



Minutes of the City of Calera Council Meeting January 18, 2022

The Council of the City of Calera met in the Council Chambers of the City Hall at 7901 Highway 31 on Tuesday, January 18, 2022, at 6:30 p.m., in a regular meeting. Mayor Graham presiding.

Mayor and Council Members Present:

Jon G. Graham, Mayor
Philip Busby, Council Member
Kenny Dale Cost, Council Member
Ernest Montgomery, Council Member
Calvin Morgan, Council Member
Kay Snowden Turner, Council Member
Alan Watts, Council Member

Guests:

Sean Kendrick, James Fuller, Kelly Ellison, David Hyche, Debbie and Richard Byers, Bill and Ann Davis, Markus Snowden, Dawn Gragg, Bill Hilyer, Seth Gandy, Stacy Walkup, Jessica Sheffield, Marvin Gentry, Jackie Batson, Stephanie Busby, Howard Kaplan, David Comer, John Walter, Deb Long, Dennis Torrealba, Vickie McGiboney, Terry McGiboney

Mayor Graham called the meeting to order at 6:30 p.m.

Word of Prayer and Pledge of Allegiance:

Alan Watts opened the meeting with prayer and the Pledge of Allegiance.

Approval of Minutes:

Council Member Montgomery made a motion to approve and dispense with the reading of the following minutes:

Regular Meeting – January 3, 2022
Work Session – January 3, 2022

Council Member Cost seconded said motion and upon vote, the results were as follows:

AYES: Busby, Cost, Graham, Montgomery, Morgan, Turner, Watts

NAYS: None

Motion Passed

Old Business:

No old Business

New Business:

Seth Gandy, Park and Recreation Director – Christmas Parade Winner Announcement

1st Place- Edwards Towing

2nd Place- Terry's Towing and Lil Bit of Fun Daycare

3rd Place- Journey Baptist Church

Resolution No. 2022-02 – Surplus Park Department Equipment – One (1) Toro Workman Sprayer

Council Member Busby moved that Resolution No. R-2022-02 is adopted. Council Member Watts seconded said motion and upon vote, the results were as follows:

AYES: Busby, Cost, Graham, Montgomery, Morgan, Turner, Watts

NAYS: None

Motion Passed – Adopted this 18th day of January 2022

Chris Pappas, City Engineer – Proposal for Architectural Services – TurnerBatson – 17th Avenue Parking Lot (See Attached)

Council Member Cost made a motion to approve the proposal as requested. Council Member Turner seconded said motion and upon vote, the results were as follows:

AYES: Busby, Cost, Graham, Montgomery, Morgan, Turner, Watts

NAYS: None

Motion Passed

Resolution No. 2022-03 – Auxiliary Audit Agreement – Avenu Insights & Analytics, LLC. (See Attached)

Council Member Montgomery moved that Resolution No. R-2022-03 is adopted. Council Member Busby seconded said motion and upon vote, the results were as follows:

AYES: Busby, Cost, Graham, Montgomery, Morgan, Turner, Watts

NAYS: None

Motion Passed – Adopted this 18th day of January 2022

Resolution No. 2022-04 – Rebuild Alabama FY 2022 Grant Application and Acceptance (See Attached)

Council Member Turner moved that Resolution No. R-2022-04 is adopted. Council Member Montgomery seconded said motion and upon vote, the results were as follows:

AYES: Busby, Cost, Graham, Montgomery, Morgan, Turner, Watts

NAYS: None

Motion Passed – Adopted this 18th day of January 2022

Resolution No. 2022-05 – Bid Award Sanitary Sewer Treatment Plant SCADA Upgrade

Council Member Busby moved that Resolution No. R-2022-05 is adopted. Council Member Cost seconded said motion and upon vote, the results were as follows:

AYES: Busby, Cost, Graham, Montgomery, Morgan, Turner, Watts

NAYS: None

Motion Passed – Adopted this 18th day of January 2022

Street Light Approval Request – Limestone Parkway and Beverly Drive (See Attached)

Council Member Cost made a motion to approve the Street Light at Limestone Parkway and Beverly Drive. Council Member Morgan seconded said motion and upon vote, the results were as follows:

AYES: Busby, Cost, Graham, Montgomery, Morgan, Turner, Watts

NAYS: None

Motion Passed – Adopted this 18th day of January 2022

Moratorium on Gas Stations for the next 10 Years

Council Member Turner made a motion to place a moratorium on all gas stations for the next 10 years. Council Member Busby seconded said motion and upon vote, the results were as follows:

AYES: Turner, Busby

NAYS: Montgomery, Watts, Morgan, Graham, Cost

Motion Failed to Pass

Attorney for the next meeting

Aberdeen Subdivision Project

Council Member Busby made a motion to put the Aberdeen Subdivision Project on standby until we get our attorneys together to figure this out. Council Member Turner seconded said motion and upon vote, the results were as follows:

AYES: Busby, Cost, Graham, Montgomery, Morgan, Turner, Watts

NAYS: None

Motion Passed

Guests:

Jessica Sheffield – 170 Savannah Lane (See Attached Document)

Deb Long - 149 Savannah Lane (See Attached Document)

John Walter - Attorney for Savannah Pointe Residential Association, Inc. (See Attached Documents)

Council Member Busby made a motion to adjourn the meeting at 7:15 p.m.

Approved this 7th day of February 2022.

Jon G. Graham, Mayor

ATTEST:

Connie B. Payton, City Clerk

To view our City Council Meeting please click the link below:

<https://www.youtube.com/watch?v=AH2XoFv6gOY>

Mayor Graham introduced the following Resolution:

RESOLUTION NO. R-2022-02

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF CALERA, ALABAMA AS FOLLOWS:

WHEREAS, the City of Calera, Alabama has inventoried all Park Department Inventory

WHEREAS, the City has found the following item for the City of Calera no longer needed.

Items to Surplus:

One (1) Toro Workman Sprayer Serial Number 07368-31000117

Council Member Busby moved that Resolution No. R-2022-02 is adopted. Council Member Watts seconded said motion and upon vote, the results were as follows:

AYES: Busby, Cost, Graham, Montgomery, Morgan, Turner, Watts

NAYS: None

Mayor Graham declared Resolution No. R-2022-02 adopted.

Adopted this 18th day of January 2022.

Connie Payton, City Clerk

Jon G. Graham, Mayor



January 6, 2021

Mayor Jon Graham
City of Calera
(205) 668-3810
7901 Highway 31
Calera, AL 35040

C/O: Chris Pappas
City Engineer
(205) 668-3814

Re: **Proposal for Architectural Services
City of Calera 17th Avenue Parking Lot**

Dear Mayor Graham:

On behalf of our firm, I sincerely appreciate the opportunity to submit this proposal for architectural services for the City of Calera's 17th Avenue Parking Lot. Your vision for the city is extremely exciting and we are pleased to be considered for this important project. During our recent meetings with Calera Main Street, we have discussed the general project scope and plans for the revitalization.

