

Regular Scheduled Economic Development Committee Meeting
Tuesday, January 23, 2018 at 3:00 pm
Birmingham City Hall, Third Floor
Council Conference Rooms D&E

Agenda

- I. **Call to Order**
- II. **Review of the Minutes**
- III. Approval of the City providing a Quitclaim Deed to Tupelo Hotels 1031 Acquisition II, LLC in order to clear title issues affecting a portion of the Brown Marx property. The title issues result from a condemnation proceeding initiated by the City of Birmingham in 1957 to acquire 20-foot wide strip of real property that would have had the effect of widening the public right-of-way of 19th Street North between 1st Avenue North and 2nd Avenue North from 60 feet to 80 feet. The condemnation proceeding was never completed but title searches do not indicate the outcome of the condemnation case. Clearing this title issue will assist in facilitating the development of a hotel on the property.

Submitted by: Griffin Lassiter **Department:** Economic Development

Recommended Funding Source: N/A
Amount: N/A

- IV. Approval of a Slope and Grading Easement and a Drainage Easement under which the City will grant easements to Grant's Mill, LLC for slope and grading and for drainage improvements. The City is currently under contract with Grant's Mill, LLC, to sell property located at 2700 Wenonah Oxmoor Road to Grant's Mill, LLC for \$369,000. Grant's Mill, LLC intends to develop market rate housing on the property and has requested the easements to facilitate its development.

Submitted by: Nigel Roberts **Department:** Community Development


Recommended Funding Source: N/A
Amount: N/A

- V. **Old Business**
- VI. **New Business**
- VII. **Adjournment**

*******NOTE*******

The next Economic Development Committee meeting will be **Tuesday, February 13th, 2018 at 3:00 pm** in Conference Rooms D&E.

ALL Submissions are due on or before Wednesday, February 7th, 2018 at 12:00 noon.



CITY OF BIRMINGHAM
DEPARTMENT OF PLANNING, ENGINEERING & PERMITS
RIGHT OF WAY SECTION
710 North 20th Street
ROOM 220, CITY HALL
BIRMINGHAM, ALABAMA 35203

Randall L. Woodfin
Mayor

Andre V. Bittas
Director

December 29, 2017

Tupelo Hotels 1031 Acquisition II, LLC
3616 S. Bogan Rd., Suite 201
Buford, GA 30519

To Whom It May Concern:

It has come to our attention that the public records continue to reflect an old condemnation proceeding (Probate Case No. 36777) initiated by the City of Birmingham in 1957. This proceeding concerned a twenty (20)-foot wide strip of real property (see hatched area indicated in Exhibit A attached hereto) that would have had the effect of widening the public right-of-way of 19th Street North between 1st Avenue North and 2nd Avenue North from sixty (60) feet to eighty (80) feet.

We understand that the public records indicate that: (i) the City's condemnation request was granted and an amount of compensation for the same was determined by the Probate Court of Jefferson County, (ii) all private parties to the proceedings subsequently appealed the Probate Court's determination to the Circuit Court of Jefferson County, and (iii) no resolution of the appeal with respect to the condemnation was ever filed of record.

In the absence of any clarifying documents in the public records, we have been asked to provide a status update on the status of the condemnation proceedings from the City's perspective.

As of today's date the City of Birmingham does not find any evidence that an award was paid into Probate Court to finalize the condemnation proceedings. The City has been provided with the affidavit of Frank M. Bainbridge (see Exhibit B attached hereto), whose father, Frank Bainbridge, was the attorney of record for the primary defendants in the condemnation proceeding. This affidavit contains Frank M. Bainbridge's sworn statement that upon appeal of the condemnation proceedings to the Jefferson County Circuit Court, the value of the subject property determined by the Circuit Court was higher than the City was willing to pay, and the City did not proceed further with condemnation.

Moreover, review of City of the Birmingham's as-built records for Ordinance No. 2988D (see Exhibit C attached hereto), dated February 26, 1963, shows that the 19th Street, North, right-of-way

between Blocks 108-A and 108-B, according to the present plan and survey of the City of Birmingham, Alabama, by the Elyton Land Company, is sixty (60) feet in width.

