line of Mississippi Highway 22 as follows: run thence North 30° 47' 08" East for a distance of 20.00' to a point; run thence South 59° 12' 52" East for a distance of 100.00' to a point; run thence South 30° 47' 08" West for a distance of

20.00' to a point; run thence South 59° 12' 52" East for a distance of 58.70' to the point of curvature of a curve to the left subtending a central angle of 14° 54' 39" and having a radius of 1,195.92 feet with the radius point of this curve being North 30° 47' 08" East of this point; run thence southeasterly along this curve to the left counterclockwise for an arc distance of 311.23 feet (chord bearing and distance: South 68° 40' 11" East, 310.35 feet) to the intersection of said south right-of-way line of Mississippi Highway 22 with the said west margin of the Old Livingston-Brownsville Road; leaving said south right-of-way line of Mississippi Highway 22, run thence South 41° 12' 00" East along said west margin of the Old Livingston-Brownsville Road for a distance of 477.02' to a point; run thence South 50° 19' 00" East along said west margin of the Old Livingston-Brownsville Road for a distance of 201.96' to the point of beginning.

The above described parcel of land contains 10.81 acres, more or less, and is situated in the Southwest Quarter of the Northeast Quarter (SW1/4 NE1/4), in the Northwest Quarter of the Southeast Quarter (NW1/4 SE1/4), in the Northeast Quarter of the Southwest Quarter (NE1/4 SW1/4) and in Southeast Quarter of the Northwest Quarter (SE1/4 NW1/4), all in Section 8, Township 8 North, Range 1 East, Madison County, Mississippi. The reference meridian for the survey of the parcel of land described in this legal description is based on the Mississippi State Plane Coordinate System, West Zone NAD83(93) system established by observation of the "Fan Reset" triangulation station by Ricky L. Nelson, P.L.S. The concrete monument with aluminum cap marking the corner common to Sections 8, 9, 16 and 17, Township 8 North, Range 1 East, Madison County, Mississippi, has grid coordinates of North: 1107874.0721, East: 2334802.2961, the scale factor is 0.999951672731 and the convergence angle to True North is plus (clockwise) 00° 04' 00".

MADISON COUNTY MS. This instrument was  
filed for record AUG. 22, 2007 at 8:11 a.m.  
Book 2232 Page 315  
ARTHUR JOHNSON, C. C.  
BY: [Signature] D.C. 



LAW OFFICES OF ANDY J. CLARK, PLLC  
567 HIGHWAY 51 NORTH, SUITE C  
RIDGELAND, MS 39157

P-601-622-7334

andy@andyjclark.com

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August 11, 2023

To: Rita McGuffie, Chair  
Mannsdale-Livingston Historic Preservation Commission  
Scott Weeks, Administrator  
Madison County Planning & Zoning Commission

From: Andy J. Clark, Esq.  
Counsel to Madison County Planning & Zoning Commission

cc: A. Mike Espy, Esq.  
Counsel to Madison County Board of Supervisors

RE: **The Oaks-Assisted Living Facility**  
**Conditional Use-Public/Quasi-Public Facility**

---

MEMORANDUM OPINION

Rita:

I write to further address certain issues raised at the August 10, 2023, meeting of the Planning & Zoning Commission regarding the above-referenced Application.

**Issue:**

Is an assisted living facility, such the one proposed by the Application for Conditional Use for a Public/Quasi-Public Facility (with Site Plan) submitted by Chad Phillips permitted in the Mannsdale-Livingston Historic Preservation District, as set forth in the Madison County Zoning Ordinance?

**Brief Answer:**

Yes.

**Governing Ordinance Provisions:**

Article III: Interpretations and Definitions

Page 1 of 4

-219-

Exhibit "2"

Article XIX: Mannsdale Livingston Historic Preservation District-Section 1901(c)

Article XXI: General Commercial District (C-1)

**Analysis:**

**Background:**

The property for this proposed Assisted Living Facility lies just west of the corner of Highway 463 and Highway 22, is zoned as C-1 General Commercial District with a PUD overlay, is in Supervisor District 4, and lies within the bounds of the Mannsdale-Livingston Historic Preservation District. Applicant seeks this conditional use in order to construct and run an assisted living facility.

**Definitions:**

Article III defines **Public/Quasi-Public Facilities and Utilities** as:

Any building, structure, system, use, or combination of uses, which is customarily and ordinarily provided by either public or private agencies, groups, societies, corporations, or organizations, whose purpose is the provision of necessary and desirable goods and/or services for the general public health, safety, and welfare. Such uses shall include, but not be limited to:

...

E. Convalescent homes or nursing homes.

Article III defines **Nursing Home** as:

Those health facilities where persons are housed and furnished with meals and continuing nursing services for a fee. Also known as Convalescent Home or Rest Home.

Article III defines **Assisted Living** as:

Assisted refers to a type of physical assistance rather than monetary assistance. In assisted living facilities, residents live independently in apartment or condominium style accommodation, and may be assisted by the provision of meals, housekeeping, security and social programs. Additional planned care, such as bathing, dressing and assistance with medication may also be provided.

**Question raised: *Is this an inappropriate use since apartments and condominiums are specifically prohibited in MLHPD?***

**Answer: No.**

Article III defines **Apartment** as:

A dwelling unit located in a multiple family structure for occupancy by one family only, either rented or leased to the occupants.

Article III defines **Dwelling, Multiple Family** as:

Any residential building or portion thereof which is occupied by three or more families living independently of each other. The term "multiple-family dwelling" shall be understood to include apartment houses or "complexes" and condominiums.

Article III defines Condominium as:

Real property consisting of an undivided interest in common or a portion of a parcel of real property, plus a separate interest in space in a residential, office, commercial or other land use.

As for the proposed assisted living facility, it cannot be considered an "apartment" because the facility is not a "multi-family structure" in a residential building. Rather, it is a proposed commercial building in a commercial designated district. Such use is only appropriate, and may only be approved by Application for Conditional Use for a Public/Quasi-Public Facility.

Without question, the proposed assisted living facility cannot be considered a "condominium," as the residents will not own any interest in any portion of the real property.

It is important to note here that apartments and condominiums are only allowed in certain residential zoning designations. They are not permitted in commercial zoning designations. As such, that is the reason that Nursing Homes, Convalescent Homes, Rest Homes, and Assisted Living Facilities are only permitted as a Conditional Use for a Public/Quasi-Public Facilities and Utilities in all zoning designations, including commercial designations.

**Question raised: *Is this use prohibited by Deed Restriction?***

**Answer: No.**

This property was previously deed restricted to only allow 2000 sf. single family residences by the Greaves family and others. See Deeds, attached to this memo as collective Exhibit "A." However, those covenants and restrictions were specifically terminated to allow for commercial purposes. See Termination of Covenants attached to this memo as collective Exhibit "B." Moreover, the Special Warranty Deed from the Greaves family to Chestnut Hill, LLC (predecessor in title to the Applicant) specifically states that the Grantor (Greaves) knew of the Grantee's (Chestnut's) plans to develop the property commercially. See Special Warranty Deed attached to this memo as Exhibit "C."

**Question raised: *What if the owners go out of business and sell? Doesn't that open the door for any type of commercial use of the property?***

**Answer: No.**

Article IV, Section 406.14 states:

Upon change in use of a structure or parcel and prior to issuance of a privilege license, a zoning verification must be completed by the Madison County Administrator, or their appointee. The proposed use of the property should comply with the zoning regulations for that type use including, but not limited to, off-street parking and access and buffer screening as deemed appropriate to protect the health, safety, and welfare of the general public.

As such, any change of use in the property or building would have to come back before Planning & Zoning for approval.

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**Conclusion**

Based on the analysis set forth above, I am of the opinion that the Application for Conditional Use for a Public/Quasi-Public Facility with Site Plan is proper.

I hope you find this information helpful and informative as MLHPD reviews this application.

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August 15, 2023

To: Scott Weeks, Planning and Zoning Administrator

From: Rita McGuffie, Mannsdale-Livingston Heritage Preservation District Commission

Re: The Oaks

Dear Mr. Weeks:

The Mannsdale-Livingston Heritage Preservation District Commission held its meeting on August 14, 2023 at 6 pm at the Chapel of the Cross, Madison, Mississippi. Petitioners Chad and Crystal Phillips presented their proposal for The Oaks Personal Care Assisted Living Home Conditional Use Application and Site Plan.

**FINDINGS:**

1. Petitioner has previously come before MLHPD with illegible and incomplete submittals.
2. MLHPD meets the 2nd Monday of each month if there is business to address within the District. However, MLHPD called special meetings on June 6, 2023 and July 31, 2023 to accommodate this petitioner.
3. At the July 31, 2023 meeting the petitioner came before MLHPD with an illegible incomplete submittal during which the petitioner said they had submitted some of the missing items to the Planning and Zoning Administrator and Mr. Weeks had failed to forward. However, they did not bring these items to the meeting themselves either. MLHPD tabled the review in that small hard copies were illegible for the items we review under the guidelines of the Zoning Ordinance for Madison County (ZOMC). Several times Ms. Phillips tried to present items on her cell phone. Ms. Phillips stated that she was very familiar with the ZOMC and referenced she had conferred with P&Z Attorney in depth about this proposal. Proposal was tabled and petitioner was given opportunity to come back with legible documents that could be reviewed.
4. Planning and Zoning moved forward with the Public Hearing on the Oaks on August 10, 2023, and approved this project conditional upon approval by MLHPD at its next meeting on August 14, 2023.
5. At the August 14, 2023 meeting MLHPD asked Mr. Phillips whether the information shown on the Madison County website under Active Planning and Zoning Cases was the complete and final submittal for the Oaks and was, in fact, the information that was presented to Planning and Zoning Commission for review at the Public Hearing on August 10, 2023, and was the exact submittal that was brought to MLHPD on August 14, 2023. Mr. Phillips confirmed that this was his complete and final submission information that was presented to Planning and Zoning, shown for the public on Madison County website and was presented to MLHPD on August 14, 2023.
6. The Conditional Use application shown on the Madison County website listed the Use applied for was Luxury Assisted Living. Petitioners stated that the requested Use had been changed to Personal Care Assisted Living and an amended Conditional Use application had been submitted to Planning and Zoning but they did not have a copy of it to include with their proposal. MLHPD pointed out that there is no definition/reference in ZOMC for this new verbiage. Mr. Phillips stated that his entire property is under the Conditional Use Application which is for a Conditional Use on an underlying C-1 zoning. He stated that he had the legal description required to be submitted along with this application, but could not produce it. Under ZOMC Section 1910 MLHPD shall review Conditional Use applications.
7. When MLHPD asked for the Application for Certificate of Appropriateness that is required under ZOMC Section 1913, they responded with questions about whether there was a form to use but then stated that they had sent the completed form to P&Z and that P&Z had

