IN THE SUPREME COURT OF MISSISSIPPI

NO. 2006-TS-02126

GWENDOLYN E. BALL ET AL — APPELLANT/CROSS-APPELLEE

- VERSUS -

MAYOR AND BOARD OF ALDERMEN OF THE CITY OF NATCHEZ, MISSISSIPPI — APPELLEE/CROSS-APPELLANT

APPEAL FROM THE CIRCUIT COURT
OF ADAMS COUNTY, MISSISSIPPI

BRIEF OF THE APPELLEE CITY OF NATCHEZ, MISSISSIPPI

Walter Brown
MSB #[redacted]
Walter Brown Law Firm PLLC
P. O. Box 963
Natchez, Mississippi 39121
Telephone: (601) 442-4242
Facsimile: (601) 442-3996
E-Mail: wlawfirm@bellsouth.net

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this Court may evaluate possible disqualification or refusal.

(1) Gwendolyn E. Ball, Appellant/Cross-Appellee;

(2) J. Neil Varnell, Appellant/Cross-Appellee;

(3) Sarge Preston, Appellant/Cross-Appellee;

(4) Mayor and Board of Aldermen, City of Natchez, Appellee/Cross-Appellant

(3) James A. Bobo, attorney for Appellant/Cross-Appellees

(4) Walter Brown, attorney for Appellee/Cross-Appellant;

(7) Honorable Forrest A. Johnson, Circuit Court Judge, Adams County, Mississippi.

WITNESS my signature on this the 7th day of August, 2007.

Walter Brown
MSB [redacted]
Walter Brown Law Firm PLLC
P. O. Box 963
Natchez, Mississippi 39121
Telephone: (601) 442-4242
Facsimile: (601) 442-3996
E-Mail: wlawfirm@bellsouth.net

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STATEMENT OF THE CASE

This is an appeal from the Circuit Court of Adams County wherein the Court upheld the actions of the Natchez City Council in entering into an Option/Development Agreement of certain surplus city-owned land and of the Mayor's action in subsequently executing the Deed conveying the land pursuant to the developer's exercise of the Option.

STATEMENT OF THE FACTS

A. Introduction

In January of 2005, city officials began receiving inquiries and requests by interested developers for the sale and development of the Natchez Pecan Factory Site, which property had been given to the City of Natchez by a local family in 1995, and which had been operating as an agricultural processing factory in Natchez from the 1920s until it closed in 1992. In April of 2005, after receiving over a dozen inquiries about developing the property, the City Council decided to prepare a Request for Proposals to all interested developers. (R. 141, R.E. 122)

In addition to the oral and written inquires, the proposed sale and development of the subject property was discussed at open meetings of the Mayor and Board of Aldermen on April 26, 2005, May 10, 2005, May 24, 2005, May 31, 2005 and June 28, 2005 (R. 140, R.E. 123).

On or about April 27, 2005, the City did issue its Request for Proposals to the 14 prospective developers who requested the opportunity to do so. **Specifically included in the letter from the City to the developers was the requirement that any proposal would be subject to notification and review by the Mississippi Department of Archives and History**. Said proposals were to be returned to the City no later than May 27, 2005. (R.152, R.E. 135)

In response to the requests forwarded to the 14 prospective developers, five (5) proposals were received and opened in Open Session by the Mayor and Board in a Special Meeting on May 31, 2005. The proposals ranged in various figures as to the price for the land from $275,000 to $650,000. **The average of the five (5) proposals offered by the prospective developers was $460,000.** (R. 168, R.E. 149) All but one of said proposals set out detailed plans (as required in the

RFP) for the timeline, the date of commencement of construction, the date of completion of construction and opening of the project and the proposed use of the site, i. e. what kind of development, and the maximum investment. The one exception was the proposal by the highest bidder James M. Biglane of $650,000 but his proposal had no specificity nor was it responsive as to any particular development, any commencement date, or the amount of the investment. (R. 178, R.E. 159)

The process of solicitation, invitation, receipt and consideration of proposals was reported and published in the *Natchez Democrat* on May 30, June 8, June 13, June 15, June 28 and July 3 of 2005. (R. 213, R.E. 194).

On June 7, 2005, the City Council interviewed the five (5) prospective developers and on June 28, 2005 the board narrowed its selection down to the developer Worley Brown. On August 9, 2005, after six weeks of negotiations as to the terms of an agreement acceptable to the City for development of the property, the City Council unanimously adopted its Resolution to enter into the Option/Development Agreement with Worley Brown LLC. (R. 223, R.E.204) In the adopting Resolution, the Board noted that the property was surplus and was not needed for municipal purposes, that a recent appraisal of the property was $714,900 and that the developer had offered $500,000, but had also agreed to commit to a time line of completion by September 30, 2007 and to expend $19,300,000 in development and to meet all applicable local and state historic preservation requirements. Under the terms of the August 9, 2005 Resolution adopted by the City Council, the Mayor was *authorized, empowered and directed* to execute a deed of conveyance transferring the City's interest upon notice of the exercise of the Option by the Developer. (R.285, R. E. 46)

(The final appraisal of Robert Gavin, a Mississippi Certified General Appraiser, is set forth in R. 275-276, R.E. 40-41. It should be noted that Mr. Gavin was not aware that the deed would contain a reservation by the City of a public use access easement along the bluff sidewalk for 535 feet up to six feet wide or a total of 3,110 square feet. (R. 291, 308, R.E. 52, 69) A copy of the Minute Excerpts of the August 9, 2005 meeting of the Board and the Option Development and other exhibits is reflected in R. 283, R.E. 44)

No appeal was taken by any party to the final action of the City Council on August 9, 2005 in adopting the Resolution to enter into the Option/Development Agreement and to authorize and direct the Mayor to execute a Special Warranty Deed to the developer incorporating the terms and conditions of the Option/Development Agreement.

The Agreement of August 9, 2005 provided for a 6 month option period to expire on February 9, 2006 and further provided in Paragraph 3.7 that the City and the optionee-developer would be required to meet all applicable city, state and federal statutes, rules and regulations for the sale and development of the property including compliance with state law and the regulations of the Mississippi Department of Archives and History. (R. 295, R.E. 56) The Option/Development Agreement further provided as part of the City's representations that the City *would cooperate* with the developer in the acquisition of all permits and approvals necessary to develop the property. (R. 287, R.E.48 and R.E. 56 as to permits and approvals)

On September 12, 2005 the Mississippi Department of Archives and History notified the City that it had learned that the City was considering selling public property in the Natchez On Top of the Hill Historic District and reminded the City that prior to such transfer the Mississippi Antiquities Act required that the Department be notified so a determination of Mississippi Landmark eligibility could be made.

In compliance with *Miss. Code Ann.* 1972, §39-7-22, on September 19, 2005, the City Attorney, Walter Brown, submitted to the Mississippi Department of Archives and History the City's notice as required under the statute of its intention to transfer the subject property and attached thereto the city's plan for riverfront development of city-owned properties including the Natchez Pecan Factory and other city properties nearby. See specifically the City's Riverfront Plan as to its entire Downtown Riverfront Development. (R. 320, R.E. 209).

On September 22, 2005 Thomas H. Waggener, Review and Compliance Officer of the Historic Preservation Division of the Department of Archives and History acknowledged receipt of the City's submission, but warned that the impact of Katrina might slow down the process. (R. 360, R.E.78)

On September 30, 2005 Deputy Attorney General Mike Lanford, on behalf of the Department of Archives and History notified the City *again* that the aforesaid **§39-7-22** (R. 318, R.E. 244) required that the City first obtain a permit from the Department of Archives and History *before* transfer of title to the property. (R. 361, R.E. 79)

And on November 22, 2005, the City Attorney notified the Department of Archives and History that compromise had been reached as to the design of the development on the Natchez Bluff which had received the approval of the Historic Natchez Foundation, nationally recognized architect Christopher Chadbourne and the City Preservation and Planning Boards and seeking an expeditious review of the City's plan for riverfront development on this site. (R. 362, R.E. 245)

Nearly four months later, on January 12, 2006, the Permit Committee of the Mississippi Archives Department did formally determine that the Natchez Pecan Factory Site had been designated as a Mississippi Landmark and requested that the City submit to the Permit Committee of the Archives Department *another* formal notice of its intention to transfer the property for the aforesaid purposes. (R. 366, R.E. 246)

On January 23, 2006, the City of Natchez forwarded its *second* notice to the Mississippi Department of Archives and History and formally submitted its plan for the sale and development of t he property and requested review and approval to transfer the property for the subject development (R. 367).

On January 23, 2006, the Worley Brown LLC developers through their attorney, Tim Waycaster, did request of the City an extension of the deadline date of February 9, 2006 because of the still on-going notice and review process by the Department of Archives and History (R. 396, R.E. 80).

On the following day, January 24, 2006, the City Council convened its Regular Meeting and at that meeting the Developer's request for an extension of the option deadline was conveyed to the Council by the City Attorney who reported that the permit for transfer of the property had <u>not</u> been received from the Department of Archives and History and that the Developer was in fact to appear before the Archives Board on February 9, 2006 to explain its proposed project. The City Attorney

recommended in view of the circumstances that the extension of the option deadline be granted and the City Council unanimously approved a 30 day extension. (R. 409, R. E. 247) The City Attorney reported the Council's action to the attorney for the developer Waycaster the following day January 25, 2006. (R. 411, R. E. 87) The appellant Ball and her attorney, Mr. Bobo, were present at the January 24, 2006 City meeting on an *unrelated matter* concerning height limitations for a hotel in another part of the City and for height limitations in the Waterfront District generally. Thereafter Mr. Bobo did perfect an appeal of the Board's actions on January 24, 2006, but **did not** object with respect to the action of the Board concerning the granting of the extension of the Option. (R. 398, R.E.83)

Thereafter, the City did grant additional extensions of the Option upon request by the developer at its meetings of February 14, February 28, March 28, April 25 and May 9 (R. 412, R.E. 89).

On March 9, 2006, the Department of Archives and History acting through its Permit Committee of the Board of Trustees met and gave final approval for the project, some 30 days after the original Option would have expired (R. 432, R. E.248).

On May 22, 2006 Worley Brown, LLC through its attorney, Tim Waycaster, gave notice to Mayor Phillip West of its exercise of the Option and requested a closing date, (R. 434, R.E. 250 and on May 30, 2006, the Mayor executed and delivered the City's Special Warranty Deed to Worley Brown LLC conveying the subject property pursuant to the authority given him in the Resolution and Agreement of August 9 2005. (R. 450, R.E. 107)

B. Procedural History

Subsequent to the conveyance of the property by Mayor West to the developer on May 30, 2006, a Notice of Appeal was filed by Gwendolyn Ball and Rena Jean Schmieg on June 8, 2006. Oral argument was heard by the Court, briefs were presented and on November 17, 2006, the Circuit Court issued its ruling denying the relief sought by the appellants as to the City's sale of the property, and granting relief to the appellants as to the Agreement's provision allowing securing by the developer of the sidewalk along the Bluff after normal daylight hours. From that Order, this appeal

was taken by certain Natchez residents and cross-appeal was made by the City of Natchez as to the standing of the parties on the various issues and with regard to the sidewalk ruling.