SCOPE OF SERVICES

TURNERBATSON will oversee development of drawings and construction administration for the development of the 17th Street parking lot. Civil engineering will be completed by the City of Calera. Electrical engineering and landscape architecture will be included under our umbrella. Those services will include:

- Develop schematic drawings for Owner review and comment.
- Coordinate with local code officials and utility providers.
- Owner will provide full surveys as necessary
- Prepare full construction documents and submit for permit.
- Provide bidding phase services.
- Provide construction administration services throughout the construction period.

ARCHITECTURAL FEE

We anticipate that this work will be conducted on an hourly basis with a **guaranteed maximum cost of \$15,000.**

Anticipated hours are:

Architecture:	60 hours
Landscape Architecture:	30 hours
Electrical Engineering:	25 hours

TURNERBATSON

1950 Stonegate Drive #200
Birmingham, Alabama 35242
205.403.6201 | turnerbatson.com

Reimbursable Expenses

Reimbursable expenses including printing and plotting costs, mileage, review fees, postage, and additional engineering disciplines or consultants are in addition to the base fee. Reimbursables will be invoiced at 1.15 times the actual amount. Any engineers and consultants required by the owner, which are contracted through our office, will be invoiced at this rate.

Thank you again for your consideration of our firm. If you have any questions about our qualifications or this submission, please call me at 205-403-6201.

Sincerely,
TURNERBATSON

A handwritten signature in black ink, appearing to read "David M. Reese". The signature is fluid and cursive, with the first name "David" being more prominent than the last name "Reese".

David M. Reese
President
Principal Architect

Mayor Graham introduced the following Resolution:

RESOLUTION NO. R-2022-03

**AUXILIARY AUDIT AGREEMENT BETWEEN AVENU INSIGHTS
& ANALYTICS, LLC AND CITY OF CALERA**

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF CALERA,
ALABAMA

WHEREAS, the Council hereby agrees to authorize the Mayor to sign the one-year Auxiliary Audit Agreement with Avenu Insights & Analytics, LLC. for audit services. Said contract attached to minutes.

The City of Calera adopted this Resolution at the regular meeting on January 18, 2022, This Resolution is effective as of January 18, 2022.

Council Member Montgomery moved that Resolution No. R-2022-03 be adopted.
Council Member Busby seconded said motion and upon vote, the results were as follows:

AYES: Busby, Cost, Graham, Montgomery, Morgan, Turner, Watts

NAYS: None

Mayor Graham declared Resolution No. R-2022-03 adopted.

Adopted this the 18th of January 2022.

Jon G. Graham, Mayor

ATTEST:

Connie B. Payton, City Clerk

Auxiliary Audit Agreement

This agreement made as of the ____ day of _____, 2022, by and between AVENU Insights & Analytics, LLC and City of Calera, an Alabama CITY ("CITY").

A. General Provisions

1. **Audit Services Performed:** AVENU will perform auxiliary audit services for sales and use taxes, rental/lease tax, lodging tax and such other taxes as may from time to time be designated by the CITY.
2. **Deposit Process:** Deposits are made to the extent that funds have been received, via Automated Clearing House of the amounts and to the designated recipients as instructed by the CITY for each type of tax collected, as shown in more detail on Exhibit A.
3. **Information Provided:** CITY represents that the information provided to AVENU in the performance of services hereunder shall be provided free and clear of the claims of third parties. CITY represents that it has the right to provide this information to AVENU and that said information shall not be defamatory or otherwise expose AVENU to liability to third parties.
4. **Compliance with laws:** Each Party accepts responsibility for its compliance with federal, state, or local laws and regulations.
5. **Review and Appeal Process:** AVENU has adopted and will use a review and appeals process which is based on the *Alabama Taxpayers' Bill of Rights Act* and *Uniform Revenue Procedures Act* codified as Title 40, Chapter 2A, Code of Alabama, 1975, as amended.
6. **Audit Services:**
 - i. **AVENU Audit Services:** Audit Services include all preparation for the performance of an audit, any research or statistical analysis performed in relation to an audit, in-house audit/collection efforts, examination of the books and records of the taxpayer, an assessment of the amount due (if any), and all services related to closing an audit.
 - ii. **AVENU Reciprocal Agreement:** To the fullest extent allowed by law, CITY hereby authorizes AVENU to act as a facilitator with the Alabama Department of Revenue and other applicable jurisdictions to share audit findings on its behalf.
 1. **AVENU Fee:** AVENU will receive an amount based on an hourly rate as set forth in Exhibit A. There shall be no contingent fees. Each year on the anniversary of the Effective Date of this Agreement the hourly rate will increase by 3%.
 2. If overnight travel or travel more than 25 miles beyond origination point is required, AVENU will pay the auditor and bill the CITY for its portion of travel expenses. CITY agrees to pay the amount of these fees when due, regardless of any recovery.
 3. **Billing Increment:** Time will be recorded in 15-minute intervals (.25 hours);
 4. **Shared Audit Fees:** When audits for CITY overlap with audits for other AVENU clients or clients of AVENU Affiliates, the fees will be shared as follows:
 - a. **Travel Time:** travel time, expenses, and a daily per diem amount for each audit is distributed evenly among the clients reviewed for each audit.
 - b. **Interview Time:** time billed during the initial interview of each audit is distributed evenly amongst the clients reviewed for each audit – during this process the auditor determines which clients will actually be audited for and billed Audit Time as follows;
 - i. **Audit Time:** Time billed during the actual audit stage of each audit is billed according to actual time spent working for each client;
 - i. **No Double Billing:** In no event will the overlapping audits combined require payment for more than 100% for any one AVENU representative.