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Exhibit "3"

- already sent it to MLHPD. Ms. McGuffie verified that no Certificate of Appropriateness had been forwarded to us and the petitioners could not provide a copy from their files.
8. The petitioners do not have approval letter from MDOT for the entrance from Highway 22 at this time. Construction would come through an easement across adjacent property within Livingston Township.
  9. Petitioner has stated throughout review process that emphasis has been placed on the front elevation of the building. MLHPD has had concerns over the side elevations from the beginning since they would be in view of existing adjoining property. Petitioner has not chosen to address this during the submittal process. The very long white side wall has 2 small windows which are out of proportion to the elevation. No landscaping has been shown on the material we have been presented. MLHPD voiced its concern that these elevations will not be softened by landscaping or screened from view of adjoining property. Petitioner indicated they have chosen to use their resources for the front elevation and the interior.
  10. From our first time to meet with Mr. Phillips, MLHPD expressed the importance of the required 80 foot additional landscape buffer for every commercial development to the overall look and feel of the entire District. This is one of the means by which the Overlay District can soften the impact of development. We indicated that every Commercial project has provided a detailed 80 foot landscaping plan for MLHPD to review as to its appropriateness for that particular site. MLHPD suggested Mr. Phillips provide photographs of existing trees that he wants to leave in place along with any plans for additional plantings/features to attach to submittal for our required review. Mr. Phillips stated at July 31st and August 14th meetings that this would require time and money and he had decided not to do anything. Under residential projects in the District, developer has the option of a 100 foot natural buffer or a 60 foot landscaped and maintained buffer. Commercial shall have 80 foot *landscaped* buffer. (ZOMC Section 1907)
  11. Hours of operation were not submitted in writing. Mr. Phillips stated that occupancy would be 24 hour but open to the public from 8 am to 8 pm.
  12. No written statement was included concerning compliance to noise pollution. Mr. Phillips verbally confirmed that the project would be compliant with noise ordinance.
  13. Also verbally, Mr. Phillips indicated no security fencing will be installed except maybe on rear patio.
  14. Also verbally, Mr. Phillips stated that there is no nursing station proposed.
  15. MLHPD pointed out that a few units did not have Mississippi State Department of Health required outside exposure.
  16. Since Planning and Zoning Public Hearing Meeting came prior to MLHPD being able to provide their review, in order to provide a cohesive county review MLHPD verified with Mr. Phillips that the information provided on August 14 was the same material that was presented to the county at Planning and Zoning Public Hearing on August 10 and published on the Madison County website. References for MLHPD review include: ZOMC Sections 1907, 1910, 1911, 1912, 1913.
  17. Following Mr. Phillips statement that he stands by his proposal as presented, a motion was brought before MLHPD to deny this proposal based on the fact that presentation tonight is incomplete, there is a lack of information about landscaping and the side elevations which can be viewed by adjoining landowners are not appropriate. The motion was seconded and carried with David Landrum recusing himself from voting.

**RECOMMENDATION:**

MLHPD recommends that this Conditional Use/Site Plan for the Oaks Personal Care Assisted Living facility as presented by James "Chad" Phillips and Crystal Gardner Phillips be denied.

Rita McGuffie, MLHPD

**Andy Clark**

---

**From:** Andy Clark  
**Sent:** Tuesday, October 17, 2023 4:57 PM  
**To:** ritamcguffie1@gmail.com  
**Cc:** KenPrimos@kapcoinc.net; Scott Weeks  
**Subject:** The Oaks-Site Plan

Rita-

Good afternoon. On Tuesday, October 10, 2023, Scott Weeks, Ken Primos, you, and I met to discuss the re-submission of the site plan for The Oaks assisted living facility.

At that meeting, on behalf of the Madison County Planning & Zoning Commission, I asked that the Mannsdale-Livingston Historic Preservation District ("MLHPD") Commission convene to review the site plan for The Oaks, as re-submitted by Crystal and Chad Phillips, as the Phillips' had made revisions to address the reasons for MLHPD Commission's August 15, 2023, denial of their site plan.

It has come to my attention that the MLHPD Commission does not wish to review the site plan as re-submitted.

Please confirm as soon as possible, as the Phillips' site plan is set for review by the Planning & Zoning Commission on Thursday, October 19, 2023, at 9:00 a.m.

Thank you.

Andy J. Clark  
Law Offices of Andy J. Clark, PLLC  
567 Highway 51 North  
Suite C  
Ridgeland, MS 39157  
(601) 622-7334  
[andy@andviclark.com](mailto:andy@andviclark.com)

Exhibit "4"

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October 17, 2023

To: Scott Weeks, Planning and Zoning Administrator

Cc: Andy Clark, Planning and Zoning Attorney

From: Rita McGuffie, MLHPD

Dear Mr. Weeks:

Last week I met with you and Andy Clark to discuss the Oaks Personal Care Assisted Living proposal which MLHPD denied on August 14, 2023 (our 4th meeting to review this project). When I asked Mr. Clark whether the County classified the current Oaks request as a new submittal, he replied "no". I then asked whether this would be considered as reopening the case that had been duly denied to which his answer was again "no". Mr. Clark stated this could just be called a "revisit". Mr. Clark stated that MLHPD Commission had certainly preformed its duties correctly on this matter and could, therefore, stand on their August 14, 2023 decision to deny, or MLHPD Commission could choose to call another special meeting to revisit the Oaks. I have now canvassed the MLHPD Commission members and we do not have the vote to revisit the Oaks. Therefore, MLHPD will stand on our August 14, 2023 decision.

Sincerely,

Rita McGuffie

Exhibit "5"

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**APPLICATION FOR CONDITIONAL USE**

Name and Address of Applicant:  
Chad Phillips  
The Oaks Residence  
Luxury Assisted Living

Street Address of Property (if different address):  
Hwy 22 3625  
Livingston, ME

APPLICATION DATE	Present Zoning of Property	Legal Description of Property:	TAX PARCEL NUMBER	FLOOD ZONE	MAP/PLAT OF PROPERTY
<u>4.1.23</u>	<u>C-1 PD</u>	<u>See (Exhibit A)</u>	<u>0816-08-001/02</u>	<u>X</u>	<u>See (Exhibit B)</u>

Other Comments: As per Article 605 of the Madison County Zoning Ordinance.

**Comments**

Respectfully Submitted

Daniel Wolbridge, Architect  
DW

.....

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 \_\_\_\_\_

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**APPLICATION FOR CERTIFICATE OF APPROPRIATENESS/  
CERTIFICATE OF APPROPRIATENESS:**

**MANNSDALE-LIVINGSTON HERITAGE PRESERVATION (MHLF) DISTRICT**

APPLICANT NAME: James Phillips and Crystal Gardner-Phillips  
APPLICANT ADDRESS: 282 Lake Village Dr. Madison, CPOR, REI, LLC  
APPLICANT TELEPHONE NUMBER 601-955-7911, MS 39110  
DATE SUBMITTED TO ZONING ADMINISTRATOR: 10/16/23

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

See 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:

Uses Allowed Only As Special Exceptions:

- Public/ quasi-public facility or utility: Specify: personal residential assisted living  
- 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.

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## *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

\_\_\_\_\_  
Date

***APPROVED BY THE MADISON COUNTY BOARD OF SUPERVISORS:***

\_\_\_\_\_  
President

\_\_\_\_\_  
Date

**BEFORE THE PLANNING AND ZONING COMMISSION  
OF MADISON COUNTY, MISSISSIPPI**

**IN THE MATTER OF THE  
APPLICATION FOR CONDITIONAL  
USE; THE OAKS RESIDENCE  
ASSISTED LIVING FACILITY**

**PETITIONERS: JAMES PHILLIPS AND CRYSTAL GARDNER-PHILLIPS  
AND CPOR REI, LLC**

**SUPPLEMENTAL SUBMISSION IN SUPPORT OF  
APPLICATION FOR CONDITIONAL USE**

Come now the Petitioners, James Phillips and Crystal Gardner-Phillips and CPOR REI, LLC and file this their *Supplemental Submission in Support of Application for Conditional Use* before the Planning Commission of Madison County, Mississippi ("Commission") to construct and develop a Public/Quasi-Public Facility in the form of a personal residential assisted living facility on property which is currently zoned C-1 commercial and located within the Livingston Township Planned Unit Development ("LPUD") and as defined and provided for under and pursuant to Article III, Article IV, Section 402 and Article VIII; Section 805, Madison County Zoning Ordinance ("MCZO"), and in support thereof would state unto the Commission the following, to wit:

I.

**PROCEDURAL HISTORY**

The Petitioners filed their "Application for Conditional Use" ("Application") to construct "The Oaks Residence" ("The Oaks") personal care residential assisted living facility with the Madison County Zoning Administrator on April 1, 2023. The Commission took up for consideration The Oaks' application on August 10, 2023 and unanimously approved same

conditioned upon approval by the Marnsdale-Livingston Historic Preservation District ("MLHPD") at its next meeting.

MLHPD took up the Petitioners' application at its August 14, 2023 meeting but denied same based upon (1) "lack of information about landscaping" and (2) "side elevations of the building were inappropriate." Pursuant to the actions of the MLHPD, the Petitioners revised their plans to fully address the MLHPD concerns as is set forth and contained on page 2 "landscaping" and pages 9 and 11 "elevations" of their revised plan. When the Petitioners' attempted to present their revised plan to the MLHPD they were directed to "correspond directly with P&Z and/or The Board of Supervisors on this matter" (See Exhibit "1" hereto). The Petitioner's revised plan was provided to the Madison County Zoning Administrator on October 10, 2023 and is currently now before this Commission. A copy of the undersigned's letter of October 10, 2023 is attached hereto as Exhibit "2" and the revised plans are incorporated herein and made a part hereof for all intents and purposes.

