BEFORE THE SUPREME COURT OF THE STATE OF MISSISSIPPI

GWENDOLYN BALL ET AL. — **APPELLANTS**

v. — **CAUSE NO: 2006-CA-02126**

MAYOR AND BOARD OF ALDERMEN OF THE CITY OF NATCHEZ, MISSISSIPPI — **APPELLEE**

APPEAL FROM DECISION OF THE CIRCUIT COURT OF ADAMS COUNTY, MISSISSIPPI

REPLY BRIEF OF APPELLANTS

ORAL ARGUMENT REQUESTED

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Appellants Gwendolyn E. Ball, J. Neil Varnell and Sarge Preston submit this Reply Brief in support of their Appeal[1]:

I. THIS COURT HAS JURISDICTION OVER THE SUBJECT MATTER

Natchez alleges that this Court lacks jurisdiction to review the municipal actions taken on January 24, 2006 and May 23, 2006. (Natchez Brief at 6 & 7). Natchez claims that because the actions taken on August 9, 2005, were not made the subject of a "timely appeal," then this Court has no jurisdiction to review the Mayor's actions on May 30, 2006. (Natchez Brief at 7).

A. The Actions Taken On August 9, 2005, Did Not Finally Dispose Of All Issues Of This Controversy

This Court has given a broad interpretation to §11-51-75.[2] The Court has noted that "[w]e are of the opinion that any act of a ... municipality leaving a party aggrieved is appealable under §11-51-75 where ... all issues of the controversy are finally disposed of by Order of the City Council." **South Central Turf, Inc. v. City of Jackson**, 526 So.2d 558, 561 (Miss.1988). **See also Garrard v. City of Ocean Springs**, 672 So.2d 736, 739 (Miss. 1996).

In order to determine whether the acts of Natchez on January 24, 2006 and May 30, 2006, are "appealable under §11-51-75," we must determine whether the action Natchez took on August 9, 2005, finally disposed of all the issues of this controversy.[3]

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[1] The Appellants incorporate herein the contents of their initial brief.

[2] Unless otherwise indicated all code references are to the Mississippi Code of 1972, as amended.

[3] To make this determination we look to the minutes of the relevant meetings. **Tupelo Redevelopment Agency v. Abernathy**, 913 So.2d 278, 288 (Miss. 2005) (a "municipality can only act through its minutes, and those official actions must be evidenced by its minutes.") (citing **Smith v. Board of Sup'rs of Tallahatchie County**, 124 Miss. 36, 41, 86 So. 707, 709 (1921).

The August 9, 2005, minutes reflect that the municipal authorities of Natchez adopted "a resolution to enter into an Option Development Agreement with Worley Brown, LLC, for the sale and development of the city-owned Pecan Shelling Factory Site on Broadway Street." (Record at 284). The minutes contain a separate "Resolution" with the proposed (unsigned) option agreement attached.

The August 9, 2005, resolution states "that certain real property ... known as the Pecan Shelling Factory Site should be offered for sale to Worley Brown, LLC,... for the sum of $500,000 pursuant to and in accordance with Miss. Code Ann 1972, §57-7-1 (Rev. 2003) and in accordance with the terms of the aforesaid Option/Development Agreement." (Record at 285).

The August 9, 2005, resolution states that "Mayor Phillip West and City Clerk Donnie Holloway ... are hereby authorized, empowered and directed to execute all documents required to consummate the transaction including the Option/Development Agreement[4] ... **and upon the proper and timely exercise of the notice required in the Option/Development Agreement to execute a deed of conveyance transferring the city's interest in the aforesaid real property** .... [T]he terms and conditions of the aforesaid Option/Development Agreement, ... are incorporated herein and made a part hereof for any and all purposes." (Record at 286) (emphasis added).

Paragraph 1.2 of the Option is titled "Expiration Date. This paragraph, incorporated into the Resolution, provides that the "Option shall commence on the Option Effective Date ("Effective Date") of this Option Agreement and expires at 5:00 p.m., Central Standard Time, on the 9th day of

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[4] The record does not reflect that Mayor West or City Clerk Holloway ever signed or delivered the Option/Development Agreement. ¶5.10 of the Option, which is incorporated into the August 9, 2005, resolution requires that the Option "be executed in duplicate ... and shall be recorded and reflected on the Minutes ... upon its approval and execution by both parties.... (Record at 304).