7. Notification, Reporting to CITY:
 - i. AVENU will provide CITY with monthly reports including, but not limited to, payment listings showing all taxes received related to net receipts reported, a general ledger distribution that corresponds to CITY'S account numbers and all fees paid to AVENU. These reports will be provided by the 10th of the month following the tax month;
 - ii. CITY AGREES TO EXAMINE THIS REPORT IMMEDIATELY. IF NO ERROR IS REPORTED BY THE CITY TO AVENU WITHIN 60 DAYS, THE STATEMENT WILL BE DEEMED ACCURATE;
 - iii. All items credited will be subject to receipt of payment; and
 - iv. AVENU will attend Council meetings at such times as may be reasonably requested by CITY.
8. Payment: AVENU shall submit invoices for all services rendered hereunder. Payment will be made by CITY to AVENU within thirty (30) days of receipt of an invoice. Any amounts which remain unpaid after thirty days shall accrue interest at the rate of one and one-half percent per month, or the maximum amount permitted by law.
9. Company Audit: Once a year AVENU will have an independent auditor prepare an SSAE 16, SOC 1, Type II Independent Service Auditor's Report on Controls Placed in Operation and Tests of Operating Effectiveness. This report will be made available upon request.
10. Effective Date: The effective date for the performance of services under the terms of this agreement shall commence _____ 1, 2022 with collection of _____ taxes to be remitted on or before _____ 20, 2022.
11. Term of the Agreement: This Agreement shall be for a term of one (1) year following the date of execution or the maximum period allowed by law, whichever is shorter. Either party shall have the right to terminate this Agreement in the event of a material breach by the other party. Any such termination may be made only by providing ninety (90) days written notice to the other party, specifically identifying the breach or breaches on which termination is based. Following receipt of such notice, the party in breach shall have thirty (30) days to cure such breach or breaches. In the event that such cure is not made, this Agreement shall terminate in accordance with the initial ninety (90) days notice.
12. Effect of Termination: Notwithstanding non-renewal or termination of this Agreement, CITY shall be obligated to pay AVENU for services performed through the effective date of termination for which AVENU has not been previously paid. In addition, because the services performed by AVENU prior to termination or non-renewal of this Agreement may result in the CITY's receipt of revenue after termination which are subject to AVENU' fee, the CITY shall remain obligated after termination or non-renewal to provide to AVENU such information as is necessary for AVENU to calculate compensation due as a result of the receipt of revenue by the CITY. The CITY shall remain obligated to pay AVENU' invoices therefore in accordance with the terms of this Agreement.
13. Indemnity: To the fullest extent allowed by law, AVENU hereby agrees to indemnify and hold CITY harmless from any claims and against all costs, expenses, damages, claims and liabilities based upon or arising solely out of a breach of this Agreement by AVENU. Except as set forth in the preceding sentence, to the full extent allowed by law, CITY hereby agrees to indemnify and hold AVENU harmless from any claims and against all costs, expenses, damages, claims and liabilities relating in any way to sales, use and other taxes of CITY, including, but not limited to, determination of taxes due from taxpayers, the collection thereof and any refunding related thereto.
14. Limitation of Liability: To the maximum extent permitted by law, in no event shall AVENU, its employees, contractors, directors, affiliates and/ or agents be liable for any special, incidental or consequential damages, such as, but not limited to, delay, lost data, disruption, and loss of anticipated profits or revenue arising from or related to the services, whether liability is asserted in contract or tort, and whether or not AVENU has been advised of the possibility of any such loss or damage. In addition, AVENU' total liability hereunder, including reasonable attorney's fees and costs, shall in no event exceed an amount equal to the fee paid by the CITY for the affected service to which the claim pertains. The foregoing sets forth the CITY'S exclusive remedy for claims arising from or out of this Agreement. The provisions of this section allocate the risks

AVENU City Contract 2022

between AVENU and the CITY and AVENU' pricing reflects the allocation of risk and limitation of liability specified herein.

15. Equal Opportunity to Draft: The Parties have participated and had an equal opportunity to participate in the drafting of this Agreement. No ambiguity shall be construed against any Party upon a claim that that party drafted the ambiguous language.
16. Assignment: This Agreement shall be binding upon and inure to the benefit of the Parties, their successors; representatives and assigns. AVENU shall not assign this Agreement, or delegate its duties or obligations under this Agreement, without the prior written consent of CITY, which consent shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, AVENU may assign this Agreement, in whole or in part, without the consent of CITY to any corporation or entity into which or with which AVENU has merged or consolidated; any parent, subsidiary, successor or affiliated corporation of AVENU; or any corporation or entity which acquires all or substantially all of the assets of AVENU. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their successors or assigns.
17. Force Majeure: AVENU shall not be in default of its obligations hereunder to the extent that its performance is delayed or prevented by causes beyond its control, including but not limited to acts of God, government, weather, fire, power or telecommunications failures, inability to obtain supplies, breakdown of equipment or interruption in vendor services or communications.
18. Subcontractors: AVENU shall have the right to hire assistants as subcontractors or to use employees to provide the Services required by this Agreement. AVENU, in rendering performance under this Agreement shall be deemed an independent contractor and nothing contained herein shall constitute this arrangement to be employment, a joint venture, or a partnership. AVENU shall be solely responsible for and shall hold CITY harmless from any and all claims for any employee related fees and costs including without limitation employee insurance, employment taxes, workman's compensation, withholding taxes or income taxes.
19. Intellectual Property Rights: The entire right, title and interest in and to AVENU' database and all copyrights, patents, trade secrets, trademarks, trade names, and all other intellectual property rights associated with any and all ideas, concepts, techniques, inventions, processes, or works of authorship including, but not limited to, all materials in written or other tangible form developed or created in the course of this Agreement (collectively, the "Work Product") shall vest exclusively in AVENU. The foregoing notwithstanding, in no event shall any CITY-owned data provided to AVENU be deemed included within the Work Product.
20. Entire Agreement: This Agreement constitutes the entire agreement between the Parties hereto and supersedes any prior understandings or written or oral agreements between the Parties respecting the subject matter contained herein. Said Agreement shall not be amended, altered, or changed, except by a written Agreement signed by both Parties hereto.
21. Invalidity: If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

IN WITNESS WHEREOF, the parties hereto as of the date first above written have duly executed this Agreement.

AVENU INSIGHTS & ANALYTICS, LLC

City of Calera

By: _____
Its: _____

By: _____
Its: _____

Proposed pricing contained herein valid for 60 days from date of issuance. Issued 1/11/2022 JK

AVENU City Contract 2022

Mayor Graham introduced the following Resolution:

RESOLUTION NO. R-2022-04

**A Resolution of the City of Calera Authorizing
Rebuild Alabama Grant Application and Acceptance for the FY 2022**

WHEREAS, it is the desire of the Mayor and City Council of the City of Calera to authorize application and acceptance of the Rebuild Alabama Grant (RAA) for the Fiscal Year 2022 by and for the City of Calera; and,

WHEREAS the amount of said grant is \$250,000.00 with remaining funding to be paid by the City of Calera in the amount of \$162,555.00; and

BE IT FURTHER RESOLVED by the Mayor and City Council of the City of Calera, in the State of Alabama, that the Mayor is hereby authorized to make application for the Rebuild Alabama FY 2022 Grant to support improvements to the Whippoorwill Road Resurfacing Project.

Council Member Turner moved that Resolution No. 2022-04 be adopted. Council Member Montgomery seconded said motion and upon vote, the results were as follows:

AYES: Busby, Cost, Graham, Montgomery, Morgan, Turner, Watts

NAYS: None

Mayor Graham declared Resolution No. R-2022-04 adopted.

Adopted this 18th day of January 2022.

Jon G. Graham, Mayor

ATTEST:

Connie Payton, City Clerk

City of Calera

JON GRAHAM
Mayor
CONNIE PAYTON
City Clerk
CHRIS PAPPAS
City Engineer



COUNCIL MEMBERS:
ERNEST MONTGOMERY
CALVIN MORGAN
KENNETH COST
PHILLIP BUSBY
ALAN WATTS
KAY TURNER SNOWDEN

January 11, 2022

FY 2022 RAA Annual Grant Program
Whippoorwill Road Resurfacing Project

A. Sponsoring Agency:

Jon G. Graham
Mayor
City of Calera, Alabama
7901 Highway 31
Calera, Alabama 35040
(205) 668-3500
mayor@calera.org

Project Manager:

Chris Pappas
City Engineer
1074 10th Street
Calera, Alabama 35040
cpappas@calera.org

B. Proposed Project Improvements:

The project consists of repairing and overlaying Whippoorwill Road in Calera. Whippoorwill Road is a critical piece of road infrastructure in Calera. Calera is often plagued by rail traffic on the CSX railroad blocking every road crossing in downtown Calera. These blockings are a daily occurrence and often last from 15-45 minutes. This situation separates Calera Fire Station One from the elementary school, police station, many businesses and residential homes that the station must serve.