The Petitioners' application and revised plans specifically address all of the provisions set forth and contained in Sections 805.01-805.05 "Conditional Use Permits," MCZO, adopted in November 2019. The Petitioners' revised plan also addresses each and every requirement for "site plan" review and approval as set forth under and pursuant to Section 807 and 810 "Site Plan Review" of the MCZO.

II.

THE OAKS FACILITY

As depicted in the The Oak's revised plans it is designed to look and feel like a beautiful southern greek revival home. The Oaks will be located within the Livingston Township PUD ("LTP") on five acres of property currently zoned C-1. A copy of the Warranty Deed and description of the five (5) acre parcel are attached hereto as Exhibits "3" and "4" respectively and Survey made a part hereof. The underlying C-1 commercial designation of The Oaks property specifically permits "Public or Quasi-Public facilities and utilities in compliance with Section 402 of this ordinance." (Section 2101 A MCZO pg. 142). Under Article XXVII, "PUD" Section 2704, A. "The uses that are permitted out right in PUD districts are subject to the regulations and restrictions as prescribed in the initial zone over which the PUD is superimposed." Section 2705 states that a public or quasi-public facilities or utilities may be considered for location in a PUD district in compliance with Section 402 of this ordinance. (MCZO pg. 163-164)

The Oak's application is not for a residential use. The property is zoned as a PUD superimposed over a C-1 general commercial use district designation. The Oaks' application is for a personal care assisted living facility which is clearly permitted as a conditional use for a Public/Quasi Facility in a C-1 District and all districts in the County. (See Section 402, pg. 47, MCZO).

The Oak's facility will accommodate a total of 15 residents giving it a smaller "home" feeling while providing exceptional senior services and upscale amenities. Another unique offering is The Oak's ratio of caretaker to residents unlike larger assisted living facilities. The Oak's will have only five (5) residents to one caretaker during the day, which far exceeds state and federal minimum requirements. Perhaps even more important is the fact that The Oaks will be

located within close proximity to many residential neighborhoods giving residents the opportunity to be close to their loved ones. This is also consistent with the research and publications by the Assisted Living Federation of America which found that the typical assisted living facility draws 85% of their residents from within 15 miles of their locations. The hours of operation for which The Oaks which will be open to the public will be from 8:00 a.m. to 8:00 p.m. which is well within the hours of operation proscribed under Article XIX (See MLHPD, Section 1914, MCZO, pg. 136).

### III.

#### **OWNERSHIP AND OPERATION OF THE OAKS ASSISTED LIVING FACILITY**

James Phillips and Crystal Gardner-Phillips are the sole owners and managers of The Oaks.

James is a registered charge nurse who has substantial experience in various ICU settings. James is licensed in Mississippi and Louisiana with Compact/Multistate, BLS, ACLS, PALS and National Assisted Living Manager certifications. Crystal is part of the fourth generation Gardner Real Estate Family. As Vice President of Gardner Realtors, founded by her great grandmother, Gertrude Gardner, Crystal led the Company with over 750 Realtors and 5,000+ local real estate transactions in excess of one billion dollars annually. Crystal is recognized nationally as an expert in the industry speaking at many national conferences including Leading Real Estate Companies of the World, Luxury Real Estate and The Realty Alliance.

James and Crystal not only have substantial health care and real estate experience, but they have also secured an expert advisory team for ongoing conversations and network consisting of top operators around the country for adoption of best practices in site selection, architectural design and review, construction, business planning, financial operation, and management. Residential

Assisted Living Academy (RAL) is one of America's industry leaders in educating and supporting investors and entrepreneurs in the process of investing in and operating Residential Assisted Living Care homes throughout the United States. The principles in RAL have over twenty (20) years of experience in assisting owners and investors in the ownership, operation, and successful management of senior residential assisted living facilities.

IV.

MADISON COUNTY ZONING ORDINANCES

The Madison County, MS Zoning Ordinance adopted by the Madison County, MS Board of Supervisors in November 2019 is the governing document and standards to be applied to The Oaks application for a conditional use.<sup>1</sup>

As stated above The Oak's application is for an assisted living facility (commercial use) located within the LTPUD which is superimposed over a C-1 General Commercial District. As set forth herein The Oaks is permissible as a conditional use for a Public/Quasi-Public Facility in a C-1 district and ~~all other zoning districts as defined and designated thereunder~~ (See Section 402; Section 2102 A.; Section 2705 A. MCZO).<sup>2</sup>

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<sup>1</sup> "AN ORDINANCE ESTABLISHING COMPREHENSIVE ZONING REGULATION FOR MADISON COUNTY MISSISSIPPI, AND PROVIDING FOR THE ADMINISTRATION ENFORCEMENT, AND THE AMENDMENT THEREOF; AND FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT THEREWITH."

<sup>2</sup> Section 402 Public/Quasi-Public Facilities and Utilities

All public and quasi-public facilities and utilities, as defined under Article III of this Ordinance, may be located in any district in the County Provided:

- a. That all applicable requirements of federal, state and county laws shall be met.
- b. That all such proposed uses shall be subject to the procedures stated under Section 805 relative to Conditional Uses.
- c. No public or quasi-public facility or utility shall be located in any area where the proposed use would be incompatible with surrounding land uses.



Article III of the MCZO defines Public/Quasi Public Facilities and Utilities as:

Any building, structure, system use, or combination of uses, which is customarily and ordinarily provided by either public or private agencies, groups, societies, corporations, or organizations, whose purpose is the provision of necessary and desirable goods and/or services for the general public health, safety, and welfare. Such uses shall include, but not be limited to:

**E. Convalescent homes or nursing homes.**

Under Article III E. "Convalescent homes or nursing home" are specifically designated as Public/Quasi Public Facilities.

Article III defines Nursing Home as:

Those health facilities where persons are housed and furnished with meals and continuing nursing services for a fee. Also known as Convalescent Home or Rest Home.

Under Article III Assisted Living is defined as follows:

Assisted refers to a type of physical assistance rather than monetary assistance. In assisted living facilities, residents live independently in apartment or condominium style accommodation, and may be assisted by the provision of meals, housekeeping, security and social programs. Additional planned care, such as bathing, dressing and assistance with medication may also be provided.

Petitioners submit that it is clear that convalescent homes or nursing homes are Public/Quasi Public Facilities which are allowed as a conditional use not only in C-1 and PUD zoning classifications, but "in any district in the county" (See Section 402, MCZO). Consequently, The Oak's application for conditional use is proper and warranted under the MCZO and request is hereby made that it be approved by the Planning and Zoning Commission of Madison County, Mississippi.

RESPECTFULLY SUBMITTED, this the 12<sup>th</sup> day of October, 2023.

JAMES PHILLIPS, CRYSTAL  
GARDENER-PHILLIPS, AND  
CPOR REI, LLC, APPLICANTS

By: Steven H. Smith  
STEVEN H. SMITH, ATTORNEY FOR  
APPLICANTS



Madison County, MS  
 I CERTIFY THIS INSTRUMENT FILED/RECORDED  
 7/12/2023 10:17:05 AM  
 INST: 888331 PAGE 1 OF 4  
 BOOK W - 4348288  
 WITNESS MY HAND AND SEAL  
 Ronny Lat, C.C. BY: RGK D.C.

~~This instrument prepared by and should be returned to:~~

ROBERT D. HARRISON, MSB/2029  
 717 Rice Road, Suite H  
 Ridgeland, Mississippi 39157  
 (601) 957-0002

INDEXING INSTRUCTIONS:

Madison County, Mississippi  
 Section 8, T8N, R1E - entire section

WARRANTY DEED

GRANTORS' ADDRESS/PHONE:

4829 Sheridan Avenue  
 Metairie, Louisiana 70002  
 504-236-4826

GRANTEE'S ADDRESS/PHONE:

282 Lake Village Drive  
 Madison, Mississippi 39110  
 504-251-1576

FOR AND IN CONSIDERATION of the sum of Ten Dollars (\$10.00) cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, the undersigned SHARON DIPAOLA GARDNER, acting in her capacity as the surviving Co-Trustee of the GLENN M. GARDNER AND SHARON GARDNER LIVING TRUST, does hereby sell, convey, and warrant unto CPOR REI, LLC, a Mississippi limited liability company, the following described land and property lying and being situated in Madison County, Mississippi, more particularly described as follows, to-wit:

5.08 acres located in Section 8, Township 8 North, Range 1 East, Madison County, Mississippi, and being further described as follows:

Exhibit "3"

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Commencing at a ½" iron rebar found marking the northwest corner of Lot 67 of Chestnut Hill, Part 1D as referenced in Plat Cabinet "E" at slide 141B and 142A and as recorded in the office of the Chancery Clerk of Madison County at Canton, Mississippi and thence run North 52 degrees 46 minutes 44 seconds West for a distance of 2,014.07 feet to a ½" iron rebar set and also being the Point of Beginning of the tract herein described:

From the POINT OF BEGINNING thence run North 78 degrees 41 minutes 31 seconds West for a distance of 29.76 feet to a ½" iron rebar found; thence run North 42 degrees 47 minutes 56 seconds West for a distance of 141.39 feet to a ½" iron rebar found; thence run North 38 degrees 28 minutes 33 seconds West for a distance of 87.83 feet to a ½" iron rebar found; thence run North 66 degrees 09 minutes 08 seconds West for a distance of 105.85 feet to a ½" iron rebar set; thence run North 06 degrees 39 minutes 18 seconds East for a distance of 471.74 feet to a ½" iron rebar set; thence run North 30 degrees 49 minutes 27 seconds East for a distance of 99.83 feet to a concrete monument found on the south right-of-way line of MS Highway #22; thence run North 31 degrees 17 minutes 23 seconds East, along said right-of-way, for a distance of 19.96 feet to a concrete monument found; thence run South 59 degrees 01 minutes 33 seconds East, along said right-of-way, for a distance of 100.19 feet to a concrete monument found; thence run South 31 degrees 09 minutes 45 seconds West, along said right-of-way, for a distance of 19.99 feet to a ½" iron rebar found; thence run South 58 degrees 54 minutes 47 seconds East, along said right-of-way, for a distance of 58.72 feet to a ½" iron rebar set; thence run along a curve to the left with the following data: Chord Bearing of South 65 degrees 09 minutes 05 seconds East, Chord Length of 256.41 feet, Radius of 1,195.92 feet, Arc Length of 256.91 feet to a ½" iron rebar set; thence run South 18 degrees 40 minutes 38 seconds West for a distance of 618.30 feet back to the POINT OF BEGINNING and being 5.08 acres, more or less.

