

**CITY OF CLINTON
REGULAR MEETING OF THE MAYOR AND BOARD OF ALDERMEN
TUESDAY, AUGUST 6, 2002 – 5:30 P.M.
MUNICIPAL COURTROOM - 305 MONROE STREET**

WELCOME AND CALL TO ORDER - Mayor Rosemary Aultman

INVOCATION AND PLEDGE OF ALLEGIANCE TO THE FLAG

The invocation was led by Alderman Brabham followed by the Pledge of Allegiance to the Flag led by Alderman Hisaw.

ROLL CALL - City Clerk Wayne Derrick

Present: Jehu Brabham - Alderman-At-Large
 Tony Hisaw - Alderman Ward 1
 Tony Greer - Alderman Ward 2
 Clint Brantley - Alderman Ward 3
 Phil Fisher – Alderman Ward 4
 Herb Touchton – Alderman Ward 5
 Sharbert Lott – Alderman Ward 6
 Ken Dreher - City Attorney

APPROVAL OF AGENDA ITEMS A-Z

MOTION made by Alderman Greer and **SECONDED** by Alderman Brantley to approve Consent Agenda Items A-Z. Item C, D, E, F and Z will serve to advertise favorably the opportunities, possibilities and resources of the City of Clinton. **MOTION CARRIED UNANIMOUSLY**

DENIAL OF APPEAL OF ZONING ADMINISTRATOR'S INTERPREATION OF ORDINANCE

Gary Ward introduced this item by providing background to the Mayor and Board regarding the appeal of Scot and Mary Welch of the Zoning Administrator's interpretation of "accessory building, structure or use" as applied to a tree house in the front yard of the Welch residence located at 218 Kitchings Drive. Steve Smith, attorney for Mr. and Mrs. Welch, made a presentation the Mayor and Board setting out their position. Mr. and Mrs. Welch also spoke briefly to the Mayor and Board.

After discussion and comments by various Aldermen, **MOTION** made by Alderman Brabham and **SECONDED** by Aldermen Fisher to deny the appeal. Alderman Brabham had prepared and distributed to the Mayor and Board of Aldermen and to the City Clerk his motion in writing, said motion being attached hereto. **MOTION** carried 6-1, with Alderman Touchton voting "No".

REQUEST FOR CONDITIONAL USE/NON CONFORMING USE BY SCOT AND MARY WELCH

Gary Ward introduced this matter and provided background to the Mayor and Board. The Mayor and Board had been provided with the Minutes of the Planning & Zoning Board dealing with this item, a copy of the transcript of the public hearing and various exhibits and background materials prior to this meeting. Steve Smith, attorney for the Welches made a presentation to the Mayor and Board followed by a brief statement by Scot Welch. After discussion, Alderman Brabham provided a written Resolution to the Mayor and Board with a copy to the City Clerk. **MOTION** made by Alderman Brabham and **SECONDED** by Alderman Fisher to adopt the Resolution attached. **MOTION** carried 6-1, with Alderman Touchton voting "No".

APPROVAL OF RENOVATIONS TO 301 AND 303 WEST LARSON AND 501 CAPITOL STREET

Upon recommendation by Gary Ward, Zoning Administrator, **MOTION** made by Alderman Touchton and **SECONDED** by Alderman Lott to approve the renovations to 301 and 303 West Larson and 501 Capitol Street. The Planning and Zoning Commission and the Clinton Historical Preservation Commission recommended approval. A copy of renovations plan is a file with the Zoning Administrator. **MOTION CARRIED UNANIMOUSLY**

APPROVAL OF BID FOR THE PURCHASE OF PIPE, VALVES, HYDRANTS AND OTHER MATERIALS TO BE USED IN THE INSTALLATION OF MUNICIPAL WATER LINES

Upon recommendation by Tim Rogers, Public Works Director, **MOTION** made by Alderman Brantley and **SECONDED** by Alderman Greer to accept Hughes Supply as having the lowest and best bid of \$27,093.09 for the purchase of pipe, valves, hydrants and other materials to be used in the installation of municipal water lines. **MOTION CARRIED UNANIMOUSLY**

APPROVAL OF BID FOR THE PURCHASE OF TRACTOR WITH A BOOM MOWER FOR THE STREET DEPARTMENT

Upon recommendation by Tim Rogers, Public Works Director, **MOTION** made by Alderman Brantley and **SECONDED** by Alderman Fisher to accept the bid submitted by Deviney Equipment as the lowest and best bid in the amount of \$49,890.00 for the purchase of a TS100 New Holland tractor with a Diamond mid-mounted hydraulic mower. Three bids were received, with the lowest being that of Crain Tractor and Equipment; however Crain's bid was not accepted because it did not meet specifications. **MOTION CARRIED UNANIMOUSLY**

APPROVAL OF BID FOR ROBINSON PARK WALKING TRAIL AND PARKING AREA PAVING

Upon recommendation by Mike Taggart, Parks/Recreation Director, **MOTION** made by Alderman Greer and **SECONDED** by Alderman Hisaw to accept APAC as having the lowest and best bid of \$25,245.00 for Robinson Park Walking Trail and Parking Area Paving. **MOTION CARRIED UNANIMOUSLY**

APPROVAL OF RESOLUTION TO OPEN BANK ACCOUNTS AT BANKPLUS FOR ALL FUNDS BELONGING TO THE CITY OF CLINTON

Upon recommendation by Wayne Derrick, City Clerk, **MOTION** made by Alderman Touchton and **SECONDED** by Alderman Lott to approve a Resolution to open bank accounts at BankPlus for all funds belonging to the City, said transfer of funds from AmSouth Bank to be made as soon as practical. BankPlus was the highest of six bidders to serve as the City's depository for all City funds for a term of two years. Notice to bid to qualified depositories was made in accordance with Sections 207-105-305 and 27-105-353 of the Mississippi Code of 1972. A copy to the Resolution is attached **MOTION CARRIED UNANIMOUSLY**

ADJOURN 6:55 P.M.

MOTION made by Alderman Hisaw and **SECONDED** by Alderman Fisher to adjourn. **MOTION CARRIED UNANIMOUSLY**

APPROVED: Rosemary G. Aultman August 12, 2002
Rosemary G. Aultman, Mayor Date

ATTEST: W. Derrick 08/12/2002
Wayne Derrick, City Clerk Date

SEAL:



CITY OF CLINTON AGENDA ITEM FACT SHEET

BOARD MEETING DATE: August 6, 2002

AGENDA ITEM NO. 7.a

CONSENT AGENDA: _____ TO: _____

FOR: _____

ACCT. NO. _____

DISCUSSION/ACTION: Appeal of Zoning Administrator's Decision/Accessory Building Definition 218 Kitchings Drive

INTRODUCED BY: Gary Ward

EXHIBITS FOR REVIEW:

Minutes _____	Invoice _____	Other _____
Ordinance _____	Plans, Maps _____	_____
Resolution _____	Contract _____	_____

RECOMMENDATION: Planning & Zoning Commission Makes No Recommendation

BOARD ACTION:

MOTION MADE BY: Brabham

SECONDED BY: Fisher

<u>VOTE CAST:</u>	<u>"AYE"</u>	<u>"NAY"</u>	<u>ACTION TAKEN:</u>
Brabham	<u>Y</u>	_____	_____
Hisaw	<u>Y</u>	_____	_____
Greer	<u>Y</u>	_____	_____
Brantley	<u>Y</u>	_____	_____
Fisher	<u>Y</u>	_____	_____
Touchton	<u>Y</u>	<u>N</u>	_____
Lott	<u>Y</u>	_____	_____
Mayor Aultman	_____	_____	_____

AGENDA ITEMS MUST BE TURNED IN TO THE CITY CLERK WITH ALL ATTACHMENTS NO LATER THAN 5 P.M. ON THE WEDNESDAY PRECEDING THE TUESDAY BOARD MEETING TO BE INCLUDED ON THE AGENDA. THIS DEADLINE WILL BE STRICTLY ENFORCED.

