

**IN THE SUPREME COURT OF MISSISSIPPI**

**MARK C. MODAK-TRURAN AND ANITA K.  
MODAK-TRURAN and  
DANIEL M. BAKER AND  
KATHERINE S. BAKER**

**APPELLANTS**

**VS.**

**CASE NO. 2008-CA-00105**

**CONSOLIDATED WITH CASE NO. 2008-CA-00104**

**MAYOR HARVEY JOHNSON, IN HIS OFFICIAL  
CAPACITY ONLY, AND THE CITY COUNCIL OF  
JACKSON, MISSISSIPPI, CAROL N. SIMMONS,  
AND WILLIAM J. SIMMONS, DECEASED D/B/A  
THE FAIRVIEW INN**

**APPELLEES**

---

**ON APPEAL FROM ORDER OF THE  
CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT  
OF HINDS COUNTY, MISSISSIPPI**

---

**RESPONSE BRIEF  
OF THE MAYOR AND CITY COUNCIL  
OF JACKSON, MISSISSIPPI, APPELLEE  
TO THE BRIEF OF APPELLANTS MARK AND ANITA MODAK-TRURAN**

---

**PIETER TEEUWISSEN  
SPECIAL ASSISTANT TO THE CITY ATTORNEY  
CLAIRE BARKER HAWKINS  
DEPUTY CITY ATTORNEY**

**OFFICE OF THE CITY ATTORNEY  
CITY OF JACKSON, MISSISSIPPI  
455 East Capitol Street  
Post Office Box 2779  
Jackson, Mississippi 39207  
Telephone: 601-960-1799**

**COUNSEL FOR APPELLEE**

**C O P Y**

**IN THE SUPREME COURT OF MISSISSIPPI**

**MARK C. MODAK-TRURAN and  
ANITA K. MODAK-TRURAN and  
DANIEL M. BAKEAR and  
KATHERINE S. BAKER**

**APPELLANTS**

**VS.**

**CAUSE NO. 2008 CA-00104  
CONSOLIDATED WITH CAUSE NO. 2008-CA-**

**00105**

**MAYOR HARVEY JOHNSON, In his  
Official capacity and THE CITY COUNCIL  
OF JACKSON, MISSISSIPPI, CAROL N.  
SIMMONS AND WILLIAM J. SIMMONS,  
DECEASED D/B/A THE FAIRVIEW INN**

**APPELLEES**

**AMENDED CERTIFICATE OF INTERESTED PERSONS**

Pursuant to Miss.R.App. 28(a)(1), 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 Court of Appeals may evaluate possible disqualification or recusal:

1. Dan M. Baker, Esq.  
Katherine S. Baker, Esq.  
729 Fairview Street  
Jackson, MS 39202  
*Appellants*
2. Dr. Mark C. Modak-Truran, Esq.  
Anita Modak-Truran, Esq.  
735 Fairview Street  
Jackson, MS 39202  
*Appellants*
3. Crane D. Kipp, Esq.  
Wise Carter Child & Caraway, P.A.  
P.O. Box 651  
Jackson, MS 39205

**C O P Y**

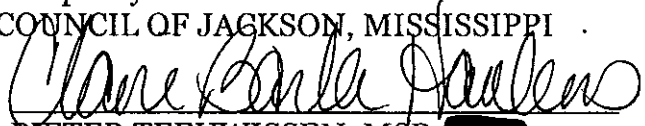
*Counsel for Interveners*

4. Robert P. Wise, Esq.  
Sharpe & Wise PLLC  
120 North Congress Street, Suite 902  
Jackson, MS 39201  
*Counsel for the Interveners*
5. Former Mayor Harvey Johnson, in his official capacity  
Jackson City Council  
*Appellees*
6. The Estate of William J. Simmons, Deceased  
Carol Simmons, Administratrix  
311 Highland Park Blvd.  
Ridgeland, Ms 39157  
*Appellee*
7. Sharp Hospitality LLC and/or Peter Sharp  
734 Fairview Street  
Jackson, Mississippi 39202
8. Sarah O'Reilly-Evans, City Attorney  
Pieter Teeuwissen, Special Assistant to the City Attorney  
Claire Barker Hawkins, Deputy City Attorney  
455 East Capitol Street  
Jackson, Mississippi 39201  
*Counsel for Appellees*
9. Hon. Bobby DeLaughter, Presiding Judge  
Hinds County Circuit Court  
407 East Pascagoula Street  
Jackson, Mississippi 39201