Being the same land and property described and conveyed in Warranty Deed recorded in Book 4315 at Page 314 of the Madison County land records.

TOGETHER WITH THE FOLLOWING EASEMENTS:

1. 20' wide Sanitary Sewer Easement described and conveyed in the aforementioned Warranty Deed recorded in Book 4315 at Page 314, being appurtenant to the 5.08 acre parcel described herein.

2. 50' wide Ingress Egress Easement described and conveyed in the aforementioned Warranty Deed recorded in Book 4315 at Page 314, being appurtenant to the 5.08 acre parcel described herein.

Excepted from the warranty of this conveyance are:

1. Prior recorded reservations and conveyances of oil, gas and other minerals in, on and under the subject property.
2. Ad valorem taxes for the current year and subsequent years not yet due and payable.
3. Terms and conditions of Decree of Chancery Court establishing the Persimmon Burnt Corn Water Management District in Minute Book 37 at Page 524.
4. Declaration of Covenants, Conditions and Restrictions for Livingston Township, dated December 6, 2018, recorded in Book 3695 at Page 115.
5. Covenant for meeting standards of the Mansdale-Livingston Heritage Preservation District contained in Special Warranty Deed dated August 24, 2007, recorded in Book 2232 at Page 315.
6. Reciprocal Easement Agreement dated February 27, 2019, recorded in Book 3695 at Page 182.
7. Right of Way and Easement Deed to Centerpoint Energy Resources Corp. d/b/a Centerpoint Energy Mississippi Gas dated July 23, 2014, recorded in Book 3109 at Page 716.
8. Matters depicted on the plat of survey of the subject property prepared by Baird Engineering, Inc., dated February 17, 2023.

Grantor and Grantee acknowledge that the ad valorem taxes for the present year were prorated on an estimated basis using the tax information for the preceding year. If this proration proves to be inaccurate upon receipt of the actual tax statement for the present year, Grantor and Grantee shall adjust this proration based on the actual tax figures.

DATED, this the 10 day of July, 2023.

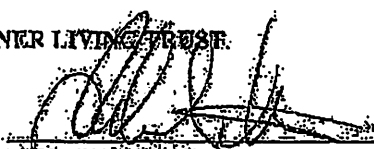
GLENN M. GARDNER AND SHARON  
GARDNER LIVING TRUST

  
SHARON DIPAOLO GARDNER,  
Surviving Co-Trustee

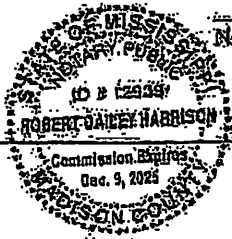
STATE OF MS

COUNTY/PARISH OF Madison

THIS instrument was acknowledged before me on this the 10 day of July, 2023, by SHARON DIPAOLO GARDNER, acting in her capacity as the surviving Co-Trustee of the GLENN M. GARDNER AND SHARON GARDNER LIVING TRUST.

  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_



MISSISSIPPI COUNTY RECORDS DEPARTMENT FILED ON 7/12/23 10:17:05 AM AND RECORDED IN W BOOK 4898 PAGE 289

*Steven H. Smith, PLLC*  
ATTORNEY AT LAW

Steven H. Smith

Legal Assistant:  
Angela Dees

Telephone:  
(601) 987-4800  
Facsimile:  
(601) 987-6600

October 16, 2023

Address:  
4316 Old Canton Road  
Suite 200  
Jackson, MS 39211

E-Mail:  
ssmith@shsattorneys.com  
angela@shsattorneys.com

*Via Email Only:*

Scott Weeks  
Madison County Planning & Zoning Administrator  
Scott.weeks@madison-co-com

Re: The Oaks Residence, residential  
Assisted Living Facility  
Revisions to Plans as per  
Your October 13, 2023 email

Dear Scott:

Attached is another set of the Plans for The Oaks Residence which have been revised to address each of the six (6) points presented in your email to me of October 13, 2023. Your email of October 13, 2023 to me is attached for your convenience. For your convenience and review each of the six (6) points referenced above are continued on the following pages of the attached plans.

- Point No. 1: Page A-1; Since our side yard abuts property which is zoned commercial (C-1) our 10' set back complies with Section 2103.04 of the Madison Co. Zoning Ordinance.
- Point No. 2: Page A-1; The front set back is shown to be 35' from the Hwy 22 right of way along with an additional 80' buffer, for a total set back/buffer of 115' from the Hwy 22 right of way.
- Point No. 3: Page A-1-2. The number of plants and type of plants are listed.
- Point No. 4: The front, rear, and both side elevations are shown on pages A-4 and A-4.1.
- Point No. 5: Page A-1; The total Gross Lot Coverages is 13,120 Sq Ft.
- Point No. 6: The Oaks Residence will not use/have a dumpster on its premises.

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Also, enclosed is the Application for Certificate of Appropriateness/Certificate of Appropriateness, along with property description which we have completed.

Upon receipt and review of my letter and the additional revisions to our plans, if you have any questions or if I have failed to provide you any requested information/revisions, please contact me at your earliest convenience.

*Steven H. Smith, PLLC*

By: *Steven H. Smith*  
Steven H. Smith

Enclosures:

cc: James & Crystal Phillips

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**EXHIBIT "A"**

**5.08 acres located in Section 8, Township 8 North, Range 1 East, Madison County, Mississippi, and being further described as follows:**

**Commencing at a ½" iron rebar found marking the northwest corner of Lot 67 of Chestnut Hill, Part 1D as referenced in Plat Cabinet "E" at slide 141B and 142A and as recorded in the office of the Chancery Clerk of Madison County at Canton, Mississippi and thence run North 52 degrees 46 minutes 44 seconds West for a distance of 2,014.07 feet to a ½" iron rebar set and also being the Point of Beginning of the tract herein described:**

**From the POINT OF BEGINNING thence run North 78 degrees 41 minutes 31 seconds West for a distance of 29.76 feet to a ½" iron rebar found; thence run North 42 degrees 47 minutes 56 seconds West for a distance of 141.39 feet to a ½" iron rebar found; thence run North 38 degrees 28 minutes 33 seconds West for a distance of 87.83 feet to a ½" iron rebar found; thence run North 66 degrees 09 minutes 08 seconds West for a distance of 105.85 feet to a ½" iron rebar set; thence run North 06 degrees 39 minutes 18 seconds East for a distance of 471.74 feet to a ½" iron rebar set; thence run North 30 degrees 49 minutes 27 seconds East for a distance of 99.83 feet to a concrete monument found on the south right-of-way line of MS Highway #22; thence run North 31 degrees 17 minutes 23 seconds East, along said right-of-way, for a distance of 19.96 feet to a concrete monument found; thence run South 59 degrees 01 minutes 33 seconds East, along said right-of-way, for a distance of 100.19 feet to a concrete monument found; thence run South 31 degrees 09 minutes 45 seconds West, along said right-of-way, for a distance of 19.99 feet to a ½" iron rebar found; thence run South 58 degrees 54 minutes 47 seconds East, along said right-of-way, for a distance of 58.72 feet to a ½" iron rebar set; thence run along a curve to the left with the following data: Chord Bearing of South 65 degrees 09 minutes 05 seconds East, Chord Length of 256.41 feet, Radius of 1,195.92 feet, Arc Length of 256.91 feet to a ½" iron rebar set; thence run South 18 degrees 40 minutes 38 seconds West for a distance of 618.30 feet back to the POINT OF BEGINNING and being 5.08 acres, more or less.**

**(Copy of survey plat attached as Exhibit "A")**

**Prepared by:  
Colin L. Baird, PE, PLS  
Baird Engineering, Inc.  
Clinton, Mississippi  
Date: February 20, 2023  
Job #4735**

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**TOGETHER WITH THE FOLLOWING EASEMENTS:**

**20' wide Sanitary Sewer Easement**

861.90 square feet located in Section 8, Township 8 North, Range 1 East, Madison County, Mississippi, and being further described as follows:

Commencing at a ½" iron rebar found marking the northwest corner of Lot 67 of Chestnut Hill, Part 1D as referenced in Plat Cabinet "E" at slide 141B and 142A and as recorded in the office of the Chancery Clerk of Madison County at Canton, Mississippi and thence run North 52 degrees 46 minutes 44 seconds West for a distance of 2,014.07 feet to a ½" iron rebar set; thence run North 18 degrees 40 minutes 38 seconds East for a distance of 186.71 feet to a ½" iron rebar set and also being the Point of Beginning of the tract herein described:

From the POINT OF BEGINNING thence continue North 18 degrees 40 minutes 38 seconds East for a distance of 20.46 feet to a ½" iron rebar set thence run South 59 degrees 08 minutes 23 seconds East for a distance of 48.11 feet to a ½" iron rebar set; thence run South 46 degrees 49 minutes 20 seconds West for a distance of 20.80 feet to a ½" iron rebar set; thence run North 59 degrees 08 minutes 23 seconds West for a distance of 38.08 feet back to the POINT OF BEGINNING and being 861.90 square feet, more or less.

**AND,**

**50' wide Ingress/Egress Easement**

0.27 acres (11,700 square feet) located in Section 8, Township 8 North, Range 1 East, Madison County, Mississippi, and being further described as follows:

Commencing at a ½" iron rebar found marking the northwest corner of Lot 67 of Chestnut Hill, Part 1D as referenced in Plat Cabinet "E" at slide 141B and 142A and as recorded in the office of the Chancery Clerk of Madison County at Canton, Mississippi and thence run North 52 degrees 46 minutes 44 seconds West for a distance of 2,014.07 feet to a ½" iron rebar set; thence run North 18 degrees 40 minutes 38 seconds East for a distance of 518.30 feet to a ½" iron rebar set and also being the Point of Beginning of the tract herein described:

From the POINT OF BEGINNING thence continue North 18 degrees 40 minutes 38 seconds East for a distance of 50.00 feet to a ½" iron rebar set; thence run along a curve to the left with the following data: Chord Bearing of South 76 degrees 33 minutes 00 seconds East, Chord Length of 227.74 feet, Radius of 1,245.92 feet, Arc Length of 228.06 feet to a ½" iron rebar set; thence run South 05 degrees 01 minutes 39 seconds West for a distance of

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50.07 feet to a ½" iron rebar set; thence run along a curve to the left with the following data: Chord Bearing of North 76 degrees 36 minutes 42 seconds West, Chord Length of 239.63 feet, Radius of 1,245.92 feet, Arc Length of 239.97 feet back to the POINT OF BEGINNING and being 0.27 acres (11,700 square feet), more or less.