February, 2006." (Record at 288). Under paragraph 1.6 of the Option, incorporated into the Resolution, the closing[5] of the conveyance could not occur after February 24, 2006.

The Resolution, and the incorporated Option terms, only authorize the Mayor and City Clerk to sign a deed **"upon the proper and timely exercise of the notice required in the Option/Development Agreement."** In order to be proper and timely under the August 9, 2005, resolution, the notice had to be submitted before 5:00 p.m., on February 9, 2006. The August 9, 2005, resolution and the incorporated Option terms do not include an authorization for the Mayor and City Clerk to sign any transaction documents on behalf of Natchez, either at the time the notice of exercise is received after February 9, 2006 or when the closing occurs after February 24, 2006.

It is temporally impossible for the issues presented concerning January 24, 2006 and May 30, 2006, to be finally disposed of by the August 9, 2005, resolution. First, the August 9, 2005, resolution and the incorporated Option terms, do not obligate Natchez to convey the subject property after February 24, 2006, and do not allow the Option Holder to exercise the Option after February 9, 2006. The practical and legal effect of the actions of Natchez on January 24, 2006, was to contract anew with Worley Brown, LLC, and bind Natchez to accept a notice of exercise of the option prior to or on March 13, 2006, and implicitly bound the parties to close no later than March 28, 2006. **See Coast Materials Co. v. Harrison County Development Com'n**, 730 So.2d 1128, 1131 (Miss. 1998) ("Although the transaction did in fact substitute one parcel of property for another parcel, it was nevertheless a conveyance evidenced by a special warranty deed which was directly challenged by Coast Materials' bill of exceptions. The fact that Coast Materials did not properly appeal the

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[5] Black's Law Dictionary defines "closing" as "the final steps of the transaction whereat the consideration is paid, mortgage is secured, deed is delivered or placed in escrow. etc." **See** BLACK'S LAW DICTIONARY 1372 (6th ed.1990).

previous sale of land to Delta is irrelevant."). Put another way, had the City failed to act on January 24, 2006, the Option, if enforceable in the first place, would have expired and become unenforceable by its terms at 5 p.m., on February 9, 2006. But the City did act, or attempted to act, and it is the January 24, 2006, actions which form, in part, the basis of this appeal.

Second, the actions taken on August 9, 2005, were not a final decision under state law. The Antiquities Law of Mississippi, §§39-7-1 et seq., requires that "always prior to the ... transfer of public property to private ownership ... local governments ... shall notify the [Board Trustees of the Mississippi Department of Archives and History] of the planned action on a form supplied by the board." §39-7-22.[6] In addition to this statutorily imposed condition, the August 9, 2005, resolution and the incorporated terms of the Option, set forth numerous conditions: delivery of merchantable title (¶2.2), payment of taxes, liens, encumbrances (¶2.3), satisfactions as to title and environmental conditions (¶2.4), The August 9, 2005, resolution and the Option terms incorporated therein, additionally required that the signed and executed Option Agreement be spread upon Natchez's minutes. **See** fn 4 *supra*. In addition the August 9, 2005, resolution and the Option terms

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[6] Natchez concedes that there "is absolutely no question as to the City's ... 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...." (Natchez Brief at 13-14). Natchez attempts to give the Court the impression that the Mississippi Department of Archives and History approved the transfer and the project. This is false. Natchez states that 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 ...." (Natchez Brief at 5). Natchez directs the Court to page 432 of the Transcript. The "permit committee" does not represent the actions of the Board of Trustees of the Mississippi Department of Archives and History. §39-7-5 provides that the "authority to administer the provisions of this chapter is vested in the board of trustees of the department of archives and history, hereinafter referred to as the board." Specifically it is the board of trustees that is authorized to issue permits, not a staff committee which in practice merely makes recommendations to the Board of Trustees. See §39-7-19.

incorporated therein, required Worley Brown, LLC, to disclose to Natchez "ten (10) days prior to closing" five (5) categories of information, including but not limited to a "budget for the development of the Property." (¶5.1)" (Record at 301).[7]

These conditions prevent the August 9, 2005, resolution from being considered a final disposition as a matter of law. **See Garrard**, 672 So.2d 736, 739 (Miss. 1996) ("Had this motion passed, the conditional language which stayed the hut's removal would have prevented this from being a final disposition."). **See also J.H. Parker Const. Co., Inc. v. Board of Aldermen of City of Natchez**, 721 So.2d 671, 674 (Miss. App. Ct. 1998) (necessary approval by state agencies prevented Board's action from being final).