Respectfully submitted,

FORMER MAYOR HARVEY JOHNSON, in his  
Official Capacity  
CITY COUNCIL OF JACKSON, MISSISSIPPI

By:

  
PIETER TEEUWISSEN, MSB [REDACTED]  
Special Assistant to the City Attorney  
CLAIRE BARKER HAWKINS, MSB #101312  
Deputy City Attorney

**IN THE SUPREME COURT OF MISSISSIPPI**

**MARK C. MODAK-TRURAN and  
ANITA K. MODAK-TRURAN and  
DANIEL M. BAKEAR and  
KATHERINE S. BAKER**

**APPELLANTS**

**VS.**

**CAUSE NO. 2008 CA-00104**

**CONSOLIDATED WITH CAUSE NO. 2008-CA-**

**00105**

**MAYOR HARVEY JOHNSON, In his  
Official capacity and THE CITY COUNCIL  
OF JACKSON, MISSISSIPPI, CAROL N.  
SIMMONS AND WILLIAM J. SIMMONS,  
DECEASED D/B/A THE FAIRVIEW INN**

**APPELLEES**

**CERTIFICATE OF INTERESTED PERSONS**

Pursuant to Miss.R.App. 28(a)(1), 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 Court of Appeals may evaluate possible disqualification or recusal:

1. Dan M. Baker, Esq.  
Katherine S. Baker, Esq.  
729 Fairview Street  
Jackson, MS 39202  
*Appellants*
2. Dr. Mark C. Modak-Truran, Esq.  
Anita Modak-Truran, Esq.  
735 Fairview Street  
Jackson, MS 39202  
*Appellants*
3. Crane D. Kipp, Esq.  
Wise Carter Child & Caraway, P.A.  
P.O. Box 651  
Jackson, MS 39205

*Counsel for Interveners*

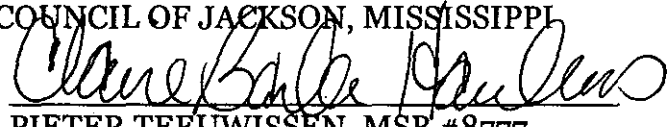
4. Robert P. Wise, Esq.  
Sharpe & Wise PLLC  
120 North Congress Street, Suite 902  
Jackson, MS 39201  
*Counsel for the Interveners*
5. Former Mayor Harvey Johnson, in his official capacity  
Jackson City Council  
*Appellees*
6. The Estate of William J. Simmons, Deceased  
311 Highland Park Blvd.  
Ridgeland, Ms 39157  
*Appellee*
7. Sharp Hospitality LLC and/or Peter Sharp  
734 Fairview Street  
Jackson, Mississippi 39202
8. Sarah O'Reilly-Evans, City Attorney  
Pieter Teeuwissen, Special Assistant to the City Attorney  
Claire Barker Hawkins, Deputy City Attorney  
455 East Capitol Street  
Jackson, Mississippi 39201  
*Counsel for Appellees*
9. Hon. Bobby DeLaughter, Presiding Judge  
Hinds County Circuit Court  
407 East Pascagoula Street  
Jackson, Mississippi 39201

Respectfully submitted,

FORMER MAYOR HARVEY JOHNSON, in his Official  
Capacity

CITY COUNCIL OF JACKSON, MISSISSIPPI

By:

  
PIETER TEEUWISSEN, MSB #8777  
Special Assistant to the City Attorney  
CLAIRE BARKER HAWKINS, MSB #101312  
Deputy City Attorney

## TABLE OF CONTENTS

STATEMENT REGARDING ORAL ARGUMENT .....	1
STATEMENT OF THE ISSUES .....	1
STATEMENT OF THE CASE .....	2
STATEMENT OF THE FACTS .....	3
SUMMARY OF THE ARGUMENT .....	10
ARGUMENT .....	15
I. STANDARD OF REVIEW .....	15
II. Text Amendment 5 is a Text Amendment, not a map amendment or a de facto Rezoning of 734 Fairview Street from R-2 to C-3, thus did not result in illegal "spot zoning." .....	15
a. Text amendment 5 is a Text Amendment, not a de facto mp amendment rezoning to an unrestricted C-3 General Commercial District Restaurant.....	15
b. Text amendment 5 creating a procedure for an existing Class B Bed and Breakfast Inn permit holder to obtain a restaurant use did not create illegal "spot zoning" .....	16
III. The procedures the Council used in its adoption of Text Amendment 5 were within the City's discretion and did not violate the Appellants' due process rights to a full and fair hearing.....	17
IV. The Modak-Trurans fail to demonstrate that Text Amendment 5 is unconstitutional.....	17
a. The amendments are not "unconstitutionally vague." .....	18
b. The Modak-Trurans fail to establish that the ordinance is arbitrary in its enforcement.....	20