AGENDA ITEM 7A AUGUST 6, 2002

THIS MATTER CAME BEFORE THE MAYOR AND BOARD OF ALDERMEN AT THE AUGUST 6, 2002, MEETING ON THE APPEAL BY SCOT AND MARY WELCH OF THE INTERPRETATION OF THE ZONING ADMINISTRATOR THAT THE TREE HOUSE LOCATED IN THE FRONT YARD OF THE WELCH PROPERTY AT 218 KITCHINGS DRIVE CONSTITUTES AN ACCESSORY BUILDING OR STRUCTURE UNDER THE ZONING ORDINANCE.

MOTION MADE BY ALDERMAN _____, SECONDED BY ALDERMAN _____, THAT THE INTERPRETATION OF THE ZONING ADMINISTRATOR SHALL BE UPHELD IN THAT THE TREE HOUSE CLEARLY MEETS THE DEFINITION OF "ACCESSORY STRUCTURE OR USE" AS SET OUT IN THE ZONING ORDINANCE OF APRIL 4, 1997, AS WELL AS THE DEFINITION OF "ACCESSORY BUILDING OR USE" AS SET OUT IN THE PREVIOUS ZONING ORDINANCE. THE TREE HOUSE IS CLEARLY A STRUCTURE AND/OR A BUILDING UNDER THE DEFINITIONS OF BOTH THE CURRENT AND PREVIOUS ORDINANCE. IT IS THE FINDING OF THIS BOARD THAT THE CLEAR INTENT OF BOTH THE PRESENT AND PREVIOUS ZONING ORDINANCES THAT NO SUCH STRUCTURE AND/OR BUILDING BE PERMITTED IN FRONT YARDS OF RESIDENTIAL PROPERTY. THE WELCHES SHALL HAVE 90 DAYS FROM THIS DATE TO COMPLY WITH THE REMOVE THE TREE HOUSE FROM THEIR FRONT YARD AND BRING THEIR PROPERTY INTO COMPLIANCE WITH THE ZONING ORDINANCE

-08/06/2002-

**RESOLUTION DENYING A SPECIAL EXCEPTION/CONDITIONAL USE AND/OR A
NONCONFORMING USE FOR PROPERTY LOCATED AT 218 KITCHINGS DRIVE,
CLINTON, MISSISSIPPI OWNED BY SCOT AND MARY WELCH**

WHEREAS, Scot and Mary Welch (the "Welches"), did file a request for a special exception/conditional use and/or a nonconforming use designation for a "treehouse" located in the front yard of their property located at 218 Kitchings Drive, Clinton, Mississippi (the "Property"), and,

WHEREAS, all notice requirements of the Zoning Ordinance of the City of Clinton were accomplished and a public hearing was held on July 23, 2002, as required: and,

WHEREAS, the Planning and Zoning commission, upon conclusion of the public hearing on July 23, 2002, adopted a Motion to forward the request of the Welches for a special exception/conditional use and/or a nonconforming use designation without a recommendation for approval or disapproval by a vote of 4 to 1; and,

WHEREAS, said Motion was forwarded to the Mayor and Board of Aldermen for their consideration at the meeting scheduled for August 6, 2002;

WHEREAS, the Mayor and Board of Aldermen of the City of Clinton, Mississippi, have the final authority with regard to all matters involving the Zoning Ordinances; and

WHEREAS, the Mayor and Board of Aldermen are fully familiar with the request and the area involved in the request; and

BE IT RESOLVED by the Mayor and the Board of Aldermen of the City of Clinton, Mississippi that the request of the Welches for a Special Exception/Conditional Use and/or a Nonconforming Use Designation of the property located at 218 Kitchings Drive is hereby denied and such action is taken pursuant to the findings of fact set out as follows:

1. The Mayor and Board of Aldermen of the City of Clinton, Mississippi, have the final authority with regard to all matters involving the Zoning Ordinance.
2. The recommendation of the Planning and Zoning Commission is advisory in nature.
3. The Mayor and Board of Aldermen have knowledge of the area involved and are aware of the requirements for conditional use and nonconforming use.
4. The requested designation does not meet the definitions of a Conditional Use of the Zoning Ordinance.
5. Under Article VI of the Zoning Ordinance, the subject property which is zoned R-1, does not meet any of the listed provisions Defining permitted conditional uses and structures and therefore must be denied as a matter of law.
6. The minutes of the Planning and Zoning Commission further clearly reflect that even if such a special exception/conditional use met the requirement of Article VI for a special exception/conditional use, the granting of such would adversely affect adjacent property.

7. The request for a nonconforming use designation must be denied because the use under the previous Zoning Ordinance, (assuming the structure was actually begun prior to the effective date of the current Ordinance) was illegal and therefore cannot continue as a nonconforming use and further because the requested nonconforming use was expanded under the present Zoning Ordinance in violation of this Ordinance.
8. Until the City received a complaint concerning this matter in April 2002, neither the Mayor nor any Aldermen was aware of the structure or its violation of the Zoning Ordinances of the City of Clinton.
9. The Mayor and Board of Aldermen have had the opportunity to review the Minutes of the Planning and Zoning Commission including the exhibits thereto, the transcript of the Public Hearing and the Memorandum of Steven H. Smith, attorney for the Welches, as well as being personally familiar with this issue over the past several months since this matter came to the City's attention.
10. There is no record of what, if anything, Julion Lowther was told or what instructions or guidance he may have given the Welches.
11. Neither of the building inspectors that went to the property were there to inspect the treehouse and were not charged by the City to make Zoning inspections.
12. The Welches shall have 90 days from this date to remove and/or relocate the treehouse and bring their property into compliance with the Zoning Ordinance.

08/06/2002

STEVEN H. SMITH, PLLC

ATTORNEY AT LAW

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Legal Assistant

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MEMORANDUM

TO: MAYOR and BOARD OF ALDERMEN
City of Clinton, Mississippi

FROM: Steven H. Smith, Attorney for Scott and Mary Welch
218 Kitchings Drive, Clinton, Mississippi

DATE: August 1, 2002

SUBJECT: (1) *Appeal of Zoning Administrator's Interpretation of the Welches' Treehouse Pursuant to §§ 2401.02 & 2413.03 et seq., City of Clinton Zoning Ordinance*

(2) *Request for Conditional Use/Special Exception or Non-Conforming Use*

Dear Mayor and Members of the Board of Aldermen:

On behalf of my clients, Scott and Mary Welch, and their four (4) children, please accept this letter/memorandum as my clients' support and bases for their appeal of your Zoning Administrator's interpretation (via: his letters of April 12th and May 15th, 2002) under and pursuant to §§ 2401.02 & 2413.03 et seq., City of Clinton's Zoning Ordinance. You will also please accept this letter as my clients' alternative request for the City of Clinton to grant/award them a Conditional Use/Special Exception or Non-Conforming Use to allow the continued existence and use of the treehouse located in their front yard at 218 Kitchings Drive, Clinton, Mississippi.

My clients initially appealed the Zoning Administration's interpretation that their children's treehouse constituted an "*accessory building*" and his demand to remove the treehouse by letter dated June 26, 2002. A copy of that letter/appeal is marked as "Exhibit 1" and attached to the Welches' Planning and Zoning presentation. My clients' request for a Conditional Use/Special Exception or Non-Conforming Use Application was filed with the City of Clinton on June 26, 2002.

My clients believe that the factual and legal matters set forth hereinbelow and/or to be presented before you at your August 6, 2002 regular Board Meeting are crucial to and will impact upon your decision regarding my clients' appeal of your Zoning Administrator's interpretation and my clients' request for a Conditional Use/Special Exception and/or Non-Conforming Use/Permit.