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**MR. DAVE CALL**  
 20442323110000513  
 Water/Power/Over Creek Water Access - not marked  
 Private/Atty. Distribution - marked  
 Overdevelopment Energy MS - den  
 Electric Utility MS - den  
 From Topographic Data, C Spine Floor - marked

**PROPERTY LINES AND CORNER STATIONS IN THE SE 1/4 OF THE NW 1/4, THE NE 1/4 OF THE SW 1/4, THE SE 1/4 OF THE SW 1/4 AND THE NW 1/4 OF THE SE 1/4 OF SECTION 9, T-9-S, R-12-E, MADISON COUNTY, MISSOURI**

This property may be subject to records of recorded easements, mortgages, liens or other encumbrances which are not shown on this survey, and no warranty is made by the surveyor as to the accuracy of such records.

The boundary survey was performed and this plat was prepared by David L. Dault, Engineer, No. 0002767, 508 Jefferson Street, O'Fallon, MO 63366. Phone (601) 925-2015.

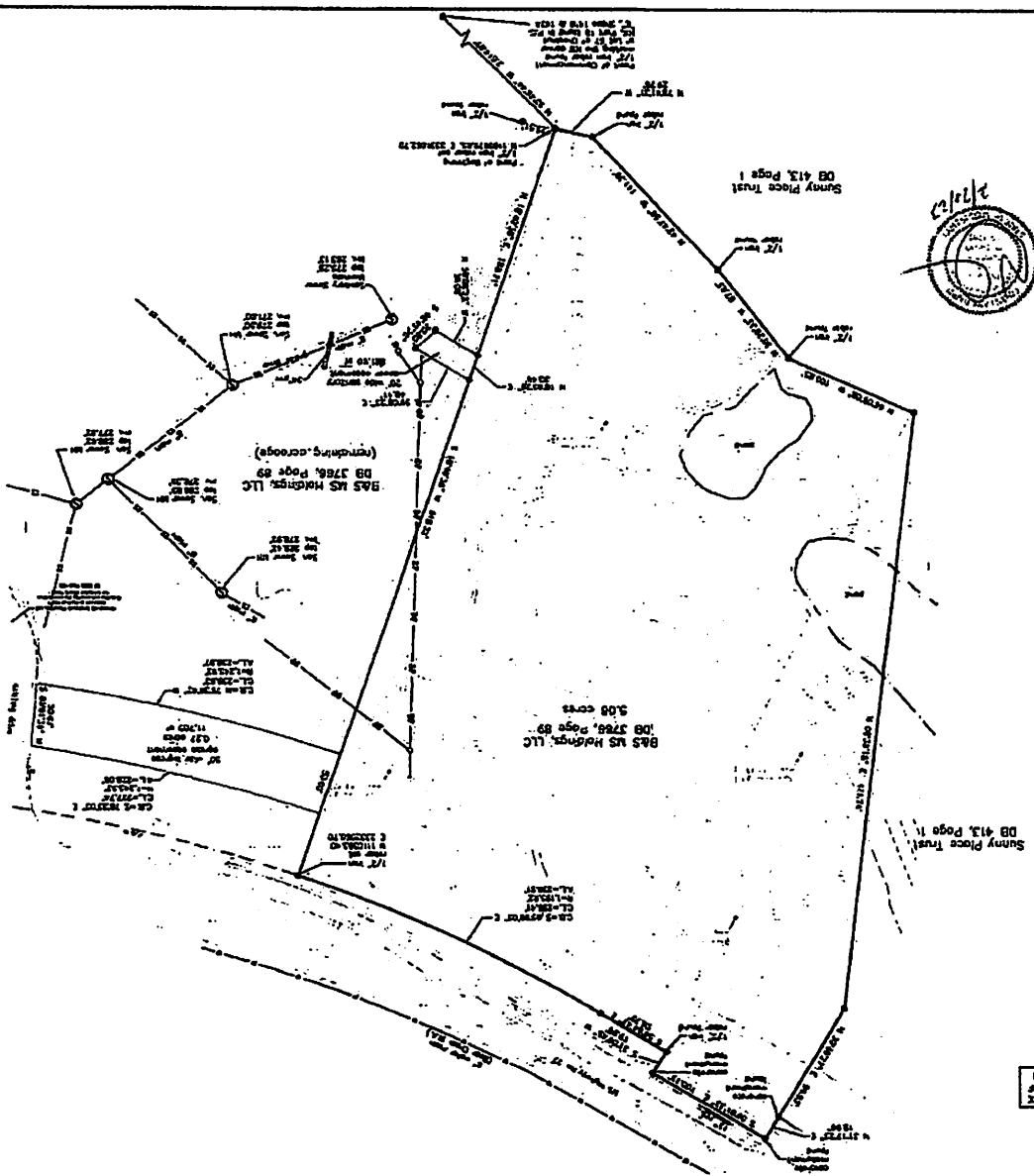
This survey is considered valid only when signed and sealed by the surveyor in accordance with the provisions of the Missouri Statutes.

I, David L. Dault, do hereby certify that the foregoing plat was made on February 10, 2023.

Date of Field Survey Commencing: February 9, 2023.

Changes in accordance with the provisions of Missouri Statutes for land surveyed in the State of Missouri, or considered as a part of the survey.

Notes of Bearings: The bearings on this plat are based on the datum of the Mississippi State Plane Coordinate System. Distances were measured using Trimble S550 and S572. Computed Factor = 1.0000453340000 (0.46 to 0.00mm) Computed Azimuth = 11110356.183, E = 232947.501



- LEGEND**
- Blk. - Blk. & Subdiv. Lines
  - - Blk. & Subdiv. Corners
  - - Blk. & Subdiv. Center Points
  - - Blk. & Subdiv. Section Corners
  - - Blk. & Subdiv. Quarter Section Corners
  - - Blk. & Subdiv. Section Quarter Corners
  - - Blk. & Subdiv. Section Quarter Quarter Corners
  - - Blk. & Subdiv. Section Quarter Quarter Quarter Corners
  - - Blk. & Subdiv. Section Quarter Quarter Quarter Quarter Corners



**BOUNDARY & TOPOGRAPHIC SURVEY**  
 for  
**R & S HOLDINGS**

DAVID L. DAULT  
 ENGINEER  
 No. 0002767  
 508 JEFFERSON STREET  
 OFFALON, MISSOURI 63366  
 PHONE (601) 925-2015

NO.	REVISIONS	DATE

SHEET 1 OF 1

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**Watson Jones PLLC**  
ATTORNEYS AND COUNSELORS AT LAW

J. Kevin Watson  
W. Robert Jones, III  
A. Seth Robbins  
Michael S. McKay

October 25, 2023

Via Electronic Mail - Scott.weeks@madison-co.com

Scott Weeks, Zoning Administrator  
Madison County, Mississippi  
125 West North Street  
Canton, Mississippi 39046

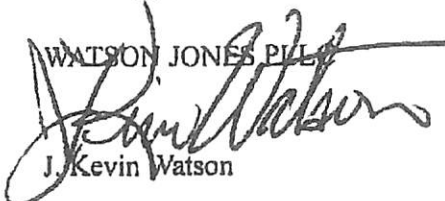
RE: Notice of Appeal of Planning Commission Action on  
Chad Phillips - Conditional Use for a Public/Quasi-Public  
Facility Utility (Assisted Living Facility) with Site Plan,  
3265 Highway 22 Property Zoned C-1 Commercial

The Briar Patch, LLC, Cedar Rose, LLC, Accent on Design, LLC d/b/a The Palmetto – Men’s Shoppe, Mr. and Mrs. Arne Greaves, Dr. and Mrs. James Sutherland, Mr. and Mrs. Sebastian Greaves, Mr. and Mrs. John Mills, Mr. and Mrs. Henry Greaves (the “Greaves Family”) (collectively the “Appellants”) hereby appeal the Planning Commission’s October 19, 2023 recommendation to approve the Chad Phillips – Conditional Use Application for the property which proposes to grant a conditional use for an assisted living facility.

The Appellants request a public hearing on their appeal, as provided for in Section 813 of the Madison County Zoning Ordinance and the laws of the State of Mississippi. At the hearing, the Appellants will present additional evidence and arguments in support of their appeal.

Thank you for your assistance. If you have any questions or require additional information regarding the Appellants’ appeal, please do not hesitate to contact me.

Sincerely,

WATSON JONES PLLC  
  
J. Kevin Watson

cc: Mike Espy, Attorney for the Madison County Board of Supervisors (via electronic mail)  
Andy Clark, Attorney for the Madison County Planning Commission (via electronic mail)

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*Steven H. Smith, PLLC*  
ATTORNEY AT LAW

Steven H. Smith

Legal Assistant:  
Angela Dees

Telephone:  
(601) 987-4800  
Facsimile:  
(601) 987-6600

October 16, 2023

Address:  
4316 Old Canton Road  
Suite 200  
Jackson, MS 39211

E-Mail:  
ssmith@shsattorneys.com  
angela@shsattorneys.com

**Via Email Only:**

Scott Weeks  
Madison County Planning & Zoning Administrator  
[Scott.weeks@madison-co-com](mailto:Scott.weeks@madison-co-com)

Re: The Oaks Residence, residential  
Assisted Living Facility  
Revisions to Plans as per  
Your October 13, 2023 email

Dear Scott:

Attached is another set of the Plans for The Oaks Residence which have been revised to address each of the six (6) points presented in your email to me of October 13, 2023. Your email of October 13, 2023 to me is attached for your convenience. For your convenience and review each of the six (6) points referenced above are continued on the following pages of the attached plans.

- Point No. 1: Page A-1; Since our side yard abuts property which is zoned commercial (C-1) our 10' set back complies with Section 2103.04 of the Madison Co. Zoning Ordinance.
- Point No. 2: Page A-1; The front set back is shown to be 35' from the Hwy 22 right of way along with an additional 80' buffer, for a total set back/buffer of 115' from the Hwy 22 right of way.
- Point No. 3: Page A-1-2. The number of plants and type of plants are listed.
- Point No. 4: The front, rear, and both side elevations are shown on pages A-4 and A-4.1.
- Point No. 5: Page A-1; The total Gross Lot Coverages is 13,120 Sq Ft.
- Point No. 6: The Oaks Residence will not use/have a dumpster on its premises.