SUMMARY OF THE ARGUMENT

The City of Natchez is a Special Charter City and as such and like other municipalities in the State, it has the power to sell or otherwise dispose of municipal surplus property under the several statutes including §21-17-1 and §57-7-1. For over a year and a half from January of 2005 until August of 2006, the City Council conducted a very deliberative, open and elaborate process to select a responsible and responsive developer in an open and public manner, and to contract with that developer and require it to meet all applicable local and state ordinances and laws including Historic Preservation review by the Natchez Preservation Commission and the Mississippi Department of Archives and History. The City Council conducted its meetings and deliberations in a lawful manner, exercised its legislative authority under §57-7-1 to dispose of surplus lands not needed for governmental purposes for a commercial enterprise, and as such, the actions of the Board were supported by substantial evidence, were not arbitrary or capricious, were within the scope of the City's powers and in no way violated the appellants' statutory or constitutional rights.

STANDARD OF REVIEW

Decisions or orders of a municipality are to be upheld unless such decision or order was unsupported by substantial evidence, was arbitrary or capricious, was beyond the municipality's scope of powers, or violated the constitutional or statutory rights of the aggrieved parties. "The substantial evidence requirement for review of administrative decisions is met where the record includes such relevant evidence as reasonable minds might accept as adequate to support a conclusion." *Falco Lime, Inc. v City of Vicksburg*, 836 So.2d 711 (2003)

ARGUMENT

I. Jurisdiction

Preliminary to consideration of any appeal is the question of whether or not the reviewing Court has jurisdiction of the subject matter. In this case, it is true the appellants filed their Notice of Appeal in a timely manner after the May 30, 2006 *execution and delivery* of the deed by the

Mayor; however, it should be pointed out that the Council took no action at that meeting, the Mayor having his prior authority and contractual obligation to execute and deliver the deed on notice of exercise of the Option by the developer as set forth in the Resolution of August 9, 2005. **Further, no appeal was taken of the Council's action on August 9, 2005.** For this reason, the City of Natchez respectfully submits the failure of the appellants to take a timely appeal after the August 9, 2005 meeting at which full authority was given to the Mayor to execute the deed, deprives the Circuit Court and thus this Court of any jurisdiction on the action taken solely by the Mayor on May 30, 2006 when he executed and delivered the deed to the developer with no action whatsoever by the City Council, it being unnecessary.

The failure of the appellants to take a *timely* appeal from the **August 9, 2005** City Council meeting deprived the Circuit Court of its jurisdiction under §11-51-75 and therefore this appeal should be dismissed as untimely because neither the Circuit Court nor this Court has jurisdiction. *Newell v Jones County,* 731 So. 2d 580 (1999)

II. Standing

Mississippi law is very clear that for "aggrieved parties" to have a basis to challenge a municipality's actions, they must allege, and have some plausible contention that they have suffered an injury *different* from any other citizen or that they have personally suffered the deprivation of a legal right. In this case, the appellants have raised more than half a dozen issues, and in the course of the City's argument hereafter, the issue of standing of these appellants and the standard to be applied will be addressed as such issues are discussed.

III. The Sale of Real Property by a Municipality

Throughout the appellants' brief the central theme of the discussion is how may a municipality dispose or sell its surplus real property. It is pertinent to note that this particular real property has *never* been used by the City for *any* municipal purpose and the City so declared in its August 9, 2005 Resolution that it was surplus and not needed for municipal purposes which is uncontradicted. While there are numerous statutes in Mississippi dealing with the sale of real property by governmental bodies, particularly for economic development purposes, the statutes

discussed here will be §21-17-1 and §57-7-1 of the Mississippi Code.

§21-17-1 is the statute often followed by local authorities, but clearly not the exclusive statute which a municipality may follow in selling its property. For some reason, the appellants seem to be fixed on the proposition that §21-17-1 mandates bids be taken, for throughout this case and in its brief they have talked mightily about selling real property without "advertising" or taking such bids.

§21-17-1(2)(a) provides that a City *may* sell its property by going through a public bid process and accepting sealed, competitive bids and then states a city "**shall award the lease or sale to the highest bidder.**" Clearly it was not in the City's best interest to sell this riverfront property to the "highest bidder" who might have plans incompatible with the City's Riverfront Development Plan or it may have no plans (as in the Biglane proposal) whatsoever for an acceptable development project which obviously the City Council was looking for in its request for proposals by setting forth therein and asking for (a) the type of development, (b) the amount of the investment, (c) the time line for commencement and completion and certainly not last, but not controlling was (d) the consideration to be paid for the land. So it was important for the Natchez City Council to disregard the "bid" option of §21-17-1(2)(a) as it did and as this Court should do in determining the reasonableness and appropriateness of the City's approach in the sale of this particular real property.

§21-17-1(2)(a) and (b) also provides a second alternative and that is to establish a minimum value by three appraisals of the property and then sell the property to a buyer upon a determination that the "use of such property for the purpose for which it is to be sold, conveyed or leased will promote and foster the development and improvement of the community in which it is located and the . . . economic . . . welfare thereof" without having to advertise for and accept competitive bids. This is often the manner in which municipal property is sold and this was available if the City so chose.

It is important however to note that §21-17-1(11) *also* contains the following language:

> "The powers conferred by this section shall be in *addition and supplementary* to the powers conferred by any other law, and nothing contained in this section shall be construed to prohibit, or to prescribe conditions concerning any practice or practices authorized under any other law. (Emphasis Added)

In this case, and at this juncture in the sale process, the City had provided in its April, 2005 Request for Proposals that proposals would be considered and an award made on the basis of §21-17-1, but upon receiving the five proposals from very sophisticated local and out of town developers, none of the five proposals met the price established by the one appraisal received at that point which was $714,900. In fact, it is pertinent to note that the average of the five proposals was only **$460,000**. (R.112, R.E. 15)

Keeping in mind that §21-17-1 is "supplementary" to other laws and does not prohibit the use of other laws in selling surplus municipal property, at this point the City could have obtained two other appraisals and negotiated with the developer or developers to raise (or lower) their proposed purchase price, or it could have, as it did, utilize its statutory authority under §57-7-1 in disposing of the subject property and selecting the best developer for the City's riverfront development. Exercising its legislative authority, the City chose to use §57-7-1 and so stated in its Resolution adopted on August 9, 2005. (R.285, R.E. 46)

Thus, it is respectfully submitted that all the discussion by the appellant about taking bids, public notices and the various other commentary, including appraisals does not in any way make the City's actions improper or illegal, but in fact, in conformity with state law assuming all other requirements under §57-7-1 are met which the City contends were, as discussed hereinafter.

IV. The January 24, 2006 Meeting

A. There was a quorum of the City Council present at the meeting.

Much has been said by the appellants as to the manner in which the Natchez City Council conducted this meeting, and particularly that part of the meeting dealing with extension of the Option, i.e., the appellants say a quorum was not present and therefore the actions of the City were void.

It is undisputed that four of the seven members of the City Council were present and that the Mayor participated by telephone as a fifth person in accordance with §25-41-5 which provides for such telephonic participation. However, it is not §25-41-5 alone on which the City relies as its basis for the position that there was a quorum present. The validating authority is found in the language

of the *City's Special Charter*, Section 19 which provides in pertinent part as follows:

> "The legislative and contracting power of said City of Natchez shall be vested in a **City Council** to be **constituted by said Mayor and Aldermen** with power to make and establish rules of its own government; to appoint and regulate the times of its regular meetings, and to alter the same at pleasure; (and) to appoint such subordinate officers as it may deem necessary for each term of office and with such regulations as it may by ordinance prescribe. **A majority of said council shall constitute a quorum** and said Mayor shall be the presiding officer . . ." (R. 474, R.E.115)

Thus the Special Charter of the City of Natchez states clearly that the City Council is composed of the Mayor and six aldermen, a total of seven persons, and "that a majority of said council shall constitute a quorum." A council consisting of seven members with four members being present, clearly show a quorum was present and that the action taken by the City Council on January 24, 2006 to extend the Option was procedurally correct and proper under the City's Special Charter.

The appellants reliance on §21-3-19 is simply not well taken. A review of Volume 6 of the Mississippi Code, Title 21 and specifically §21-1-9 reflects therein the various classifications of municipalities in Mississippi including Code Charters. §21-3-1 et seq., including the section relied upon by appellants (§21-3-19) are under "code charters." It is interesting to note that §21-1-1 provides that nothing in the classification of municipalities shall affect the status of any municipal corporation **heretofore created** and now existing and all such municipal corporations, including villages, shall continue to exist as such **with all the rights and privileges thereof.**

Further, §21-1-11 provides that

> "The courts shall take judicial notice of the class to which each of the municipalities of the state belong and of its powers under the provisions of this title."

As this Court so well knows, Mississippi in its wisdom has provided for a number of forms of governments for municipalities. Natchez and many older cities have what is known as a Special or Private Charter. Other Special Charter cities are McComb, Vicksburg, Aberdeen and Greenville for example. The City of Natchez was settled in 1716, received its first Special Charter in 1803 and is currently operating under its 1846 Charter, see Laws of Mississippi 1846 at Page 479. (Also see as Addendum A excerpt from City's Charter Historical note.)

In addition to "Code Charters," the Legislature has also provided in Title 21 for Commission forms, (§21-5-1), Council forms (§21-7-1), Mayor-Council form (§21-8-1) and Council-Manager plan (§21-9-1).

The law in Mississippi is that provisions of a "Special Charter" which are contrary to general statutory provisions (such as §21-3-19) are viewed as *exceptions* to the statutory provisions except where general statutes expressly provide otherwise, i.e., language in the statute which says that the general statute supercedes the provisions of a Special Charter on such a subject or when a Special Charter is silent on such subject. In *Tisdale v City of Aberdeen et al* 856 So.2d 323 (2003), the Supreme Court opined that because the Charter was *silent* on the subject of appointment of the City Attorney, the general statute would apply. In this instance, the Natchez City Charter, Section 19 *expressly* provides that the Mayor and Aldermen constitute the City Council and further that a majority of the City Council constitutes a quorum for the conduct of business.

Clearly here there is a conflict between the "Code Charter" provision §21-3-19 and Section 19 of the Special Charter of the City of Natchez as to what constitutes a quorum for the transaction of business and as such the Special Charter provision controls. First, it should be noted there is *no provision* in the Code Charter Law §21-3-1 et seq. or any other statute for that matter, that expressly provides that §21-3-19 is applicable to special charter cities. Simply put, the Legislature has not so expressed under Code Charter provisions any superiority over provisions of Special Charters and for that reason the Attorney General of Mississippi has consistently stated that such conflicts should be resolved in favor of the provisions of a Special Charter.

In this regard, it is relevant and on point to note that in the Title 21 municipal statutes, the Legislature has specifically set forth *when and what* provisions of a particular municipal statute should prevail over Special Charter provisions. For example, see §21-13-21 (Ordinances), 21-15-39 (Officers and Records), and §21-8-41 (Mayor-Council Form of Government). In addition, as a clear expression of the Legislature as to the dominance of a general statute, as well as when exceptions are made to Special Charter cities, see §21-17-13 (attached as Addendum B)

Thus, there being *no* expression by the Legislature that the Code Charter cited by appellant

shall be applicable and thus supercede contrary provisions in a city's Special Charter, then §21-3-19 is simply not applicable and the transaction of business by the City Council of the City of Natchez is governed by its Special Charter provision, Section 19.