I. Scott and Mary Welch's family and residents at 218 Kitchings Drive, Clinton, Mississippi, 39056

Scott and Mary Welch are adult resident citizens of the City of Clinton, Mississippi. Scott and Mary have been married for more than ten (10) years and have four (4) children whose names and ages are as follows:

Shelby - 7
Tucker - 5
Riley - 3
Cooper - 9 months

Scott and Mary have been residents of the City of Clinton since 1990 and residents at their home located at 218 Kitchings Drive since November of 1996. Scott and Mary Welch are long time members of the First United Methodist Church of Clinton, Mississippi. Scott Welch is an Electrical Engineer who has been employed with Delphi Automotive Systems since 1984. Mary is a domestic engineer (homemaker) responsible for rearing the couple's four (4) children.

II Procedural and Factual Background Regarding the Welches' Treehouse and Request for Conditional Use/Special Exception and/or Non-Conforming Use

Scott and Mary Welch moved into their home located at 218 Kitchings Drive, Clinton, Mississippi, 39056 in November of 1996. At the time of the occupancy of their current residence, Scott and Mary had one child, Shelby. Shortly thereafter, Mary Welch went to the City of Clinton's Building Official and Zoning Administrator, Julion Lowther, to inquire about and, if necessary, request a permit to construct the treehouse in the batch of Sweetgum trees located in their front yard. Mrs. Welch spoke with My Lowther who advised her that she did not need a permit or any other authorization in order to construct their treehouse in their front yard. Even though Mrs. Welch begged Mr. Lowther for something in writing, Mr. Lowther assured her she needed no permit or other written authorization to construct their treehouse. Shortly thereafter, Scott Welch began construction of the Welches' treehouse in the batch of Sweetgum

trees referenced above.

By April of 1997, the Welches' treehouse had a floor. The walls were framed but not enclosed and the treehouse had no roof. The treehouse's construction was initiated and initially undertaken under and pursuant to the City of Clinton's Ordinance which existed prior to the current Ordinance. The City of Clinton's current Ordinance was adopted in April of 1997. A copy of Clinton's current Ordinance is marked as "**Exhibit 2**" and attached to the Welches' Planning and Zoning presentation.

Under the City of Clinton's (hereinafter "Clinton") former Ordinance, § 201 contained various definitions. One definition contained in Clinton's former Ordinance was "*Accessory Building or Use*". The definition stated, "***Any building or use which is subordinate or incidental to the main building or dominate use of the lot or premises***". Under this definition of "accessory building", Bill Lowther did not require the Welches to obtain a permit to construct their children's "treehouse" in their front yard. Furthermore, Mr. Lowther did not interpret § 410 of Clinton's former Ordinance to apply to prohibit the location of accessory buildings in the front yard of any main building. Consequently, the Welches have strived to construct and complete their children's treehouse/playhouse over the last five (5) years resulting in the treehouse as it stands today. A copy of the definition of "Accessory Building or Use" and § 410 dealing with Accessory Buildings or Uses under Clinton's former Ordinance is marked as "**Exhibit 3**" and attached to the Welches' Planning and Zoning presentation.

Between November of 1996 and April 2002, the City of Clinton performed two (2) building inspections at the Welches' residence at 218 Kitchings Drive. The first was a building inspection request for an electrical service panel at the Welches' home which was approved by the City of Clinton on September 22, 1999. At that time, the Building Official viewed the Welches' treehouse and commented about how nice it was. Clinton's Building Official made no other comments, inquiries, or demands regarding the treehouse. The Welches had a second building inspection when they undertook to enclose their garage at their home in 2000. That final inspection of their home was undertaken by Roger McNeese on September 26, 2000. Mr. McNeese also necessarily viewed the Welches' treehouse and placed no request or demand upon the Welches to remove it nor indicated any non-compliance with any City of Clinton Codes, Ordinances, or Regulations. A copy of the Welches' building inspections is marked as "**Exhibit 4**" and attached to the Welches' Planning and Zoning presentation. Consequently, as of September 2000, the Welches believed and relied upon the representation of the City of Clinton that they could lawfully construct their treehouse in their front yard and needed no permit to do so; the Welches changed their position as a result of that belief and reliance "constructed the treehouse" and now are subject to suffering a detriment or prejudice as a result of their reliance on the representations of the City of Clinton.

Since 1997, Scott and Mary Welch have not only enjoyed constructing their children's treehouse/playhouse, but they have thoroughly enjoyed the pleasure each of the other children in their neighborhood has derived from playing with their children in their children's treehouse/playhouse.

The neighborhood children's use and enjoyment of the treehouse went unquestioned and unabated until April 12th of this year, 2002. On April 12, 2002, Gary Ward, Zoning Administrator for the City of Clinton, sent the Welches a letter advising them that Clinton's Ordinance prohibits "Accessory buildings to be located in the front or side yards." This letter further informed the Welches that their treehouse is in violation of the City's Ordinance and must be "removed or relocated to the rear yard of the property".

Mr. Ward wrote a second letter to Scott and Mary Welch dated May 15, 2002 advising them they had ten (10) days from receipt of that letter to submit a plan to remove or relocate their treehouse. Mr. Ward advised that "otherwise the City is forced to begin legal proceedings against you for violation of § 410.05 of the City of Clinton's Zoning Ordinance." A copy of Mr. Ward's letters is marked as collective "**Exhibit 5**" and attached to the Welches' Planning and Zoning presentation.

In response to the April 12, 2002 and May 15, 2002 letters received by Scott and Mary Welch from Gary Ward, Zoning Administrator, City of Clinton, the Welches prepared and submitted their Request for Conditional Use/Special Exception, and/or Non-Conforming Use Application dated June 26, 2002. ("**Exhibit 1**", and attached to the Welches' Planning and Zoning presentation). The Welches also filed an appeal to the Mayor and Board of Aldermen of the City of Clinton, Mississippi, regarding Gary Ward's administrative determinations contained in his April 12th and May 15th, 2002 letters. The Welches' appeal is marked as "**Exhibit 6**" and attached to the Welches' Planning and Zoning presentation.

It is the position of the Welches that their children's treehouse has never and does not currently constitute an "accessory building" under the City of Clinton's former and/or current Zoning Ordinance. Further, the Welches submit that the facts and circumstances surrounding the construction and continued use of their children's treehouse/playhouse warrants the grant/award of a Conditional Use Permit and/or Special Exception Permit and/or adjudication of a Non-Conforming Use, all as provided for under the City of Clinton's current Zoning Ordinance.

Attached to this memorandum/letter is a set of photographs of the treehouse here in question at its inception prior to April 1997. As you can see from reviewing the photographs marked as collective "**Exhibit 7**" and attached to the Welches' Planning and Zoning presentation, the treehouse did not constitute an "accessory building" under Clinton's former Ordinance or current Ordinance. Moreover, it did not constitute a building at all, but rather a "treehouse" or "playhouse".

Marked as "**Exhibit 8**", and attached to the Welches' Planning and Zoning presentation, is a set of photographs which depict the Welches' children's treehouse as it exists today. As you can see, from reviewing these photographs marked as "Exhibit 8" and attached to the Welches' Planning and Zoning presentation, the treehouse is an attractive treehouse and the centerpiece of a neighborhood playground. The Welches' children's treehouse serves as the neighborhood treehouse and is loved and adored by all of the children in the Welches' neighborhood.

Finally, the petitions marked as collective "Exhibit 9", and attached to the Welches' Planning and Zoning presentation, contain almost 700 signatures of Clinton residents' approval and support of the Welches' treehouse and its continued use and existence. All 700 people agree with the Welches, that the treehouse is a positive and constructive aspect of the Kitchings Drive neighborhood, and, in fact, serves as a centerpiece of the Welches' playground in promoting the health, safety, welfare, and morals of the residents and children of the City of Clinton, Mississippi.