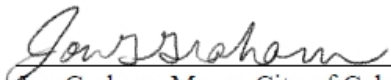
In the late 1990's, Whippoorwill Road was constructed to alleviate this problem by providing a link that is not restricted by the downtown rail crossings. Whippoorwill Road is approximately 1.8 miles long connecting 10th Street with US Highway 31. After over 20 years of heavy use, the roadway has experienced multiple areas of failure in the asphalt layers. In the last 2 years, the City has patched most of the failures through their yearly paving plan.

At this time, the final proposed project consists of completing the remaining patching, placing a G Surface Treatment over the entire road, overlaying the entire road with 1.5" of asphalt wearing course and restriping the road.

1074 10th STREET · CALERA, ALABAMA 35040
ENGINEERING DEPARTMENT (205) 668-3638 · FAX (205) 668-3821

- C. Preliminary Pay Estimate: See Attached Spreadsheet
- D. All work shall be done within the limits of the existing roadway for which right-of-way exists, therefore there are no anticipated project phases that will adversely impact the project's progression.
- E. The anticipated life expectancy of this project is 20 years. The City of Calera shall be responsible for maintenance and shall fund the maintenance out of the City's annual road maintenance budget.
- F. The local matching money is approved in the City's current budget.
- G. Supporting photographs, maps, etc: See attached

Submitted for ALDOT Consideration:

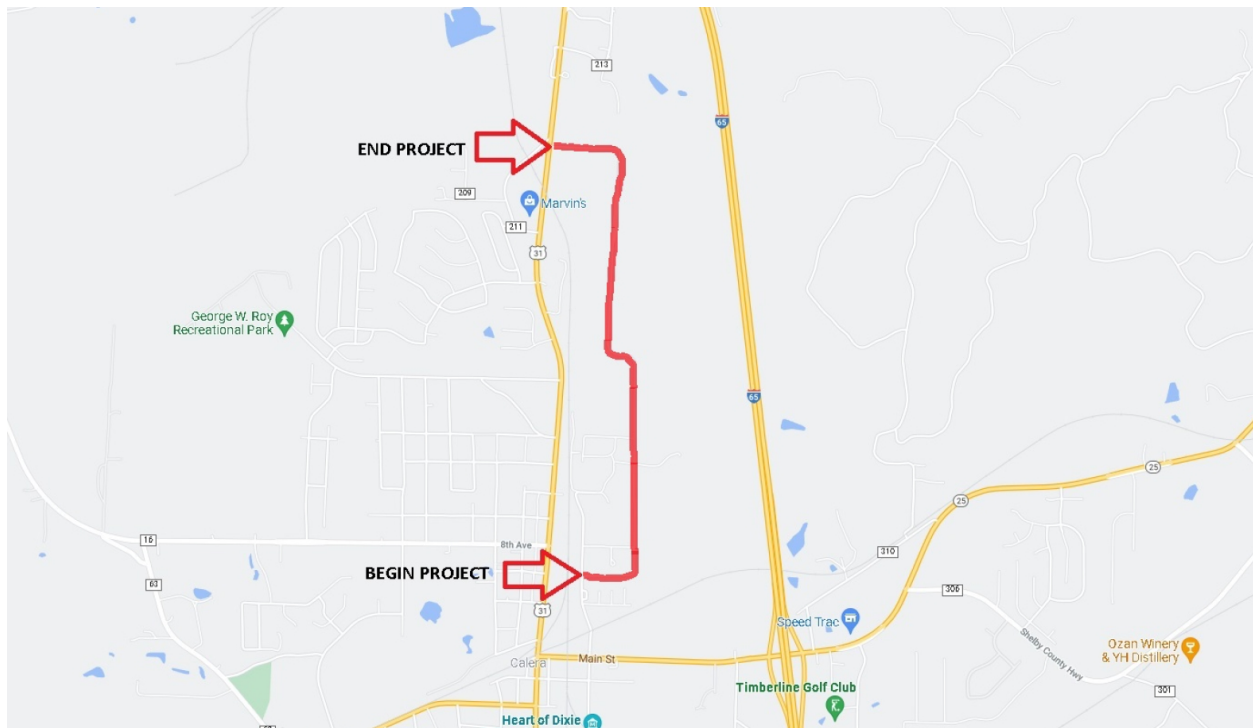

Jon Graham, Mayor City of Calera


Chris Pappas, City Engineer City of Calera

CITY OF CALERA
 OPINION OF PROBABLE COST
 PROJECT: RESURFACING OF WHIPPOORWILL ROAD
 DATE: JANUARY 11, 2022

ITEM NO.	ITEM DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL
1	MOBILIZATION	LS	1	\$ 20,000.00	\$ 20,000.00
2	ALDOT ITEM NO. 424B655 PATCHING	TN	175	\$ 150.00	\$ 26,250.00
3	ALDOT ITEM NO. 401B108 G TREATMENT	SY	24000	\$ 3.50	\$ 84,000.00
4	ALDOT ITEM NO. 424A361 WEARING COURSE	TN	1980	\$ 110.00	\$ 217,800.00
5	TACK	GAL	500	\$ 4.00	\$ 2,000.00
6	STRIPING	LS	1	\$ 25,000.00	\$ 25,000.00
				SUB-TOTAL	\$ 375,050.00
				10% CONTINGENCY	\$ 37,505.00
				GRAND TOTAL	\$ 412,555.00

REQUESTED FUNDING THROUGH REBUILD ALABAMA	\$ 250,000.00
REMAINING FUNDING TO BE PAID BY THE CITY OF CALERA	\$ 162,555.00





VIEW OF WHIPPOORWILL ROAD AT HWY 31



VIEW LOOKING SOUTH ALONG WHIPPOORWILL RD



VIEW LOOKING SOUTH ALONG WHIPPOORWILL RD



VIEW LOOKING SOUTH ALONG WHIPPOORWILL RD



VIEW LOOKING SOUTH ALONG WHIPPOORWILL RD



VIEW LOOKING NORTH AT SOUTHERN END



TYPICAL CONDITION



TYPICAL CONDITION



TYPICAL CONDITION

Mayor Graham introduced the following Resolution:

RESOLUTION NO. R-2022-05

A RESOLUTION ACCEPTING A BID FOR SANITARY SEWER TREATMENT PLANT SCADA UPGRADE FOR THE CITY OF CALERA, ALABAMA.