(See also as to the "conflict" question Attorney General Opinions to the City of Waveland (1993) by Phil Carter, City of Greenville (1996) by Alice Wise, and City of Greenville (1996) by Samuel W. Keyes.) (see Addendum C hereto)

It is true that the City of Natchez at the meeting in question conducted the meeting with four members of the City Council present and with Mayor Phillip West participating by telephone from Jackson under §25-41-5, which states in subsection (2) that

> "A public body may conduct any meeting, other than an Executive Session called pursuant to §25-41-7 . . . through teleconference . . . *If a quorum of the public body is physically assembled* at one (1) location for the purpose of conducting a meeting, additional members of the public body may participate in the meeting through teleconference . . . provided their participation is available to the general public."

Clearly under the Special Charter of the City of Natchez, Section 19, a "quorum of the public body", i.e., the City Council was physically assembled at one (1) location for the purpose of conducting a meeting through teleconference.

Thus under Section 19 of the Special Charter of the City of Natchez and §25-41-5, the meeting held by the City Council was conducted with a quorum of that body present.

B. The City Acted Legally and Within Terms of the Contract in Extending the Date for Exercise of the Option Because of the Pending Issues before the Mississippi Department of Archives and History.

The second question raised as to the actions of the City Council was the extension of the Option at the request of the developer. At the outset, the City would suggest there is a serious question as to whether or not these appellants have standing to raise such a question.

In Mississippi, parties have standing to sue when they assert a "colorable" interest in the subject matter or experience an adverse effect from the conduct of the defendant. In *Burgess v City of Gulfport*, 814 So.2d 148 (2002), Justice Waller, writing for the Court, found that the parties "lacked standing." Said the Court citing from *City of Madison v Bryan*, 763 So.2d 162 (Miss. 2000)

"Bryan lacked standing to challenge the municipality's action pursuant to §11-51-75

> in the absence of demonstrating 'that the City's action had an adverse effect on property which he had in interest,' id. We placed the burden on *Bryan* to demonstrate a specific impact or harm felt by him *that was not suffered by the general public*. id @ 166.
>
> Further, Justice Waller went on to say in the *Burgess* decision
>
> "We must determine whether the residents have asserted colorable interest in the subject matter of the litigation or experienced an adverse effect different from the general public. They clearly do not own the property in question. Neither have they alleged that they own the land around the property in question, or that the land has been affected in an adverse manner. However, the do argue that their residences in the City of Gulfport give them standing.
>
> *Miss. Code Ann.* §11-51-75 outlines the proper procedure to appeal when someone is aggrieved by a decision of a municipality. *It does not in anyway confer standing.* The residents do not have a colorable interest in the subject matter of the litigation. Neither have they experienced adverse effects different from the general public. Further, the mere fact that they reside in the City is not sufficient to confer standing. They therefore have no standing. *Burgess*, 814 So.2d 148, 153

The City will acknowledge that one of the appellants Preston owns property across the street from the Old Pecan Factory Site. Before discussing his particular circumstances, it is most important and it is respectfully submitted that the question raised by appellant in this point is the granting of the extension which appellants allege to be illegal. In this regard, as to the "standing" issue, where is the "colorable" interest in objecting to city's actions? Appellant Preston may have had standing to assert, for example, a "takings issue," which he did not, but as to the City's decision to extend the Option, it is respectfully submitted he had no standing. It is further respectfully submitted that the extension of the Option deadline on January 24, 2006, or even *after* the February 9,2006 deadline would have been legal and within the City's contractual obligations under the Agreement.

In the City's Request for Proposals letter to the 14 prospective developers and in the Option/Development Agreement itself reference is made to the requirement that the sale take place in accordance with all relevant ordinances and state laws including but not limited to Historic Preservation review by the City, and including Landmark and Permitting review by the Department of Archives and History. (R. 165 and 295, R.E. 148 and 56) There is absolutely no question as to the City's contractual and legal obligation to strictly comply with the requirements of §39-7-22, which mandated that before the land could be sold the City would have to go through the review

process administered by the Mississippi Department of Archives and History, as the City was reminded, not once but twice, by the Department of Archives and History and the Attorney General. (R.361, R.E. 79)

Prior to its Regular Meeting on January 24, 2006, the City Council received a request from the developer asking that the Option Period be extended in order for the developer to go before the Archives and History Permit Board on February 9, 2006 to make its case as to why the City should be allowed to sell its property to the developer for the purposes intended. The next Regular Meeting of the City Council would be February 14, 2006, *after* the deadline expiration date for exercise of the Option and thus the reason for the request by the developer. As a practical matter, under §39-7-22, the *City* was indeed charged with getting approval by the Mississippi Department of Archives and History, and for that reason, the extension could have and should have been granted on the City's own initiative whether before or after February 9, 2006 since under §39-7-22, the City must secure approval prior to sale of the property.

The appellee City respectfully submits that the Court should find that there is no standing for Preston or any of the other appellants on this question of extending the Option. Assuming *arguendo* and in further support of the City's position, it should be pointed out that while Sarge Preston lives near the proposed development, his particular appeal taken from the January 24, 2006 meeting alleges that he owns property directly adjacent to the site and that the sale of the property will adversely impact his property values and aesthetics. As to the "values" contention, there is no evidence in the record whatsoever to suggest, nor has there ever been any offered by Mr. Preston that the removal of this dilapidated and deteriorated factory building (R. 386, R.E.251) and its replacement with a $19.3M condominum project will affect his values or the aesthetics. "Reasonable" minds would suggest the contrary conclusion.

The transformation from a factory into a modern and historically acceptable designed structure approved by the Natchez Preservation Commission and the Department of Archives and History will clearly improve the values and aesthetics of Mr. Preston's property. A bald assertion of property damage without any evidence whatsoever does not make a "colorable interest" in the

subject matter, i.e., does not give Mr. Preston standing. If such an assertion has to be alleged without any further proof, one could appeal any action and thus hold up any municipal initiative simply because someone lived in a neighborhood adjacent to a proposed new development like this one in the City's Waterfront Development District, which in this case the project proposed is legally zoned for that purpose, of which there was no dispute. As Justice Waller has said,

> "We place the burden on Bryan to demonstrate a specific impact or harm felt by him that was not suffered by the general public." *City of Madison v Bryan* ,763 So.2d 162, 163 (Miss 2000)

And as to the impact, if any, on the general public, appellants further claim that they have engaged in recreational activities on the site of the subject property including walking and enjoying the scenic vistas and that these activities are not engaged in by the general public. The record is replete with comments, including by the appellants about the "general public's" use of the sidewalk which runs along the edge of the bluff and the City's property. The City of Natchez respectfully submits that citizens of the City of Natchez do routinely use the sidewalk along the bluff for walking and viewing the river but that the Option/Development Agreement and the deed expressly and specifically provides for the *reservation of an easement* by the City of Natchez for the purpose of allowing the public to *continue* to walk along the brow of the bluff as before. (R. 291, 308, R.E. 52, 69) And the Circuit Court upheld the unrestrained right of use in the public to use the sidewalk. There is simply no evidence that the portions of the factory site were used for "recreational activities," the photographs in the record clearly reflect otherwise, and there was no evidence offered that the appellants did or could have used it for that purpose.

So regardless of who made the request of whether or not the City could have acted on its own initiative at any time, clearly the granting of the extension was neither arbitrary or capricious nor was it unsupported by substantial evidence nor did it violate any constitutional or statutory right of the appellants. It was clearly the right and legal thing to do under the contract as well as under §39-7-22.

This was a contractual obligation of the City Council and clearly the appellants had no standing to question such action by the City Council having no colorable interest in the sale of the property that was adverse to their interest and the burden was on them to show that which they did

not. *City of Madison v Bryan, supra*

The City's position is thus that there was no standing to question the granting of the extension by the City Council, in that they have no colorable interest in this act of the City of Natchez, nor do they have nor have they shown any impact whatsoever on damage to the values of their property or the aesthetics of their property. Any reasonable person could easily conclude this will greatly enhance the value and aesthetics of their property since the deteriorating factory would be removed and the design of the new project has been approved by the local and state preservation authorities.

Further, supportive of the City's contention that it did properly exercise the Option can be found in the express language of the contract as to the City's obligations. For example, Section 1.4 of the Contract provides

> "If the Optionee declines to exercise the Option within the time provided herein, then the Option consideration paid shall be retained by the City and this agreement shall expire by its own terms without further obligation of either party, **unless the decision to decline to exercise the Option is the result of the failure of the City to substantially meet the representations made by the City herein, the failure of the City to otherwise substantially comply with its obligations under the terms of this agreement or the inability of the Optionee to obtain variances, permits and/or other approvals necessary to develop the project . . ."**
>
> What were these representations and obligations? Section 3.7 says in pertinent part
>
> "Following purchaser's receipt of required approvals from the Mississippi Department of Archives and History, purchaser agrees to forthwith commence construction,"
>
> and under City's representations in Section 4.3(e)
>
> "The City will cooperate with the Optionee in the acquisition of all permits, approvals and variances necessary to build a structure sufficient in size to meet the requirements of the developer."

Clearly the City acted within the terms of the contract, and within the terms of the City's obligation under the contract and under §39-7-22 in extending the Option deadline.

V. Pendency of the Appeal

In discussing this point raised by appellants, it must be remembered what action the City Council took at the January 24, 2006 meeting. It had received a request from the developer that the

Archives and History component had not been completed and would not be heard prior to the February 9, 2006 Option expiration deadline. It must be remembered that the original letter to the developers seeking proposals, the Resolution approving the agreement with Worley Brown and the Option/Development Agreement itself all provide for compliance with the applicable local ordinances and state laws regarding the City Preservation Commission and the Mississippi Department of Archives and History. In that context and given the request by the developer and the fact that the Archives Department had not given its approval, the City Council did at the January 24, 2006 meeting *grant an extension for the Option deadline*. That is what we are discussing now before this Court. It is not the sale of the property on May 30, 2006, but merely an extension of the Option deadline based upon requirements of the contract.

The appellants contend that under the Mississippi decisions of *Gatlin v Cook*, 380 So.2d 236 (1980), and *South Central Turf v the City of Jackson*, 526 So.2d 558 (1988) the City Council of Natchez was divested of jurisdiction. They note in *Gatlin* that the Mississippi Supreme Court said the City could not "order or entertain a petition for rehearing" of a rezoning matter once decided and cite *Gatlin* as their authority that the Natchez City Council could not extend the Option, i.e., could not go forward with the City's obligations to get Archives and History approval under the 2005 Option/Development Agreement.

The matter now before the Court is not a rezoning case as it was in *Gatlin* nor was it a rejected bidder as it was in *South Central Turf*. Also the January 30, 2006 appeal of the appellants had absolutely nothing to do with extension of the Option or sale of the property, but rather dealt with height of a hotel property and zoning issues involving height in the Waterfront Development District. (R. 399, R.E. 83) But whatever the basis may be for the January 30, 2006 appeal, it is not the law *carte blanc* in Mississippi that the actions of a governmental body can be suspended whenever an appellate procedure ensues, especially involving the fulfillment of a contractual obligation. Certainly the developer Worley Brown might be taking a risk in proceeding forward to exercise its Option and to buy the property, but that is the developer's risk and as it stands even today. There was no *supersedeas* bond posted by the appellants nor was there an attempt by the

appellants to seek injunctive relief to enjoin the City from proceeding on with its contractual obligations.

