

SUPREME COURT OF MISSISSIPPI
Court of Appeals of the state of Mississippi

NO. 2007-CP-1516
Consolidated with 2007-CP-1518

JAMES E. PRUITT AND KARLOTTA PRUITT-APPELLANTS

VS.

**THE ZONING BOARD OF THE CITY OF LAUREL, MS-
PLANNING COMMISSION.
APPELLEE**

AND

THE CITY COUNCIL OF LAUREL, MS.- APPELLEE

APPEAL

RESPONSE BREIF FOR THE APPELLANT

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ORAL ARGUMENT IS NOT REQUESTED

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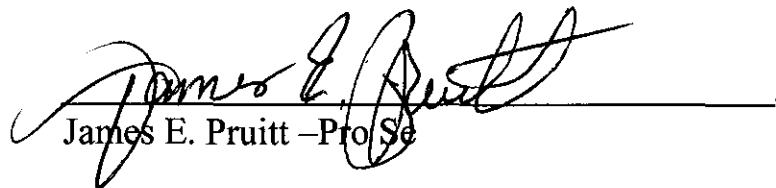
AND

THE CITY COUNCIL OF LAUREL, MS.- APPELLEE

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 the Supreme Court and/or the judges of the Appeals may evaluate possible disqualification or recusal.

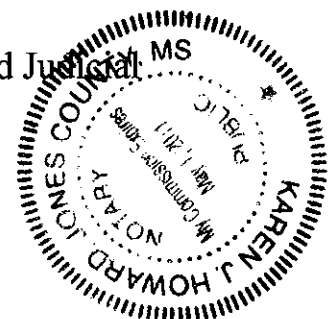
James E. Pruitt, Pro-Se – Pro Se Attorney for James and Karlotta Pruitt


James E. Pruitt –Pro Se

David Ratcliff Attorney for The Zoning Board of the City of Laurel, MS
Planning Commission

David Ratcliff Attorney for the City Council of Laurel, MS.

The Honorable Billy Joe Landrum, Circuit Court Judge, Second Judicial
District, Jones County, Mississippi



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FACTS

On May 3, 2007 Appellant's filed a document entitled Plaintiff's Complaint and a document entitled Plaintiff's motion in the Circuit Court of the Second Judicial District of Jones County, Mississippi, pursuant to Uniform Rules of Circuit and County Court Practice (U.R.C.C.C.P.). This appeal was given cause number 2007-40-CV5 (a/k/a case # 2007-CP-01516) by the Clerk.

The document entitled Complaint was an Appeal filed Complaining of the violation of the Zoning Board of the City of Laurel, Mississippi, Planning Commission :

- 1) Zoning Board Clerk Mailing letters of Notice of Hearing of the Zoning Petition to residents of Laurel, Mississippi that were not joining property owner of property requested to be re-zoned.
- 2) The Zoning Board of the City of Laurel, Mississippi, Planning Commission Zoning Ordinance, in the manner in which the hearing was conducted..
- 3) The failure of the City Council of Laurel, Mississippi to examine the findings of the Zoning Board of the City of Laurel, Mississippi, Planning Commission on April 17, 2007 to determine if the Zoning request met the criteria of the Three (3) Supreme Court rules for rezoning of property, instead the City Council of Laurel, Mississippi denied an appeal hearing that was placed upon the Council agenda by the Zoning Board Clerk.

On July 11, 2007 Appellants filed a document entitled Notice of Intent and a document entitled Appeal in the Circuit Court of the Second Judicial District of Jones County , Mississippi pursuant to Uniform Rules of Circuit and County Court Practice (U.R.C.C.C.P.). This Appeal was given a cause number 2007-73-CV7 (a/k/a 2007-CP-01518) by the Clerk.

Both of the foregoing documents were filed because of a request for a Package retail Beer Permit sale at property that was already zoned C-3 for the sale of beer and light wine. The request was refused by the City Clerk office due to a dispute of Little Angels Day Care Center being four (400) hundred feet or not.

- 1) The request was placed upon the Zoning Board agenda by the Clerk for a Distance Variance. The Laurel City ordinance # 803.05.02 only gives the Zoning Board of the City of Laurel, Mississippi, Planning Commission jurisdiction to conduct a hearing for a Distance variance when property is less than four (400) feet of a church or school, not a Day Care Center.
- 2) The City Council of Laurel, Mississippi failed to examine the findings of the Zoning Board of the City of Laurel, Mississippi, Planning Commission on July 3, 2007 to determine if the Distance Variance request should be granted, instead the City Council of Laurel, Mississippi denied an appeal hearing that was placed upon the Council agenda by the Zoning Board Clerk.