WHEREAS, the City of Calera has solicited sealed bids as required under the Alabama bid law; and

WHEREAS, bids were opened at Calera City Hall on December 27, 2021, at 10:00 a.m.; and

WHEREAS, bids were as follows:

Company

Aqua-Aerobics	\$129,915.00
Dexter Fortson Associates	\$104,632.00

WHEREAS, the Mayor and Council of the City of Calera, at the Regular Meeting on January 18, 2022, considers the recommendation of Mr. Bill Hilyer. The Mayor and Council will award the bid for Sanitary Sewer Treatment Plant SCADA Upgrade in the amount of \$129,915.00 to Tracer Electronics.

(Copy of Mr. Bill Hilyer, Public Works Director recommendation letter attached to this Resolution)

Council Member Busby moved that Resolution No. R-2022-05 be adopted. Council Member Cost seconded said motion and upon vote, the results were as follows:

AYES: Busby, Cost, Graham, Montgomery, Morgan, Turner, Watts

NAYS: None

Mayor Graham declared Resolution No. R-2022-05 adopted.

Adopted this 18th day of January, 2022.

Jon G. Graham, Mayor

ATTEST:

Connie B. Payton, City Clerk

City of Calera



JON GRAHAM
Mayor
CONNIE PAYTON
City Clerk

COUNCIL MEMBERS:

PHILIP BUSBY
KENNY DALE COST
ERNEST MONTGOMERY
CALVIN MORGAN
KAY SNOWDEN TURNER
ALAN WATTS

January 18, 2022
Calera City Council
Mr. Jon G. Graham
Mayor
7901 Highway 31
Calera, AL

Dear Mayor and Council,

As you are aware, the city opened bids for the upgrade of the SCADA for the biological process at the Camp Branch Wastewater Treatment plant. Attached to this letter of recommendation you will find a copy of the bids received.

The city received two bids for this project. One bid came from Dexter Fortson Associates for \$104,632, and the other bid came from Aqua-Aerobic Systems for \$129,915. Although Dexter Fortson was the lowest bidder on this project, they have acknowledged they do not have direct experience in performing this work at a wastewater treatment facility utilizing sequence batch reactors for processing wastewater. Aqua-Aerobics is the manufacturer of the biological process equipment for the plant and has supported the treatment process for the last 16 years. Therefore, it is my recommendation that the city award the bid to Aqua-Aerobics in the amount of \$129,915.

If you have any questions, please contact me at your convenience.

Sincerely,

William Hilyer

7901 HIGHWAY 31 · CALERA, ALABAMA 35040
MAYOR (205) 668-3500 · FAX (205) 668-3624

"Large enough to be progressively aware, yet small enough to still care"

REQUEST FOR BIDS – Sanitary Sewer Treatment Plant SCADA Upgrade

INVITATION TO BID

The city of Calera shall be accepting sealed bids for services and goods necessary to upgrade the Supervisory Control and Data Acquisition (SCADA) control system that operates our existing Aqua-Aerobic treatment processes at our sanitary sewer treatment plant. Bids will be accepted until 10:00 a.m. on December 27, 2021 at time the bids will be opened and read aloud. Sealed bids shall be submitted to the following:

City of Calera

Attn: Bill Hilyer, Public Works Director 7901 US Highway 31

Calera, AL 35040

INSTRUCTION TO BIDDERS

Bids shall be submitted on the bid form provided by the Calera Water Board. Bids shall be returned in a sealed envelope clearly marked "SEALED BID – Sanitary Sewer Treatment Plant SCADA Upgrade. ". Bidders shall not be permitted to use to their advantage any errors or omissions in the specifications or contract documents. The City of Calera reserves the right to issue new instructions or corrections as needed.

If the bidder has any questions concerning the meaning or intent of the specifications, the bidder shall request that an interpretation be made and an addendum be issued by the city, which shall be made available to all bidders. Failure to have requested an addendum shall not relieve the bidder from delivery in accordance with the intent of the specifications.

The city of Calera reserves the right to reject any and all bids or to waive any informalities or technicalities in the bid process and to accept the bid, which in the judgment of the city will be in the best interest of or be most advantageous to the city of Calera.

No bid shall be withdrawn for a period of 30 days following the date specified for opening of the bids.

GENERAL CONDITIONS

All prices shall be F.O.B., 7901 US Highway 31, Calera, AL, 35040.

The items bid on these specifications shall comply in all respects unless deviations are clearly specified.

Should it be determined on delivery that the items bid are deficient in any respect, the bidder or manufacturer shall, at no expense to the city, correct the deficiencies.

All bids shall be accompanied by sales brochure on the item bid and any or all guarantees or warranties must be attached.

SPECIFICATIONS:

Proposed SCADA control **system must fully comply, communicate, and operate** with existing Aqua-Aerobic treatment process equipment currently operating at the treatment plant.

PLC and Interface upgrade hardware for the main SBR control panel will include:

- * CompactLogixProcessor and Two (2) Panelview Plus 1000 Color Touchscreen HMI display interfaces programmed at AASI

- * I/O modules, power supplies, end caps, terminals, and wiring etc.

- * AAS to supply new and updated electrical drawings and new control strategy (with current storm flow logic). NOTE: The existing PLC enclosure, starters, selector switches, fuses, circuit breakers, and associated wiring will be reused. Any additional parts not identified in the scope below will be reused.

A SCADA system upgrade is required, and will be provided. This Windows 10 package will allow communication with the new CompactLogix platform via ETHERNET (DH+ capability is no longer available with CompactLogix).

* A new PC, laptop computer, flash drive, software packages, prosoft card, cable, and programming will be provided.

SCADA upgrade maintains the same functionality and same screens as the customer's existing SCADA system. NOTE: Customer is responsible for all ethernet wiring to and from the new SCADA system PC to the PLC

ADDITIONAL NOTES:

* Aqua field service personnel to complete wiring and terminations inside the control panel.

* Any field/plant wiring outside of the panel is the responsibility of the purchaser.

* Owner to provide personnel to operate the plant by hand during periods when the old PLC/Interface is disabled.

* The Aqua-Aerobic Systems field service technician will dispose of the existing controls equipment.

* Any additional programming changes or modifications that are requested above and beyond our standard programming scope are not included in the price and may require an additional price adder.

* Updated O&M manual drawings and cutsheets, and unlimited phone support.

ADVANTAGES AND FEATURES:

* The PLC and Interface software will maintain the integrity and reliability of the original system, while providing additional features and benefits common to the latest Aqua control strategies. The new system will provide higher speed and more reliable communication between the PLC and Operator Interface, operator friendly LCD touchscreen, and ready hardware and software support from AAS and locally. There will be minimal downtime through the use of pre-terminated I/O cards, shipped and pre-labeled with wiring information. The AquaSBR control system is a timer-based system with level overrides. This system provides control, sequence monitoring, and annunciation capabilities, and is designed to focus on an operating strategy to optimize the biological treatment process, while minimizing required operator attention.

* The control logic is proprietary to Aqua-Aerobic Systems, Inc.