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Also, enclosed is the Application for Certificate of Appropriateness/Certificate of Appropriateness, along with property description which we have completed.

Upon receipt and review of my letter and the additional revisions to our plans, if you have any questions or if I have failed to provide you any requested information/revisions, please contact me at your earliest convenience.

*Steven H. Smith, PLLC*

By: *Steven H. Smith*  
Steven H. Smith

Enclosures:

cc: James & Crystal Phillips

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**MINUTES OF THE MEETING OF THE MADISON COUNTY  
PLANNING AND ZONING COMMISSION HELD AND CONDUCTED ON  
THURSDAY, THE 19th DAY OF OCTOBER, 2023 AT 9:00 A.M. AT THE  
MADISON COUNTY COMPLEX BUILDING**

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**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 October, 2023, at 9:00 a.m. in the Madison County Complex Building.

Present:       Dr. Keith Rouser  
                  Rev. Henry Brown  
                  Jean McCarty  
                  Mandy Sumerall

Scott Weeks, Planning and Zoning Administrator

Absent:         Bill Billingsley

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

There first came on for consideration the minutes of the September 14, 2023, meeting of the Commission. Upon motion by Commissioner McCarty, seconded by Commissioner Brown with all voting "aye," motion to approve the September 14, 2023, minutes passed.

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

There next came on for consideration the Application of Chad Phillips for a Conditional Use for Public/Quasi Public Facility (The Oaks-Assisted Living Facility) with Site Plan. The property subject to the application is at 3265 Highway 22, is zoned C-1 Commercial District with a Planned Unit Development ("PUD") overlay, and is in Supervisor District 4.

Prior to presentation, Attorney Clark advised the Commission that this Application was previously before the Commission at its August 14, 2023, meeting, and the Commission approved it conditioned on review by the Mannsdale-Livingston Historic Preservation District ("MLHPD"). MLHPD met following the Commission meeting, and denied the Application. Such denial is attached to these minutes as Exhibit "A." Since that time, the Phillips have engaged Steven H. Smith, Esq., and have supplemented their Application. Attorney Clark advised that he and Administrator Weeks had met with two (2) of the MLHPD Board members, and asked that they convene, and review the supplemental information provided by the Phillips. Attorney Clark advised that MLHPD had declined to meet and review, and instead rely on their August denial. See MLHPD Letter dated October 17, 2023, attached hereto as Exhibit "B." Attorney Clark

reminded the Commission that MLHPD and Planning & Zoning Commission approval are not contingent, or dependent on each other, and that the Commission has an opportunity to listen to the presentation, and make their decision.

Steven H. Smith, Esq. appeared on behalf of the Applicants. Mr. Smith advised that the Application was filed on April 1, 2023, and seeks to construct an assisted living facility in the PUD at the Town of Livingston. Mr. Smith reminded the Commission that the property was zoned as C-1, and that an assisted living facility is permitted thereunder. Mr. Smith also reminded the Commission that this Application was unanimously approved by the Commission on August 10, 2023, conditioned upon approval from MLHPD.

Mr. Smith explained that MLHPD reviewed the Application on August 14, 2023, and denied it for two (2) reasons: "lack of information about landscaping," and "site elevations for the building were inappropriate." See Exhibit "A." Mr. Smith advised that his clients had revised the plans, addressed both issues raised, and requested that MLHPD revisit the revised plans. Mr. Smith submitted a screenshot of a text message between Crystal Gardner-Phillips, and MLHPD Chair, Rita McGuffie, advising that the Applicant should communicate with the Commission, or the Board of Supervisors regarding further submission. See Exhibit "C," attached hereto. Mr. Smith advised that since that text, the Applicant had communicated and cooperated with the Commission, and on October 12, 2023, submitted a Supplemental Submission in Support of Application for Conditional Use setting forth the revised plans. See Exhibit "D," attached hereto. Mr. Smith advised that on October 13, 2023, he received an email from Administrator Weeks outlining six (6) issues raised by MLHPD, and immediately revised their plans and met each issue by October 16, 2023. See Exhibit "E," attached hereto. Mr. Smith addressed each of the six (6) issues raised, and argued that the Applicants had met each of the issues in order to comply with the Zoning Ordinance.

Mr. Smith advised that on October 17, 2023, having not heard from MLHPD on the request to review the supplemental submissions, Attorney Clark requested Rita McGuffie confirm whether MLHPD would so review the submission. Mr. Smith advised that Ms. McGuffie responded that MLHPD would not review the submission, and rely on their August 14, 2023, decision. See Exhibit "F."

Mr. Smith argued that the Applicant had addressed and met each and every request from MLHPD, and was fully compliant with all required provisions of the Zoning Ordinance.

Mr. Smith reiterated that the proposed facility would be an assisted living facility, with only fifteen (15) beds, and a ratio of caretakers to residents that is much lower than a larger facility that is permitted. Mr. Smith argued that the surrounding uses are all commercial, and that the proposed facility is a Public/Quasi-Public Facility under Section 402 that is permitted in a C-1 Commercial use district, and a Planned Unit Development ("PUD"), both of which are applicable to the subject property.

Mr. Smith advised that the Applicant has a leadership team known as Residential Assisted Living Academy that is one of the top teams in the country to assist entrepreneurs in all aspects of operating and managing assisted living facilities. Mr. Smith stated that national statistics show



that assisted living facilities received approximately 85% of their residents from within a fifteen (15) mile radius of the location of the facility. Mr. Smith asked the Commission to acknowledge the residential growth in Madison County, and advised that based on the survey conducted by the Applicants, there is a need for the proposed facility, especially with such a low caretaker/resident ratio.

Mr. Smith next addressed the licensing and regulatory requirements for the proposed facility. Mr. Smith advised that the Applicants will have to get a license from the Mississippi State Department of Health, and submit a plan to meet all required criteria. Mr. Smith pointed to Miss. Code Ann. §43-11-13 as setting forth standards required by the State in the construction, operation, and management of the proposed facility, and entitled Minimum Standards for Personal Care Homes Assisted Living. *See Exhibit "G,"* attached hereto.

Mr. Smith next addressed concerns about how no one could have expected that an assisted living facility would be located at the Town of Livingston, that it would be out of character with the area, or doesn't fit with the architecture of the area. Mr. Smith advised that the rezoning of the Livingston Township PUD had been appealed to the Mississippi Supreme Court, and was upheld. Mr. Smith presented an architectural rendering of the Livingston Township PUD, which he argued was known to property owners in the area since 2010. Mr. Smith pointed out that the architectural rendering shows the property now owned by the Applicants as labeled "Active Senior Retirement." *See Exhibit "H."*

In response to questions from Chairman Rouser, Mr. Smith advised that the facility would not have a garbage dumpster area, but separate receptacles for garbage. Mr. Smith also pointed out where the facility would be located in relation to adjacent commercial development, and other residential areas in the vicinity.

In response to question from Commissioner Sumerall regarding deed restrictions, Attorney Clark advised that in looking at the historical land records, the Greaves family owned this property for quite some time. They conveyed the property with deed restrictions that it would only be used for residential use, and houses not less than 2,400sf. Attorney Clark advised that there is a clear record of termination of those covenants/restrictions, and in the deed from the Greaves to Chestnut Developers, there is clear language that the Grantor and Grantee understand that the property will be used for commercial development, and that any use would comply with the MLHPD. *See Exhibit "I,"* attached hereto. Attorney Clark advised that there is no doubt that the property falls under the MLHPD, but that the inclusion of the language in the 2007 Special Warranty Deed regarding MLHPD compliance was really unnecessary because the Board of Supervisors had already created the MLHPD in 2003, and the Greaves property was already in the MLHPD District at the time of the 2007 conveyance to the predecessor in title to the Applicant. Attorney Clark advised that there have been three (3) amendments to the Zoning Ordinance since the 2003 creation of the MLHPD—being 2005, 2013, and 2019. Attorney Clark advised that any time there is an amendment to the Zoning Ordinance, the old ordinance is repealed. As such, the governing ordinance applicable to the subject property is the 2019 Zoning Ordinance.

Mr. Smith also responded to Commissioner Sumerall that there are no current plans for the additional property owned by the Applicants.

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Greta Barber-Mills appeared in opposition. Ms. Barber-Mills advised that she, and her siblings are adjacent property owners, and have many concerns regarding the proposed use. Ms. Barber-Mills stated that the subject property is subject to the provisions of the MLHPD based on the 2007 Special Warranty Deed for a period of fifty (50) years, and that time has not passed. Ms. Barber-Mills argued that the Applicants are proceeding forward without the approval of MLHPD, which they are obligated to have. Ms. Barber-Mills argued that one of the objective of the MLHPD is to protect the integrity of the area, and to encourage premium architecture for new construction. Ms. Barber-Mills argued that the proposed architecture does not meet the standards of the MLHPD, and would be out of harmony with the existing structures. Ms. Barber-Mills further stated that the unspecified definition of a personal care home is worrisome as it is vague, and could open the door to unwanted services. As an example, Ms. Barber-Mills stated that one of the definitions of a personal care home under the Mississippi Department of Health is any facility operating 24 hours a day, 7 days a week, accepting individuals who require personal care services or mental care services. Ms. Barber-Mills inquired as to whether this would involve drug or alcohol rehab. Ms. Barber-Mills argued that they have no way of knowing what type of services would be provided, and do not want to leave the door open to see. Ms. Barber-Mills argued that the MLHPD prohibits overnight occupancy other than residential—no hotels, no apartments, no inns. Ms. Barber-Mills argued that the Applicant's facility would house 15-30 occupants, and staff, which is in complete violation of the MLHPD. Ms. Barber-Mills argued that the rooms at the facility would be apartments—30 people living under the same roof for an extended period. Ms. Barber-Mills asked why have rules if they are not to be followed? Ms. Barber-Mills argued that all of the businesses at the Town of Livingston have met the requirements of the MLHPD, and has contributed greatly to the Town's beauty and charm, and have enhanced the real estate value of the surrounding property. Ms. Barber-Mills argued that the Applicants would benefit from the rich history of the area, but that there appears to be a general disregard for the surrounding property owners and businesses due to the proposed building materials, lack of adequate landscaping, and a proper buffer zone between the Applicant's property and the adjoining land. Ms. Barber-Mills argued that the Applicants wish to be a part of the high standards, but are unwilling to meet the same standards which they are obligated to meet.