CERTIFICATE OF SERVICE .....23

CONCLUSION .....21

## AMENDED TABLE OF AUTHORITIES

### CASES

<i>Adams v. Mayor of City of Natchez</i> , 964 So.2d 629, 633 (Miss.App.2007) .....	12
<i>American v. Holland</i> , 554 F. 2d 237 (5 <sup>th</sup> Cir. 1977) .....	9
<i>Ballard v. Smith</i> , 107 So. 2d 580 (Miss. 1958).....	19
<i>Bossier City Medical Suite v. City of Bossier City</i> , 483 F. Supp. 633 (N.L. la 1980) .....	11
<i>City of Chicago v. Morales</i> , 527 U.S. 41, 119 S.Ct. 1849, 114 L.Ed.2d 67 (1999).....	18
<i>City of Ridgeland v. Estate of M.A. Lewis</i> , 2007 WL 1248511, ¶19 (Miss.App. May 1, 2007) .....	12
<i>Childs v. Hancock Co. Bd. of Sup'rs</i> , 2007 WL 3257014, 2007 Miss.App. ....	12
<i>Connaly v. General Constr. Co.</i> , 269 U.S. 385, 46 S.Ct. 126, 70 L.Ed. 322 (1926).....	18
<i>Drews v. City of Hattiesburg</i> , 904 So.2d 138 (Miss.2005).....	12
<i>Dumas v. City of Dallas</i> , 648 F. Supp. 1061 (N.D. Tx. 198.....	11
<i>Fondren North Renaissance v. Mayor and City Council of City of Jackson</i> , 749, So.2d 974 (Miss. 1999) .....	10, 16
<i>Hill v. Colorado</i> , 530 U.S. 703, 120 S.Ct. 2480, 147 L.Ed.2d 597 (2000).....	18
<i>Massachusetts Board of Retirement v. Murgia</i> , 427 U.S. 307, 96 S. Ct. 2562, 49 L. Ed. 2d 520 (1976).....	11
<i>Mayor &amp; Board of Aldermen, City of Clinton v. Welch</i> , 888 So.2d 416, 422 (Miss. 2004).....	17, 18, 19
<i>Memphis Light, Gas &amp; Water Div. v. Craft</i> , 436 U.S. 1, 56 L. Ed. 2d 30, 98 S. Ct. 1554 (1978).....	17
<i>Miss. Power Co v. Gowdy</i> , 459 So.2d 257 (Miss.1984).....	17
<i>New Albany v. Ray</i> , 417 So.2d 550 (Miss. 1982) .....	12

C O P Y



## TABLE OF AUTHORITIES

### CASES

<i>Adams v. Mayor of City of Natchez</i> , 964 So.2d 629, 633 (Miss.App.2007) .....	10
<i>American v. Holland</i> , 554 F. 2d 237 (5 <sup>th</sup> Cir. 1977) .....	9
<i>Ballard v. Smith</i> , 107 So. 2d 580 (Miss. 1958).....	19
<i>Bossier City Medical Suite v. City of Bossier City</i> , 483 F. Supp. 633 (N.L. la 1980) .....	9
<i>City of Chicago v. Morales</i> , 527 U.S. 41, 119 S.Ct. 1849, 114 L.Ed.2d 67 (1999).....	18
<i>City of Ridgeland v. Estate of M.A. Lewis</i> , 2007 WL 1248511, ¶9 (Miss.App. May 1, 2007) .....	10
<i>Childs v. Hancock Co. Bd. of Sup'rs</i> , 2007 WL 3257014, 2007 Miss.App. ....	10
<i>Connaly v. General Constr. Co.</i> , 269 U.S. 385, 46 S.Ct. 126, 70 L.Ed. 322 (1926).....	18
<i>Drews v. City of Hattiesburg</i> , 904 So.2d 138 (Miss.2005).....	10
<i>Dumas v. City of Dallas</i> , 648 F. Supp. 1061 (N.D. Tx. 198.....	10
<i>Fondren North Renaissance v.</i> <i>Mayor and City Council of City of Jackson</i> , 749, So.2d 974 (Miss. 1999) .....	9, 14
<i>Hill v. Colorado</i> , 530 U.S. 703, 120 S.Ct. 2480, 147 L.Ed.2d 597 (2000).....	18
<i>Massachusetts Board of Retirement v. Murgia</i> , 427 U.S. 307, 96 S. Ct. 2562, 49 L. Ed. 2d 520 (1976).....	9
<i>Mayor &amp; Board of Aldermen, City of Clinton v. Welch</i> , 888 So.2d 416, 422 (Miss. 2004).....	17, 18, 19
<i>Memphis Light, Gas &amp; Water Div. v. Craft</i> , 436 U.S. 1, 56 L. Ed. 2d 30, 98 S. Ct. 1554 (1978).....	14
<i>Miss. Power Co v. Gowdy</i> , 459 So.2d 257 (Miss.1984).....	14
<i>New Albany v. Ray</i> , 417 So.2d 550 (Miss. 1982) .....	10