24 hour technical/phone support is available for the life of the AquaSBR system

AquaSBR

Instrumentation

1 P.C. Based Control and Monitoring System will be provided as follows:

- One (1) Dell Precision Tower 5810 XL, Intel Xeon Processor E5-1620 v3 (4C, 3.5GHz), 16GB 2400MHz DDR4 RDIMM ECC memory, (2) 500GB Hard Drives in RAID 1 configuration, Integrated 1GB NIC, (1) 1GB NIC add-in card (PCIe), USB Laser 6-button mouse, 16X DVD+/-RW drive, 63month ProSupport 7x24, 1GB video card, 24" Dell Monitor
- One (1) backup Laptop computer
- Microsoft Windows 10 Operating System
- Microsoft Office Home and Business Edition 2016
- Malware/Antivirus software
- Media storage flash drive(s).
- Uninterrupted power supply.
- HP DeskJet printer(s).

- USB Printer cable.
- NetGear GS-105NA Ethernet Switch.
- Hubbell Cat 6 Ethernet Cable.
- TechSmith Snag-It software.
- RS Logix 5000 MINI Edition software.
- FactoryTalk View SE Station software.
- FactoryTalk View SE Development software.
- Prosoft communication module

Controls

Controls wo/Starters

1 Control Panel Upgrade Package(s) consisting of the following:

- Compactlogix Processor.
- Compactflash.
- Adapter plate(s) for operator interface.
- Input card(s)
- Relay output(s).
- Analog input(s).
- Power supply(s).
- 2.5 amp power supply(ies).
- HMI cable(s).
- 16 GA MTW wire.

BID FORM Sanitary Sewer Treatment Plant SCADA Upgrade Lump Sum Bid Price

\$ 129,915

Bid Submitted By:

Company

Name: Aqua-Aerobic Systems Inc.

Authorized Representative (Name and Title) Tim Lamont

Authorized

Signature _____ Date _____

Contact Information

Phone _____

Fax _____

Email _____

BID FORM Sanitary Sewer Treatment Plant SCADA Upgrade Lump Sum Bid Price

\$ 104,632.⁰⁰

Bid Submitted By:

Company

Name: Dexter Fortson Associates Inc.

Authorized Representative (Name and Title)

Andrew W. Fortson, President/Gen

Signature

Authorized

Date

12/27/2021

Contact Information

Phone 205-436-2710

Fax

Email

Street Lighting Modifications

Alabama Power Company



Alabama

Alabama

This is to advise that on the _____ day of _____, _____ adopted resolutions which appear in the minutes of this meeting, authorizing the following street lighting modifications:

☐ Council
☐ Commission of _____ Alabama

Fixture Ownership				Lamp Wattage	Poles	Other Facilities	Location
Company Owned		Customer Owned					
Install	Remove	Install	Remove				
✓				050 HPS			LIMESTONE PKWY AND Beverly DR LONG ARM MOUNTED

The requested modifications will change the present billing amounts as shown below:

(a) Additions	\$
(b) Removals	\$
(c) Other	\$

For Company Use Only:		(d) Net Change in Annual Billing	\$
W.E. Number		(e) Previous Annual Billing	\$
☐ W.E. Not Required		(f) New Annual Billing	\$
Set Order Number	Date	(g) New Monthly Billing	\$

The rules, regulations and Rate Schedule SLM on file with and approved by the Alabama Public Service Commission govern this service and are incorporated into this contract by reference. The Company will provide copies of the current versions upon request.

Alabama Power Company	Municipality, County or State
Approved:	By:
Title:	Title:



REQUEST TO BE ADDED TO THE CITY COUNCIL AGENDA

Form must be completed and returned to the City Clerk cpayton@calera.org
no later than 5:00 p.m. on the Wednesday prior to the council meeting

SPEAKING POLICY REQUIREMENTS

1. All individuals wishing to address the Council must complete the request form.
2. Verbal comments and interruptions from the floor will not be allowed.
3. Each speaker will be limited to five (5) minutes. For groups of individuals that wish to address the Council on the same topic, they will be limited to three (3) minutes per speaker. In cases where there are multiple speakers on the same topic, speakers are encouraged not to repeat the same information presented by previous speakers.

Date of Request: January 12, 2022

Meeting Date: January 18, 2022

Speaker's Name: John Walter, as attorney for Savannah Pointe Residential Association Inc.

Speaker's Address: 1217 Greystone Parc Drive, Hoover, AL 35242

Speaker's Telephone Number: 205-905-9510

Please give your description of the subject(s) you wish to address. You will not be able to discuss matters that are not listed on your request.

1. State and local laws regarding the process for approving residential developments.
2. The proper procedures for approving or disapproving the Aberdeen development.
3. The role of impact studies and why they are important.
4. Reports of property damage from flooding in Calera.
5. Other matters pertinent to the proposed Aberdeen development.



REQUEST TO BE ADDED TO THE CITY COUNCIL AGENDA

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SPEAKING POLICY REQUIREMENTS

1. All individuals wishing to address the Council must complete the request form.
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3. Each speaker will be limited to five (5) minutes. For groups of individuals that wish to address the Council on the same topic, they will be limited to three (3) minutes per speaker. In cases where there are multiple speakers on the same topic, speakers are encouraged not to repeat the same information presented by previous speakers.

Date of Request: Wednesday, Jan 12, 2022

Meeting Date: Tuesday, Jan 18, 2022

Speaker's Name: Deb Long

Speaker's Address: 149 Savannah Ln, Calera

Speaker's Telephone Number: 205-447-3476

Please give your description of the subject(s) you wish to address. You will not be able to discuss matters that are not listed on your request.

To address the acceptance or approval
of Charleston Place Master Plan, and it's
relationship to Savannah Pointe.

Deb Long 1/12/22



REQUEST TO BE ADDED TO THE CITY COUNCIL AGENDA

(Must be made no later than 5:00 p.m. on the Wednesday prior to the council meeting)

Date of Request: 1/12/22

Meeting Date: 1/18/22

Speaker's Name: Jessica Sheffield

Speaker's Address: 170 Savannah Lane

Speaker's Telephone Number: 352-872-2530

Please give a brief description of the subject(s) you wish to address. You will not be able to discuss matters that are not listed on your request. Your remarks will be limited to five minutes.

- Calera needs a moratorium on gas stations and liquor stores
- Calera's attorney should be present at all council and planning meetings
- City should clearly add upcoming projects on website
- City should request from ALDOT an on ramp onto I-65 from Hwy 22

SOUTHEAST ADVOCATE

ALABAMA - GEORGIA - FLORIDA

January 18, 2022

City Council for the City of Calera
7901 US-31
Calera, AL 35040

Sent Via Email Only to the following:

Kay Snowden Turner (ksnowdenturner@calera.org); Calvin Morgan (cmorgan@calera.org); Philip Busby (pbusby@calera.org); Kenny Dale Cost (kcost@calera.org); Ernest Montgomery (emontgomery@calera.org); Alan Watts (awatts@calera.org)

Re: Legal Issues Identified Relating to the Approval Process for the Aberdeen Subdivision.