Third, the time to appeal the City's transfer of title to the subject property did not begin to run until the Mayor and City Clerk signed the Deed on May 30, 2006. **J.H. Parker Const. Co.**, 721 So.2d at 674 ("The ten day appeal period did not commence until April 11 when the City executed the contract with Lampkin Construction.").

Fourth, Natchez indicates that the Mayor's actions on May 30, 2006 can not be the subject matter of an appeal under §11-51-75. This position is simply unsupported by law. In **City of Madison v. Shanks**, 793 So.2d 576, 578-579 (Miss. 2000), this Court stated that the "issue in the present case is whether the mayor is a "municipal authority" whose actions may be appealed under Miss. Code Ann. §11-51-75 (1972). Both the statute and relevant case law suggest that this question should be answered affirmatively." "Mississippi cases have referred to 'actions' of counties and municipalities as appealable events." Id. at 580 (citing **South Cent. Turf, Inc. v. City of Jackson**,

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[7] The minutes do not reflect or establish that the requirements of ¶5.1 were satisfied or waived prior to closing.

526 So.2d 558, 561 (Miss.1988). "Because the mayor is a municipal authority, it follows that her actions are subject to review." **Shanks,** 793 So.2d at 580.

Lastly, the Mayor did not have authority to sign and deliver a deed on May 30, 2006, and even if he held such authority, the signing and delivery of the deed was the final action of the municipality. A mayor, "in executing a contract, merely carries out the mandate of the municipal authorities (in this case, the mayor and city council); and under the law this mandate cannot rest in parol; it should be set out plainly on the minutes of the governing municipal board." **Kidder v. McClanahan,** 126 Miss. 179 , 88 So. 508, 510 (1921). See also §25-1-43 ("An officer shall not enter into any contract on behalf of the state, or of any county, city, town, or village thereof, without being specially authorized thereto by law or by an order of the board of supervisors or municipal authorities.").

A review of the August 9, 2005, resolution discloses that the Mayor was authorized to sign a deed if he received "proper and timely notice" of exercise of the Option prior to 5 p.m., on February 9, 2006. The August 9, 2005, resolution also provided that any closing had to occur on or before February 24, 2006. The minutes of January 24, 2006, merely provide that a "Motion was made by Alderman West and seconded by Alderman Pollard to grant an extension of thirty (30) days for the Worley-Brown Group to exercise the option. The motion carried unanimously." (T at 409). There is no special authorization for the Mayor to sign anything after February 24, 2006. The Mayor acted without proper authorization and §11-51-75 allows the appeal of this action for judicial review.

II. THE APPELLANTS HAVE STANDING

In effect Natchez claims that it can engage in illegal conduct and if it damages every citizen of Natchez in the same way then no citizen can appeal the illegal conduct. (Natchez Brief at 7 &

13).[8] Natchez actually acknowledges that the Appellants are claiming that its actions are "illegal" and yet has the effrontery to ask "where is the 'colorable' interest in objecting to [the] city's [illegal] actions?" (Natchez Brief at 13).

The liberal standing rules[9] adopted by this Court reflect the Court's commitment to perform its constitutional imperative as a co-equal branch of government. See Article 1, Section 1 and Article 6, Section 144 of the Mississippi Constitution of 1890, as amended. The Court would have little chance of acting as an effective check on legislative and executive abuses of power if the courthouse door slams whenever an aggrieved party answers in the affirmative to the gate keeping question of "Did the abusive action harm everybody in the same manner?"[10]

Likewise the Court has noted that "openness in government is the public policy of this state. It is conducive to good government, and heroic deeds." **Mayor and Aldermen of City of Vicksburg v. Vicksburg Printing and Pub. Co.**, 434 So.2d 1333, 1336 (Miss. 1983). The Court has stated that it is its hope that the pronouncements of the Court are "found faithful" to the principles and policies which hold "that citizens be advised of and be aware of the performance of public officials and the deliberations and decisions that go into the making of public policy. . ." Id.

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[8] In the proceedings below, the City did not argue that the Appellants did not have standing to raise issues concerning the "illegality" of the City's actions. (Hearing Transcript at 33, RE at 117). Instead the City argued that the Appellants did not have standing to contest the "legislative decision ... as to what kind of deal to make." Hearing Transcript at 34).