<b><i>Nichols v. City of Gulfport</i></b> , 589 So.2d 1280 (Miss. 1991).....	18
<b><i>Thrash v. Mayor and Commissioners of the City of Jackson</i></b> , 498 So.2d 801, 808 (Miss.1986) .....	2, 10
<b><i>Smith v. Goguen</i></b> , 415 U.S. 566, 94 S.Ct. 1242, 39 L.Ed.2d 605 (1974).....	18
<b><i>Stansberry v. Holmes</i></b> , 613 F. 2d 1285, 1288 (5 <sup>th</sup> Cir. 1980).....	10
<b><i>Stoney v. Office of Personnel Management</i></b> , 519 F. Supp. 54 (N.D. Ga 1981).....	10
<b><i>Village of Belle Terre v Boraas</i></b> , 416 US 1, 4, 39 L. Ed 797, 94 S. Ct. 1536 (1974) .....	2, 9
<b><i>Village of Euclid v Ambler Realty Co.</i></b> , 272 US 365, 71 L Ed. 303, 47 S. Ct. 114 (1926).....	1, 17
<b><i>Woodland Hills Conservation Assn, Inc. v City of Jackson</i></b> , 433 So.3d 1173, 1181-82 (Miss. 1983).....	2
<b><i>Zahn v. Board of Public Works</i></b> 274 U.S. 325, 47 S.Ct. 594. 71 L. Ed. 1074 (1927) .....	9
<b><u>STATUTES</u></b>	
Jackson, Miss., Zoning Ordinance § 202.17 .....	2
Jackson, Miss., Zoning Ordinance § 202.17(a) .....	2
Jackson, Miss., Zoning Ordinance § 1701.02-A .....	11
Jackson, Miss., Zoning Ordinance § 1704.02-A.....	2

## **STATEMENT REGARDING ORAL ARGUMENT**

The Appellees see no need for oral argument. The parties have ably made their record in accord with the prescribed procedures of the City of Jackson Zoning Ordinance and adopted procedures and extensively briefed their arguments.

## **STATEMENT OF THE ISSUES**

- I. Whether the Appellants have met their burden on appeal to show that the Jackson City Council's legislative adoption of Text Amendment 5 was arbitrary, capricious, discriminatory, illegal, not supported by substantial evidence, and not "fairly debatable."
- II. Whether Appellants have met their burden on appeal to show Text Amendment 5 creates an impermissible rezoning of the Fairview Inn's Property from a Class B Bed and Breakfast Inn with a restricted permanent use permit within R-2 Residential Zoning, to an unrestricted C-3 General Commercial Restaurant, resulting in "illegal spot zoning."
- III. Whether Appellants have met their burden on appeal to show the City Council's adoption of Text Amendment 5 and its procedures for an existing Class B Bed and Breakfast Inn permit holder to obtain a restaurant use was not within the City Council's discretion.
- IV. Whether appellants have met their burden on appeal to show the City Council's adoption of Text Amendment 5 deprived Appellants of a full and fair hearing, or violated the appellants rights to due process.
- V. Whether the Appellants have demonstrated that Text Amendment 5 is unconstitutionally vague or arbitrarily enforced.