To the Members of the City Council for the City of Calera:

My name is John Walter, and I am an attorney residing in North Shelby County. I was recently contacted and hired by Savannah Pointe Residential Association, Inc. to investigate the procedures being used to approve the Aberdeen subdivision. On January 4, 2022, the Planning Commission considered an application from Stars & Stripes 3V, LLC ("Stars & Stripes") to approve the Preliminary Plat for "Aberdeen, Phase 1." The Planning Commission deferred the decision to approve the application in order to first seek counsel from the city's attorney.

This morning, I received a copy of the Stars & Stripes application for Preliminary Plat approval. It shows that the application was first submitted by the developer on October 18, 2021, and it received approval from the Zoning Administrator, City Engineer, Building Official, Public Works Director, Fire Chief or Fire Marshall, and Police Chief or Deputy Chief on **December 10, 2021.**

State law requires that a municipal planning commission "approve or disapprove" a plat within 30 days after submission. Ala. Code § 11-52-32(a). If a municipal planning commission

fails to make a decision within 30 days, “the plat shall be deemed to have been approved.” *Id.* Therefore, it appears that the application for Preliminary Plat for Aberdeen, Phase 1 was approved by default.

This is concerning because the conclusion of my legal research is that the original Master Plan approved by the City Council in 2006 has expired and the Planning Commission lacks authority to approve the preliminary plat until the City Council re-approves the Master Plan. The remainder of this letter explains the reasons I believe the Planning Commission currently lacks authority to approve the preliminary plat for Aberdeen Phase 1.

I. Statement of the Law

A. The Approval of a Master Plan by the City Council

The first step that a developer must take to develop a Planned Unit Development (“PUD”) such as Aberdeen is to have the Master Plan approved by the City Council. Specifically, Calera’s zoning ordinances state:

Approval of the application for the PUD by the Council shall be an approval of the Master Development Plan and Planning Criteria of the application (the “Plan”). The developer of the PUD may proceed with the development of the property in accordance with the Plan, and no further approvals shall be required, except as set forth in § 5.20.5.

Calera Zoning Ordinance § 5.20.3.(2) (emphasis added). The word “Council” is defined in the zoning ordinances as “The City Council of the City of Calera.” Calera Zoning Ordinance § 3.4.(27). Therefore, the zoning ordinances clearly require the City Council of the City of Calera to approve the Master Plan for all PUDs.

The City Council is required to follow the procedures for “Conditional Use” approval found in Section 2.9 when deciding to approve a Master Plan. Calera Zoning Ordinance § 5.20.3.

Section 2.9.5 states that a Master Plan application “shall only be approved upon a finding that all” of the following nine criteria are satisfied:

1. The request is consistent with all applicable provisions of the Comprehensive Plan.
2. The request shall not adversely affect adjacent properties.
3. The request is compatible with the existing or allowable uses of adjacent properties.
4. The request can demonstrate that adequate public facilities, including roads, drainage, potable water, sanitary sewer, and police and fire protection exist or will exist to serve the requested use at the time such facilities are needed.
5. The request can demonstrate adequate provision for maintenance of the use and associated structures.
6. The request has minimized, to the degree possible, adverse effects on the natural environment.
7. The request will not create undue traffic congestion.
8. The request will not adversely affect the public health, safety or welfare.
9. The request conforms to all applicable requirements of this Ordinance.

Calera Zoning Ordinance § 2.9.5.

After a Master Plan is approved, it can expire due to the inaction of the developer under two separate two zoning ordinances. The first is found in Calera Zoning Ordinance § 2.9.4, which states:

Expiration and Revocation. Approval of a Conditional Use shall be considered exercised when the use has been established or when the Building Permit has been issued and substantial construction accomplished. When such use is abandoned or discontinued for a period of one (1) year, it shall not be reestablished, unless authorized by the Commission. Conditional Use approval shall be revoked when the applicant fails to comply with the conditions imposed by the Commission.

Calera Zoning Ordinance § 2.9.4 (emphasis added). Because Calera Zoning Ordinance § 5.20.3 directs the City Council to use the Conditional Use criteria found in § 2.9 in approving the Master Plan, I find the best interpretation of these regulations as requiring the authorization of

the City Council to reestablish the Conditional Use after it has been abandoned or discontinued for a period of one year.

A Master Plan can also expire due to the inaction of the developer under Calera Zoning Ordinance § 5.20.7, which states:

Time Limit for Development of the Plan. If no construction has begun with six (6) months from the estimated and approved start up date of the PUD, as indicated by §5.20.1.3.e(4), said approval shall lapse and be of no further effect. The Planning and Zoning Commission, upon showing of good cause by the developer, may extend for period(s) of three (3) months for the beginning of construction and development shall commence each year on five (5) acres and said construction should continue and be completed within a reasonable time.

Calera Zoning Ordinance § 5.20.7 (emphasis added).

B. Approval of the Preliminary Plat by the Planning Commission

After the City Council approves a Master Plan, the developer is next required to submit an application for preliminary plat approval to the Planning Commission. Calera Zoning Ordinance § 5.20.5. State law requires that a municipal planning commission “approve or disapprove” a plat within 30 days after submission. Ala. Code § 11-52-32(a). This 30 day time period can be extended if the applicant chooses to waive this requirement and consents to an extension of time. *Id.* The municipal planning commission may also grant “tentative approval,” which can require that “water and sewer and other utility mains, piping, or other facilities shall be installed” prior to the plat receiving formal approval. Ala. Code § 11-52-31(a); *see also Smith v. Eufaula Planning Comm’n*, 765 So. 2d 670, 671 (Ala. Civ. App. 2000) (showing a municipal planning commission grant tentative approval on the condition that the developer provide perimeter fencing around the development and an engineering report regarding the adequacy of water pressure in the area with respect to fire control).

If a planning commission denies an application for plat approval, the commission must state “[t]he ground of disapproval . . . upon the records of the commission.” Ala. Code § 11-52-32(a). Alabama Courts require the reason for disapproval to be sufficiently clear and definite to inform a developer how “the plan failed to meet the requirements of the regulations.” *Ex parte Pine Brook Lakes, Inc.*, 617 So. 2d 1014, 1016 (Ala. 1992). This notice is deemed necessary “to satisfy constitutional due process guarantees against arbitrary and capricious government action.” *Id.*

On the other hand, if the Planning Commission approves a preliminary plat application that is procedurally defective, then local citizens have a right to petition a court for a writ of mandamus directing the Planning Commission to deny the application. For example, in the case *Birmingham Planning Comm’n v. Laird*, 257 So. 3d 881 (Ala. Civ. App. 2018) a developer submitted an application to the Birmingham City Planning Commission asking to combine two lots in order to make a subdivision. *Id.* at 883. The Birmingham Planning Commission’s “subdivision Committee” approved the application. *Id.* A group of neighboring property owners who opposed the development filed a notice of appeal to the Birmingham Planning Commission, and the Planning Commission sided with the developer and granted the application. *Id.* at 884. Therefore, the neighboring property owners filed a petition in the circuit court requesting the court to issue a writ of mandamus to the planning commission directing it to deny the application for the proposed subdivision. *Id.* The neighboring property owners argued to the circuit court that the planning commission failed to follow its own regulations in approving the subdivision. The circuit court agreed and issued a writ directing the planning commission to deny the application for the new subdivision. *Id.* at 884.