[9] **See City of Picayune v. Southern Regional Corp.**, 916 So.2d 510, 525 (Miss. 2005).

[10] "Our founding fathers wisely created three, separate but equal branches of government, each delegated with certain responsibilities which often cause the occupants of the respective branches to disagree, and rightfully so in the interest of good government and what is best for the taxpaying citizens." **Fordice v. Bryan**, 651 So.2d 998, 1050 (Miss. 1995) (Smith, J., dissenting).

(Citing §25-41-1 of the Open Meetings Law). What does it profit the citizenry to have "open government" if they are denied access to the judicial branch of government to address their grievances? The closed courthouse policy advocated by Natchez where the actions of a city are insulated from judicial review would make the "principles and policies" of open government hollow platitudes. The Court should reject the request of Natchez to deny the Appellants what is right and just by barring their access to the Courts.[11]

Natchez relies on two (2) cases to support its claim that the Appellants lack standing: **Burgess v. City of Gulfport**, 814 So.2d 148 (Miss. 2002) and **City of Madison v. Bryan**, 763 So.2d 162 (Miss. 2000). In **Burgess**, the parties claiming aggreived status under §11-51-75 merely alleged that they were residents. The **Burgess** parties did not allege that they owned land around the property involved or that the property was affected in an adverse manner. 814 So. 2d at 150.

In **City of Madison v. Bryan**, 763 So.2d 162 (Miss. 2000), the Court was confronted with a party who "was not the owner of the title, nor did he have a valid option to purchase, a valid contract to purchase, or a mortgage or any other encumbrance upon the property." Id. at 166. Moreover the party's "option to purchase the site expired before the case ever made it to this Court." **Id.** In these circumstances the Court held that the party's lack of any interest in the property impacted by the City's actions warranted the Court refusing to exercise jurisdiction over the claimed dispute.

Burgess and **Bryan** simply do not apply to the claims of the Appellants in this case. In the

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[11] "All courts shall be open; and every person for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law, and right and justice shall be administered without sale, denial, or delay." Article 3, Section 24 of the Mississippi Constitution of 1890, as amended.

present case, J. Neil Varnell and Sarge Preston have established that they are long-time residents, taxpayers and landowners within the City of Natchez, Mississippi. (Record at 119, RE at 22). J. Neil Varnell owns property in the neighborhood of the Pecan Factory site. Sarge Preston owns real property directly adjacent to the site. (Id.) Gwendolyn E. Ball is a resident, taxpayer and landowner within the City of Natchez, Mississippi. Mrs. Ball's residence is near the subject property. (Record at 122, RE at 28). These parties claim that the actions being appealed will adversely impact their properties by adverse impact on values and aesthetics; that each of these parties has engaged in recreational activities on the site of the subject property, including but not limited to walking and enjoying the scenic vistas; that these activities are not engaged in by the general public and that the actions being appealed will adversely impact their continued pursuit of those activities. (Id.) They further claim that the impact of the proposed development on the stability of the Bluff subjects each of them to physical danger and also threatens the above referenced real properties. (Id.)[12]

III. HOW NOT TO SELL REAL PROPERTY OWNED BY A MUNICIPALITY

Beginning at Natchez's Brief page 7 and continuing through page 9 Natchez addresses the topic of the "Sale of Real Property by a Municipality." Beginning at page 18 and continuing through page 24 of its brief, Natchez addresses the topic of "§57-7-1 as Part of the State's Economic Development Code Should be Construed Liberally to Effectuate its Purpose and the Public Policy of this State." (Natchez Brief at 18 - 24).

Natchez claims that "it was important for the Natchez City Council to disregard the 'bid'

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[12] "A party's assertion of an interest or effect goes a long way toward establishing that it has an interest in or will likely be affected...." **Harrison County v. City of Gulfport**, 557 So.2d 780, 783 (Miss. 1990).

option of §21-17-1(2)(a) as it did ...." (Natchez Brief at 8).[13] Natchez does not claim that it was "important" for it to disregard the three (3) appraisal method required by §21-17-1(2)(b), but nonetheless admits that this procedure was not followed.[14]

The Mississippi Supreme Court has long recognized the importance of an open competitive bid system to protect the public interest and taxpayers. In the area of public construction, this Court has noted that the purpose of an open competitive bid system is to "secure economy... in the expenditures of public funds . . ., to protect the public from collusive contracts; to prevent favoritism, fraud, extravagance, and improvidence in the procurement . . . and to promote actual, honest, and effective competition to the end that each proposal or bid received and considered . . . may be in competition with all other bids upon the same basis, so that all such public contracts may be secured at the lowest cost to taxpayers." **Telcom Sys., Inc. v. Lauderdale County Bd. of Supervisors**, 405 So.2d 119, 120 (Miss.1981) (citations omitted). The same public policies hold true in the area of the sale of public lands, except the goal is the highest return for the taxpayer. The actions of Natchez were contrary to these policies.