Mr. Smith responded to Ms. Barber-Mills, and stated that she brought nothing of substance, or that could be proved. Mr. Smith stated that everything she raised had already been addressed or debunked. Mr. Smith reiterated that MLHPD had two (2) initial reasons for denial, and then an additional six (6) issues raised. Mr. Smith argued that the Applicant had met and addressed each of them, and that there is nothing left to address. Mr. Smith specifically denied that there would be any sort of drug or alcohol rehab at the facility. Mr. Smith further denied that this use is an apartment, condominium, or boarding house, but is an assisted living facility, which is allowed in any zoning district under the Zoning Ordinance. Mr. Smith argued that the proposed facility does not violate anyone's integrity or does not go with the community. Mr. Smith argued that the hours of operation would be less than those allowed under MLHPD, as they would be open to the public from 8:00 a.m. to 8:00 p.m., whereas MLHPD hours of operation are 6:00 a.m. to 9:00 p.m.

Sebastian Greaves appeared in opposition. Mr. Greaves advised that he lives adjacent to the proposed facility. Mr. Greaves advised that he has a background in title, and runs title for timber companies, oil and gas companies, and real estate developers. Mr. Greaves advised that when his family was approached by the developers of the Town of Livingston in 2007, they

conveyed the subject property subject to restrictions. Mr. Greaves argued that there are legal issues here, and that the property is subject to the standards of MLHPD. Mr. Greaves argued that there is a legal issue, and a zoning issue. Mr. Greaves argued that boarding houses, apartments, and multi-family residences are not allowed. Mr. Greaves argued that the MLHPD has authority to grant general descriptions. Mr. Greaves argued that a Board of Supervisors resolution was approved, and defined boarding house. He argued that if you are paying for a room and a meal, it's a boarding house. Mr. Greaves argued that everyone knows this use is an apartment or a boarding house, and is not a single family dwelling. Mr. Greaves argued that when one goes into an area to rezone, you have to look at what restrictions are in place. As an example, he argued that if he were to go into Annandale Subdivision, you have to look at their covenants and restrictions. He argued this is no different as there is a deed with restrictions that is tied to the MLHPD charter. Mr. Greaves argued that MLHPD approval had not been gained, and approval of the facility would be in violation of the standards of the MLHPD. Mr. Greaves asked that a copy of the deed be admitted to the minutes. *See Exhibit "J."*

Ms. Barber-Mills stated that in response to Mr. Smith's statement that he does not know of anything else the Applicant could do, she believed that approval of the MLHPD is the starting point. She further argued that the proposed facility not being apartments is "splitting hairs," and that she disagreed that there are no longer covenants that need to be enforced or upheld.

Mr. Smith responded that there are no legal issues preventing the construction of the Applicant's facility. He argued that the "hocus-pocus" about covenants, things not being allowed, and improper zoning is wrong. He argued that arbitrary denial by MLHPD is not lawful, and that everything else set forth in opposition is a "scare tactic."

Sebastian Greaves responded that this is a legal issue because when you have restrictions in a deed, they must be abided by.

Loistine Worthy of the Greater Livingston Missionary Baptist Church appeared and stated that she was not in opposition or in favor of the Application. Ms. Worthy advised that they had just heard of this Application, and that the church simply wanted to be included so that they could make an informed decision of what they want. Of particular concern to Ms. Worthy was the rear of the property because it adjoins the church's graveyard.

Chad Phillips responded and advised that they are there to serve the community, and he would be happy to share their plans with the church. He stated that they had complied with the notice requirements of the Zoning Ordinance as far as posting signs, and running ads in the newspaper, and apologized if the church was unaware.

Crystal Gardner-Phillips appeared and advised that they had done their due diligence to ensure that they were not in violation of the Zoning Ordinance. Ms. Gardner-Phillips advised that they have worked diligently with MLHPD and had hired a historic architectural specialist to ensure that they proposed facility is true Greek Revival to ensure compatibility with the area. Ms. Gardner-Phillips reiterated that the Applicants are more than willing to discuss the matter further with those in opposition.

In response to question from Commissioner McCarty, Mr. Smith responded that this facility would not fall under the Mississippi Landlord-Tenant Act; the residents would not sign leases for specific space within the facility, and the facility would not fall under any rental ordinance of Madison County, but that the resident's bedrooms would be a part of the services that they are contracting for, and all of those matters would be regulated by the State Department of Health.

Rita McGuffie, MLHPD Chair, appeared and wanted to address the fact that their request that the Applicants approach Planning & Zoning first is simply standard procedure. In response to question from Commissioner McCarty as to whether there was a chance that MLHPD would reconsider its decision to stand on their August 14, 2023, denial, Ms. McGuffie stated that MLHPD had met with the Applicant on four (4) occasions, and MLHPD was concerned with the procedure of review because this was not a new submission, and was not a re-opening of a matter that they had already voted as being a final submission.

Upon motion by Commissioner McCarty to approve the Application of Chad Phillips for a Conditional Use for Public/Quasi Public Facility (The Oaks-Assisted Living Facility) with Site Plan, seconded by Commissioner Brown, with the vote being as follows:

Chairman Rouser	Aye.
Commissioner McCarty	Aye.
Commissioner Brown	Aye.
Commissioner Sumerall	Nay.

As such, the Application of Chad Phillips for a Conditional Use for Public/Quasi Public Facility (The Oaks-Assisted Living Facility) with Site Plan, was approved 3-1.

There next came on for consideration, the need to close the public hearing. Upon motion by Commissioner Brown to close the public hearing, seconded by Commissioner McCarty, with all voting "aye," the public hearing was so closed.

With there being no further business, the October 19, 2023, meeting of the Madison County Planning and Zoning Commission was recessed until October 20, 2023, at 9:00 a.m.

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Date

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Dr. Keith Rouser, Chairman

# The Oaks Residence

## Personal Care Assisted Living

### Madison County, MS

**Sheet Index:**

- A-1 Overall
- A-2 Site Plan
- A-3 Foundation
- A-4 First Floor
- A-5 Second Floor
- A-6 Third Floor
- A-7 Stairs
- A-8 Roof
- A-9 Mechanical
- A-10 Electrical
- A-11 Plumbing
- A-12 Fire Protection
- A-13 Energy
- A-14 Other

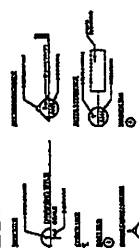
**Square Footage**

- Overall: 10,000
- First Floor: 5,000
- Second Floor: 3,000
- Third Floor: 2,000
- Roof: 1,000
- Mechanical: 500
- Electrical: 500
- Plumbing: 500
- Fire Protection: 500
- Energy: 500
- Other: 500

**Program Information:**

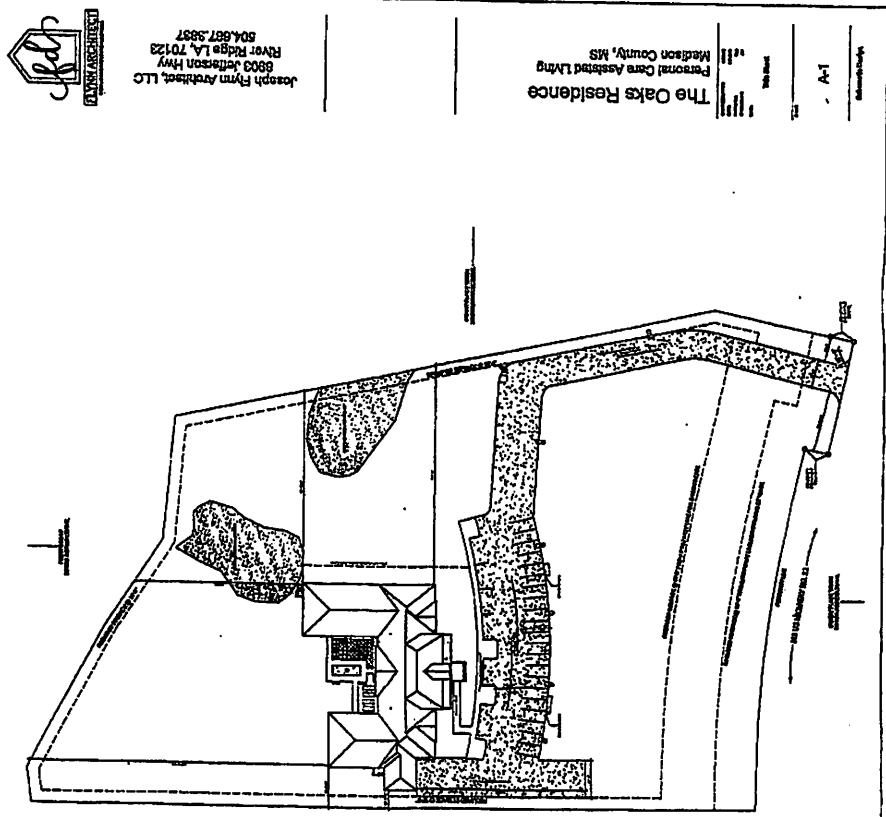
- Project Name: The Oaks Residence
- Client: Personal Care Assisted Living
- Location: Madison County, MS
- Architect: Joseph Pym Architects, LLC
- Date: 10/15/2014

**Architectural Symbols**



**NOTES:**

- ALL WORK TO BE DONE IN ACCORDANCE WITH THE 2012 INTERNATIONAL RESIDENTIAL CODE BOOK (IRC) AND THE 2012 INTERNATIONAL MECHANICAL, ELECTRICAL, AND PLUMBING CODE BOOK (IMC, EPC, AND UPC).
- ALL WORK TO BE DONE IN ACCORDANCE WITH THE 2012 INTERNATIONAL ENERGY CONSERVATION CODE BOOK (IECC).
- ALL WORK TO BE DONE IN ACCORDANCE WITH THE 2012 INTERNATIONAL FIRE AND SAFETY CODE BOOK (IFSC).
- ALL WORK TO BE DONE IN ACCORDANCE WITH THE 2012 INTERNATIONAL SCHEDULING CODE BOOK (ISC).
- ALL WORK TO BE DONE IN ACCORDANCE WITH THE 2012 INTERNATIONAL SIGNAGE CODE BOOK (ISC).
- ALL WORK TO BE DONE IN ACCORDANCE WITH THE 2012 INTERNATIONAL SYMBOLS CODE BOOK (ISC).



