



Huntsville, Alabama

308 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 9/22/2022

File ID: TMP-2107

Department: City Attorney

Subject:

Type of Action: Approval/Action

Resolution to set a Public Hearing on the vacation of a right-of-way in MidCity Subdivision Phase 6, along MidCity Drive; and introduction of a Resolution consenting to and introduction of an Ordinance vacating the right-of-way pertaining to the same. (Set October 27, 2022, Regular Council Meeting)

Resolution No.

Finance Information:

Account Number: NA

City Cost Amount: NA

Total Cost: NA

Special Circumstances:

Grant Funded: NA

Grant Title - CFDA or granting Agency: NA

Resolution #: NA

Location:

Address: MidCity Subdivision

District: District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☐ District 5 ☐

Additional Comments:

RESOLUTION NO. 22-_____

BE IT RESOLVED by the City Council of the City of Huntsville, within the State of Alabama, as follows:

1. That **Madison Plaza Associates, LLC**, is the sole landowner abutting the property hereinafter described, submitted an application for the vacation of Right-of-way being and lying in Madison County, and being more particularly described as follows (the “Right-of-way” or the “Property”):

**SEE EXHIBIT “A” - “PETITION FOR VACATION OF RIGHT-OF-WAY”
EXHIBIT “B” – “PUBLIC HEARING NOTICE”**

2. That a public hearing shall be held for purpose of allowing public comments on the proposed vacation of said Right-of-way at Huntsville City Hall in the Council Chamber, located at 308 Fountain Circle, Huntsville, Alabama 35801, at 5:30 p.m. on Thursday, October 27, 2022; and

3. That notice of the vacation of the Right-of-way has been or shall be provided to all adjacent landowners and any known entities with facilities or equipment lying in said Right-of-way in accordance with Section 23-4-1 *et seq.* of the Code of Alabama, 1975, as amended; and

4. That the Clerk-Treasurer is hereby ordered to have public hearing notice contained in Exhibit “B” attached hereto (“Public Notice”), immediately published in *The Huntsville Times* for four consecutive weeks, with said notice to run beginning on September 18, September 25, October 2, and October 9, 2022.

5. It is hereby ordered that copies of the Public Notice shall be posted on bulletin boards located in the Madison County Courthouse and Huntsville City Hall.

ADOPTED this the 22nd day of September, 2022.

President of the City Council
of the City of Huntsville, Alabama

APPROVED this the 2nd day of September, 2022.

Mayor of the City of
Huntsville, Alabama

STATE OF ALABAMA

COUNTY OF MADISON

PETITION FOR VACATION OF A PORTION OF RIGHT-OF-WAY

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, MADISON PLAZA ASSOCIATES, LLC, an Alabama limited liability company (the "Owner"), desiring to vacate that portion of a certain right-of-way hereinafter described, says as follows:

1. WHEREAS, the said Owner is the owner of all the land abutting the hereinafter described section of right-of-way; and
2. WHEREAS, convenient and reasonable means of ingress and egress are available to the Owner and to other landowners of the surrounding property; and
3. WHEREAS, the said right-of-way, hereinafter described, is situated within the City of Huntsville, Alabama; and
4. WHEREAS, the undersigned, by this instrument, declare their intent and desire to vacate a portion of said right-of-way as hereinafter described, reserving unto the City of Huntsville a temporary utility easement for certain utilities located within such vacated right-of-way until such time as those utilities are relocated; and
5. WHEREAS, the undersigned wish for the entirety of the vacated property to be deeded from the City of Huntsville to Madison Plaza Associates, LLC.

NOW, THEREFORE, the undersigned, as the Owner of the property abutting the said right-of-way hereinafter described, does hereby petition and urge that the City Council of the City of Huntsville adopt a resolution hereby declaring the designated portion of said right-of-way vacated and assenting to the vacation of said right-of-way, being described as follows:

SEE EXHIBIT "A" attached hereto and incorporated herein.

IN WITNESS WHEREOF, the undersigned Owner of the property abutting said section of right-of-way hereinabove described has caused this petition to be executed, on this 19 day of September, 2022.

