

IN THE CIRCUIT COURT OF COUNTY, MISSISSIPPI

APPELLANT

V.

NO.

APPELLEE

**BILL OF EXCEPTIONS**

COMES , and files this his/her Bill of Exceptions to the action of the Mayor and Board of Aldermen described herein and would show unto the court the following:

1. On , the Mayor and Board of Aldermen of the City of , Mississippi enacted an Ordinance entitled "AN AMENDMENT TO THE CITY OF , MISSISSIPPI'S APPENDIX A ZONING ORDINANCE SECTION 405-PROHIBITED USES IN ALL DISTRICTS." A copy of the Ordinance is attached hereto as Exhibit " ". This Ordinance purports to prohibit within for a period of ( ) years. Appellant takes exception to the Ordinance and submits that the action of the Mayor and Board of Aldermen in enacting the Ordinance is arbitrary, capricious, unreasonable, unconstitutional as violating the due process requirement of the 14th amendment to the United States constitution and equal protection clause thereof and was enacted contrary to the provisions of Miss. Code Ann. §17-1-17 (1972) and the cases interpreting same.

2. The Ordinance was enacted pursuant to a Notice of Public Hearing, a true and correct copy of which is attached hereto as Exhibit " ". The Notice of Public Hearing is fatally defective in that it fails to unambiguously inform interested parties of the proposed action. The Notice only states that the hearing will be held regarding "an amendment to the City of , MS's, Appendix A Ordinance Section 405-Prohibited Uses in All districts." It fails to state the Nature of the Amendment proposed or the uses to be prohibited. The Notice is therefore invalid to apprise interested parties of the purpose for which the hearing is to be held. The Notice further fails to state that its effect is to repeal the allowed use of in as has been an allowed use in District, . The Notice is entitled "Notice of Public Hearing" and fails to state in the title that the public hearing is to be held by the Mayor and Board of Aldermen of the City of . The Notice, to be sufficient at law, should state "City of , Notice of Public Hearing" or Notice of Public Hearing before the Mayor and Board of the City of " so as to apprise interested parties of the holder of the public hearing.

3. The Ordinance is also invalid in that it fails to specify in the title the prohibited uses to be included within Section 405 and is therefore fatally defective as failing to give adequate notice to the public of the nature of the Ordinance enacted.

4. Because of the inadequacy of the Notice of Hearing, Appellant was not provided adequate notice and was prohibited from presenting his/her case regarding the proposed amendment. Appellant did not learn of the Amendment or Public hearing until , .

5. On , the Mayor and Board of Aldermen of the City of enacted a Moratorium prohibiting the placement of within the City of for a period of ( ) years. The moratorium was enacted without public notice or public hearing.

6. On , , the Mayor and Board of Aldermen extended the Moratorium enacted on , for an additional ( ) years. This Moratorium was also enacted without notice or public hearing.

7. Prior to the enactment of the Moratorium on , were an allowed use in district, . Appellant is the owner of property within the City of .

8. On , , Appellant filed suit in the United States District Court for the District of Mississippi challenging the enforceability of the Moratorium enacted on , and extended on , and requesting an injunction and other relief. The case is still pending and is in the discovery phase.

9. Despite Appellee's knowledge of the Federal suit it took a course of action to prejudice the rights of Appellant by enacting an Amendment to attempt to correct procedural and substantive errors in the enactment of the unlawful Moratorium of , and , without giving Appellant actual notice of its proposed actions in violation of the due process clause of the 14th amendment to the United States Constitution and in violation of Mississippi Law, Miss Code Ann. §17-1-17 (1972). accomplished its objective to enact such an Amendment by intentionally failing to properly inform Appellant of the proposed amendment. In addition, to the extent that Miss. Code Ann. §17-1-17 (1972), allows an amendment without actual notice to a person who stands in the shoes of Appellant (i.e. a person who the appellee knew had a special interest in the proposed amendment) that provision should be declared unconstitutional on its face and/or as applied by Appellee.

10. Appellant therefore requests that this court declare the Ordinance enacted on , , described in paragraph 1 above be declared invalid.

11. Appellant attaches hereto in support of his Bill of Exceptions the following:

(a) Minutes of the meeting of the Mayor and Board of Aldermen of \_\_\_\_\_, Mississippi held on \_\_\_\_\_, \_\_\_\_\_. (Exhibit " \_\_\_\_\_ ")

(b) Copy of the Ordinance enacted on \_\_\_\_\_, \_\_\_\_\_ purporting to prohibit \_\_\_\_\_ in \_\_\_\_\_. (Exhibit " \_\_\_\_\_ ")

(c) Notice to the Public of the Hearing to be held on the Ordinance described in 11 (b). (Exhibit " \_\_\_\_\_ ")

(d) Copy of the Complaint filed against \_\_\_\_\_ in the United States District Court for the \_\_\_\_\_ District of Mississippi, Cause # \_\_\_\_\_. (Exhibit " \_\_\_\_\_ ")

(e) Copy of \_\_\_\_\_ district \_\_\_\_\_ of the \_\_\_\_\_ Ordinance of the City if \_\_\_\_\_. (Exhibit " \_\_\_\_\_ ")

RESPECTFULLY SUBMITTED,

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ATTORNEY FOR APPELLANT

EXECUTED THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

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MAYOR