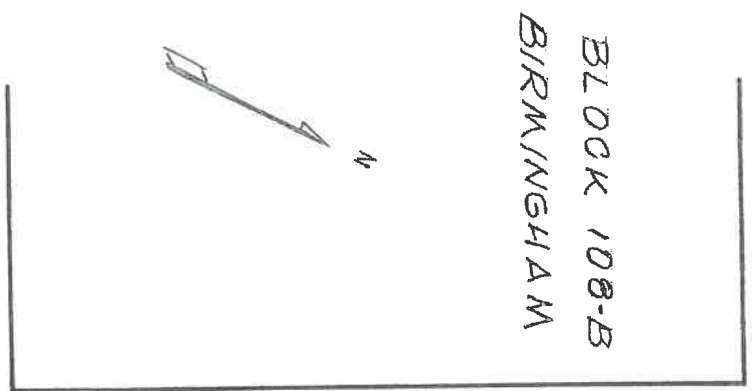
Based on our review of City records, and based upon and in reliance on the truth and accuracy of the attached affidavit of Frank M. Bainbridge, we find no evidence that the condemnation proceedings relative to the subject property were ever finalized. Accordingly, to the knowledge of the undersigned, the City does not have any records to suggest that said property is part of the City's right-of-way and the City does not consider the subject property to be public property. Notwithstanding the foregoing, this letter shall not be deemed to constitute a quitclaim deed with respect to the subject property.

Sincerely,

A handwritten signature in black ink, appearing to read "Andre V. Bittas", written in a cursive style.

Andre V. Bittas, Director

157 AVENUE NORTH



60 19TH STREET NORTH 60

25	"	25	27.5	"	"	"	"	"	27.5
16	15	14	13	12	11	10	9	8	7
99.8	BIRMINGHAM			BIRMINGHAM			BIRMINGHAM		
27.5	Est JE Penny			Mike U. Finocchio, Trustee			Birmingham Trust and Saving Company		
27.5	17			18			19		
27.5	Paving --- 685.86			CC&G 50.92			CC&G 4.58		
100	72.2 Ass'd			Sidewalk 70.05			6" Conc 94.96		
	27.5			Paving --- 269.97			Paving --- 269.97		
	27.5			Total --- 385.86			Total --- 230.46		