**MADISON PLAZA ASSOCIATES, LLC, an
Alabama limited liability company**

By: RCP Capital, LLC, an Alabama limited liability
company
Its: Manager

By: 
Max J. Grelier, Manager

STATE OF ALABAMA

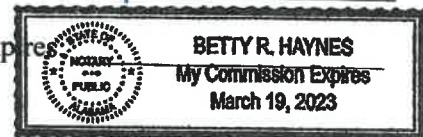
COUNTY OF MADISON

I, the undersigned Notary Public in and for said County and State, hereby certify that Max J. Grelier, whose name as Manager of RCP Capital, LLC, an Alabama limited liability Company, in its capacity as Manager of Madison Plaza Associates, LLC, an Alabama limited liability company, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

GIVEN under my hand and official seal this the 19 day of September, 2022.



Betty R. Haynes
Notary Public
My commission expires



This instrument prepared by:

Katherine Amos Beasley

Wilmer & Lee, P.A.

100 Washington Street

Huntsville, Alabama 35801

256-533-0202

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EXHIBIT "A"

(Legal Description of Portion of Right of Way to be Vacated – portion of Sanderson Street)

A tract of land lying and being in Section 31 & 32, Township 3 South, Range 1 West of the Huntsville Meridian, and being more particularly described as follows;

Commencing at a #5 rebar found at the Southeast corner of Lot 2 of Madison Plaza as recorded in Plat Book 27, Page 72 in the Office of the Judge of Probate for Madison County, Alabama, said point marking the north right-of-way of Sanderson Street; thence along said right-of-way North 87 Degrees 43 Minutes 34 Seconds West a distance of 79.70 feet to a #4 rebar with an illegible cap found; thence North 88 Degrees 28 Minutes 04 Seconds West a distance of 120.99 feet to the point of curvature of a curve to the right having a radius of 826.43 feet, the chord of which is North 82 Degrees 48 Minutes 51 Seconds West for a distance of 140.86 feet; thence along the arc of said curve 141.03 feet to a #5 rebar found on a curve to the right having a radius of 914.99 feet, the chord of which is North 75 Degrees 51 Minutes 31 Seconds West for a distance of 103.19 feet, said point being Point of Beginning of the herein described tract;

Thence along the arc of said curve 103.24 feet to a #5 rebar with a cap stamped "GARVER LLC CA-445-LS" set (typical); thence South 16 Degrees 45 Minutes 47 Seconds West a distance of 10.00 feet to a #4 rebar found on a curve to the right, having a radius of 917.62 feet, the chord of which is North 69 Degrees 13 Minutes 27 Seconds West for a distance of 111.55 feet; thence along the arc of said curve 111.62 feet to a #5 rebar set at the point of tangency of said curve; thence North 65 Degrees 38 Minutes 45 Seconds West a distance of 89.32 feet to a #5 rebar set; thence leaving said right-of-way South 8 Degrees 22 Minutes 27 Seconds West a distance of 86.08 feet to a #5 rebar set on the proposed north right-of-way of Sanderson Street; thence along said proposed right-of-way South 89 Degrees 41 Minutes 23 Seconds East a distance of 30.00 feet to a #5 rebar set; thence South 89 Degrees 41 Minutes 23 Seconds East a distance of 153.02 feet to a #5 rebar set at the point of curvature of a curve to the right having a radius of 388.30 feet, the chord of which is South 85 Degrees 35 Minutes 47 Seconds East for a distance of 57.40 feet; thence along the arc of said curve 57.45 feet to a #5 rebar set; thence South 81 Degrees 10 Minutes 07 Seconds East a distance of 12.50 feet to a #5 rebar set; thence South 81 Degrees 10 Minutes 07 Seconds East a distance of 49.66 feet to a #5 rebar set; thence leaving said proposed right-of-way North 3 Degrees 43 Minutes 21 Seconds West a distance of 8.09 feet to the POINT OF BEGINNING.

The above described parcel contains 0.23 acres (10181.56 sq. ft.) more or less.

(Public Hearing Notice to be Published)

In accordance with Section 23-4-1 et seq. of the Code of Alabama, 1975, as amended, you are hereby notified of a public hearing to be held at Huntsville City Hall in the Council Chamber, located at 308 Fountain Circle, Huntsville, Alabama 35801, at 5:30 p.m. on Thursday, October 27, 2022.