Very important as a standing issue also is the fact that the appellants were not and are not parties to the subject contract, had no interest in the subject property and therefore have no standing to claim that the appeal in someway restrains the City from going forward with its contractual obligations, i.e., in this case, execution of the deed once the Notice of Exercise of the Option had occurred. *Gatlin* and *South Central* both had standing as direct parties in interest unlike the appellants here.

Furthermore, no appeal was *perfected* of the January 24, 2006 meeting on January 30, or any time thereafter prior to May 30, 2006 by the appellants. They merely gave notice of an appeal about issues totally unrelated with the sale of the subject property, but did not submit and therefore failed to have the Mayor sign a Bill of Exceptions, thus that appeal was not perfected and even though it has been "consolidated" by order of the Court and made a part hereof, it certainly would not have prohibited the Mayor subsequently signing the deed and conveying the property on May 30, 2006. Neither *Gatlin v Cook* nor *South Central Turf* are authority nor should it be for absolutely shutting down a city government from carrying out its business, in this case, its contractual obligations under the Option/Development Agreement with Worley Brown LLC to convey the property upon the proper exercise of the Option.

It should also be pointed out that in *South Central Turf* and *Gatlin* that the question of timeliness of the appeal in the proper court were the central issues. With respect to the timing, the Court noted in both cases that the decision of the City Council was *final* and therefore the timeliness of the appeal was appropriate. In the instant case, as already contended with respect to the jurisdiction issue, the time for the appeal was August 9, 2005. Further, to that extent, assuming *arguendo* that May 30, 2006 appeal after the execution of the deed was the "final" action, then certainly the appellants have suffered no disadvantage, the matter now going to the Circuit Court and then to this Court, since no construction has taken place as of this date.

VI. §57-7-1 as a Part of the State's Economic Development Code Should be Construed

Liberally to Effectuate its Purpose and the Public Policy of this State.

Instructive as to standard of review with respect to statutory construction can be found in the language in the landmark case of *Secretary of State v Wiesenberg* 633 So.2d 983 (Miss. 1994) in which the Court said the following:

> "Not surprisingly, both sides emphasize different views on this Court's standard of review with respect to statutory construction. However in *Aikerson v State* 274 So.2d 124 (Miss. 1973) this Court said:
>
> 'It is a general rule in construing statutes this Court will not only interpret the word used but will consider the *purpose* and *policy* which the legislature had in view of enacting the law.'" *Secretary of State v Wiesenberg* 633 So.2d 983, 990

See also *Kelly v Int'l Games Tech* 874 So.2d 977, 979 (2004), *Smith v Petal School District* 956 S0.2d 273 (Miss. 2006) and *Jones v General Motors Corp.* 2007 WL 1610478, S.D. Miss 2007. See also the Fifth Circuit Opinion of *Quarles et al v Fred St. Clair and Mississippi Department of Public Welfare* 711 F. 2d 691, 70 ALR Fed. 910 (1983) in which the Court said

> "As in all cases of statutory construction, our task is to interpret the words of (the statute) in light of the purposes Congress sought to serve. 711 F. 2d 704

and said the Court further

> "A construction which leads to impractical or harsh results is to be avoided. (P. 705); . . . an agency interpretation made pursuant to a congressional delegation of authority is entitled to substantial deference (P. 706) . . . what deference is due to a given case, however, will vary in accordance with a number of factors. These include: the consistency of interpretation and the length of adherence to it, undisturbed by Congress. (P. 706)

Relevant to the criteria set out in *Quarles* is the history of interpretation by several Mississippi Attorneys General of §57-7-1, the consistency of such opinions and the length of adherence to it without any change by the Mississippi Legislature.

It is respectfully submitted that the purpose and public policy of the State of Mississippi in enacting §57-7-1 and the commentary and opinions by the Attorney General of the State of Mississippi in construing the statute was to create an "economic development" tool and thus it is codified under Title 57 of the Mississippi Code styled "Planning, Research and Development." This title of the Mississippi Code and the Chapters and Sections thereunder are the Economic Development framework for the State of Mississippi and its political subdivision.

For example, under related statutes such as §57-64-3, as to regional economic development contained in the Chapter's "Declaration of Public Policy,"

> "(d). That the projects contemplated under this chapter are to provide economic development benefits, including but not limited to industry, distribution, commerce, tourism, healthcare and other purposes in which the *pubic purpose and interest of the people of the State is served.*"
>
> and thereafter
>
> "(f). That the authority granted under this chapter and the purposes to be accomplished hereby are proper governmental and public purposes and that the resulting economic benefits to the state are of paramount importance, mandating that the provisions of this chapter be *liberally construed and applied in order to advance the public purpose.*"

It was obviously the intent of the Mississippi Legislature that local governments such as counties or municipalities could and would use the various statutes under Title 57 including §57-7-1 as an economic development tool, (as it has been) and it is submitted that economic development statutes should be interpreted liberally to achieve the purpose and the policy for which they were enacted, i.e., to assist, as in this case, local governments develop their communities by sale of surplus property not needed for governmental purposes for commercial use.

The record reflects that the City of Natchez has developed a comprehensive plan for riverfront development. This is illustrated in the document prepared by the City and the Natchez Adams County Economic Development Authority illustrating the Pecan Factory Site and three other riverfront sites as part of the City's bold initiative for riverfront economic development. (R. 320, R.E. 209)

The development of this Riverfront plan required a deliberative, carefully crafted development agreement and that's what the City arrived at in requesting proposals, interviewing prospective developers, selecting a developer and setting forth carefully the terms of the development both as to amount of investment, kind of investment and specific completion dates.

In this case, the City determined that this surplus municipal property which had *never* been used for municipal purposes and which had formerly been used as a factory site should be sold to a developer who would construct and operate the kind of development compatible with the newly created Waterfront Development District, and the City determined that 57-7-1 was the appropriate vehicle for the sale *and development* of this property.

§57-7-1 says in pertinent part the following:

> "In the event any municipality . . . shall have surplus . . . lands which are not needed for . . . governmental purposes, then such property . . . may be set aside and improved for . . . commercial purposes and the same may thereafter be . . . sold upon such terms and conditions as a municipality . . . shall prescribe."
>
> "In order to provide for the improvement of such property for . . . commercial purposes the municipality or other authority shall be authorized to provide all necessary utilities therefor and to lay out, construct and/or improve or hard surface roadways, streets, driveways . . . and provide for . . . necessary or proper utilities . . . to make such land . . . useful . . . for . . . commercial enterprises. The cost and expenses of such improvements to said real estate shall be paid for from funds made available from the . . . sale of such lands to the extent such funds are available."

The Supreme Court of Mississippi has never had a case before it calling for the interpretation of §57-7-1 but there are other authorities cited by the City in its Briefs and Argument to the Circuit Court. Authority supportive of the City's legislative determination to sell the property under the specific terms and conditions of the Development Agreement are found in Attorney General Opinions, treatises on zoning classifications, Mississippi's tax classification policies and a Mississippi Supreme Court decision, all of which are persuasive as to this question.

Attorney General Opinions

Cited in the record and before the Circuit Court are numerous Attorney General Opinions over the past years interpreting §57-7-1 and applying in these Opinions a broad interpretation approving various local initiatives for economic development purposes using this statute as its authority. These full opinions and commentary are reflected in the Record and in the Record Excerpts as noted hereafter.

In 1998, City Attorney Guy Mitchell of **Tupelo** asked for an opinion for an interpretation of §57-7-1 of the Attorney General's office. Mr. Mitchell noted that based upon a master plan by the

City as to the best use of surplus municipal property, the City had concluded that the best utilization would be to develop it for commercial purposes including a portion of it to be utilized by the City for its administrative offices. The master plan called "for the development of office buildings, *townhouses*, parks and innovative downtown uses," which would "revolutionize the downtown and become the benchmark of redevelopment in North Mississippi." In response, the Attorney General stated that §57-7-1 permits a municipality to sell the same for commercial purposes upon such terms and conditions as a municipality might prescribe. (R. 31, R.E. 259).

A similar opinion was issued to the **Adams County** Board of Supervisors in 2003 wherein the Attorney General approved the sale of real property adjacent to the county hospital for a medical office building and for the development of a parking lot for the joint use of the medical office building and the hospital opining that such uses could be provided under the commercial language of §57-7-1. The Attorney General stated as to the matter of consideration,

> "In response to your query, this office has opined that sales and leases pursuant to §57-7-1 do not necessarily require fair market value, but should be made for *good and valuable consideration.*" (R. 37, R.E.265)

And in 2003 in response to an opinion request from the Town of **Horn Lake** as to whether it could lease a portion of city property to a local fitness club who proposed to build an athletic and health club facility on city property, citing §57-7-1 as its authority, the Attorney General said

> "Consistent with our prior opinions, the governing authorities of the City of Horn Lake, upon the proper factual findings, may utilize the provisions of §57-7-1 to lease the described municipality which is not used for municipal purposes to a health and fitness club for construction of an athletic and fitness center . . . Sales and leases pursuant to §57-7-1 do not necessarily require fair market value but should be made for good and valuable consideration and not be such as would constitute a donation. . . *Whether the consideration listed in your request is sufficient "good and valuable consideration" to support the lease is a factual determination which must ultimately be made by the governing authorities*, such to the review by the State Auditor's Office." (R. 42, R.E. 269)

These opinions and numerous other opinions interpreting §57-7-1 illustrate the State of Mississippi's broad interpretation in the utilization of this statute for economic development purposes. As noted, the purpose, use and sale of the subject property to the developer by the City of Natchez for the stated benefits received by the City and for a commercial purpose was "good and

valuable consideration" as determined by the City's legislative body, i.e. the utilization of the property as a condominium development not unlike what you might find in Gulf Shores, Alabama or Destin, Florida. Clearly, the policy of the State of Mississippi is to interpret economic development statutes broadly as has been done in the many Attorney General Opinions cited and reflected under §57-7-1 in the code.

Legal Treatises

Recognized legal treatises such as American Jurisprudence are also supportive of such a broad interpretation. See commentary in 83 Am Jur. 2d Zoning and Planning, Section 26 which states as follows:

> "The word 'commercial' as used in the law of zoning denotes an use for profit. Among those uses which may be considered commercial are *home occupations*, gas stations, outdoor advertising, funeral homes, etc." (Emphasis Added)

In addition, as further noted in American Jurisprudence, other uses which might be considered "commercial" include mobile home parks, motels, hotels and boarding houses. 83 Am. Jur. 2nd Zoning and Planning, Section 205.

It should be noted that the subject property in question is not zoned residential, commercial or industrial, it is zoned "Waterfront Development District." (R.47, R.E.272) By definition it is intended to be a mixed use district, and in this instance clearly the most prevalent use of the property would be for what might be construed as recreational purposes, as second vacation or recreational homes or "time-share" units, which are certainly commercial, such usage not being dissimilar from that found in places like on the Gulf Coast.

Constitutional and Decisional Authorities

A third persuasive source of authority can be found in Mississippi's tax classification policies and their interpretation by the Supreme Court of Mississippi in 1991 in its decision in *Board of Supervisors of Harrison County and City of Pass Christian, Mississippi v Adrian G. Duplantier et* al, 582 So.2d 1275. In this decision involving residents of New Orleans including Judge Duplantier, the Mississippi Supreme Court was called upon to determine the classification of condominium units in Harrison County for tax purposes under Mississippi's ad valorem provisions, Section 112, Miss.