As you can see from reviewing the photographs marked as "Exhibit 9" the Welches' treehouse is not only attractive and well maintained, it is extremely sturdy and constructed of the finest woodworking materials. The railings around the treehouse are solid and visibly capable of protecting visitors/occupants of substantially greater size and weight than those who routinely play in and around the treehouse.

The treehouse has no electrical wiring or electrical conduit in or connected to it. The treehouse has no lights, light fixtures, appliances, or air conditioners which could conceivably cause harm or damage to the treehouse or the occupants playing in it. Furthermore, the treehouse remains locked at all times if Scott and Mary Welch are away from the premises. The treehouse is also insured under the Welches' homeowner policy and the subject of liability insurance coverage.

III. Procedural Background Before the Planning and Zoning Commission.

On June 23, 2002, Scott and Mary Welch along with myself, on their behalf, presented their case in support of their request for a Conditional Use/Special Exception and/or Non-Conforming Use Application filed on June 26, 2002. The Welches submitted a positional paper which consisted of eight (8) pages along with ten (10) exhibits in support of their application and request. A transcript of the public hearing held before the Planning and Zoning Commission was also made and is included as a part of the proceedings before the Planning and Zoning Commission and made a part of the record of same.

Over one hundred and thirty (130) people attended the meeting with each and every person in attendance being in favor of the continued existence of the Welches' treehouse. Not one person attended the June 23rd Planning and Zoning Meeting who was opposed to the treehouse. A part of the Welches' presentation and documentation they requested to be placed in the record of the proceeding before the Planning and Zoning Commission Members consisted of Petitions which contained almost seven hundred (700) signatures of city wide residents who were in favor of the continued use and existence of the Welches' treehouse.

After a lengthy hearing and receipt of the numerous comments from persons in attendance in favor of the continued existence of the treehouse, the Planning and Zoning Commission voted to refer the matter to the Mayor and Board of Aldermen with a "no recommendation" recommendation. However, this recommendation is in direct violation of § 2411.03 of the City of Clinton's Zoning Ordinances.

Section 2411.03 specifically states in part that, "*only in case of a tie vote may an application be forwarded to the Mayor and Board of Aldermen 'without recommendation'.*" Consequently, you are hereby placed on notice that the City of Clinton's procedure for receiving, considering, and acting upon the Welches' application referenced hereinabove has not been followed by the City of Clinton and its Planning and Zoning Commission. The Welches' submit that the procedural and substantive violation by the City of Clinton and its Planning and Zoning Commission Members is material and relevant to this case and constitutes a ground for reversal should this matter be appealed.

IV Legal and Factual Basis to Approve the Welches' Request for Conditional Use, and/or Special Exception and/or Non-Conforming Use Application.

A. To date, the City of Clinton has advised the Welches of only two (2) sections contained in its Zoning Ordinance which it construes to be in violation. The City of Clinton specifically has referenced and relied upon the definition of "accessory building" under § 200 of its Ordinance and § 401.05 which prohibits the location of accessory buildings in the front yard and side yard of any district. A copy of both of those sections of Clinton's Ordinance are contained in collective "Exhibit 10" attached to the Welches' Planning and Zoning presentation. Consequently, it is the City of Clinton's Zoning Administrator's interpretation that the Welches' treehouse constitutes an "accessory building" which lies at the crux of this controversy and hearing before you today.

The Welches submit that their children's treehouse did not constitute an "accessory building" under Clinton's former Ordinance. (See "Exhibit 3"). Neither does the Welches' treehouse constitute an "accessory structure" under Clinton's current Zoning Ordinance. The Welches' treehouse is just that, a "**treehouse**". It also serves as the centerpiece and **playhouse** for the Welches' play area in their front yard. Moreover, "treehouse" is not addressed or defined in the City of Clinton's current Zoning Ordinance and clearly is not prohibited from existing in a resident's front yard or side yard.

Consequently, since the Welches' "treehouse" does not constitute an "accessory building or use" under § 401.05 of Clinton's current Zoning Ordinance, it is not prohibited from existing in the Welches' front yard.

The Welches' treehouse is a playhouse, not an accessory building. Moreover, the photographs produced by the Welches during the Spring of 1997 clearly depict the treehouse with nothing more than a floor and framed up sides, ... nothing more and certainly not a building or structure. To categorize or classify the Welches' treehouse as an "accessory building" as defined under the City's old Ordinance or current Ordinance, is, we believe, arbitrary, capricious, discriminatory, and/or unreasonable in violation of the City's Ordinance and state law.

B. Waiver, estoppel, or laches may operate under certain circumstances to preclude relief against Zoning Ordinances or regulations. Walker and Baxter v. City of Biloxi, 92 So.2d 227 (1957). 8 McQuillin, Municipal Corporations, 3 Ed. Sec. 25.291. Based upon the facts cited above and facts to be shown at an additional hearing and/or appeal hereof, the Welches contend that the City of Clinton is **equitably estopped** from asserting that its "treehouse" is an "accessory building" or an "accessory structure", and is prohibited from being located in the Welches' front yard.

In 1999 and again in 2000, the Building Inspector for the City of Clinton clearly viewed and was made aware of the existence of the Welches' treehouse. The City had knowledge that the treehouse was being constructed and/or existed. If the City felt that the treehouse constituted an accessory building and was prohibited from existing in the Welches' front yard, the City not only had an opportunity, but a duty to speak out and advise the Welches of this fact. The City did not do so. Furthermore, the City's failure to speak out or in any way object to the construction and/or existence of the Welches' treehouse in 1999 and 2000 to date, constitutes a negligent disregard of the plain dictates of conscience and justice. Suggs v. Town of Caledonia, 470 So.2d 1055 and Canal - Commercial Trust and Savings Bank v. Brewer, 143 Miss. 146, 108 So. 424, 109 So. 8, 47 A.L.R. 45 (1926).

The Welches sought permission/permit from the City to construct their treehouse. The Welches believed and relied upon the representation of Julion Lowther, Clinton's Building Inspector and Zoning Administrator, that a permit or other authorization was not required to construct the treehouse. The Welches have expended hundred of hours and thousands of dollars as a result of their belief and reliance upon the City that no permit or other authorization was necessary to construct their treehouse in its present location. Thirdly, the Welches will now necessarily suffer a detriment and be prejudiced as a result of their reliance, should they be forced to take down their treehouse. These facts and legal principals clearly fall within the definition and application of "equitable estopped" and "detrimental reliance" and are unmistakably and applicable and controlling in this case.

The Welches requests the Mayor and Board of Aldermen to determine that the City is equitably estopped from classifying or categorizing its treehouse as an "accessory building" or "accessory structure" and from requiring its demolition. Town of Florence v. Sea Lands, Ltd., 759 So.2d 1221.

C. Scott Welch has spent hundreds of hours and thousands of dollars constructing his children's treehouse in its current location. The City of Clinton's Zoning Ordinance does not define "treehouse" and does not inhibit or restrict the location of treehouses in the City of Clinton. A treehouse, is a treehouse, is a treehouse,.... not an accessory building and its location is not prohibited under Clinton's Ordinances.

As referenced above, the Welches relied upon representations from city officials prior to constructing their treehouse. The City cannot deny its knowledge, through its building official and zoning administrator, that the treehouse was under construction and/or completed during

1999 and/or 2000. Consequently, the Welches submit that in light of the law in the State of Mississippi and applicable statutory authorities coupled with the state of the City's Zoning Ordinance in the Spring of 1997 and to date, any requirement by the City of Clinton that the Welches' treehouse be removed as it currently exist shall constitute a "**regulatory taking**," in violation of their State and Federal Constitutional rights and for which the Welches will be entitled to receive compensatory damages, attorney fees, and costs. Section 11-51-75, Miss. Code of 1972; City of Druant v. Laws Construction Co., 721 So.2d 598 (1998); Citizens for Equal Property Rights v. Board of Supervisors of Lowndes County, 730 So.2d 1141 (Miss. 1999).