Having failed to comply with the open and competitive provisions of §21-17-1, Natchez

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[13] Natchez's claim of compulsion in the disregard for the law harkens back to the 1970's when comedian Flip Wilson popularized the phrase: "The devil made me do it."

[14] Natchez contends that the June 6, 2005, letter from Bob Gavin represents an "updated appraisal." (Natchez Brief at 25). A review of this letter reflects that it is not an updated appraisal. The letter reflects that Gavin engaged in no new analytical process but only revised his 2002 numbers. In fact he clearly starts his revision from his "original calculations" set forth in his November 8, 2002 report. (Record at 275). While not controlling, Mississippi's Relocation Assistance Law defines an appraisal as "a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information." Miss. Code Ann. §43-39-5(h). Gavin's June 6, 2005, letter clearly does not meet this standard.

tacitly concedes its only hope lies in a finding that it complied with §57-7-1. (Natchez Brief at 9). Importantly Natchez concedes that it is only thorough a "liberal interpretation" of §57-7-1 that its actions can be deemed lawful. (Natchez Brief at 18).

Natchez fails to realize that §57-7-1 is yet another statute which relies upon competitive bids to protect the public. This section allows certain surplus lands to be "set aside and improved for industrial and commercial purpose and . . . **thereafter** . . . sold upon such terms and conditions as a municipality . . . shall prescribe." Miss. Code Ann. §57-7-1. (Emphasis added). Improvements performed by a city, prior to sale, would have to comply with the applicable bid laws so that public scrutiny and accountability would be insured. See Miss. Code Ann. §31-7-13.

Natchez fails to address the very real and logical impediment posed to its position by the clear phrases of the statute that the surplus lands be "set aside and improved" and "thereafter ... sold." Instead Natchez hopes that the Court will ignore these provisions of the statute and liberally interpret "industrial and commercial purpose" to include residential condominium developments. (Natchez Brief at 24).

The Mississippi Legislature has told the Court its purpose in adopting Title 57 of the Mississippi Code. None of these statements of purpose and policy even come close to a Legislative intent to allow private condominium developers to obtain public land well below market value and to further obtain overly generous and costly benefits and concessions from a government agency. For example, §57-1-1 contains the "Declaration of Policy" for Chapter 1 of Title 57 covering "Department of Economic And Community Development In General." This sections specifically provides that:

> the citizens demand as a public purpose the development within Mississippi of commercial, industrial, agricultural, manufacturing and

> tourism enterprises, herein called "enterprises" by the several counties, supervisors districts and municipalities, all herein called "municipalities." "Enterprises" shall be construed to include expansion of such existing buildings and facilities, conditioned, however, that the municipality, if required by the Board of Economic Development, shall take security upon the existing building or buildings at the time of entering into contract for the expansion of existing buildings and facilities.

§57-1-1. One is struck by the complete absence of any reference to residential enterprises.[15]

§57-3-3 sets forth the "Legislative Intent" for Chapter 3 "Agriculture and Industry Program" and states:

> It is the intent of the legislature by the passage of this chapter to authorize municipalities to acquire, own and lease projects for the purpose of promoting industry and trade by inducing manufacturing, and industrial enterprises to locate in this state, promoting the use of agricultural products and natural resources of this state, and promoting a sound and proper balance in this state between agriculture, commerce and industry.

§57-3-3. Again, there is no mention of the Legislature's desire to promote residential condos.[16] In fact a Westlaw search of Title 57 reflects that the word "residential" never appears in the title.

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[15] The Mississippi Legislature knows and appreciates the difference between residential property uses, industrial property uses and commercial property uses. **See** Miss. Code Ann. §29-3-31 (directing board of education to classify certain 16th Section lands) and §29-3-151 (authorizing the lease of certain 16th Section lands for "commercial, industrial, and/or recreational use").