RESPONSE ARGUMENT AND LAW

As stated in Appellant's brief, on April 17, 2007 case # 2007-CP-01516 the City Council of Laurel, Mississippi denied the appeal placed upon their agenda to be heard. The City Council of Laurel, Mississippi did not examine the findings of the Zoning board hearing to determine if appellant met the criteria of rezoning property in accordance to the 3 Supreme Court rules

The State of Mississippi Supreme Court, rule states that the only basis for rezoning properties are: (brief exhibit A)

- 1) A mistake in the original (or last) rezoning
- 2) Change in the character of the neighborhood since the last zoning change.
- 3) Public need for additional land in the requested zoning classification.

And therefore did not enter a ruling based upon the City Council own findings.

The Laurel City Council did not enter a ruling pursuant to ordinance # 803.05.05 they merely denied to hear the appeal.

As stated in Appellants brief, on May 3, 2007 an Appeal was filed with the Circuit Court of the Second judicial District of Jones County, Mississippi within the 30 day limit pursuant to the . **Uniform Rules of Circuit and County Court Practice (U.R.C.C.C.P) rule #504 The Notice of Appeal and payment of cost**

must be simultaneously file and paid with the Circuit Clerk within thirty (30) days of the entry of the order or judgment being appealed”.

As stated in Appellant’s brief , on July 3, 2007 case # 2007-CP-01518 the City Council of Laurel, Mississippi denied the appeal placed upon their agenda to be heard. The City Council of Laurel, Mississippi did not examine the findings of the Zoning board hearing to determine if Appellants property was over 400 feet from a School or Church. And therefore enter a ruling based upon the City Council own findings. The Laurel City Council did not enter a ruling pursuant to ordinance #803.05.05 which states: **“To conduct a public hearing and to make a ruling”**, they merely denied to hear the appeal.

On July 11, 2007 Appellants filed an Appeal in the Circuit Court of the Second Judicial District of Jones County, Mississippi , within the 30 day limit pursuant to the . **Uniform Rules of Circuit and County Court Practice (U.R.C.C.C.P) rule #504 The Notice of Appeal and payment of cost must be simultaneously file and paid with the Circuit Clerk within thirty (30) days of the entry of the order or judgment being appealed”.**

. The Appellee stated that the Appellants failed to file a “Bill of Exceptions” as required by 11-51-75 of the Mississippi code of 1972. This statute also exclusively state that grievances and requires **“the municipal authorities after rendered such judgment or decision, and may embody the facts, judgment and decision in a bill of Exceptions which shall be signed by the person acting as president**

of municipal authorities. The Clerk thereof shall transmit the Bill of Exceptions to the Circuit Court at once”

Here Appellee states the Appellants believed incorrectly that the City was required to prepare and file a Bill of Exceptions for Appellants, however the Appellants believed correctly as the 11-51-75 clearly states that it is the responsibility of the Clerk to transmit the “Bill of Exception “ to the Circuit Court immediately. So it was the Appellee’s who believed incorrectly.

Appellants contacted the Laurel City Clerk, The Laurel City Council’s Clerk, and the President of the Laurel City Council in request of a “Bill of Exceptions”, and either one ever heard of a “Bill of Exceptions’. The City Clerk and the City Council Clerk were running all over the City Hall asking other workers what I was talking about. Finally while The Appellant was in the City Clerk’s office, the clerk called the Council President. He was unaware of what a “Bill of Exceptions” and stated he was not going to sign anything, and referred the Clerk to call the City Council’s Attorney. The City Council Clerk immediately contacted the City Attorney and asked him what is a “Bill of Exceptions”, and he, did not know enough to tell her what the Appellants was asking for.

After Appellants researched the Uniform Rules of Circuit and County Court Practice (U.R.C.C.C.P) rules, Appellants concluded that a “Bill of Exceptions” is nothing but the Records of a lower court or authority which in this case would be the Zoning Board of the City of Laurel, Mississippi, Planning Commission

“minutes of the hearing” and the City Council of Laurel, Mississippi “minutes of the hearing”.