D. A "Conditional Use" is defined under § 200 of Clinton's current Zoning Ordinance and on page 7 thereof. "Special Exception" is defined under § 200 of Clinton's Ordinance on page 20 as "See 'Conditional Use'". Special exception and conditional use are defined to be one and the same under Clinton's current Zoning Ordinance.

Under Clinton's definition of "Conditional Use" the City contends that the Welches' treehouse is an "accessory building" and therefore prohibited from existing in the Welches' front yard pursuant to § 401.05 of its Ordinances. However, by definition under Clinton's Zoning Ordinance of "Conditional Use", and pursuant to § 2402 through § 2405.03 of Clinton's Ordinance, the Welches' treehouse qualifies as and should be characterized and adjudicated to be a "Conditional Use". The Welches' treehouse without question promotes the public health, safety, morals, and general welfare of the City of Clinton. Furthermore, the Welches' treehouse does not adversely affect any adjacent property owners. In fact, three (3) of the last five (5) houses that have sold in the Welches' neighborhood have sold in five (5) days or less. The other two (2) residences sold within four (4) months of being placed on the market for sale.

Not only does the existence and use of the Welches' treehouse qualify to be adjudicated a conditional use under Clinton's Zoning Ordinances, it also qualifies as a conditional use under the case law in the State of Mississippi. Conditional use permits in Mississippi are adjudicative in nature while zoning ordinances are legislative acts. In this case, the burden is upon the Welches, to prove only by a preponderance of the evidence that they have met the elements/factors essential to obtaining a conditional use permit. Barnes v. Board of Supervisors, DeSoto County, 553 So.2d 508, 509, 510.

The Welches' treehouse unquestionably complies with § 2405.01 of Clinton's Ordinance which sets forth the requirements for granting a Special Exception or Conditional Use Permit. Moreover, under Barnes v. Board of Supervisors, supra, the Welches' treehouse (1) does not increase traffic hazards or congestion, (2) does not increase any fire hazards, (3) does not adversely affect the character of the neighborhood, (4) does not substantially adversely affect the general welfare of the community of City of Clinton, (5) does not overtax or over burden the City's public utilities or community facilities, and (6) does not conflict with Clinton's Comprehensive Plan. City of Olive Branch, Board of Aldermen v. Bunker, 733 So.2d 842 and Mayor and Board of Aldermen, City of Clinton v. Hudson, 774 So.2d 448.

To date, the City of Clinton has produced no documentation, testimony, affidavits, maps, plats or any other documentation or proof that would indicate that the Welches' treehouse does not promote the public health, safety, morals, or general welfare of the City or that it adversely affects any adjacent property owners. To date, the City of Clinton has advised the Welches that they received one or two anonymous calls about the treehouse, and nothing more. That is the total sum and substance of the City's basis for adjudicating the Welches' treehouse to be an accessory building and demanding its demolition.

E. Not only do the Welches submit that they are entitled to the grant of a conditional use permit, but their treehouse also qualifies as a "Non-Conforming Use" under City of Clinton's Zoning Ordinances and the laws of the State of Mississippi; if, the terms "accessory building" or "accessory structure" are even applicable to the Welches' treehouse.

Non-conforming use is defined under Clinton's Ordinance under § 200 on page 15 of said Ordinance. Section 2200 through 2206 of Clinton's Ordinance defines the different types of non-conforming uses and identifies the regulations concerning non-conforming uses of structures. Clinton's Ordinances specifically provide for the existence and continuation of structures which exists in areas in which the current zoning would prohibits such existence. Specifically, § 2200 defines a non-conformity as "any land, lot, building, structure, or parts thereof, existing prior to the enactment of this Ordinance, which subsequent to the enactment of this Ordinance or amendment thereto, does not conform with the use regulations and/or dimensional regulations of the District in which it is situated...". Section 2200 goes on to state that it is the intent of this Ordinance to permit non-conformities to continue until they are removed, but not to encourage their survival.

Section 2200 states further that in order to avoid undue hardship, the Ordinance shall be deemed not to require a change of plans, construction, or designated use of any building on which **"ACTUAL CONSTRUCTION WAS LAWFULLY INITIATED PRIOR TO THE EFFECTIVE DATE OF ADOPTION OR AMENDMENT OF THIS ORDINANCE..."**

Construction of the Welches' children's treehouse was unequivocally initiated and substantially undertaken prior to the adoption of Clinton's current Zoning Ordinance in April of 1997, even if it is deemed to be a building. The photographs marked as "Exhibit 7" to the Welches' Planning and Zoning presentation, clearly indicate that only the floor of the treehouse had been completed with the walls having only been framed when Clinton's current Ordinance was adopted. There were no enclosures of the treehouse and no roof on the treehouse as of the date of the adoption of Clinton's current Zoning Ordinance. The treehouse could hardly be found to constitute an "accessory building" as that term was defined under Clinton's old Ordinance. Consequently, the treehouse lawfully existed under the old Ordinance, (floor and framed walls only). Even if construed to have evolved into an accessory building under the new Ordinance, actual construction was "lawfully initiated prior to the effective date of adoption or amendment of this Ordinance".

Non-conforming uses of property is a legal principal clearly recognized and adhered to in the State of Mississippi. In fact, "the nature of the right to a non-conforming use is a property right". Barrett v. Hinds County, 545 So.2d 734, 737. Non-conforming uses have been allowed to continue where the use was lawful at the time of the adoption of the Ordinance so long as the use did not change or become abandoned. Id. Once a non-conforming use has been established and not abandoned, it runs with the land. Appeal of Indianhead, Inc., 414 PA. 46, 198 At.2d 522 (1964), Eitnier v. Kreitz Corp., 404 PA. 406, 172 At.2d 320.

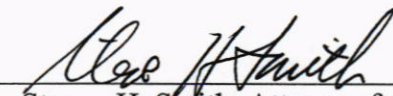
It is uncontradicted that the Welches' children's treehouse existed only as a treehouse at the time that Clinton's current Zoning Ordinance was adopted. It cannot rationally or reasonably be said that only the floor and framed up walls of the treehouse constituted a building or an accessory building under the old Ordinance or at the time that Clinton adopted its current Zoning Ordinance. Consequently, the Welches' treehouse also qualifies as a non-conforming use and the Mayor and Board of Aldermen should adjudicate same.

Scott and Mary Welch respectfully requests the Mayor and Board of Aldermen of the City of Clinton to overturn the Zoning Administrator's interpretation of the City's Zoning Ordinances (§ 200, § 401.05, et seq.) construing their treehouse to be an "accessory building" and requiring its removal.

In the alternative, Scott and Mary Welch respectfully request the Mayor and Board of Aldermen of the City of Clinton, Mississippi, to grant their request for a Conditional Use or Special Exception permit or to adjudicate their treehouse to constitute a non-conforming use.