## STATEMENT OF THE CASE

Pursuant to its legislative judgment and function long recognized in federal and Mississippi jurisprudence (*Village of Euclid v Ambler Realty Co.*, 272 US 365 at 387-88, 71 L Ed. 303, 47 S. Ct. 114, 54 ALR 1016 (1926); *Village of Belle Terre v. Boraas*, 416 US 1 at 4, 39 L. Ed 797, 94 S. Ct. 1536 (1974); *Woodland Hills Conservation Assn, Inc. v. City of Jackson*, 433 So.3d 1173 at 1181-82 (Miss. 1983); and *Thrash v. Mayor and Com'rs of City of Jackson*, 498 So.2d 801 at 806 (Miss.1986)), the City Council of the City of Jackson, Mississippi at a hearing on April 7, 2004, voted unanimously 5-0 to adopt certain text amendments to its existing 1974 City Zoning Ordinance, as amended. (R.159). The City Council adopted the text amendments by following the "Procedure for Text Amendments" set out in the City's zoning ordinances at Section 1704-A which requires the publication of notice and a public hearing, "before the City Planning Board and/or City Council". Section 1704.02-A. The Appellants have appealed the City Council's adoption of the two sections of Text Amendment 5 to this Court. Text Amendment 5, Section 1 amends City ordinance Section 202.17 defining Bed and Breakfast Inn Class B by adding a new definition under Class B Inns for a "Class B Bed and Breakfast Inn With Restaurant" (as Section 202.17(a)). Text Amendment 5, Section 2 amends Section 602.02.3, "Uses which May Be Permitted as Use Permits", by adding language concerning procedures for adoption of a "Class B Bed and Breakfast Inn With Restaurant" use by either a new use permit applicant or by any existing Class B Bed and Breakfast Inn use permit holder. The text amendments pertaining to the Bed and Breakfast Inn definitions were presented to the Council at the request of city council members. (R.361).

The Appellants appealed the decision of the Jackson City Council to the Circuit Court of Hinds County, First Judicial District. The Court appointed a special master who on October 3, 2007, "after weighing all of the evidence", found that the amendments constituted "spot zoning", and recommended that the Court rule in favor of the Appellants (R.E. Order, p.41). The Circuit Court issued its Memorandum Opinion and Order on December 4, 2007, finding that the special master's conclusion "cannot be reconciled with the record" in light of "evidence of public need in the record, and such evidence vitiates the 'spot zoning argument.'" (R.E., Order p.17). The Circuit Court ordered that the special master's report and recommendation be rejected and that the amendments of the City of Jackson be affirmed. (R.E, Order p.21).

### **STATEMENT OF THE FACTS**

The Appellees adopt the Statement of Facts recited by them in their response to the brief of Appellants, Daniel M. and Katherine S. Baker and incorporate same by reference herein. In addition, Appellees point out the following factual clarifications to the Modak-Truran Statement of Facts:

The Modak-Trurans consistently assert that Text Amendment 5 (which they pejoratively refer to as the "Fairview Inn Amendments" despite the undisputed fact that Text Amendment 5 is applicable to all properties in the City of Jackson that fall within its description, now or at anytime in the future)" effectively rezone and reclassify an R-2 Single family and Two-Family Residential District into a C-3 General Commercial District." However, as recognized by the Circuit Court, the Zoning Map of the City remains unchanged and the property of the Appellants, as well as the Fairview Inn, remained zoned R-2, as they have been since the initial adoption of zoning ordinance for

the City. The adoption of Text Amendment 5 has in no way modified the zoning classification of any property in the City of Jackson, just as the issuance of a use permit in 1993 affording the owners of Fairview the right to use that property as a Bed and Breakfast, Class B, had no effect on the R-2 zoning of Fairview.

The Modak-Trurans assert that Text Amendment 5 “run[s] afoul of the City’s comprehensive zoning scheme”. Unfortunately, the Modak-Trurans fail to recognize that the City adopted a new comprehensive land use plan on March 2, 2004 which embarks on a new planning regime favoring the New Urbanism favor mixed uses for Central City neighborhoods, such as Belhaven, as opposed to the strict segregation of residential and commercial uses of the old comprehensive plan and traditional “Euclidian” zoning. Text Amendment 5 was one of the first tiny acts of implantation of this new comprehensive plan by the City Council when it acted on April 7, 2007 to adopt Text Amendment 5.