Constitution of 1890. Under Section 112, Class One property is "Single Family, Owner Occupied, Residential Real Property" taxed at ten percent (10%) and Class Two property is "All Other Real Property" which is taxed at a higher rate (fifteen percent (15%)). In the *Duplantier* decision, the issue presented to our Supreme Court was the classification of condominium properties for tax purposes under the aforesaid Mississippi constitutional provision.

This Court concluded that the condominium units in question did not fit the description of Class One properties because they were not necessarily owner-occupied and as such the structures were therefore to be taxed at the same level as Class Two *commercial property* because of their "recreational" character. (R. 52, R.E.273)

The Natchez City Council made a similar decision in determining the particular project to be of a commercial nature. Again an appropriate analogy has already been made to the numerous condominium units used for recreation and commercial purposes by hundreds if not thousands of Mississippians who annually visit Biloxi, Gulf Shores, Alabama, Destin, Florida and other Gulf Coast tourist destinations.

As noted in the Worley Brown proposal which was attached to and made a part of the Option/Development Agreement, the developers say

> ". . . based on the current trends . . . it is save to assume that most of these units will be purchased by individuals seeking to invest in riverview property and/or purchase a second home in downtown Natchez. This will result in a significant number of visitors to the area throughout the year who will generate sales tax revenues through the purchase of goods and use of services during their time in our city and otherwise contribute to the Natchez economy as a whole. (R.173, R.E.155)

Appellee City of Natchez respectfully submits that the City Council's determination as to classification of this economic riverfront development project, and the Circuit Court's findings affirming that legislative determination was supported by substantial evidence, was not arbitrary or capricious, was within the City's powers under the authority of §57-7-1, deprived none of the appellants of any statutory constitutional right, and the lower Court's decision should be upheld for the reasons stated.

VII. The City's Sale of the Property under the terms of the Option/Development Agreement was not a Donation Contrary to the Constitution of the State of Mississippi.

Finally, appellants say the transaction was arbitrary and illegal and constituted an unlawful donation of real property and funds. To begin with, appellants make the blatant misrepresentation in saying the city used a four year old appraisal. The updated appraisal of Bob Gavin reflected his opinion that the property had a value of $714,900. (R. 275, R.E. 40) This appraisal was dated June 6, 2005, just over a month before the Option/Development was entered into. Secondly, it has been noted that Mr. Gavin was not even aware when he made his appraisal that the City was reserving for public use an access sidewalk 535 feet in length and up to 6 feet in width. Further, given the fact that the City did not utilize the appraisal process of §21-17-1, the date or time or amount of the appraisal is not particularly noteworthy in determining whether or not the City's actions were "reasonable." (See Attorney General Opinions stating that criteria to be considered is "good and valuable consideration.") The City in this case did use §57-7-1 and did receive good and valuable consideration in accepting the $500,000 proposal and the other contractual benefits. It is also pertinent to point out again to the Court that the average of the five proposals received was only $460,000. (R. 168, R.E. 150). The appellants not only want to claim they have the right to question the legality of the transaction, the brief would suggest they also want to be the ones to make the "business deal" for the City. Clearly they have no standing to do that, and even more clearly the amount of the investment and the timely commencement and completion of the project and the rigorous design approval by the City and Archives support the City's contention that the transaction was for "good and fair consideration".

The City did offer fairly modest incentives as a part of the Development Agreement, but the appellants "broad brush" characterization is certainly not accurate. The appellants claim they have standing to contest the waiver of the building fees and other incentives offered by the City in this transaction. The City did agree to offer certain incentives and in each instance had a legal basis therefor. As to the exemption of ad valorem taxes, §17-21-5 authorizes municipalities to grant exemptions from municipal ad valorem tax for certain structures in central business districts and historic preservation districts, both of which would qualify if and when the developer makes written

application therefor and factual findings by the City Council granting such. In addition to the state statute, Natchez has an ordinance making such exemption available upon proper application and findings. (See Addendum D and E) Finally, as to the very modest grant of tax exemption for those unsold units for a period of two (2) years as authorized by the aforesaid statute is clearly a very reasonable and modest incentive.

In the case of the waiver of the building permit fee, again upon proper application and factual findings by the City in accordance with its applicable ordinance, such a waiver could be made under the City's ordinance, again, when and if proper application is made and granted by the City Council. (See Ordinance as F)

As to the construction and improvement of sidewalks, lighting, including underground utilities, obviously all of this is on city property and the city certainly has authority to construct sidewalks and provide lighting and utilities to the point of connection on the city's public property. While the City has agreed to making certain public improvements, it certainly has the authority to do so as a municipality and under §57-7-1, it not only the authority to make such improvements, but it must use funds derived from the sale for that purpose. Certainly the City has the authority to build sidewalks and place lighting on its streets.

Thus, none of these incentives offered were illegal or grandiose in any way, and certainly the appellants have no standing to question the wisdom or not of the business deal, as long as reasonable people could conclude that the increase to the tax base, the new employment and the visitors to the Natchez Riverfront and its economic development more than offset the minimal contribution and incentives of the City.

(While the Court does not necessarily take judicial of what appears in the Jackson *Clarion Ledger*, since it was a front page headline on August 1, 2007 as this brief was being prepared, there is attached hereto a **front page article** "Hookup Charges Waived" by Jackson City Council, it seems only pertinent to include it as part of the City's addenda hereto as Addendum G as to the appropriateness of municipalities offering incentives for the revitalization and preservation of downtown municipal areas.

VIII. The City's action was supported by substantial evidence, was neither arbitrary nor capricious, was within the City's Scope of Powers and did not violate the constitutional or statutory rights of the appellants.

As noted in the *Falco Lime, Inc. v City of Vicksburg* decision in 2003, the standard of review of decisions or orders of a municipality are to be upheld if they are supported by substantial evidence, are not arbitrary or capricious, within the municipality's scope of powers and did not violate the Constitution or statutory rights of the aggrieved parties.

There was substantial evidence of the City's careful and deliberate process in attempting to carry out its riverfront development plan and going through its RFP selection process, in allowing full participation at all of its numerous meetings of all interested parties, including especially the appellants and was in contrast to the arbitrary and capricious characterization by the appellants, a deliberative and carefully thought out process. Further, it was within the municipality's scope of powers under its Charter and under §57-7-1 to sell the property through the process used. The aggrieved parties' rights have not been violated in any manner. Finally, as our Supreme Court has said

> "'The substantial evidence' requirement for review of administrative decisions is met where the record includes such relevant evidence as reasonable minds might accept as adequate to support a conclusion." *Falco Lime, Inc. v City of Vicksburg, supra.*

Reasonable minds, including the Circuit Court Judge who found the City's actions to be proper and legal could certainly conclude that it was reasonable for the City Council of Natchez to enter into an agreement to dispose of surplus City property never used for municipal purposes for a $19.3M economic development project where a deteriorating factory once stood. Further, the $500,000 consideration, under the circumstances cited, was a fair and valuable consideration in view of the increase in tax base, the infusion of private investment and most important as evident by the entire process, establishing a cornerstone for riverfront development, tourism and economic development generally of the Natchez Waterfront and the Waterfront Development District.

CONCLUSION

In the 1990's, the City of Natchez adopted a number of "quality of life" ordinances, undertook aggressive changes in its zoning laws, which is still ongoing as the City creates a new "Development Code". This Code parallels, and in fact predates the current studies and implementation in the "Katrina" areas of Mississippi and Louisiana for "smart growth" by the creation of "mixed use" districts such as what Natchez has adopted in 1992 in the form of the Waterfront Development District.

As has been noted, the Pecan Factory site is located in the Waterfront Development District of Natchez which has provisions in that special zoning district for numerous uses, including retail, riverfront attractions and *dwellings*. (R. 47, R.E.272) This mixed use or "smart growth" approach is indeed the trend for the future, not only in Natchez but throughout this country, and the City's determination to utilize this project for revitalization of its downtown district and riverfront is consistent with that concept and the objectives of the City of Natchez as it has so determined by its Board of Aldermen, the City's legislative body.

Natchez, Mississippi is a tourist destination town. It has been an organized tourist town for over 75 years when the leaders of this community began the Natchez Pilgrimage in 1932. Some would argue that Natchez has been a "tourist" town since the 1840s in the heyday of "Natchez Under the Hill."

Nevertheless, it goes without saying that the beautiful antebellum homes such as *Dunleith, Stanton Hall, Monmouth* and many others may be "residential" in some parts of Mississippi such as, say Meridian or Hattiesburg, but in Natchez, they are definitely commercial.

The Natchez City Council may a legislative decision that this was a commercial enterprise, and certainly it is to the developer Worley Brown.

The Natchez Riverfront is zoned Waterfront Development District. It provides for gaming, retail, restaurants, dockside gaming, entertainment, dwelling units, guests houses and marinas/docks among other uses, all as a matter of right. The City's designation of this enterprise as commercial was not neither unreasonable nor arbitrary. Anyone walking along the Natchez Riverfront could

easily conclude that this is a commercial venture just as it might be in Biloxi, Gulf Shores or Orange Beach, Alabama.

Statutory construction of this economic development statute should be broad and it should take into consideration its purpose and the public policy. The Circuit Court reached such a conclusion and this Court should affirm on appeal.

This the 7th day of August, 2007.

Respectfully submitted,

MAYOR AND BOARD OF ALDERMEN
CITY OF NATCHEZ, MISSISSIPPI

BY: _____

Walter Brown
MSB #[redacted]
Walter Brown Law Firm PLLC
P. O. Box 963
Natchez, Mississippi 39121
Telephone: (601) 442-4242
Facsimile: (601) 442-3996
E-Mail: wlawfirm@bellsouth.net

Attorney for APPELLEE

CERTIFICATE

I, the undersigned Walter Brown, of counsel for the Mayor and Board of Aldermen of the City of Natchez, certify that I have this date hand delivered a true and correct copy of the within and foregoing Brief of the Appellee to:

Mr. James Bobo
Akers & Bobo, PLLC
(601) 825-4588
Attorney for the Apellants

and transmitted via first class mail, postage prepaid, a true and correct copy of the within and foregoing Brief of the Appellee to:

Honorable Forrest A. Johnson
Adams County Circuit Court
Adams County Courthouse
Natchez, Mississippi 39120

SO CERTIFIED, this the 7th day of August, 2007.

WALTER BROWN

PART I CHARTER*

*Editor's note: The charter of the City of Natchez, according to the best available data, was originally enacted by the state legislature January 28, 1846, as Laws 1846, at page 479. The compilation of the charter in this volume is derived from the city's 1954 Code as the charter appeared therein, and is unofficial. Amendments to the charter since 1954 are set out herein. Amendments to the charter are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original charter. Obvious misspellings have been corrected without notation. For stylistic purposes, a uniform system of headings, catchlines and citations to state statutes has been used. Additions made for clarity are indicated by brackets. Other changes have been made pursuant to instructions from the city.

Westlaw.