Respectfully submitted,

SCOTT AND MARY WELCH

By: 
Steven H. Smith, Attorney for Scott
and Mary Welch

SHS/clb

CITY OF CLINTON AGENDA ITEM FACT SHEET

BOARD MEETING DATE: August 6, 2002

AGENDA ITEM NO. 7.6

CONSENT AGENDA: _____ TO: _____

FOR: _____

ACCT. NO. _____

DISCUSSION/ACTION: Request for Conditional Use/Non-Conforming Use (Scot & Mary Welch)

INTRODUCED BY: Gary Ward

EXHIBITS FOR REVIEW:

Minutes	_____	Invoice	_____	Other	_____
Ordinance	_____	Plans, Maps	_____		_____
Resolution	_____	Contract	_____		_____

RECOMMENDATION: _____

BOARD ACTION: _____ MOTION MADE BY: Brabham

SECONDED BY: Fisher

VOTE CAST:	"AYE"	"NAY"	ACTION TAKEN:
Brabham	<u>Y</u>	_____	_____
Hisaw	<u>✓</u>	_____	_____
Greer	<u>Y</u>	_____	_____
Brantley	<u>Y</u>	_____	_____
Fisher	<u>✓</u>	_____	_____
Touchton	_____	<u>N</u>	_____
Lott	<u>Y</u>	_____	_____
Mayor Aultman	_____	_____	_____

AGENDA ITEMS MUST BE TURNED IN TO THE CITY CLERK WITH ALL ATTACHMENTS NO LATER THAN 5 P.M. ON THE WEDNESDAY PRECEEDING THE TUESDAY BOARD MEETING TO BE INCLUDED ON THE AGENDA. THIS DEADLINE WILL BE STRICTLY ENFORCED.

CITY OF CLINTON AGENDA ITEM FACT SHEET

BOARD MEETING DATE: August 6, 2002

AGENDA ITEM NO. 7. c

CONSENT AGENDA:

TO:

FOR:

ACCT. NO. _____

DISCUSSION/ACTION: Renovations to 301 W. Lawson, 303 W. Lawson, 501 Capitol Street
Bill and Marty Singletary

INTRODUCED BY: Gary Ward

TELEPHONE: 924-2256

EXHIBITS FOR REVIEW:

Minutes X
Ordinance
Resolution

Invoice
Plans, Maps
Contract

Other: _____

RECOMMENDATION: Planning and Zoning Commission recommends approval.
Clinton Historical Preservation Commission recommends approval.

BOARD ACTION:

MOTION MADE BY: Touchton

SECONDED BY: Lott

VOTE CAST:

"AYE"

"NAY"

ACTION TAKEN:

Brabham
Hisaw
Greer
Brantley
Fisher
Touchton
Lott

✓

Mayor Aultman

AGENDA ITEMS MUST BE TURNED IN TO THE CITY CLERK WITH ALL ATTACHMENTS NO LATER THAN 5 P.M. ON THE WEDNESDAY PRECEDING THE TUESDAY BOARD MEETING TO BE INCLUDED ON THE AGENDA. THIS DEADLINE WILL BE STRICTLY ENFORCED.

Bill and Marty Singletary
301 W. Lawson Street
Clinton, MS 39056

**Site Plan for Renovations,
New Construction, and Moving
and Rehabilitation of Existing Structure
and
Application for Certificate of Appropriateness**

Pursuant to the city ordinance establishing the Clinton Historical Preservation Commission and Planning and Zoning Article XIV regarding the Olde Towne Clinton District, Marty and I submit this and the attached site plan for certain work we want to do at our house at 301 W. Lawson Street, and adjoining property at 303 W. Lawson Street and 501 Capitol Street, for your consideration. Please consider this our application for a Certificate of Appropriateness for all such work.

The proposed work would include the following:

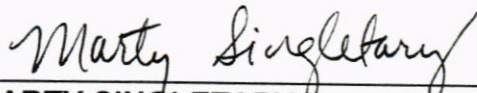
1) *New Construction.* We propose to construct a two-car enclosed garage in conformity with the attached architectural renderings and elevations. In addition to the car bays, the garage would have a storage area on the ground floor and a studio above. It would be positioned on the property just west of and slightly north of our house, and would be fully detached from the house. The garage doors would open to the west and would not be visible from the street. When completed the second, or western-most driveway on our property would become our principal ingress and egress by vehicle. It is proposed that the building be constructed of brick, either Old Chicago brick, which is the type used on the foundation of the existing house, or painted white. The other materials are as proposed in the attached architect's Finish Schedule.

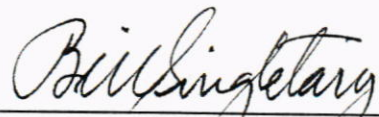
2) *Renovation of duplex.* We further propose to renovate the duplex on our property, approximately in conformity with the attached architectural renderings and elevations. The work as proposed would involve the tearing away of the eastern-most half of the structure, and the renovation of the half to the west. Our plan has changed slightly for this phase since the architect's plans were prepared. The work will still involve the addition of a porch and an entirely new roof; however, we have abandoned the addition of a full second floor as is depicted on the elevations provided. Instead, the roof would be adjusted to single-story with a couple of dormers similar to those shown on the elevations for the proposed garage.

3) *Moving and Rehabilitation of a portion of Existing Structure.* It is further proposed that we relocate the eastern one-half of the duplex. We have the property immediately adjacent to the north of our property, 501 Capitol Street, under contract for purchase. Attached is a copy of the tax map showing the location and dimensions of that property. However, one of the contingencies for such sale and purchase is the approval of the city for us to divide this extra-large lot into two lots, dividing it into an eastern half and a western half, along a line running north and south through the property. The portion of the structure we propose to relocate would be moved approximately 50 yards from its present location to the western, or second, lot which results from the division of the lot at 501 Capitol Street. We propose to renovate/rehabilitate this structure in the same manner and almost exactly as that proposed for the duplex.

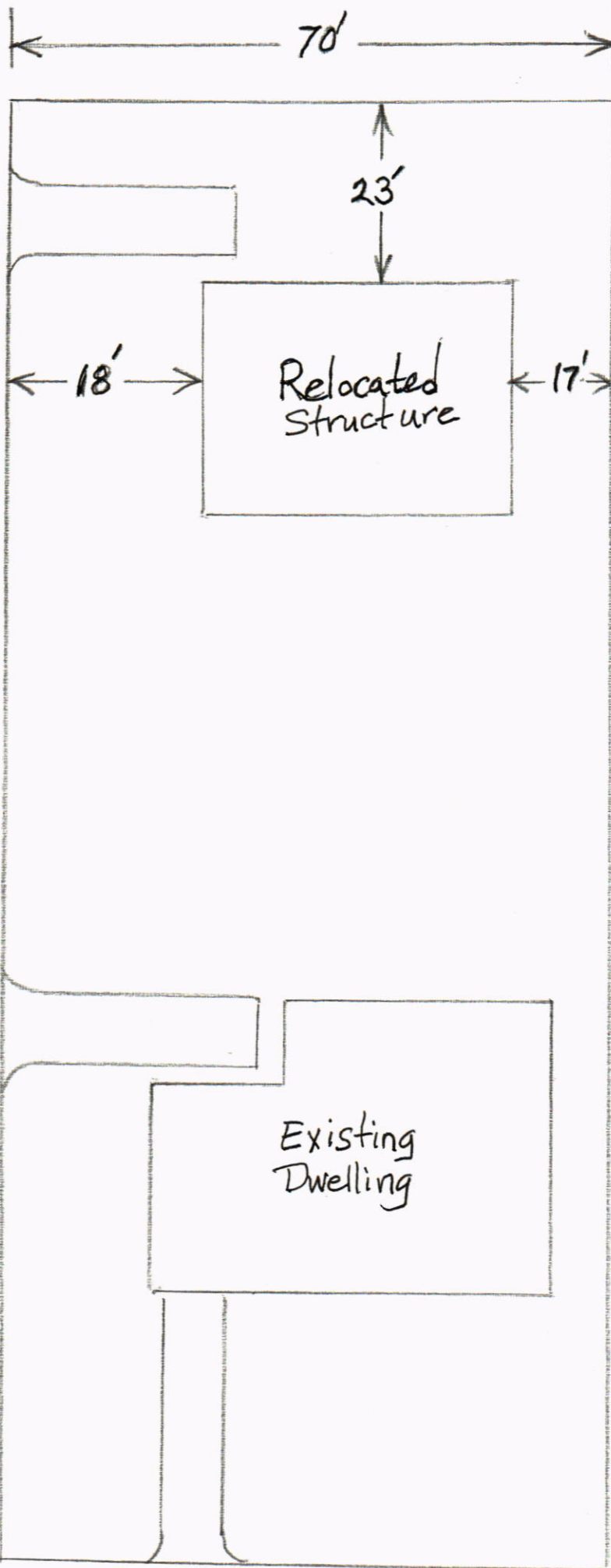
Also attached are pictures of the present condition of the duplex. The proposed renovation and rehabilitation of this structure into essentially two carriage-style structures would, we think, significantly enhance the area. It would certainly be a much-needed and long overdue improvement to what exists there now. We hope that you can tell from the architects renderings and elevations that this new construction and all the other improvements represent not only a tasteful upgrade in the area, but also a significant investment in Olde Towne Clinton, which we believe in. Thank you for your consideration.