The purpose of the hearing is to receive public comments on an application submitted by the City of Huntsville for the vacation of Right-of-way along MidCity Drive which is more particularly described as follows:

STATE OF ALABAMA
MADISON COUNTY

Tract 2: Right-of-Way to be Vacated – Sanderson Street:

Commencing at a #5 rebar found at the Southeast corner of Lot 2 of Madison Plaza as recorded in Plat Book 27, Page 72 in the Office of the Judge of Probate for Madison County, Alabama, said point marking the north right-of-way of Sanderson Street; thence along said right-of-way North 87 Degrees 43 Minutes 34 Seconds West a distance of 79.70 feet to a #4 rebar with an illegible cap found; thence North 88 Degrees 28 Minutes 04 Seconds West a distance of 120.99 feet to the point of curvature of a curve to the right having a radius of 826.43 feet, the chord of which is North 82 Degrees 48 Minutes 51 Seconds West for a distance of 140.86 feet; thence along the arc of said curve 141.03 feet to a #5 rebar found on a curve to the right having a radius of 914.99 feet, the chord of which is North 75 Degrees 51 Minutes 31 Seconds West for a distance of 103.19 feet, said point being Point of Beginning of the herein described tract;

Thence along the arc of said curve 103.24 feet to a #5 rebar with a cap stamped "GARVER LLC CA-445-LS" set (typical); thence South 16 Degrees 45 Minutes 47 Seconds West a distance of 10.00 feet to a #4 rebar found on a curve to the right, having a radius of 917.62 feet, the chord of which is North 69 Degrees 13 Minutes 27 Seconds West for a distance of 111.55 feet; thence along the arc of said curve 111.62 feet to a #5 rebar set at the point of tangency of said curve; thence North 65 Degrees 38 Minutes 45 Seconds West a distance of 89.32 feet to a #5 rebar set; thence leaving said right-of-way South 8 Degrees 22 Minutes 27 Seconds West a distance of 86.08 feet to a #5 rebar set on the proposed north right-of-way of Sanderson Street; thence along said proposed right-of-way South 89 Degrees 41 Minutes 23 Seconds East a distance of 30.00 feet to a #5 rebar set; thence South 89 Degrees 41 Minutes 23 Seconds East a distance of 153.02 feet to a #5 rebar set at the point of curvature of a curve to the right having a radius of 388.30 feet, the chord of which is South 85 Degrees 35 Minutes 47 Seconds East for a distance of 57.40 feet; thence along the arc of said curve 57.45 feet to a #5 rebar set; thence South 81 Degrees 10 Minutes 07 Seconds East a distance of 12.50 feet to a #5 rebar set; thence South 81 Degrees 10 Minutes 07 Seconds East a distance of 49.66 feet to a #5 rebar set; thence leaving said proposed right-of-way North 3 Degrees 43 Minutes 21 Seconds West a distance of 8.09 feet to the POINT OF BEGINNING.

The above described parcel contains 0.23 acres (10181.56 sq. ft.) more or less.

The above described property shall remain subject to any easement for utilities and drainage in favor of the City of Huntsville, Alabama.

This notice is being sent by United States mail at least 30 days prior to the scheduled hearing to all abutting owners, if any, and to all entities known to have facilities or equipment within the public Right-of-way of the street to be vacated, as their names and addresses appear on roll in the Madison County Revenue Commissioner's office or Madison County Tax Assessor's office, and shall be posted at the Madison County Courthouse and at Huntsville City Hall. Any citizen alleging to be affected by the proposed vacation may submit a written objection to the City Council or may request an opportunity to be heard at the public hearing held as required by law, any such objection or request may be directed to: Attn: Thomas Nunez, City Planning Department, 308 Fountain Circle, 2nd Floor, Huntsville, Alabama 35801 or thomas.nunez@huntsvilleal.gov.

RESOLUTION NO. 22-_____

BE IT RESOLVED by the City Council of the City of Huntsville, within the State of Alabama, as follows:

1. That the Madison Plaza Associates, LLC, is the sole landowner abutting the property hereinafter described, made application for the vacation of a portion of that certain Right-of-Way more particularly described as follows (the "Right-of-Way" or the "Property"):

See Exhibit "A" attached hereto and incorporated herein.