[16] §57-5-3 provides that the "Mississippi Agricultural and Industrial Board ... shall be and is hereby authorized, empowered and directed to encourage the establishment of such industrial parks or districts where said parks or districts are found to be necessary to the development of the several municipalities of this state...." §57-9-5 provides that the "Mississippi Agricultural and Industrial Board ... is hereby authorized and empowered to formulate and place into existence, plans for industrial plant training and recruitment for new and expanded industries, or both, in Mississippi."

In short, a review of the actual statements of Legislative Intent set forth in Title 57 does not bear out the contention of Natchez. None of the authorities cited in Natchez's Brief on pages 18 through 24 come anywhere close to requiring the Court to liberally re-write §57-7-1 or to abandon the Court's position that it is generally not the providence of Courts to change the Legislature's "ands" to "ors" or "ors" to "ands." **See Banks v. City of Greenwood, By and Through City Council,** 404 So.2d 1038, 1039 (Miss. 1981). §57-7-1 is plain and unambiguous and this Court should reject the invitation of Natchez to re-write the statue. See **Hamner v. Lumber Co.**, 100 Miss. 349, 417, 56 So. 466, 490 (1911).

IV. THE JANUARY 24, 2006, MEETING

The Appellants concede that **Tisdale v. City Council of City of Aberdeen**, 856 So.2d 323 Miss. (2003) indicates that Natchez may have had a quorum present at the January 24, 2006, meeting. Id. at 327 ("While the mayor is correct in asserting that four of six members of the city council constitute a quorum for doing business, he is incorrect in asserting that when all city council members are present for a meeting, four of six voting members constitute a majority. "). However, the fact remains that the Option Expired on February 9, 2006, because there was no presiding officer at the meeting. During the Meeting an objection was made to the lack of quorum and due to the fact the Mayor was on the telephone and complaining about the quality of the sound. No advance notice of the City's plan to conduct public business through teleconference was given in accordance with §25-41-5.

Section 19 of the Charter of Natchez provides that the "Mayor shall be the presiding officer." (Record at 474). Section 25-41-5 does not allow the Mayor to preside over a meeting through teleconference. Section 25-41-5 provides that if a quorum is present then "additional members of

the public body" may participate through teleconference provided at least thirty (30) days advance notice has been given.

Given the irregularities of the January 24, 2006, meeting, the actions taken at the meeting should be declared void.[17]

V. THE PENDENCY OF THE APPEAL

Natchez fails to comprehend the significance of the timely appeal of the actions taken at the January 24, 2006, meeting. The issue is whether Natchez could continuously and repeatedly modify the January 24, 2006, order to extend the period of the Option, while the Circuit Court had before it the very issues of extending the option and the lawfulness of the contemplated transfer. The cases of **South Cent. Turf, Inc. v. City of Jackson**, 526 So.2d 558 (Miss. 1988) and **Gatlin v. Cook**, 380 So.2d 236 (Miss. 1980) establish that Natchez was without jurisdiction to modify its January 24, 2006, Order to further extend the option period.

Natchez contends that the Appeal of the actions of the municipal authorities taken at the meeting on January 24, 2006, did not include the "extension of the Option or sale of the property." (Natchez Brief at 20). The "Notice of Appeal and Bill of Exceptions" filed on February 3, 2006, appears in the record at pages 1 through 6. The Notice of Appeal clearly states:

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[17] In its discussion of the propriety of the January 24, 2006 meeting, Natchez undertakes a topic entitled "The City acted legally ... in extending the Date for Exercise of the Option because of the Pending Issues before the Mississippi Department of Archives and History." The Appellants respond that the record reflects that the Developer and the City knew about the regulatory requirements of MDAH and that they knew about the potential delay, yet they entered an agreement with a definite expiration date and no contractual provisions to extend the option period. In addition no consideration was paid for the extension. Lastly that the parties needed to extend the option period is not significant in determining whether the actions of Natchez were lawful.

7.

Without a quorum present the Aldermen present undertook to conduct the following business:

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3. Purported to extend the expiration date of an "Option/Development Agreement Between the City of Natchez, Mississippi and Worley Brown, LLC."

****

11.

It was unlawful for the Mayor to attempt to "preside" over the meeting by telephone. The Mayor was absent and his duties passed to the Mayor Pro Tem. The Mayor Pro Tem could not be counted towards the establishment of a quorum.