SUBMITTED this the 18th day of July, 2002.

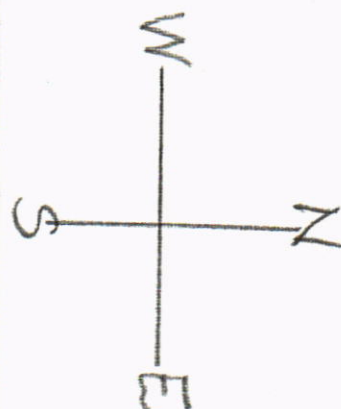

MARTY SINGLETARY, property owner

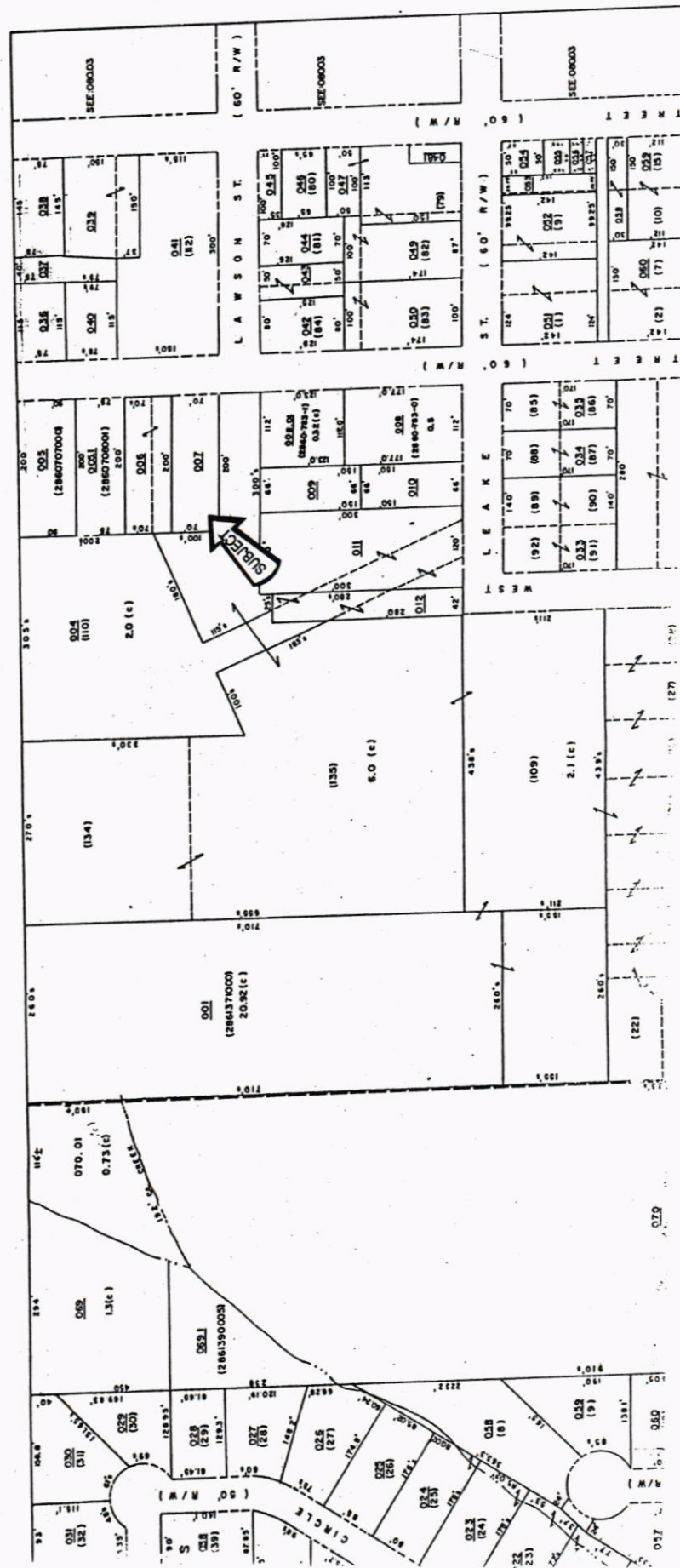

BILL SINGLETARY, property owner

Lawson Street



200'





CITY OF CLINTON AGENDA ITEM FACT SHEET

BOARD MEETING DATE: August 6, 2002

AGENDA ITEM NO. 8

CONSENT AGENDA: \$

TO:

FOR:

ACCT. NO. 400-650-591

DISCUSSION/ACTION: of bids for the purchase of pipe, valves, hydrants and other materials to be used in the installation of municipal water lines

INTRODUCED BY: Tim Rogers, Public Works Director

TR

TELEPHONE: 924-2239

EXHIBITS FOR REVIEW:

Minutes
Ordinance
Resolution

Invoice
Plans, Maps
Contract

Other

*Recommend accept
from Higgins Supply*

RECOMMENDATION:

BOARD ACTION:

MOTION MADE BY:

Brantley

SECONDED BY:

Greer

VOTE CAST:

"AYE" "NAY"

ACTION TAKEN:

Brabham
Hisaw
Greer
Brantley
Fisher
Touchton
Lott

1

Mayor Aultman

AGENDA ITEMS MUST BE TURNED IN TO THE CITY CLERK WITH ALL ATTACHMENTS NO LATER THAN 5 P.M. ON THE WEDNESDAY PRECEDING THE TUESDAY BOARD MEETING TO BE INCLUDED ON THE AGENDA. THIS DEADLINE WILL BE STRICTLY ENFORCED.

BID OPENING REPORT

Project: Cynthia/Arrow/Justin's Way
 pipe, valves, hydrants & other
 materials for installation of
 municipal water lines

Bid Date: July 9, 2002 at 10:00 ^{a.m.}_{p.m.}

Location: City Hall
 300 Jefferson Street
 Clinton, MS 39056

Owner: City of Clinton

Engineer: Public Works Dept

Pre Bid Estimate:

BIDDER	Central	Hughes	Faulkner	Utility	Consolidated
Central Pipe	27,902.35				
Hughes Supply		27,093.09			
Faulkner Pipe			30,881.75		
Utility Pipe				30,994.19	
Consolidated Pipe					83,091.50

The above bid amounts have not been checked. The bid totals are
 subject to correction after the bids have been completely reviewed.

Signed: Carol Warren
 Date: 7-9-02

CITY OF CLINTON AGENDA ITEM FACT SHEET

BOARD MEETING DATE: August 6, 2002

AGENDA ITEM NO. 9

CONSENT AGENDA: \$

TO:

FOR:

ACCT. NO. 001-215-730

DISCUSSION/ACTION: of bids for the purchase of tractor with boom mower for the street department

INTRODUCED BY: Tim Rogers, Public Works Director *TR*

TELEPHONE: 924-2239

EXHIBITS FOR REVIEW:

Minutes
Ordinance
Resolution

Invoice
Plans, Maps
Contract

Other

*Accept Dearing as
lowest and best
bid*

RECOMMENDATION:

BOARD ACTION:

MOTION MADE BY: *Brantley*

SECONDED BY: *Fisher*

VOTE CAST:

"AYE" "NAY"

ACTION TAKEN:

Brabham
Hisaw
Greer
Brantley
Fisher
Touchton
Lott

1

Mayor Aultman

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BID OPENING REPORT

Project: Tractor w/20ft boom mower

Bid Date: July 9, 2002 at 10:00 a.m.