**Joseph Pym Architects, LLC**  
 6803 Jefferson Hwy  
 River Ridge LA, 70123  
 504.887.5897

**The Oaks Residence**  
 Personal Care Assisted Living  
 Madison County, MS

**Site Plan**  
 A-1

The Oaks Residence  
 Personal Care Assisted Living  
 Madison County, MS

A-12

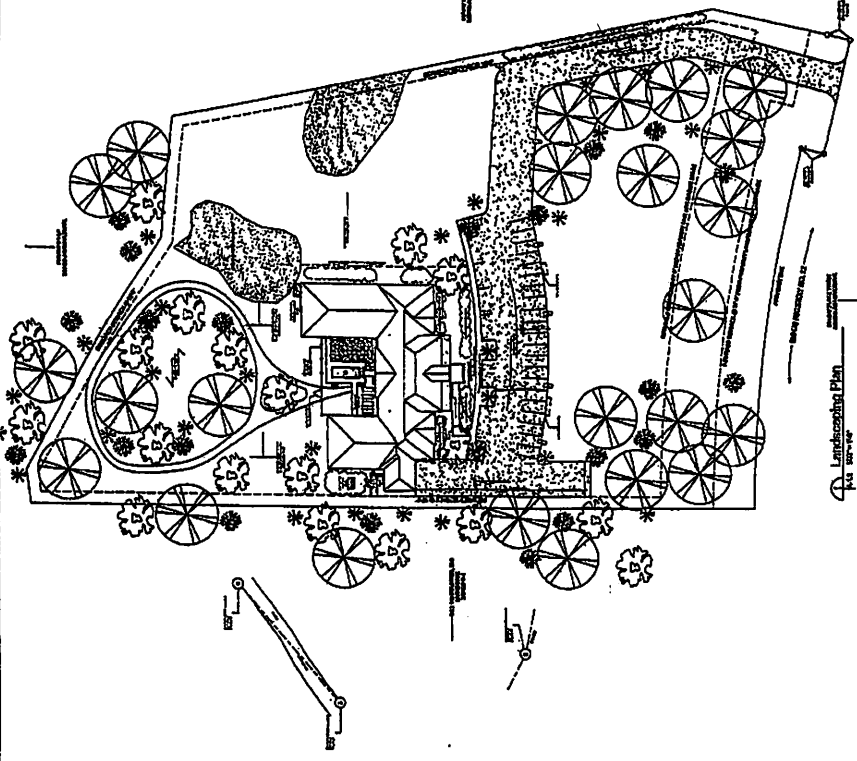
Sheet Title

Joseph Lynn Architects, LLC  
 8903 Jefferson Hwy  
 River Ridge LA, 70123  
 504.857.3857



LANDSCAPING KEY

- LANDSCAPE TREES  
 1" = 1'0" (1" = 1'0")
- SHRUBS  
 1" = 1'0" (1" = 1'0")
- LAWN  
 1" = 1'0" (1" = 1'0")
- HARDSCAPE  
 1" = 1'0" (1" = 1'0")
- WATER FEATURE  
 1" = 1'0" (1" = 1'0")
- UTILITY  
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- FENCE  
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- BUILDING  
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- PARKING  
 1" = 1'0" (1" = 1'0")
- DRIVEWAY  
 1" = 1'0" (1" = 1'0")
- ROAD  
 1" = 1'0" (1" = 1'0")



Landscaping Plan  
 1/4" = 1'-0"



Joseph Fynn Architect, LLC  
8503 Jefferson Hwy  
River Ridge LA, 70123  
504.667.3837

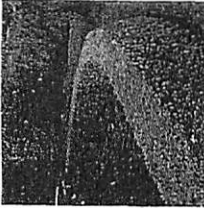
The Oaks Residence  
Personal Care Assisted Living  
Madison County, MS

A-1.3

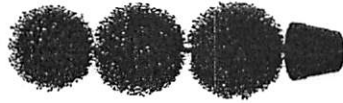
Sheet 1 of 1



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- ROUND



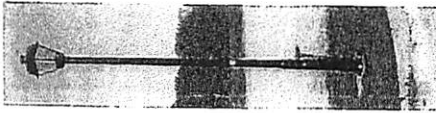
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- LINEAR



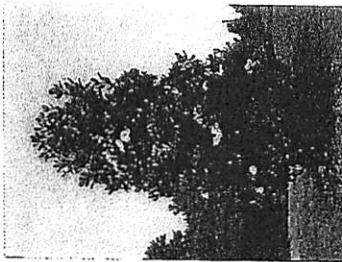
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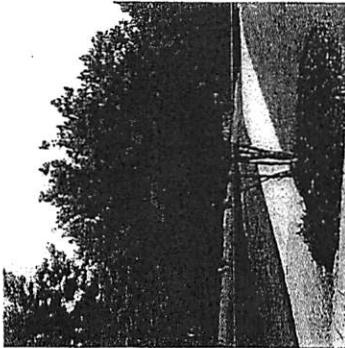
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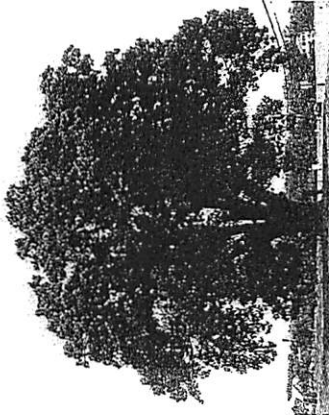
STREET LAMP POST



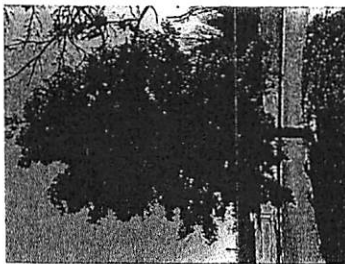
MAGNOLIA TREE



CREPE MYRTLE



OAK TREE



SAVANNAH HOLLY



ARCHITECTS

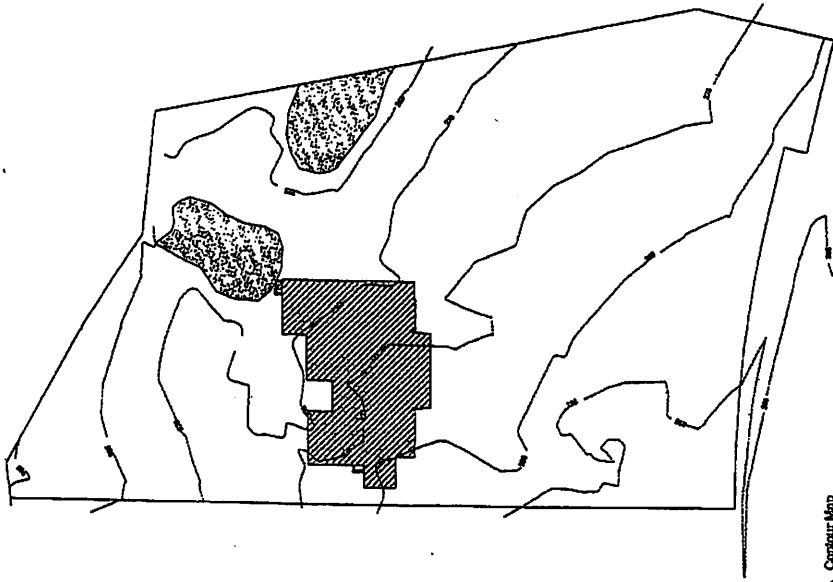
Joseph Flynn Architects, LLC  
8903 Jefferson Hwy  
River Ridge LA, 70123  
604.697.3837

The Oaks Residence  
Personal Care Assisted Living  
Madison County, MS

Sheet Number: 01  
Scale: 1/8" = 1'-0"

A-14

Revisions



Computer Aided  
Design





JPM ARCHITECTURE

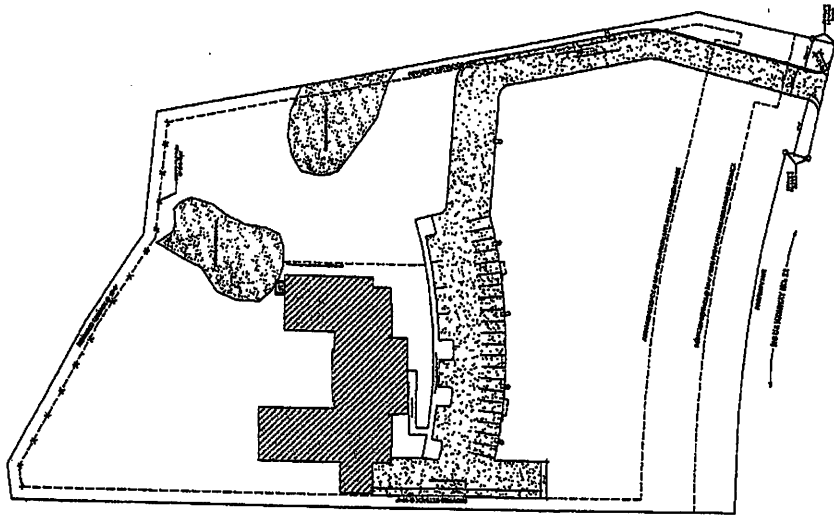
Joseph Fynn Architects, LLC  
8903 Jefferson Hwy  
River Ridge LA, 70123  
504.687.3837

The Oaks Residence  
Personal Care Assisted Living  
Madison County, MS

Project Code:

A-1.6

Revised Date:



Final Plan Option  
10/15/14

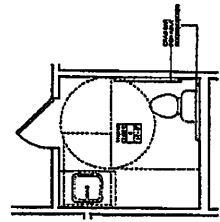


The Oaks Residence  
Personal Care Assisted Living  
Madison County, MS

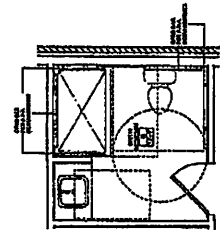
A-2.1

Architect

Joseph Flynn Architects, LLC  
8808 Jefferson Hwy  
River Ridge LA, 70123  
504.687.3837



Wider Closet  
14'-0" x 10'-0"



Unit Bathroom Layout  
14'-0" x 10'-0"