

**IN THE COURT OF APPEALS
STATE OF MISSISSIPPI
NO. 2007-CA-00601**

MICHAEL L. BRIDGE

APPELLANT

VS.

**MAYOR AND BOARD OF ALDERMEN
CITY OF OXFORD, MISSISSIPPI, ET AL.**

APPELLEES

Appeal from the Circuit Court of Lafayette County, Mississippi
Cause No. L05-428

**REPLY BRIEF OF THE APPELLANT
MICHAEL L. BRIDGE**

Oral Argument Requested

Jerry L. Mills [REDACTED]
Pyle, Mills, Dye & Pittman
800 Avery Blvd. N., Suite 101
Ridgeland, Mississippi 39157
Telephone: 601-957-2600
Facsimile: 601-957-7440

TABLE OF CONTENTS

	Page(s)
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
I. ARGUMENT	1
A. COMPLIANCE WITH THE COMPREHENSIVE PLAN	1
B. MISTAKE	3
C. CHANGE IN THE CHARACTER OF THE NEIGHBORHOOD	4
II. CONCLUSION	5
CERTIFICATE OF SERVICE	7

TABLE OF AUTHORITIES

Page(s)

CASES

<i>City of Oxford v. Inman</i> 405 So.2d 111, 113 (Miss., 1981).....	4,5
<i>Cloverleaf Mall Ltd. V. Conerly</i> , 387 So. 2d 736, 740 (Miss. 1980	3,4
<i>Cockrell v. Panola County Bd. Of Sup'rs</i> 950 So. 2d 1086, 1091-1092 (Miss. App., 2007).....	3,4
<i>Hughes v. Mayor and Comm'rs of City of Jackson</i> 296 So. 2d 689, 691 (Miss 1994).....	4
<i>Inman</i> , 405 So. 2d 114	4
<i>Jitney Jungle, Inc. v. City of Brookhaven</i> , 311 So.2d 652 (Miss.1975).....	4
<i>Martinson v. City of Jackson</i> 215 So.2d 414, 416 (Miss. 1968).....	3,4
<i>Mississippi Gaming Com'n v. Imperial Palace of Mississippi, Inc.</i> 751 So. 2d 1025, 1028-1029 (Miss., 1999).....	3
<i>Pagaud v. State</i> , 13 Miss. (15 S. & M.) 491, 497, 1945 WL 2031 (1845)	3
<i>Town of Florence Vs. Sea Lands, LTD</i> , 759 So. 2d 1221, 1224(¶ 11) (Miss. 2000) (Miss. 2000).....	3,5,6
<i>Woodland Hills Conservation Assoc., Inc. v. City of Jackson</i> 443 So. 2d1173, 1182 (Miss. 1983)	4
<i>Wright v. Mayor and Comm'rs of City of Jackson</i> 421 So. 2d 1219, 1223 (Miss. 1982)	3,4

STATUTES

Miss. Code Ann. § 17-1-1	2
Miss. Code Ann. § 17-1-19	2

I. ARGUMENT

A. COMPLIANCE WITH THE COMPREHENSIVE PLAN

The position of the City of Oxford appears to be that it is not necessary that a rezoning be compatible with the future land use plan. Rather they argue that if a rezoning is consistent with the goals of the plan, this is enough. This argument ignores longstanding zoning law in this state. Over the years, Mississippi has followed the rule that zoning must be in compliance with a comprehensive plan. Though the cases consistently followed this rule, it was not until 1988 that the definition of a comprehensive plan was clearly established. In 1988, the following legislative definition of comprehensive plan was adopted:

(c) "Comprehensive plan" means a statement of public policy for the physical development of the entire municipality or county adopted by resolution of the governing body, **consisting of the following elements at a minimum:**

- (i) Goals and objectives for the long-range (twenty (20) to twenty-five (25) years) development of the county or municipality. Required goals and objectives shall address, at a minimum, residential, commercial and industrial development; parks, open space and recreation; street or road improvements; public schools and community facilities.
- (ii) A land use plan which designates in map or policy form the proposed general distribution and extent of the uses of land for residences, commerce, industry, recreation and open space, public/quasi-public facilities and lands. Background information shall be provided concerning the specific meaning of land use categories depicted in the plan in terms of the following: residential densities; intensity of commercial uses; industrial and public/quasi-public uses; and any other information needed to adequately define the meaning of such land use codes. Projections of population and economic growth for the area encompassed by the plan may be the basis for quantitative recommendations for each land use category.
- (iii) A transportation plan depicting in map form the proposed functional classifications for all existing and proposed streets, roads and highways for the area encompassed by the land use plan and for the same time period as that covered by the land use plan. Functional classifications shall consist of

arterial, collector and local streets, roads and highways, and these classifications shall be defined on the plan as to minimum right-of-way and surface width requirements; these requirements shall be based upon traffic projections. All other forms of transportation pertinent to the local jurisdiction shall be addressed as appropriate. The transportation plan shall be a basis for a capital improvements program.