Location: City Hall
300 Jefferson Street
Clinton, MS 39056

Owner: City of Clinton

Engineer: Public Works Dept.

Pre Bid Estimate:

*not to spec due to
distinct requirement*

BIDDER	Crain	Deviney	Tubb			
Crain Tractor & Equip	48,325.00					
Deviney		49,890.00				
Tubb Equipment			55,777.77			

The above bid amounts have not been checked. The bid totals are subject to correction after the bids have been completely reviewed.

Signed:

Carol Warren

Date:

7-9-02

CITY OF CLINTON AGENDA ITEM FACT SHEET

BOARD MEETING DATE: August 6, 2002

AGENDA ITEM NO. 10

CONSENT AGENDA: _____ TO: _____

_____ FOR: _____

_____ ACCT. NO. _____

DISCUSSION/ACTION: Robinson Park Walking Trail and Parking Area Paving

INTRODUCED BY: Mike Taggart TELEPHONE: 924-6082

EXHIBITS FOR REVIEW:

Minutes _____	Invoice _____	Other <u>Bid Tabulation</u>
Ordinance _____	Plans, Maps _____	
Resolution _____	Contract _____	

*APAC
lowest and best
bid.*

RECOMMENDATION: _____

BOARD ACTION: _____ MOTION MADE BY: Greer

SECONDED BY: Hisaw

VOTE CAST: _____ "AYE" "NAY" ACTION TAKEN: _____

Brabham	_____	<u>+</u>	_____	_____
Hisaw	_____	<u>+</u>	_____	_____
Greer	_____	<u>+</u>	_____	_____
Brantley	_____	<u>+</u>	_____	_____
Fisher	_____	<u>+</u>	_____	_____
Touchton	_____	<u>+</u>	_____	_____
Lott	_____	<u>+</u>	_____	_____

Mayor Aultman _____

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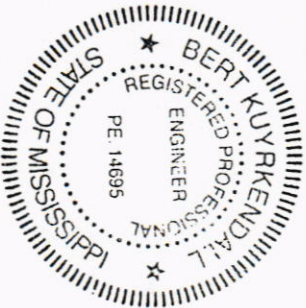
Bid Tabulation
Robinson Park Walking Trail and Parking Area Paving

City of Clinton, MS
June 18, 2002
10:00 A.M

Item Number	Item Description	Proposal Quantity	Item Unit	Adcamp		APAC		Superior		Barnes Construction	
				Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
S-403-C	Hot Bituminous Pavement Surface Course, SC-1, TYPE 2	495	Tons	\$58.50	\$28,957.50	\$51.00	\$25,245.00	\$53.25	\$26,358.75	\$68.50	\$33,907.50
Total Bid Price					\$28,957.50		\$25,245.00		\$26,358.75		\$33,907.50

THIS IS TO CERTIFY THAT THE ABOVE BID AMOUNTS ARE A TRUE AND ACCURATE TABULATION OF THE CONSTRUCTION BIDS RECEIVED ON THIS PROJECT.

BY: *Bert Kuyrkendall* DATE: 6/19/02
 BERT R. KUYRKENDALL, P.E. ASSISTANT CITY ENGINEER
 CITY OF CLINTON, MS



CITY OF CLINTON AGENDA ITEM FACT SHEET

BOARD MEETING DATE: August 6, 2002

AGENDA ITEM NO. 11

CONSENT AGENDA: _____ TO: _____

FOR: _____

ACCT. NO. _____

DISCUSSION/ACTION: Approval of Resolution to open bank accounts at BankPlus for all funds belonging to the City, said transfer of funds from AmSouth Bank to be made as soon as practical.. BankPlus was the highest of six bidders to serve as the City's depository for all City funds for a term of two years. Notice to bid to qualified depositories was made in accordance with Sections 207-105-305 and 27-105-353 of the Mississippi Code of 1972, Annotated.

INTRODUCED BY: Wayne Derrick

EXHIBITS FOR REVIEW:

Minutes	_____	Invoice	_____	Other	_____
Ordinance	_____	Plans, Maps	_____		_____
Resolution	_____	Contract	_____		_____

RECOMMENDATION:

BOARD ACTION:

MOTION MADE BY: Touchton

SECONDED BY: Lott

<u>VOTE CAST:</u>	<u>"AYE"</u>	<u>"NAY"</u>	<u>ACTION TAKEN:</u>
Brabham	_____	_____	_____
Hisaw	_____	_____	_____
Greer	_____	_____	_____
Brantley	_____	_____	_____
Fisher	_____	_____	_____
Touchton	_____	_____	_____
Lott	_____	_____	_____
Mayor Aultman	_____	_____	_____

AGENDA ITEMS MUST BE TURNED IN TO THE CITY CLERK WITH ALL ATTACHMENTS NO LATER THAN 5 P.M. ON THE WEDNESDAY PRECEEDING THE TUESDAY BOARD MEETING TO BE INCLUDED ON THE AGENDA. THIS DEADLINE WILL BE STRICTLY ENFORCED.

RESOLUTION AUTHORIZING USE OF FINANCIAL INSTITUTION

RESOLVED, that BankPlus ("Bank") is designated a depository of funds for the City of Clinton, Mississippi ("the City");

RESOLVED, that any prior resolutions remain in effect except as changed by those adopted today. The City ratifies all transactions purportedly done on its behalf with the Bank before these resolutions were delivered to the Bank. Any change (s) to these resolutions will take effect only after the Bank has received written certification of the change (s) and has had reasonable time to act on the change (s);

RESOLVED, that the City agrees to be bound by the Bank's Commercial Deposit Account Agreement for each account permitted by these resolutions;

RESOLVED, the Bank is authorized to honor, pay and charge the City's accounts for any item purporting to have been signed on behalf of the City with a facsimile signature that resembles a specimen the City has certified to the Bank, no matter by whom or by what means their actual or purported signature may have been made;

RESOLVED, that the persons named below, whose manual and/or facsimile signatures are provided next to their respective names, are authorized to perform the powers listed based on number (s) following their respective names. The Bank has no duty to inquire into any power before executing it, even if the power benefits the signer individually. The required number of signatures immediately follows the description of that power;

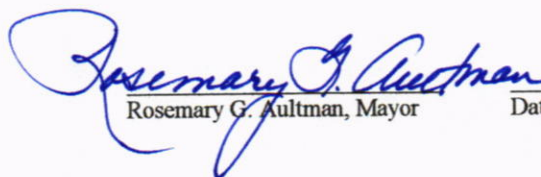
POWERS:

1. Open and close deposit accounts, sign account agreements, and sign contracts for deposit-related or other services. Signatures required: two (2)
2. Sign and authorize checks, drafts, withdrawal slips, and any other orders for the payment of money, whether by paper, electronic, or any other means, even if payable to the signer or used to discharge or reduce an obligation of the signer. Signatures required: two (2)

RESOLVED, that the City Clerk of the City of Clinton, Mississippi is directed to certify and deliver a copy of these resolutions to the Bank, the signature cards bearing the genuine signatures of the persons named below, and any other documents that the Bank requires.

AUTHORIZED PERSONS. The names of authorized persons are as follows:

Rosemary G. Aultman, Mayor
Jehu W. Brabham, Alderman-At-Large
Wayne Derrick, City Clerk


Rosemary G. Aultman, Mayor Date 8/8/02

Attest:


Wayne Derrick, City Clerk