2. That notice of the vacation of the Right-of-Way has been given as required by Section 23-4-1 *et seq.* of the Code of Alabama, 1975, as amended, and a public hearing held for purposes of allowing public comments on the proposed vacation before the City Council.

3. That after vacation of the designated portion of Right-of-Way and all public rights therein, convenient and reasonable means of ingress and egress to and from the respective property will be afforded to all property owners owning property in or near the Right-of-Way by the remaining streets, avenues, and highways.

4. That in the judgment and opinion of the City Council of the City of Huntsville that it is in the public interest and necessary and expedient that the City vacate the designated portion of Right-of-Way and that the vacation of the designated portion of Right-of-Way is in the best interests of the citizens of the City in that same will contribute to the health and general welfare of the citizens of the City of Huntsville, Alabama.

5. That the filing of the resolution with the Judge of Probate of Madison County, Alabama, shall operate as a declaration of the City's vacation of that portion of the Right-of-Way as described herein and shall divest all public rights and liabilities, including any rights which may have been acquired by prescription, in that part of the Right-of-Way. Title and all public rights shall vest in the abutting landowner, Madison Plaza Associates, LLC.

6. That notice of this resolution shall be published in *The Huntsville Times* no later than fourteen (14) days from the date hereof.

NOW THEREFORE, be it resolved by the City Council of the City of Huntsville that they do hereby assent to the said vacation of the herein described portion of Right-of-Way and that the above described Property be and the same is hereby vacated and annulled and all public rights therein divested of the Property, with the City of Huntsville retaining a public utility and drainage Easements over, across and under subject property.

ADOPTED this the 27th day of October, 2022.

President of the City Council
City of Huntsville, Alabama

APPROVED this the 27th day of October, 2022.

TOMMY BATTLE
Mayor of the City of Huntsville, Alabama

EXHIBIT A

Tract 2: Right-of-Way to be Vacated – Sanderson Street:

Commencing at a #5 rebar found at the Southeast corner of Lot 2 of Madison Plaza as recorded in Plat Book 27, Page 72 in the Office of the Judge of Probate for Madison County, Alabama, said point marking the north right-of-way of Sanderson Street; thence along said right-of-way North 87 Degrees 43 Minutes 34 Seconds West a distance of 79.70 feet to a #4 rebar with an illegible cap found; thence North 88 Degrees 28 Minutes 04 Seconds West a distance of 120.99 feet to the point of curvature of a curve to the right having a radius of 826.43 feet, the chord of which is North 82 Degrees 48 Minutes 51 Seconds West for a distance of 140.86 feet; thence along the arc of said curve 141.03 feet to a #5 rebar found on a curve to the right having a radius of 914.99 feet, the chord of which is North 75 Degrees 51 Minutes 31 Seconds West for a distance of 103.19 feet, said point being Point of Beginning of the herein described tract;

Thence along the arc of said curve 103.24 feet to a #5 rebar with a cap stamped "GARVER LLC CA-445-LS" set (typical); thence South 16 Degrees 45 Minutes 47 Seconds West a distance of 10.00 feet to a #4 rebar found on a curve to the right, having a radius of 917.62 feet, the chord of which is North 69 Degrees 13 Minutes 27 Seconds West for a distance of 111.55 feet; thence along the arc of said curve 111.62 feet to a #5 rebar set at the point of tangency of said curve; thence North 65 Degrees 38 Minutes 45 Seconds West a distance of 89.32 feet to a #5 rebar set; thence leaving said right-of-way South 8 Degrees 22 Minutes 27 Seconds West a distance of 86.08 feet to a #5 rebar set on the proposed north right-of-way of Sanderson Street; thence along said proposed right-of-way South 89 Degrees 41 Minutes 23 Seconds East a distance of 30.00 feet to a #5 rebar set; thence South 89 Degrees 41 Minutes 23 Seconds East a distance of 153.02 feet to a #5 rebar set at the point of curvature of a curve to the right having a radius of 388.30 feet, the chord of which is South 85 Degrees 35 Minutes 47 Seconds East for a distance of 57.40 feet; thence along the arc of said curve 57.45 feet to a #5 rebar set; thence South 81 Degrees 10 Minutes 07 Seconds East a distance of 12.50 feet to a #5 rebar set; thence South 81 Degrees 10 Minutes 07 Seconds East a distance of 49.66 feet to a #5 rebar set; thence leaving said proposed right-of-way North 3 Degrees 43 Minutes 21 Seconds West a distance of 8.09 feet to the POINT OF BEGINNING.