The Appellants filed both the minutes of the Zoning Board and City Council for both cases #2007-CP-01516 and 2007-CP-01518, (mandatory excerpts pgs 18-21 & pgs 15-18) to the Circuit Court Clerk office. The documents contained the official signatures of the President of the City Council, the Clerk of the Council, the City Clerk and the Mayor of Laurel along with the official City Seal

However, the Appellee should have also noted that the rule of 11-51-75 , 10-day rule and filing of a Bill of Exceptions, with the Clerk is no longer the exclusive means of filing an appeal from an adverse decision of a lower authority.

In both cases #2007-CP-01516 & 2007-CP-01518 the Appeal was filed in a timely manner within 30 days of lower authority (City Council) in accordance to MISSISSIPPI RULES OF APPELLATE PROCEDURES adopted effective Jan 1, 1995 Rule #1 states Trial court practice is governed by applicable uniform rules, and local rules where adopted pursuant to M.R.C.P. 83.

The term "trial court" in these rules includes a circuit or chancery court sitting as an appellate court And in accordance to the **UNIFORM RULES OF CIRCUIT AND COUNTY COURT PRACTICE Adopted Effective May 1, 1995 Rule 5.04** states:

The party desiring to appeal with the Circuit Clerk, --In all appeals--The notice of appeal and payment of cost must be simultaneously filed and paid thirty (30) days of the entry of the order or judgment being appeal.

Rule 504 continue to state that the **Timely filing of this written notice and payment of costs will perfect the appeal.**

The Appellee states that the “Bill of Exceptions” could be filed within a reasonable time.

As stated the Appellants filed both the minutes of the Zoning Board and City Council for both cases #2007-CP-01516 and 2007-CP-01518.

The Appellee had no knowledge of the Zoning procedures of the State of Mississippi, The Supreme Court of the State of Mississippi or the City of Laurel Codes and Rules. The Appellee’s attorney have not attempted to file a reply to any of the facts, issues or arguments filed in the complaints to the Circuit Court of the Second Judicial District of Jones County, Mississippi Court of Appeals of the State of Mississippi.

This court discussed the issue of City Council refusing to rezone lots from residential to commercial classification , in *Hattiesburg v. Pittman* (Miss 1958) 233 Miss. 544.102So2d 352 .where it stated such refusal was arbitrary and capricious and unsupported by any substantial evidence.

The Appellee failed to affirmatively show this court in their brief that they did not act arbitrarily, unreasonable and capriciously .

The Appellee failed to offer any substantial evidence to this court that the neighborhood is not of a heavy commercial area.

The Appellees states that the paramount reason for dismissal by the trial court was the failure of the Appellants to comply with the requirements of 11-51-75 of the Mississippi Code of 1972 as Annotated and Amended.

These statements are further from the truth. It is clear from examining the Court Reporter reports of the Circuit Court of the Second Judicial District of Jones County, Mississippi, the Judge made no references to Appellants failure to comply with the requirements of the 11-51-75 of the Mississippi code of 1972 as annotated and amended.

In fact, on the day of the hearing the discussion of the Appellant not meeting the 10 day timely filing or filing a "Bill of Exceptions" was ever discussed by the Appellee's attorney nor the Judge Billy Joe Landrum.

Furthermore, although the Judge Billy Joe Landrum **erred** in his ruling that the City Council of Laurel, MS did not act arbitrarily and capriciously in making a wrong decision to deny hearing the Appeal which is apart of the Uniform Rules of

Circuit and County Court Practice (U.R.C.C.C.P.) rules **Adopted Effective May 1, 1995.**

So the Judge also based his ruling in accordance to the Uniform Rules of Circuit and County Court Practice (U.R.C.C.C.P.) rules in this case.

Judge Billy Joe Landrum states in the July 30, 2007 transcript page 2 lines 9-15 “sitting as an appellate judge in this case, the only thing I can make a ruling on is as to whether or not there were any mistakes made by the people that made the decision in this matter and if they arbitrarily made the wrong decision and didn’t follow the law”

Judge Billy Joe Landrum further states in the July 30, 2007 transcript page 2 lines 16-18 “so, file me an order upholding the ruling of the Commission.

Judge Billy Joe Landrum stresses again on court transcript page 5 lines 2-4 “I’ll file an order upholding the Commission’s findings. All right”

The Judge Billy Joe Landrum was clear in his order to uphold the Commission’s findings, .

The Judge requested that an order be drawn up to state that he examined the file and did not find where there was no error committed by the Zoning board or the City Council, for that reason , he was not going to hear either cause number, and

advised the Appellants if they wanted their causes to be heard , to appeal them to the Supreme Court of the State of Mississippi.