MS ST § 21-17-13 Page 1

Miss. Code Ann. § **21-17-13**

C
West's Annotated Mississippi Code Currentness
Title 21. Municipalities
Chapter 17. General Powers

→ **§ 21-17-13.** Application of certain sections

The provisions of sections 21-17-9 and 21-17-11, shall be applicable to all municipalities of this state, whether operating under a code charter, special charter, or the commission form of government, except in cases of conflict between the provisions of such sections and the provisions of the special charter of a municipality, or the law governing the commission form of government, in which cases of conflict the provisions of the special charter or the statutes relative to the commission form of government shall control.

CREDIT(S)

Laws 1950, Ch. 491, § 111, eff. July 1, 1950.

HISTORICAL AND STATUTORY NOTES

Derivation:
Code 1942, § 3374-111.

CROSS REFERENCES

Municipalities,
Code charter type of government, see § 21-3-1.
Commission type of government, see § 21-5-1.
Council type of government, see § 21-7-1.
Council-manager type of government, see § 21-9-1.

LIBRARY REFERENCES

Municipal Corporations ⇐46.
WESTLAW Topic No. 268.
C.J.S. Municipal Corporations § 88.

JUDICIAL DECISIONS

In general 2
Validity 1

1. Validity

Code 1892, § 3035, allowing existing municipal corporations to elect to continue under their old charters, or to adopt the general incorporation law, is not unconstitutional, as conferring legislative power on such corporations.

ADDENDUM B

Miss. Code Ann. § **21-17-13**

Lum v. City of Vicksburg (Miss. 1895) 72 Miss. 950, 18 So. 476. Constitutional Law ⚿ 63(2)

Statute allowing existing municipal corporations to elect to continue under their old charters, or to adopt general incorporation law was not unconstitutional (Code 1892, § 3035). Lum v. City of Vicksburg (Miss. 1895) 72 Miss. 950, 18 So. 476. Municipal Corporations ⚿ 4

2. In general

Code 1892, c. 93, on "Municipalities," declared to be in force as to all municipalities from the time it shall become operative, provides that any municipality may within 12 months, by resolution of its corporate authorities, "elect not to come under" the chapter, in which case it is not to be under unless by a majority vote of the electors thereafter taken. Reference is made also to certain sections, which alone are declared applicable to all municipalities from the time the chapter becomes operative, to municipalities which have "not come under," and to those which might "elect to come under." It is made the duty of the governor, as soon as the chapter becomes operative as to any municipality, to issue his proclamation assigning the municipality to its proper class according to the census. *Held,* that where a municipality has signified its acceptance of the chapter within the 12 months, its status becomes fixed, and cannot be changed by any attempt to withdraw or election not to come under. Ex parte Shlomberg (Miss. 1892) 70 Miss. 47, 11 So. 721. Municipal Corporations ⚿ 75

Miss. Code Ann. § **21-17-13,** MS ST § **21-17-13**

Current through 2006 Sessions & 2007 Reg. Sess., Chs. 301,302,305 to 307, 311 to 313, 315, 319 to 321, 323 to 330, 335, 339, 341, 343, 346, 349 to 353, 357, 360, 362, 365, 378, 383, 387, 394, 397, 403, 405, 408, 410 to 412, 419, 422, 425, 426, and 430

END OF DOCUMENT

1993 WL 294327 (Miss.A.G.)

Office of the Attorney General
State of Mississippi
*1 Opinion No. 93-0397

June 9,
1993

RE: MUNICIPAL REGISTRAR

Ms. Betsy R. Phillips
City Secretary
City of **Waveland**
Post Office Box 320
301 Coleman Avenue
Waveland, Mississippi 39576

Dear Ms. Phillips:

Attorney General Mike Moore has received your letter of request and has assigned it to me for research and reply. Your letter states:

> "I called your office last week to find out the specific duties of the City Clerk/Secretary during an election and was told that I was supposed to be the Registrar of Voters and that my duties were those of the Registrar.
> The City of **Waveland** operates under a Special Charter which provides that the City holds their election in 1994 (see enclosed excerpt from Charter, Section 4, Page 6) and that the mayor appoints a Registrar of Voters at the first Regular Meeting after the election (see enclosed excerpt from Charter, Section 17, Pages 8 and 9).
> As I am not the appointed Registrar of Voters, would you please clarify this matter."

In response to your inquiry, provisions of a special or private charter that are contrary to general statutory provisions are viewed by this office as exceptions to the said statutory provisions except where the general statutes expressly provide otherwise. Therefore, the charter provision that requires the Mayor to appoint a registrar of voters would be controlling over the general statutory provision that the city clerk also acts as the municipal registrar.

Sincerely,
MIKE MOORE
ATTORNEY GENERAL

BY: Phil **Carter**
Assistant Attorney General

1993 WL 294327 (Miss.A.G.)
END OF DOCUMENT

ADDENDUM C

1996 WL 6636 (Miss.A.G.)

Office of the Attorney General
State of Mississippi
*1 Opinion No. 95-0872

January 4,
1996

Re: Election of Council Member; Private Charter

The Honorable Johnnie E. Walls, Jr.
Mississippi State Senate
P. O. Box 634
Greenville, MS 38702-0634

Dear Senator Walls:

Attorney General Mike Moore has received your recent letter in your capacity as a member of the Mississippi State Senate and has asked me to respond. Your letter states:

> The city of **Greenville** operates pursuant to a private charter. It is a weak mayor form of government with a Mayor and six (6) council members who are elected from four single member wards and two (2) super wards composed by combining wards 3 and 2 to form Super ward 5 and wards 3 and 4 to form Super ward 6. The council members are elected for four (4) year staggered terms. On the recent December 16, General election we elected the Mayor and council members for wards 1 and 2 and super ward 6. The council members for wards 3 and 4 and super ward 5 are to serve until the elections in December, 1997; however, ward 3 is being vacated by the Mayor-elect.
>
> The first meeting of the council for the new term (New Mayor's Administration) is by charter required to be held on the first Monday in January following the December General election. Since the first Monday in January, **1996**, falls on New Year's day, the meeting is scheduled to be held on January 2, **1996**, the first Tuesday. The Mayor-elect has announced that he will resign his council seat effective January 2, **1996**.
>
> I need an opinion from you regarding the following issues. First, does Section 23-15-857 of the Mississippi Code of 1972, as amended, which provides for the filling of vacancies take precedence over any provisions of the private charter which provide for a different time period than the statute? Secondly, on January 2, **1996**, will the new council be limited in its responsibilities and duties to appoint all department heads because a vacancy will exist due to one of its members being sworn in as Mayor and resigning his council seat?

As the attached opinion to Betsy Phillips, June 9, 1993, states, provisions of a special or private charter that are contrary to general statutory provisions are viewed by this office as exceptions to the statutory provisions except where the general statutes expressly provide otherwise. In that opinion we stated that a charter provision which requires the mayor to appoint a registrar of voters would be controlling over the general statutory provision that the city clerk also acts as the municipal registrar. In the enclosed opinion to Kenner Ellis, March 21, 1988, we stated that the provisions of the private charter of **Greenville** concerning the posting of surety bonds by its officers and employees control over the general statutes on the subject.

The provisions of the private charter of **Greenville** concerning procedures for filling vacancies take precedence where there is a conflict with the provisions of Section 23-15-857, the general statute which provides for the filling of vacancies.

*2 As you know, this office does not by official opinion comment on private charters. Absent any specific provision in the private charter to the contrary, the new council is not limited in its duties and responsibilities to appoint all department heads at its first meeting on January 2, **1996**, even though

a vacancy will exist. We assume that the private charter defines what constitutes a quorum.

If we may be of any further assistance, please let us know.

Sincerely,
Mike Moore
Attorney General

By: Alice Wise
Special Assistant Attorney General

Note

TO RETRIEVE THE FULL TEXT OF THE ATTACHED OPINION(S) SET FORTH AT THIS POINT, ENTER THE FOLLOWING FIND:

FI 1988 WL 249979

FI 1993 WL 294327

1996 WL 6636 (Miss.A.G.)
END OF DOCUMENT

1988 WL 249979 (Miss.A.G.)

Office of the Attorney General
State of Mississippi

*1 March 21, 1988

Surety Bonds For Specially-Chartered Municipality

Honorable G. Kenner Ellis, Jr.
Attorney
City of Greenville
Post Office Box 452
Greenville, Mississippi 38701

Dear Mr. Ellis:

Attorney General Mike Moore has received your request for an opinion and has assigned it to me for research and reply. Paraphrasing your letter of request, we find the following issue being presented for consideration:

> Do the bonding requirements of Miss. Code Ann. § 21-15-1, as amended, apply to specially chartered municipalities?

Miss. Code Ann. § 21-15-1 (Supp. 1987), a copy of which is attached and incorporated herein, in part provides that all officers elected at the general municipal election provided for in § 21-11-7 shall give bond with sufficient surety in a penalty equal to five percent of the sum of all the state and municipal taxes shown on the assessment rolls and the levies to have been collected in the municipality for the year immediately preceding the commencement of the term of office.

Miss. Code Ann. § 21-11-7 was repealed by General Laws, 1986, Chapter 495, § 329, effective from and after January 1, 1987. This provision, along with its successor under the new election code, Miss. Code Ann. § 2&-15-173 (Supp. 1987), simply provides the date for general municipal elections. However, these statutory provisions fixing the time for holding elections do not generally apply to municipalities operating under a special or private charter. See Miss. Code Ann. § 23-15-559 (Supp. 1987).

As you have indicated in your letter, the City of Greenville operates under a private or special charter which has specific provisions for the posting of surety bonds by its officers and employees. That being the case and consistent with the above-cited statutory provision, this office is of the opinion, the bonding requirements of Miss. Code Ann. § 21-15-1 does not apply to the City of Greenville.

If is this office can be of further assistance on this or other matters, please let us know.

Very truly yours,
Mike Moore
Attorney General

By: Samuel W. Keyes, Jr.
Assistant Attorney General

1988 WL 249979 (Miss.A.G.)
END OF DOCUMENT

Westlaw.

MS ST § 17-21-5 Page 1

Miss. Code Ann. § **17-21-5**

C

West's Annotated Mississippi Code Currentness
Title 17. Local Government; Provisions Common to Counties and Municipalities
Chapter 21. Finance and Taxation
Article 1. Exemptions

→ **§ 17-21-5.** Municipal ad valorem tax, immunity

(1) The governing authorities of any municipality of this state may, in their discretion, exempt from any or all municipal ad valorem taxes, excluding ad valorem taxes for school district purposes, for a period of not more than seven (7) years, any privately owned new structures and any new renovations of and improvements to existing structures lying within a designated central business district or historic preservation district or on a historic landmark site, as determined by the municipality, but only in the event such structures shall have been constructed, renovated or improved pursuant to the requirements of an approved project of the municipality for the development of the central business district and/or the preservation and revitalization of historic landmark sites or historic preservation districts. The tax exemption authorized herein may be granted only after written application has been made to the governing authorities of the municipality by any person, firm or corporation claiming the exemption, and an order passed by the governing authorities of such municipality finding that the construction, renovation or improvement of said property is for the promotion of business, commerce or industry in the designated central business district or for the promotion of historic preservation.