MORRIS AVENUE

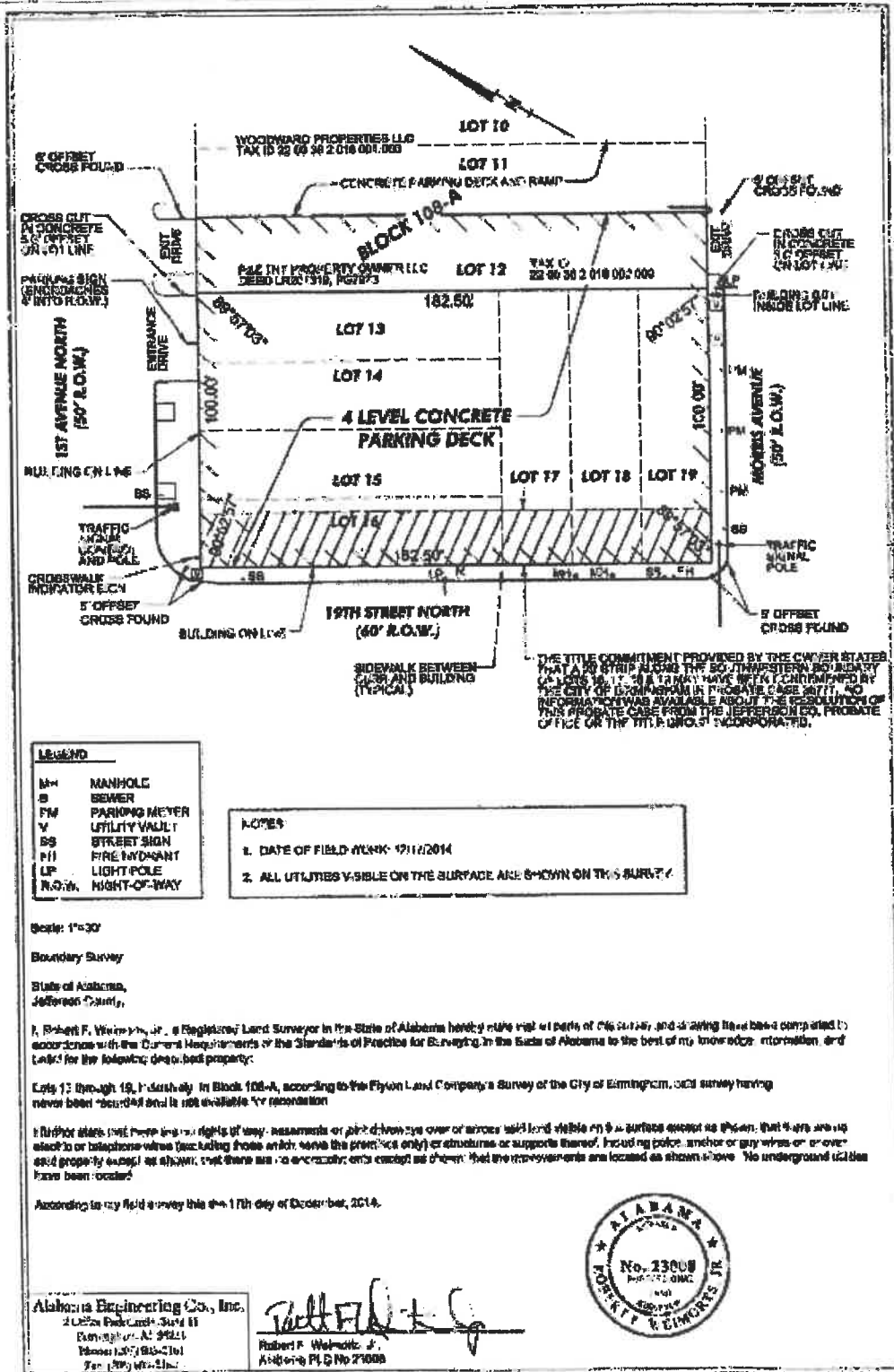


ORDINANCE - 290810
 Approved: JUN 9, 1963
 Lawler Feb 26, 1963

392.2 Ass'd
 - 400 -

Gen'l Dist. S 75-56-13
 No. of Lts. P. 784.4
 Rate per Lin. Ft. 21.63327

Exhibit A



LEGEND

M	MANHOLE
S	SEWER
PM	PARKING METER
V	UTILITY VAULT
SS	STREET SIGN
FI	FIRE HYDRANT
LP	LIGHT POLE
R.O.W.	RIGHT-OF-WAY

NOTES

- DATE OF FIELD WORK: 12/11/2014
- ALL UTILITIES VISIBLE ON THE SURFACE ARE SHOWN ON THIS SURVEY.

Scale: 1"=30'

Boundary Survey

State of Alabama,
Jefferson County,

I, Robert F. Wehmelt, Jr., a Registered Land Surveyor in the State of Alabama hereby certify that the plat and drawing hereon were prepared in accordance with the Current Requirements of the Standards of Practice for Surveying in the State of Alabama to the best of my knowledge, information, and belief for the following described property:

Lots 12 through 19, inclusively, in Block 108-A, according to the Flynn Land Company's Survey of the City of Birmingham, said survey having never been recorded and is not available for reproduction.

I further state that there are no rights of way, easements or other devices over or across said land visible on the surface except as shown; that there are no electric or telephone wires (including those which serve the premises only) or structures or supports thereof, including poles, anchors or guy wires or other said property except as shown; that there are no encroachments except as shown; that the improvements are located as shown above. No underground utilities have been located.

According to my field survey this 11th day of December, 2014.

Alabama Engineering Co., Inc.
2125 Park Lane, Suite 111
Birmingham, AL 35211
Phone: (205) 984-1101
Fax: (205) 984-1102

Robert F. Wehmelt, Jr.
Robert F. Wehmelt, Jr.
Alabama PLS No. 21008



AFFIDAVIT

On this date, December 19, 2017, **Frank M. Bainbridge** ("the Affiant"), who, on oath, swears that the following statements are within the personal knowledge of the Affiant and, to the best of Affiant's recollection, are true and correct:

Affiant states that his father, Frank Bainbridge, was the attorney of record for the primary defendants in that certain condemnation proceeding file by the City of Birmingham in June, 1957, Probate Case number 36777, seeking to condemn a 20' strip of land on the 19th Street side of the Property (as described herein) (the "Condemnation Case"); and that Affiant was an attorney practicing with his father and had involvement with the Condemnation Case.

Affiant further states that, following an order issued by the Probate Judge, the defendants appealed the Condemnation Case to Jefferson County, Circuit Court, where the determined value for that property of the Property to be condemned was higher than the City was willing to pay.

Affiant further states that, on appeal to Circuit Court, the defendants were successful and the City did not proceed with condemnation and the Condemnation Case was dismissed.

This Affidavit is given in referenced to that certain real property located at 1901 1st Avenue North, Birmingham, Alabama and more specifically described on attached Exhibit "A" ("Property")

Further, Affiant sayeth not.

AFFIANT:

Frank M. Bainbridge
Frank M. Bainbridge

STATE OF Alabama)
COUNTY OF Jefferson)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Frank M. Bainbridge whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily.

Given under my hand this 19th day of December, 2017.

Katherine K. Inman
Notary Public

My Commission Expires:



EXHIBIT "A"

Lots 13 through 19, inclusively, in Block 108-A, according to the Elyton Land Company's Survey of the City of Birmingham, said survey having never been recorded and is not available for recordation.