The Modak-Trurans cite *Euclid*, *supra*, in support of the concept that an “important facet of the Zoning Ordinance ... is the protection of residential properties from encroachment by commercial and industrial land uses.” However, land use planning has evolved in many ways since 1926 and mixed land use giving City communities more of an integrated town flavor has not only developed all over the country, but was embraced by Jackson’s City Council with the adoption a month before the action complained of here of a new mixed use integrating comprehensive land use plan for the City. This mutation of land use and zoning thought has been expressly anticipated by this Learned Court. In *Woodland Hills*, *supra*, in 1983 this Court said, “[o]ur zoning Laws contemplated dynamic communities, recognizing the inevitability, if not the desirability of a change. That principal was reiterated again in *Thrash*, *supra*,

in 1986 where this Court went to say that, when such change presents itself, nearby property owners complain that the value of their properties will be diminished by the proposed change, and that "We listen with empathy for we know that the changes in law not adversely affecting the value of someone's property are few and far between. This petty larceny of its police power is one of the inevitabilities of organized society. The trick is to avoid government action effecting grand larceny ..." *Thrash, supra* at 806. The City of Jackson has once more pulled off that trick by accommodating a new but compatible property use through the terms and tailored limitations of use permits within an established and retained, zoning category.

The Modak-Trurans assert at page 5 of their Brief that commercial uses, such as restaurants, are prohibited in residential districts. However, the Jackson zoning ordinance allows otherwise prohibited uses in almost every zoning classification with what the City fathers deem to be appropriate restrictions through the use permit process. While the Modak-Trurans would have the Court believe that their block of Fairview Street is a pristine, cloistered single family residential neighborhood, remember where these properties lie. The Baker's property lies next to property owned by an architectural firm and used to ply its trade. Next door to the Fairview Inn is the 1600 Building a multistory Medical office building and its attendant parking lot. These properties both front on Fairview Street to their North and South respectively, and on North State Street, a major urban institutional and commercial thoroughfare, to their West. They are an integral part of the Commercial Corridor designated by the City Planning Department as the North State Street Corridor. In fact, Fairview is also technically a part of that commercial corridor in light of its leasehold interest in the parking lot of the 1600 Building which abuts Fairview's entire West border.

The Modak-Truran's characterize Fairview as hosting, before the enactment of Text Amendment 5, sporadically few weddings, birthday parties and corporate dinners. However, the Modak-Trurans also complain about the "social gatherings" offered by reservation at the Fairview Inn each night during the seven months prior to that enactment of Text Amendment 5. Before that enactment the Fairview Inn was permitted to operate and had operated since 1993 a Bed and Breakfast, Class B, Inn. After the enactment of Text Amendment 5, it was still permitted to operate as a Bed and Breakfast, Class B, Inn, but with restaurant which still hosts social gatherings including corporate dinners, receptions, dinner parties, weddings, wedding reception and weekend luncheons, etc.

The Modak-Truran's also flatly assert at page 6 of their brief that "Commercial uses are not permitted in an R-2 district." However, through the use of special exceptions and use permits, R-2 districts and other residential districts are permitted to host various commercial uses, subject to appropriate restrictions, Bed and Breakfast Inns, Class A and Class B, being some of those commercial uses expressly permitted in R-2 districts. In fact, the nature of such uses really doesn't materially or substantively change after the adoption of Text Amendment 5 other than to allow the service of dinner without advance reservations.

At page 6 of their brief, the Modak-Trurans characterize Fairview as hosting, before the enactment of Text Amendment 5, "sporadically few weddings, birthday parties and corporate dinners." However, the Modak-Trurans also complain about the "social gatherings" offered by reservation at the Fairview Inn each night during the seven months prior to that enactment of Text Amendment 5. Before that enactment the Fairview Inn was permitted to operate and had operated since 1993 a Bed and Breakfast



Inn, Class B. After the enactment of Text Amendment 5, it was still permitted to operate as a Bed and Breakfast Inn, Class B, but with restaurant. The Inn still hosts social gatherings including corporate dinners, receptions, dinner parties, weddings, wedding reception and weekend luncheons, etc.

On page 7 of their brief the Modak-Trurans acknowledge that the Bed and Breakfast, Class B, use permit of the Fairview Inn permits it to offer meals to "lodgers or guests of receptions other social gatherings." However, they also assert that "while the Fairview Inn may hold wedding receptions, birthday parties and corporate events on sporadic occasions, its classification as Class B Bed and Breakfast Inn does not allow it to operate a restaurant, night club or bar or function as a hotel or motel." Being permitted to serve meals to "guests of reception and other social gatherings" has allowed it to function much like a restaurant, with certain limitations (for example, on a reservations only basis), since 1993. Furthermore, Fairview has been permitted by the Alcohol Beverage Control Division of the Mississippi State Tax Commission to serve alcoholic beverages to the guests of receptions and other social gatherings since the mid 90's as well, so the Modak-Trurans characterizations are misguided.