(2) The governing authorities of any municipality of this state with a population of twenty-five thousand (25,000) or more according to the latest federal decennial census, may, in their discretion, exempt from any or all municipal ad valorem taxes, excluding ad valorem taxes for school district purposes, for a period of not more than seven (7) years, any privately owned new structures and any new renovations of and improvements to existing structures lying within a designated business improvement district, urban renewal district or redevelopment district, as determined by the municipality, but only in the event such structures shall have been constructed, renovated or improved pursuant to the requirements of an approved project of the municipality for the development of the business improvement district, urban renewal district or redevelopment district. The tax exemption authorized herein may be granted only after written application has been made to the governing authorities of the municipality by any person, firm or corporation claiming the exemption, and an order passed by the governing authorities of such municipality finding that the construction, renovation or improvement of said property is for the promotion of business, commerce or industry in the designated business improvement district, urban renewal district or redevelopment district.

CREDIT(S)

Laws 1981, Ch. 512, § 1; Laws 1988, Ch. 454, § 1; Laws 1989, Ch. 461, § 1; Laws 1996, Ch. 522, § 1, eff. July 1, 1996.

HISTORICAL AND STATUTORY NOTES

The 1996 amendment designated subsec. (1) and added near the end reference to promotion of industry, and added subsec. (2).

LIBRARY REFERENCES

ADDENDUM D

Miss. Code Ann. § **17-21-5**

Municipal Corporations ⚿967.
WESTLAW Topic No. 268.
C.J.S. Municipal Corporations § 2006.

RESEARCH REFERENCES

Encyclopedias

Encyclopedia of Mississippi Law § 70:13, Other Exemptions.

JUDICIAL DECISIONS

Approved project 2
Designation of district 1
Exempt property 3

1. Designation of district

The legislature did not define the term "central business district" and left designation of a central business district to the governing authorities. A municipality may declare any part or parts of the municipality a central business district in which commercial or mercantile activity is or has traditionally occurred. Therefore, the governing authorities may designate all commercial zones in the municipality as lying within the central business district if the governing authorities make the factual determination that the entire area is a central business district as contemplated by the statute; i.e., an area in which commercial or mercantile activity is or has traditionally occurred. Op.Atty.Gen. No. 94-0374, Navarro, June 29, 1994.

A municipality may declare any part or parts of the municipality a Central Business District in which commercial or mercantile activity is or has traditionally occurred. Op.Atty.Gen. Jackson, Feb. 10, 1989.

2. Approved project

As used in this section, the phrase "approved project of the municipality" means and must include specific plans and/or designs, with definitive goals, intended to accomplish the preservation and revitalization of the central business district. Op.Atty.Gen. No. 98-0058, Bowman, Feb. 6, 1998.

The phrase "approved project of the municipality" as used in this section means and must include specific plans and/or designs, with definitive goals, intended to accomplish the preservation and the revitalization of the central business district. Op.Atty.Gen. No. 98-0058, Bowman, Feb. 6, 1998.

3. Exempt property

This section does not give municipalities the authority to grant tax exemptions to new structures or new renovations of and improvements to existing structures under this section for periods of less than seven years and then extend the exemptions to seven years. Op.Atty.Gen. O'Reilly-Evans, May 30, 1991.

While Section **17-21-5** authorizes governing authorities to grant an exemption from municipal ad valorem taxes, excluding school district taxes, for structures and renovations of and improvements to structures in a central business district, historic preservation district or on a historic landmark site, it does not authorize an exemption from ad valorem taxes for personal property. Op.Atty.Gen. O'Reilly-Evans, Nov. 5, 1992.

The plain language of Section 17-21-7 empowers the board of supervisors to grant an exemption from ad valorem

Miss. Code Ann. § **17-21-5**

taxes for a privately owned new structure. Thus, if all other requirements of Sections **17-21-5** and 17-21-7 have been satisfied and a finding to this effect entered into the minutes, the board of supervisors may grant an exemption from county ad valorem taxes, excluding school district taxes, for new structures. Op.Atty.Gen. No. 2003-0317, Meadows, July 11, 2003.

Miss. Code Ann. § **17-21-5,** MS ST § **17-21-5**

Current through 2006 Sessions & 2007 Reg. Sess., Chs. 301,302,305 to 307, 311 to 313, 315, 319 to 321, 323 to 330, 335, 339, 341, 343, 346, 349 to 353, 357, 360, 362, 365, 378, 383, 387, 394, 397, 403, 405, 408, 410 to 412, 419, 422, 425, 426, and 430

END OF DOCUMENT

AN ORDINANCE TO ESTABLISH A TAX ABATEMENT PROGRAM FOR THE RENOVATION OR CONSTRUCTION OF REAL PROPERTIES LOCATED IN THE COMMERCIAL ZONES OF THE NATCHEZ ON TOP-OF-THE-HILL HISTORIC DISTRICT AND NATCHEZ BLUFFS AND UNDER-THE-HILL HISTORIC DISTRICT; TO SET AN EFFECTIVE DATE; AND FOR RELATED PURPOSES.

WHEREAS, Section 17-21-5 & 27-31-31 of the Mississippi Code of 1972 grants "municipalities the authority to exempt from any or all municipal ad valorem taxes, excluding ad valorem taxes for school district purposes, for a period of not more than seven years, any privately owned new structures and renovations to existing structures lying within a central business district or historic preservation district....." and

WHEREAS, the City of Natchez recognizes the potential of increased property tax revenue from the economic activity and investment spurred by a tax abatement; and

WHEREAS, the Natchez On-Top-of-the-Hill Historic District is both a historic preservation district and the central business of the City of Natchez, and

WHEREAS, it is the policy of the City of Natchez to promote the revitalization and economic prosperity of the Natchez On-Top-of-the-Hill Historic District as well as the Natchez Bluffs and Under-the-Hill Historic District; and

WHEREAS, the City of Natchez proposes to promote revitalization and economic prosperity by utilizing the tax abatement enabling legislation detailed above in Mississippi Code Section 17-21-5 & 27-31-31; and

WHEREAS, the City of Natchez proposes to utilize the tax abatement legislation by extending a freeze in the reappraisal of properties which are granted tax abatements according to their formula set forth hereinafter.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF NATCHEZ, MISSISSIPPI IN REGULAR COUNCIL CONVENED:

SECTION 1. The City of Natchez hereby adopts a tax abatement program for real properties in the (a) Natchez On-Top-of-the-Hill Historic District and (b) the Natchez Bluffs and Under-the-Hill Historic District, each application of which is to be submitted to the Natchez Department of Planning & Zoning for review and submittal to the Mayor and Board of Aldermen for its consideration and action. In conjunction with said activity, the Mayor and Board of Alderman shall specify the real property to be exempted and the dates when such exemption begins and expires. The City Clerk shall record the application and the order approving the application in a book kept in said office for that purpose, and shall file one (1) copy of the application and the order with the Chairman of the Mississippi State Tax Commission and one (1) copy with the State Auditor of Public Accounts. Prior to beginning this program, the City of Natchez will establish a system of rules and procedures for the program to be reviewed and adopted by the Mayor and Board.

SECTION 2. This program and the tax exemption authorized herein shall apply only to revenue producing commercial real properties within the Districts set forth herein, and shall not apply to municipal ad valorem taxes levied for school district purposes. In granting such tax exemptions or abatements, the Mayor and Board of Aldermen may, in its discretion, grant such exemptions for a period of time not to exceed seven (7) years, and shall follow the procedure as set forth in the

aforesaid §§17-21-5 and 27-31-31 of the Mississippi Code of 1972, annotated, as well as the procedures set forth hereinafter.

SECTION 3. The program shall follow the procedure set forth herein:

a. The property owner shall file his/her application for tax abatement with the Department of Planning and Zoning of the City of Natchez.

b. The property owner shall follow normal procedures in filing an application for a Certificate of Appropriateness (COA) with the Natchez Department of Planning & Zoning.

c. The property owner shall follow normal procedure in filing an application for a building permit.

d. At the completion of the project renovation, the property owner shall submit detailed information on the project's costs to the Office of the City Clerk, as well as any other information requested by the City, which shall be used to determine the term of the tax abatement.

e. The City Clerk shall present the application for tax abatement to the Mayor and Board of Aldermen for its consideration, and shall submit with the report the exemption eligibility and term thereof.

f. The Mayor and Board of Aldermen shall thereupon consider and act upon the application, and if approved, the appraised value of the property shall be frozen for a period of time as set forth hereinafter.

SECTION 4. The Mayor and Board of Aldermen shall use the formula set forth hereinafter in calculating the tax abatement:

The term "building value" in this formula shall represent the appraised value of a property, minus the value of the land, as shown on the records of the Adams County Tax Assessor.

a. The minimum project investment excluding acquisition cost shall be $20,000.

b. Twenty-five percent (25%) of the minimum investment must be spent on the building façade or exterior to qualify for the tax abatement.

c. The minimum tax abatement will be three years in length.

d. An investment of $30,000 to $44,999 for new construction or building improvements shall be eligible for tax abatement for up to a four year term.

e. An investment of $45,000 to $64,999 for new construction or building improvements shall be eligible for tax abatement for up to a five year term.

f. An investment of $65,000 to $89,999 for new construction or building improvements shall be eligible for tax abatement for up to a six year term.

g. An investment of $90,000 or greater for new construction or building improvements shall be eligible for tax abatement for up to the maximum seven year term.

i. Verification as to the amount of investment and other relevant criteria, including the receipt of documents reflecting expenditures and purpose shall be submitted to the City Clerk prior to the commencement of any tax exemption.

SECTION 5. This eligibility for exemption shall apply only to ad valorem taxation for new structures or improvements to or renovation of existing structures located in the commercial zone areas of the Natchez On-Top-of-the-Hill Historic District, and the commercial zone areas of the Waterfront District One of the Natchez Bluffs and Under-the-Hill Historic District.

SECTION 6. This ordinance shall take effect and be in force from and after December 1, 1999.

SO ORDAINED this the 26th day of October, 1999.

CITY OF NATCHEZ

BY:_____
LARRY L. BROWN, MAYOR

ATTEST:_____
FRANCES TROSCLAIR, CITY CLERK

VOTING	YEA	NAY
JOYCE ARCENEAUX	____	____
GEORGE A. HARDEN	____	____
SUE STEDMAN	____	____
THEODORE WEST	____	____
DAVID M. MASSEY	____	____
JAKE MIDDLETON	____	____

UNTY OF ADAMS

efore the undersigned authority, in said county, personally appeared Charlene Carroll

e clerk of a public newspaper, printed and published in the City of Natchez, and county
oresaid, called The Natchez Democrat, who, being duly sworn, doth depose and say that
he publication of this notice hereto affixed has been made in said newspaper for
ssue(s) NO: 306 Dated the 2 day of November 1999.

ommencing on the 2 day of November,1999
nding on the 2 day of November,1999

Charlene Carroll
egal Ad Clerk

worn to and subscribed to this the 2 day of November, 1999, A.D.
efore me the undersigned Notary Public of said County of Adams.

Martha B. Gray
artha B. Gray
My Commission Expires September 20,2001

Recorded in Minute Book 77 **, Page** 15998 **.**

Recorded in Ordinance Book ____ **.**

Proof of Publication of the foregoing in the

2-Nov 99 **issue of the Natchez Democrat.**

ORDPROOF.

2006-5

AN ORDINANCE TO AMEND SECTION 90-27 OF THE CODE OF ORDINANCES OF THE CITY OF NATCHEZ TO PROVIDE FOR WAIVER OF CERTAIN FEES FOR BONA FIDE NOT-FOR-PROFIT ORGANIZATIONS SUCH AS HABITAT FOR HUMANITY AND CERTAIN ECONOMIC DEVELOPMENT PROJECT; TO SET AN EFFECTIVE DATE, AND FOR RELATED PURPOSES.