The above described parcel contains 0.23 acres (10181.56 sq. ft.) more or less.

BUT RESERVING IN FAVOR OF THE CITY OF HUNTSVILLE A PUBLIC UTILITY AND DRAINAGE EASEMENT OVER, ACROSS AND UNDER THE REAL PROPERTY DESCRIBED AS FOLLOWS:

ORDINANCE NO. 22-_____

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

Section 1. The City Council of the City of Huntsville, Alabama, finds that an application has been presented to the City of Huntsville requesting the vacation of a right-of-way; that the applicants have represented to the City of Huntsville that **Madison Plaza Associates, LLC**, is the owner of the property across which said right-of-way lies; that said right-of-way, or the portion being vacated, is not presently used and is no longer needed for a public or municipal purpose.

Section 2. Pursuant to the findings in Section 1 hereinabove, the Mayor of the City of Huntsville, Alabama, is hereby authorized, requested and directed to execute a quitclaim deed vacating the right-of-way hereinafter described, said deed being substantially in words and figures as follows, to-wit:

STATE OF ALABAMA

COUNTY OF MADISON

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, that the undersigned **CITY OF HUNTSVILLE, ALABAMA**, a municipal corporation, hereinafter referred to as Grantor, in consideration of the sum of Ten Dollars (\$10.00) in hand paid by **MADISON PLAZA ASSOCIATES, LLC**, an Alabama limited liability company hereinafter referred to as Grantee, and other good and valuable considerations, the receipt and sufficiency whereof is hereby acknowledged, does hereby remise, release, quitclaim, and convey unto the Grantee, all of the Grantor's right, title, interest and claim in and to the following described real estate situated in the City of Huntsville, County of Madison, State of Alabama, to-wit:

SEE **EXHIBIT "A"** attached hereto and incorporated herein.

SUBJECT TO a temporary utility easement which is hereby reserved unto the Grantor for any existing utilities, with said easement being 7.5' lying on each side of the centerline of each respective utility, together with a right to remove the same upon termination of said temporary utility easement. Grantor shall remain vested with said temporary easement until such time as the existing utilities within the same are relocated, at Grantee's expense, unless agreed otherwise between the parties within other utility and drainage easements to be properly dedicated to the Grantor by either plat or deed, all as acceptable to Grantor.

TO HAVE AND TO HOLD unto the said Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, Grantor has caused this quitclaim to be signed in its behalf by its Mayor and attested by its City Clerk-Treasurer, this the 27th day of October, 2022.

CITY OF HUNTSVILLE, ALABAMA,
a municipal corporation

By: _____
Tommy Battle, Mayor

ATTEST:

By: _____
Kenneth Benion, Clerk-Treasurer

STATE OF ALABAMA

COUNTY OF MADISON

I, the undersigned, a notary public in and for said County, in said State, hereby certify that Tommy Battle and Kenneth Benion, whose names as Mayor and City Clerk-Treasurer, respectively, of the City of Huntsville, Alabama, a municipal corporation are signed to the foregoing document, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same for and as the act of said corporation on the day the same bears day.

GIVEN under my hand and official seal this the 27th day of October, 2022.

Notary Public

My commission expires: _____

THIS INSTRUMENT PREPARED BY:

Katherine Amos Beasley
Wilmer & Lee, P.A.
100 Washington Street
Huntsville, Alabama 35801
256-533-0202

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EXHIBIT "A"

(Legal Description of Portion of Right of Way to be Vacated – portion of Sanderson Street)

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The above described parcel contains 0.23 acres (10181.56 sq. ft.) more or less.

Ordinance No. 22-_____ (Cont.)

ADOPTED this the 27th day of October, 2022.

President of the City Council
of the City of Huntsville, Alabama

APPROVED this the 27th day of October, 2022.

Mayor of the City of
Huntsville, Alabama