At pages 7 and 8 of their brief the Modak-Trurans incorrectly assume that they understand the history of Fairview. Fairview was the W.J. Simmons' childhood home beginning in the 1920's. After his mother's death, in the early 1970's Mr. Simmons bought Fairview from his mother's estate and established his own family as the residents thereof. In 1993, Mr. and Mrs. Simmons applied for and received a use permit to utilize Fairview as an owner-occupied Bed and Breakfast Inn, Class B, in an R-2 zoned property. The property remained the Simmons family home until it was sold to the Peter Sharp family in 2006 where upon it became the home of Peter Sharp, his wife,

Tamar, and their 2 children, all the while still being also used as a Bed and Breakfast Inn (Class B prior to May or June 2004 and Class B with Restaurant after May of June 2004).

The Modak-Trurans also erroneously assert that the Simmons sought a rezoning of their Fairview home to a commercial classification, but abandoned that application when it was apparent that the City wouldn't grant the rezoning application. Actually, virtually all of the property owners within 160 feet of the Simmons family home supported that rezoning application, but Mr. Simmons, in a gesture of neighborly friendship and unity with the neighborhood association, agreed to withdraw his rezoning application and file for a use permit in exchange for a unanimous vote of the membership of the Belhaven Improvement Association in support of that use permit application at its annual meeting.

At pages 9 and 10 of the brief the Modak-Truran's recite portions of the content of a September 22, 2003 letter from the City Zoning Administrator to the Fairview Inn concerning a perceived violation of the Zoning Ordinance (R-212-13). However, they fail to point out or quote from the zoning Administrator's follow up letter of September 24, 2003 (R-244) that retracted her objection to Fairview's activities after she actually visited the Fairview Inn on the evening of September 22, 2003 and became aware of the actual activities rather than her presumption of what was happening.

The Modak-Trurans assert on page 11 of their brief that on January 28, 2004, the City Council brought two proposed zoning ordinance amendments before the City Planning Board at the request of the Fairview Inn. Councilwomen Margaret Barrett-Simon actually requested that the City Planning Department draft and present the proposed amendments since citizens have no standing to make application for or to

place proposed zoning ordinance text amendments on the agenda of either the Planning Board or the City Council. The Modak-Trurans also characterize the first amendment as proposing a new classification for use called a Bed and Breakfast Inn, Class B. However such a use had been defined and permitted under a use permit in an R-2 district since at least 1993. The proposed amendments proposed a new definition of Bed and Breakfast Inn, Class B with Restaurant, which would be a permitted use in R-2 districts.

The Modak-Trurans on page 13 of their brief make a point that the City Planning Department offered no evidence in support of Text Amendment 5 and was unable to identify a change in the neighborhood warranting a restaurant operation in a residential district. In a hearing concerning a zoning ordinance text amendment, the Planning Department generally has no need to offer evidence in support of the amendment. Normally they present the proposed amendment, explain why it is being presented and answer any questions the Planning Board and/or City Council have, which is exactly what happened in the hearings of their matter before both those bodies. For a text amendment, no showing of change in the neighborhood or need for the proposed land use is required to be made. Those standards are required for map amendments/rezonings.

On page 14 of their brief the Modak-Trurans on page 14 of their brief once again assert that there was "no" evidence of substantial change in the neighborhood or of a public need for rezoning a commercial use into a residential district. Once again it must be made clear that such conditions are required prerequisites for a rezoning/map amendment but are not prerequisites for a zoning ordinance text amendment.

The Modak-Trurans assert on page 14 of their brief that the Fairview Inn owners appealed the negative recommendation of the Planning Board to the City Council. That

is procedurally incorrect. All Planning Board recommendations automatically go before the City Council, which concurs with or overrules each such Planning Board recommendation as it sees fit. Furthermore, the Modak-Trurans also erroneously assert that the April 7, 2004 City Council Agenda reminded the council members that these amendments were expressly and directly for the benefit of the Fairview Inn. Please note that this agenda was not included in the record on appeal by the Circuit Court when it ordered what the record would consist of. Nevertheless, the quoted Note from Staff does not do or say what the Modak-Trurans assert. It does explain what the proposed text amendments would do and factually point out that there was, at that time, only one Bed and Breakfast Inn, Class B, in the City which could then avail itself of the new provisions.