12.

The "meeting" was conducted in violation of State Law and in violation of the City's Code and Charter.

13.

The actions taken at the subject meeting violated the provisions of the Federal and State Constitutions concerning substantive and procedural due process and equal protection.

14.

The act of extending the expiration period of the Option, and the Option/Development Agreement itself are illegal. The City has violated §21-17-1 et seq., of the Mississippi Code of 1972, as amended. Moreover the extension and the underlying agreement constitute an unlawful donation.

(Record at 1-6).

The Notice of Appeal prayed that "the Circuit Court hear and consider the matter, reverse the subject decisions and actions and declare the decisions and actions to be void, **particularly declare**

that . . . the Extension of the Option/Development Agreement, and the underlying Agreement are void; and certify the same to the Municipal Authorities." (Record at 6) (emphasis added). As can be seen, the Appeal of the actions taken at the January 24, 1006, meeting specifically concerns the issues involved with the option, the extension, and the contemplated transfer.

VI. THE SALE OF THE SUBJECT PROPERTY WAS ARBITRARY, CAPRICIOUS, NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, CONTRARY TO LAW, AND CONSTITUTES AN UNLAWFUL DONATION

Natchez fails to address the matters and cases cited in the Appellants' initial brief. As discussed above, the actions of Natchez were taken at a meeting with no presiding officer present. The conveyance of the subject property was contrary to the statutes governing the sale of municipal property. Moreover the actions of the Mayor and Aldermen were taken at a time when Natchez had no jurisdiction to amend or alter its January 24, 2006, Order.

The minutes reflect that Natchez did not engage in any cost benefit analysis and failed to make any reliable information to support its action as part of the record presented on appeal.

Natchez fails to address, in a meaningful way, the serious issues concerning the value of the property. From the Record, the Court cannot tell the value of the property. Gavin's omissions in his 2002 appraisal are so glaring that one must question his competence. Moreover Gavin's 2005 letter is not an appraisal. It reflects no new analysis other than that which Natchez pointed out, a recorded easement and a survey, which brought into question Gavin's 2002 calculation of the size of the parcel. It appears to be the height of caprice to sell the "most valuable" piece of real property in Natchez on the basis of a four (4) year old and admittedly flawed appraisal.

Natchez describes the concessions it gave the residential condominium developers as "fairly modest concessions," (Natchez Brief at 25). However Natchez does not direct the Court to any

information in the record to support this allegation. It appears to be the height of caprice for Natchez to commit to the waive of taxes, fees and undertake other obligations without a scintilla of information reflecting the expected cost to the City.

Remarkably the August 9, 2005, resolution and the incorporated terms of the Option Agreement, fail to require the creation of a single job for a resident of Natchez and only speaks vaguely in terms of a "commitment to expend $19,300,000.00 in development."

Given the absence of a disclosed rational basis the Court must conclude that the actions of the City were arbitrary and capricious. **Mississippi Power Co. v. Fairchild**, 791 So. 2d 262 (Miss. Ct. App. 2001) ("the Board gave no indication of what factors were considered in reaching its determination, thus giving no assistance to this Court to find anything but that the decision was arbitrary and capricious.").

In addition Section 95 of Article 4 of the Mississippi Constitution of 1890, specifically prohibits the donation, direct or indirect, of public lands to private corporations or individuals. Public lands can only be disposed of for adequate consideration. In the present case public lands and funds have been, in effect, donated to Worley-Brown LLC, without adequate consideration being paid.

VII. CONCLUSION

The City of Natchez, Mississippi has conducted illegal meetings, exceeded it jurisdiction and arbitrarily and capriciously donated valuable public land and substantial funds to a private company. The decisions of the municipal authorities should be reversed and a decision rendered for the Appellants[18].

Respectfully submitted, this the 10th day of October, 2007.

Gwendolyn Ball, J. Neil Varnell
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[18]Natchez failed to submit any argument in support of its cross appeal, and said cross-appeal should be denied.

CERTIFICATE OF SERVICE

I, James A. Bobo, one of the attorneys for Appellants, do hereby certify that I have this day, mailed via United States mail, postage prepaid, a true and correct copy of the above and foregoing document to:

Walter Brown
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Honorable Forrest A. Johnson
Circuit Court of Adams County
Post Office Box 1372
Natchez, Mississippi 39121-1372

This the 10th day of October, 2007.

James A. Bobo