The Birmingham Planning Commission appealed the decision to the Alabama Court of Civil Appeals, but the appellate court ruled in favor of the neighboring property owners and affirmed the circuit court's decision. The appellate court wrote that Section 3.12 of the Birmingham subdivision regulations require that "[a]ll decisions of the Subdivision Committee concerning proposed subdivisions must be based on factual evidence presented by the subdivider confirming the suitability of particular lands for proposed buildings, construction, access, type and intensity of development or other uses." *Id.* at 885-86. The planning commission failed to meet this standard because "the planning commission did not review the record from the subdivision committee's meeting and the planning commission did not have before it the evidence required by its own regulations." *Id.* at 886. In its written opinion, the appellate court emphasized that "[o]nce a planning commission has properly exercised its authority in drafting ordinances regulating subdivision development, it is bound by those ordinances." *Id.* As a result of the legal action filed by individual citizens, the Birmingham Planning Commission was required to deny the application for the new subdivision.

II. Current Facts Relating to the Proposed Aberdeen Development

I submitted a request to the City of Calera for all public records relating to the Aberdeen Development on this past Thursday, January 13, 2022. As of the time of this letter, the only document I have received is the application for preliminary plat approval submitted by Stars & Stripes. Because I do not currently have access to any other documents relating to the Aberdeen development, any reference to historical facts is based on a verbal chronology provided by a city employee. I understand that the proposed Aberdeen subdivision has gone under a few different

names over the past 16 years. However, for the purpose of this letter I am going to refer to it as the Aberdeen subdivision at all stages of its history.

Based on information and belief, the Master Plan for the Aberdeen subdivision was first approved by the Calera City Council in 2006. After receiving approval, the developer proceeded to clear the land of vegetation and graded the surface to make it level. Then the “great recession” hit and the developer halted all development activities. In 2013 the land was sold and the Calera Planning Commission approved revisions to the original Master Plan that were requested by the new owner. The land was subsequently sold to Stars & Stripes and the Planning Commission again approved revisions to the Master Plan in 2021.

My understanding is that no physical construction or development has occurred on the parcel designated for the Aberdeen development since the land was graded in 2006, with the exception of adding a gated entry point for emergency vehicles that connects to the Savannah Pointe neighborhood. Satellite images show that the entrance for emergency vehicles was added sometime between 2015 and 2016.

III. Legal Analysis and Conclusion

I believe that the Master Plan originally approved for Aberdeen by the Calera City Council in 2006 has expired. It expired under Calera Zoning Ordinance § 2.9.4 because it was “abandoned or discontinued for a period of one (1) year.” It also expired under Calera Zoning Ordinance § 5.20.7 because construction did not begin within six months of the estimated and approved start date, the Planning Commission did not grant any extensions of time upon a showing of good cause by the developer, the developer has not commenced construction on a

minimum of 5 acres each year since the Master Plan was first proposed, and the construction has not been completed within a reasonable time.

I anticipate that Stars & Stripes will argue that the original owners of the land commenced construction within six months by grading the parcel of land. However, a state statute and a Calera Zoning Ordinance prevent the previous owner's act of grading from being considered "construction." Calera Zoning Ordinance § 5.20.5(3) states that the developer is not allowed to begin constructing roads until the preliminary and final subdivision plats are approved. In particular, it says, "The construction of roads within the PUD require approval of preliminary and final subdivision plats and all required design drawings according to the Subdivision Regulations of the City to build roads and infrastructure." Calera Zoning Ordinance § 5.20.5(3).

Similarly, Alabama Code § 11-52-11 also requires approval of the Planning Commission prior to the commencement of construction. This code section states in part:

[N]o street, square, park, or other public way, ground or open space or public building or structure or public utility, whether publicly or privately owned, shall be constructed or authorized in the municipality or in such planned section and district until the location, character, and extent thereof shall have been submitted to and approved by the commission

Alabama Code § 11-52-11.

Based on a plain reading of Calera Zoning Ordinance § 5.20.5(3) and Alabama Code § 11-52-11, the owner of the property in 2006 was not authorized to commence construction on the property at the time it cleared the vegetation and graded the land. Moreover, the owner of the property in the 2015-2016 time period was not authorized to build the emergency entrance that connects onto a private road in the Savannah Pointe neighborhood. Therefore, Stars & Stripes is

unable to claim that the prior owner's actions *did not* constitute construction for the purposes of Calera Zoning Ordinance § 5.20.5(3) and Alabama Code § 11-52-11, while at the same time claiming that the prior owner's actions *did* constitute construction for the purpose of satisfying the time limits to start construction under Calera Zoning Ordinance § 5.20.7.

Finally, in addition to failing to commence construction, the developer failed to continue and complete the development within a reasonable time as required by Calera Zoning Ordinance § 5.20.7. In order to determine what constitutes a reasonable amount of time, Alabama courts will ask the following question: "What would a reasonable ordinary prudent person under the circumstances think a reasonable time to perform would be." *See Turner v. Cty. Bd. of Educ.*, 360 So. 2d 948, 950 (Ala. 1978). The Savannah Pointe HOA takes the position that the increase in population, traffic, flooding, and demand on public utilities that has occurred since 2006 makes it patently unreasonable for a 16-year-old Master Plan to still be viable. Based on U.S. Census data the population of Calera increased 41% from 11,620 in 2010 to 16,494 in 2020. The amount of growth that has occurred between 2006 and 2022 is even greater and may possibly exceed 50%. Stars & Stripes should be required to submit a Master Plan to the City Council to ensure that it meets the needs of Calera in 2022.

Copies of this letter have been sent to the city mayor, city clerk, city engineer, and to the email provided by Stars & Stripes on its application for preliminary plat approval. I hope that Stars & Stripes will voluntarily waive the 30-day time limit provided in Ala. Code § 11-52-32(a) while the issues identified in this letter are further investigated and resolved. Stars & Stripes should be very interested in obtaining clarity on the legal status of their application in order to avoid the risks and costs associated with future construction activities being halted by a court

order. I believe it is in the best interest of all parties to seek clarification and resolution of these issues outside of litigation. However, if Stars & Stripes decides to move forward and demand a certificate stating that its application has been approved by default pursuant to Ala. Code § 11-52-32(a), I am advising my client to request a court to issue a writ of mandamus to the Planning Commission directing it to deny the application.

Please feel free to contact me at any time if I can be of assistance in navigating this issue.

Sincerely,



John Walter
Attorney
Southeast Advocate
205-905-9510
john@southeastadvocate.com

CC:

Mayor, Jon Graham - jgraham@calera.org
City Engineer, Chris Pappas - CPappas@calera.org
City Clerk, Connie Payton - CPayton@calera.org
Stars & Stripes - adam@stbourne.com