- (iv) A community facilities plan as a basis for a capital improvements program including, but not limited to, the following: housing; schools; parks and recreation; public buildings and facilities; and utilities and drainage.

Miss. Code Ann. § 17-1-1

The position of the Appellee and Intervenor would require this Court to either ignore the provisions of Miss. Code Ann. § 17-1-9 which states in pertinent part “Zoning regulations shall be made in accordance with a comprehensive plan” Oxford’s argument requires this statute to be amended to read “Zoning regulations shall be made in accordance with one of the four elements of a comprehensive plan.” To argue that the City of Oxford may rely only on the goals and objectives portion of the comprehensive plan makes no more sense than to contend it could rely only on the transportation and thoroughfares portion of the plan. Our law does not require that zoning be in compliance with one out of four elements of the comprehensive plan.

The legislature was quite clear when it adopted the definition of a comprehensive plan. The one definitive element of that plan to guide future growth is the future land use map. It is available for all to see. It does not require review and interruption of goals and objectives. Anyone wanting to know what the future land use should be can look at this map and readily see. We suggest this would include not only the public, but the aldermen of the City of Oxford.

B. MISTAKE

The briefs of the City of Oxford and the Intervenor attempt to justify the change based on administrative or clerical error. In reality, they are arguing not administrative error, but legislative error. To accept this argument, basic tenants of our law must be ignored. No longer would the words of these words be true:

Testimony to explain the motives which operated upon the law-makers, or to point out the objects they had in view, is wholly inadmissible. It would take from the statute law every semblance of certainty, and make its character depend upon the varying and conflicting statements of witnesses. *Pagaud v. State*, 13 Miss. (15 S. & M.) 491, 497, 1845 WL 2031 (1845). *Mississippi Gaming Com'n v. Imperial Palace of Mississippi, Inc.* 751 So.2d 1025, 1028 -1029 (Miss.,1999)

The position of the City would erase more than a century and a half of Mississippi law.

The mistake that the City is asking this Court to accept is that the Aldermen did not realize they were not rezoning property. The mistake they claim is one of failing to make a legislative decision to rezone property. The mistake they claim is one of failing to change that which is intended to be permanent.¹ Truth be told they simply did not think about changing the zoning at the time. When political pressure was applied they were forced to admit that they were not aware of what they were voting for. This does not change the fact that they approved the zoning ordinance. It does not change the fact

¹ There is a strong presumption, recognized repeatedly by the Mississippi Supreme Court, that comprehensive zoning ordinances that are adopted or amended by local governing authorities are well planned and meant to be permanent. *Town of Florence, Miss. v. Sea Lands, Ltd.*, 759 So.2d 1221, 1224(¶ 11) (Miss.2000); *Wright v. Mayor and Comm'rs of City of Jackson*, 421 So.2d 1219, 1222 (Miss.1982) (citing *Cloverleaf Mall Ltd. v. Conerly*, 387 So.2d 736, 740 (Miss.1980); *Martinson v. City of Jackson*, 215 So.2d 414, 417 (Miss.1968)). *Cockrell v. Panola County Bd. of Sup'rs* 950 So.2d 1086, 1091 -1092 (Miss.App.,2007)

that they approved the future land use map. If indeed an error was made, it was neither administrative nor clerical. No administrator made an error. No clerk made an error.

C. CHANGE IN THE CHARACTER OF THE NEIGHBORHOOD

The Mississippi Court of Appeals recently noted:

The Mississippi Supreme Court has not hesitated to reverse board of supervisors' decisions regarding rezoning when substantial evidence of change in the character of the area is not met. *See, e.g., Wright v. Mayor and Comm'rs of City of Jackson*, 421 So.2d 1219, 1223 (Miss.1982); *City of Oxford v. Inman*, 405 So.2d 111, 112 (Miss.1981); *Hughes v. Mayor and Comm'rs of City of Jackson*, 296 So.2d 689, 691 (Miss.1974). It is clearly within our judicial discretion to reverse a rezoning ordinance which was adopted based on insufficient proof. *Inman*, 405 So.2d at 114. As far as how substantial the change needs to be to warrant rezoning, zoning authorities should ask whether the changes justify rezoning. *Woodland Hills Conservation Assoc., Inc. v. City of Jackson*, 443 So.2d 1173, 1182 (Miss.1983). However, use of property in accordance with the original zoning plan is not a material change of conditions warranting rezoning. *Cloverleaf Mall Ltd. v. Conerly*, 387 So.2d 736, 740 (Miss.1980) (citing *Jitney-Jungle, Inc. v. City of Brookhaven*, 311 So.2d 652 (Miss.1975)). *Cockrell v. Panola County Bd. of Sup'rs* 950 So.2d 1086, *1092 (Miss.App.,2007)