BE IT ORDAINED by the Mayor and Board of Aldermen of the City of Natchez, Mississippi, in regular council convened:

SECTION 1: Section 90-27 of the Code of Ordinances of the City of Natchez is amended to read as follows:

Sec. 90-27. Amended.

The building code adopted by the provisions of this article is hereby amended, changed and altered as follows:

Sec. 104.7. Fees is hereby amended to read as follows:

The permit fees required by the provisions of this building code shall be as determined by the mayor and board of aldermen periodically.

Building permit fees may be waived by the Board of Aldermen, in its discretion, upon proper determination and findings that the proposed permitee is a bona fide not-for- profit organization such as Habitat for Humanity or that the proposed building project is for an economic development facility that will foster the development and improvement of the community in which it is located and the civic, social, educational, cultural, economic or industrial welfare thereof including provision for new employment, increase in the tax base or otherwise provide a significant economic benefit to the City of Natchez. In such instance, and upon such findings, the Board may grant an exemption, waiver or discount for such building permit fee.

SECTION 2: EFFECTIVE DATE.

The effective date of this ordinance shall be from and after passage in order to meet the requirements for a substantial and current economic development project by unanimous vote of the Board of Aldermen.

SO ORDAINED this the 20th day of November, 2006.

CITY OF NATCHEZ

PHILLIP CAMPBELL, MAYOR

ATTEST:

DONNIE HOLLOWAY, CITY CLERK

628

e Natchez Democrat
O. Box 1447
3 North Canal Street
tchez, MS 39121

GAL ADV PHONE: (601) 442-9101

Cost: 41.16 MOP: AMEX
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Ad Number: 01520025 Other: 3.00
Start Date: 11/17/06 Stop Date: 11/17/06
Times: 1 Words: 318 Rate: Legal Rate
Run Days: XXXXXXX Note: L3933 AN ORDINANCE TO AMEND SE
SMIWIFS

clene Williams
ty of Natchez -Legals
st Office Box 1185
tchez, MS 39121

TATE OF MISSISSIPPI
OUNTY OF ADAMS

efore the undersigned authority of said county, personally appeared Ca
he clerk of a public newspaper, printed and published in the City of N
unty aforesaid, called The Natchez Democrat, who, being duly sworn, d
id say that the publication of this notice hereto affixed has been mad
ewspaper for 1 successive week(s)/ day(s), to wit:
OL:142 NO:321 Dated the 17th day of November 2006.

ommencing on the 17th of November 2006
id ending on the 17th of November 2006

Carlee Reed

egal Ad Clerk

Sworn to and subscribed to this the 30th of November, 2006 A.D.
efore me the undersigned Notary Public of said County of Adams.

Cassie D. Strickland

Cassie D. Strickland
My commission expires the 17th of December, 2007

CASSIE D. STRICKLAND NOTARY PUBLIC ADAMS COUNTY, MS

eralded group of Saints ers plays with passion, 1D

GMA co-host Robin Roberts reveals that she has breast cancer, 1E

The Clarion-Ledger

Real Mississippi
clarionledger.com

August 1, 2007 ■ Jackson, Miss.

50¢ Primary market ■ 75¢ Other counties

cial to The Clarion-Ledger
is a fighting victim
to the Mississippi
League.

ials rise t-bull ting

kley
ledger.com

300 pit bulls were year by the Mississ escue League, and hose showed signs . MARL Director said.

c might have gone pt for an upsurge of ving the arrest of Atlanta Falcons quarterback Michael Vick on charges of operating a dogfighting ring in Virginia. He has plead not guilty.

Dogfighting often is associated with other crimes, such as drug sales, ani-

MISSISSIPPI WAR CHESTS

Funds growing down the stretch

In the month leading up to Tuesday's prima incumbent insurance commissioner received la contributions in contested race

Insurance commissioner

George Dale, Democrat $212,910

Governor

Haley Barbour, Republican $189,977

Lieutenant governor

Phil Bryant, Republican $162,290

Secretary of state

Gary Anderson, Democrat $142,119

Attorney general

Charlie Ross, Republican $87,460

Donations pour in for insurance chief

By Laura Hipp

expenses between July 1 and

Hookup, permit charges waived

■ Council hopes to boost incentives for developers eyeing downtown Jackson

By Kathleen Baydala
kbaydala@clarionledger.com

Jackson City Council members on Tuesday approved eliminating permit and infrastructure hookup fees for large developments, a move that could cost the city several hundred thousand to millions of dollars.

The council also approved several million dollars in improvements along two main roadways, including Fortification Street.

Council members approved waiving building costs for developments in the central business district, which encompasses most of downtown, that would create at least 30 jobs and take up at least 100,000 square feet.

Supporters said the change also would provide a great incentive for developers to choose Jackson for large projects, adding millions back to the city's tax rolls.

Parkway Properties Chairman Leland Speed said waiving fees would be a huge building incentive for Pinnacle at Jackson Place — the city's first large-scale, private development project in 20 years — as well as for other potential developments. "We live in a competitive world, and Jackson up until recently hadn't been real successful in that competition," he said. "It's hard to be competitive when you can go look at the competition along Lakeland Drive and in Madison County."

The idea to waive fees arose in October, when Parkway Properties asked the city to do it for its development of the

See FEES, 3A

ONLINE clarionledger.com
Interactive: Map shows downtown Jackson developments

INSIDE

Fees: Council also OKs millions in work for Fortification St., County Line

From 1A

Pinnacle. The city could not relinquish fees for one development, so city attorneys suggested it extend the offer across the downtown development area.

Speed, who also is an economic development consultant for the city, on Tuesday defended himself against accusations of conflict of interest.

"The City Council first acted on this situation in October. In October, I was working for the state (as director of the Mississippi Development Authority) for $1. Then, I was asked by the city and the mayor in February of this year to work in the area of planning, which I am doing pro bono," he said.

Council members Leslie McLemore, Kenneth Stokes, Frank Bluntson and Margaret Barrett-Simon voted in favor of waiving the fees. Marshand Crisler was the lone councilman to vote no.

Crisler said the city cannot afford to sacrifice the revenue source that building fees provide.

Council members also approved a redesign of Fortification Street, one of the main thoroughfares in the downtown area. It could cost between $5 million and $8 million.

Speed

The council initiated the first step in the project, approving a $1.5 million contract with CiViLTech Inc. for engineering work. CiViLTech President Elmore Moody said his company will draft a plan for the street from I-55 to the bridge at Mill Street.

"It's four lanes now, and we're looking at changing it to three lanes (from the interstate to Jefferson Street). There is a tremendous amount of traffic and quite a bit of speeding. The neighborhood associations want to look at calming traffic," said Moody, a former head of the city's Public Works Department.

"We've done traffic studies, and three lanes will carry the necessary amount of traffic efficiently but not as fast."

The redesign also will include the addition of sidewalks and new water and sewer lines under the street. So far, CiViLTech has begun environmental studies required by the state and federal governments and preliminary designs. In November or December, public hearings will allow residents to give feedback on those designs, Moody said.

Greater Belhaven Neighborhood Foundation Executive Director Virgi Lindsay said the council's decision was a victory for the neighborhoods touched by Fortification. A Fortification Street Coalition formed in August 2001, pulling together representatives from Farish Street, Belhaven Heights, Belhaven, north Midtown and Baptist Hospital.

"We didn't want it to be a street that just got resurfaced. We wanted it to be redefined and thought of as a street that connects urban neighborhoods," Lindsay said. "Right now, it is in horrible condition. The street has been patched and patched and patched over the years."

Following the vote on the Fortification project, the council approved more than $7 million worth of improvements to West County Line Road from the entrance of Tougaloo College to a railroad crossing. Public Works officials said the project will make the road safer.

Plans to relocate and widen the roadway began in 2000 but were delayed because the city had trouble securing right-of-way properties, Public Works Director Thelman Boyd said. "We also had to work out relocating the post office nearby," he said.

The city already has spent about $2.5 million on the project, which came from a 2003 general obligation bond. Deputy Public Works Director David Willis said if the state Department of Transportation approves the plans, the "digging dirt" phase could begin by mid-September.

■

To comment on this story, call Kathleen Baydala at (601) 961-7262.

FEE FACTS

Project permit fees for large developments slated
son (electric, mechanical, plumbing and gas per
included):

- Livingston Village
  Value: $75 million
  Building permit fees: $337,980
- King Edward Hotel
  Value: $52 million
  Building permit fees: $234,480
- Standard Life Building
  Value: $50 million
  Building permit fees: $225,480
- FBI Building
  Value: $50 million
  Building permit fees: $225,480
- Cellular South
  Value: $11 million
  Building permit fees: $49,780
- Deuce McAllister Motors
  Value: $7 million
  Building permit fees $22,014
- Old Save Rite
  Value: $8 million
  Building permit fees $36,480
- Old Library
  Value: $3.8 million
  Building permit fees $15,480
- Shaw Estates
  Value: $8 million
  Building permit fees $36,480
- Paul Moak Volvo
  Value: $3 million
  Building permit fees $14,880
- New Jerusalem C
  Value: $6 million
  Building permit fees $27,480

Source: Jackson Department of Planning and Economic Developme

Fight: Dogs used for battles trained to be aggressive, shelter director sa

From 1A

Society volunteer and a member of the shelter's board, said that from what workers are seeing, illegal dogfighting occurs frequently.

Stone said the facility received a call several weeks ago from a resident who said someone had thrown a bleeding pit bull over his fence.

The dog obviously had been used in a fight and "had been chewed up from one end to the other," Stone said.

Last September, 26 dogs — 24 of them pit bulls — were seized property consistent with dogfighting, such as treadmills, scales, scarred dogs, antibiotics, injectable steroids and testosterone or wound dressings, is enough to prosecute an individual, Boswell said.

Still, catching people involved is tough because it is an underground, lucrative activity and participants are cautious.

"They're secretive about where the dogs are held," Boswell said. "They're secretive about the whole process. They all have police scanners because carry a year in prison and $3,000 in fines.

For most people money is the motivation for the fights, Boswell said. "They want an easy and lazy way to get money."

There is no rehabilitation for dogs that have been trained to fight, Boswell said. MARL euthanizes all pit bulls received, whether or not they show signs of fighting.

"They are too unpredictable," Boswell said. "They've been bred for this for hundreds of years. It's genetically ingrained in them."

her family's two pit bulls. Javlyin Anders died from blood loss after she was attacked while playing in front of her family's home.

But other breeds are used in the illegal sport, too, including Great Danes, mastiffs, Rottweilers and St. Bernards, said Janet Madden, president and shelter manager for Community Animal Rescue and Adoption.

Madden believes that — given time — dogs trained for fighting can be reintroduced as pets. Placement of that type of dog is difficult, though.

the shelter had ever turned down a dog because it was too aggressive.

"Pit bulls were originally used because they are so people-friendly."

The no-kill shelter's vet bills for animals injured in dogfights can be expensive, Madden said.

CARA receives more dogs used as training victims than the ones bred to fight.

Small, mild-mannered dogs, puppies, cats and kittens often are used to train the fighting dogs to be aggressive, Madden said. Chickens and rabbits also are used,

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