The entire case was based on the Uniform Rules of Circuit and County Court Practice (U.C.C.R.P.) rules, from the filing of the case by the Appellants to the Jones Count Circuit Clerk office, to the decision rendered by the Judge Billy Joe Landrum.

In 2007 the Jones County Circuit Clerk's office follow the rules of the Uniform Rules of Circuit and County Court Practice (U.C.C.C.R.P.) in filing of Appeal notices. Payment must accommodate Notice. They will not accept the notice without the payment.

However, in the past when the Court was following the 11-51-75 , the appellant just needed to file the notice and the "Bill of Exception" within 10 days **without payment.**

In 2007, that practice is no longer accepted by the Jones County Clerk's office. It is clear that the Appellants and the Judge Billy Joe Landrum was on the same page and followed the same rules the Uniform Rules of Circuit and County Court Practice

It is also clear that the Appellee's were not on the same page as the Appellant and the Circuit Court judge by not following the rules of the Uniform Rules of Circuit and County Court Practice

Furthermore, it is clear that the Appellee incorrectly applied the 11-51-75 to these causes #2007-CP-01516 & 3007-CP-01518 and choose to follow *partial* of the rule of the 11-51-75 for their own gain.

The Appellee's attorney did not follow Circuit Court Judge Billy Joe Landrum's directive to give him an order upholding the Commission's finding, instead the Appellee's attorney substituted the Commission's findings with his own reason the case should be dismissed.

The Appellee's attorney substituted the correct order requested by the Judge and filed the order to the Judge with his own reason of "Order of Dismissal with Prejudice" as governed by Section 11-51-75 of the Mississippi Code of 1972 as annotated and amended.

CONCLUSION

The Appellants have provided this court with clear and convincing evidence that the Zoning Board of the City of Laurel , Planning Commission and the City Council of Laurel, Mississippi acted arbitrary and capriciously in their denial decision for cause # 2007-CP-01516 & 2007-CP-01518..

FOR THE REASONS, the Appellants, James E. and Karlotta Pruitt prays :

- 1) The Appellees' Brief to this court should be stricken as frivolous and without substance, as such refusal was manifested arbitrary and capricious and unsupported by any substantial evidence as in the case City of Hattiesburg v. Pittman (Miss. 1958)233 Mis.544, 102 So.2d 352.. The Appellees did not attempt to address any of the issues , facts, or argument raised by the Appellants..
- 2) This court should reverse the prior judgment decision of the City Council of Laurel, Mississippi to rezone area from Industrial -1 to Commercial -3 classification and grant the Zoning request filed in the City of Laurel, Mississippi for case #2007-CP-01516, the Court Costs, any other relief by the statue, and grant any other relief this court deems equitable and proper.
- 3) This court should reverse the prior judgment decision of the City Council of Laurel, Mississippi to grant Privilege License for the sell of light wine and beer, and grant the Privilege license request filed in the City of Laurel, Mississippi for case #2007-CP-01518, the Court Costs, any other relief by the statue, and grant any other relief this court deems equitable and proper.

I, James E., Appellant state for he and his wife Karlotta Pruitt, Appellant, in the above complaint that I stated in the manner all parties are familiar with.

A handwritten signature in cursive script, appearing to read "James E. Pruitt", is written over a horizontal line.

James E. and Karlotta Pruitt / Appellants

James E. Pruitt / Pro-Se
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601-326-2025

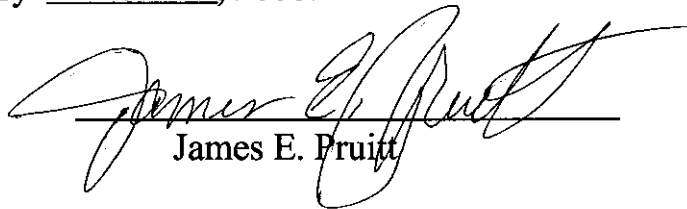
CERTIFICATE OF SERVICE

The undersigned, have been first duly sworn on oath, deposes and states that he served the Supreme Court Response Brief to:

David Ratcliff, 525 Central Avenue, suite 1, Laurel Mississippi 39440

Honorable Billy Joe Landrum –Circuit Court Judge, P.O. Box 685, Laurel, Mississippi 39441

by hand delivery on January 25, 2008.


James E. Pruitt

Signed and Sworn to before me
This 25th day of January 2008.


Karen J. Howard