It should be kept in mind that the date from which change in the character of the neighborhood is to be determined is from the adoption of the ordinance. In this case, the ordinance was adopted less than a year before the petition to change the zoning was filed. No substantial change in the character of the neighborhood occurred in that time.² The Supreme Court made the law crystal clear in another case involving the City of Oxford. The Court said:

It is also well established that the use of property in accordance with an original zoning plan is not a material change of conditions which authorizes rezoning. *Jitney Jungle, Inc. v. City of Brookhaven*, 311 So.2d 652 (Miss.1975); *Martinson v. City of Jackson*, 215 So.2d 414

² The property was originally zoned in 1971. The record did not disclose any substantial changes in the character of the neighborhood during that time.

(Miss.1968). (Emphasis added) *City of Oxford v. Inman* 405 So.2d 111, 113 (Miss., 1981)

Since the adoption of the ordinance in late 2004, no material change in conditions occurred. As the Court noted in *Town of Florence v. Sea Lands, Ltd.* 759 So.2d 1221, 1225 (Miss., 2000)

There is a strong presumption, therefore, that a municipality carefully considered its current and future needs when adopting its plan for development. The decision to change such a plan a mere two years after its adoption is suspect.

In this case, the decision to change occurred in half that time. It occurred in the absence of change in the character of the neighborhood.

II. CONCLUSIONS

Mississippi has consistently held that property owners are entitled to rely on the stability of zoning. As the Courts have noted it is not supposed to be easy to change zoning. First, the zoning must be in compliance with a comprehensive plan. In this case, the zoning change totally ignores the future land use element of the comprehensive plan. This is the element of the comprehensive plan which allows all to see exactly how a particular piece of land is proposed to be used. Though classification on the future land use plan is based on the principles set out in the goals and objectives element of the plan, it is clearly delineated so that debate of the application of the goals and objectives is determined on the front end. To review future land use, one only need to look at a map. Debate as to the application of goals and objectives is eliminated.

The only potential mistake in this case is legislative – not administrative nor clerical. There is no claim that any clerk or administrator made an error. The only error claimed is that some of the aldermen did not know what they were voting for.

There has been no change in the character of the neighborhood. This factor cannot support rezoning.

In Oxford, that which is intended to be permanent was changed in less than one (1) year. As the Court noted in *Town of Florence, Miss. v. Sea Lands, Ltd.*, 759 So.2d 1221, 1224(¶ 11) (Miss.2000), *supra*, this should be viewed with great suspicion. Though the actions of the Board of Aldermen are entitled to great deference, the power to rezone is limited by Mississippi's adoption of the modified *Maryland Rule*. The Appellant is entitled to the protections afforded under the zoning laws.

Respectfully submitted this the 10th day of March, 2008.

MICHAEL L. BRIDGE
APPELLANT

By: 

Jerry L. Mills [REDACTED]

Of Counsel

Jerry L. Mills [REDACTED]
PYLE, MILLS, DYE & PITTMAN
800 Avery Boulevard North, Suite 101
Ridgeland, MS 39157
Telephone: 601/957-2600
Facsimile: 601/957-7440

CERTIFICATE OF SERVICE

I, Jerry L. Mills, attorney for the Appellant, Michael L. Bridge, certify that I have this day served a copy of the forgoing Reply Brief of Appellant by United States mail with postage prepaid on the following:

Honorable Robert W. Elliott
Circuit Court Judge, Third Circuit District
105 East Spring Street
Ripley, Mississippi 38663

Pope S. Mallette, Esq.
Paul Bowie Watkins, Esq.
Stuart H. McCluer, Esq.
MAYO MALLETT PLLC
P. O. Box 1456
Oxford, MS 38655

T. H. Freeland, IV, Esq.
Joyce Marie Freeland, Esq.
Freeland & Freeland
P. O. Box 269
Oxford, MS 38655-0269

Ralph Coleman
350 Price Street
Oxford, MS 38655-3120

Dated this the 10th day of March, 2008.



Jerry L. Mills