The Modak-Trurans assert on page 17 of their brief that Text Amendment 5 would automatically allow the Fairview Inn to sell alcoholic beverages 7 days a week, 24 hours a day. This statement fails to appreciate that the zoning ordinance does not govern the sale of alcohol – the rules of the Alcohol Beverage Control Division of the Mississippi State Tax Commission govern such matters and their permittees are not authorized for 24/7 operation.

### **SUMMARY OF THE ARGUMENT**

As the Circuit Court's Opinion states, this Appeal of the City Council's adoption of Text Amendment 5, "is an appeal from a city council's legislative action" (Opinion, R.E. p.10). The applicable standard of review therefore starts with the recognition that the City's action, "is a legislative rather than a judicial matter." ***Fondren North Renaissance v. Mayor and City Council of City of Jackson***, 749 So.2d 974, 977

(Miss.1999). “since *Euclid* courts have traditionally afforded deference to the local zoning ordinances. See ***Village of Belle Terre v. Boraas***, 416 U.S. 1, 94 S. Ct. 1536, 39 L. Ed 2d (1974); and ***Trustee American v. Holland***, 554 F. 2d 237 (5<sup>th</sup> Cir. 1977). In such circumstances, the settled rule of this court is that it will not substitute its judgment for that of the legislative body charged with the primary duty and responsibility of determining the question.” ***Zahn v. Board of Public Works***, 274 U.S. 325, 47 S. Ct. 594, 71 L. Ed. 1074 (1927)” ***Bossier City Medical Suite v. City of Bossier City***, 483, F. Supp. 633 (N.O. La 1980). “The Supreme Court has repeatedly stated its ‘awareness that the drawing of lines that create distinctions is peculiarly a legislative task and an unavoidable one. ***Massachusetts Board of Retirement v. Mugia***, 427 U.S. 307, 314 96 S. Ct. 2562, 2567, 49 L. Ed. 2d 520 (1976). “Every line drawn by a legislative leaves some out that might well have been included. That exercise of discretion, however, is a legislative, not a judicial function.” ***Village of Beleterre v. Borass***, 416 U.S. 1, 8, 94 S. Ct. 1536, 1540, 39 L. Ed. 2d 797 (1974).” ***Stoney v. Office of Personnel Management***, 519 K. Supp. 54 (N.D. Ga 1981).

“The law of zoning allows the will of a majority, expressed through a representative body, to control the evolution of a community and shape its character.” ***Dumas v. City of Dallas***, 648 F. Supp. 1061 (N.D. Tex. 1986) (citing *Euclid* and ***Stansberry v. Holmes***, 613 F. 2d 1285, 1288 (5<sup>th</sup> Cir. 1980)).

The question on appeal therefore is whether the Appellants can meet their burden to show that the City Council’s legislative adoption of Text Amendment 5 was, “arbitrary, capricious, discriminatory, or is illegal, or without a substantial evidentiary basis” *Id.*; See also, ***City of Ridgeland v. Estate of M.A. Lewis***, 963 So.2d 1210, 1214 (Miss.App.,2007) and ***Thrash***, *supra*, at 806. As the Court stated, “[o]therwise,

the Mississippi Supreme Court has repeatedly held that ‘the judicial department of this state has no authority to interdict either zoning or rezoning decisions which may be said to be ‘fairly debatable’.” (Opinion, R.E. p.10, citing **New Albany v. Ray**, 417 So.2d 550, 552-53 (Miss.1982); **Drews v. City of Hattiesburg**, 904 So.2d 138, 140 (Miss. 2005); **Adams v. Mayor of City of Natchez**, 964 So.2d 629, 633 (Miss.App.2007); **Childs v. Hancock Co. Bd. Of Sup’rs**, 2007 WL 3257014, 2007 Miss. App. LEXIS 748 (Miss.App. Nov. 6, 2007). This “fairly debatable” standard and the limitations on judicial review of legislative land use planning actions both have their origins in **Euclid**, *supra* at 272 U.S. 365, 388, 395, 47 S. Ct. 114, 118, 121, 71 L.Ed. 303, 311, 314, and **Belle Terre**, *supra*.

Further, “[a]ppellate courts are to give deference to the zoning decision of the local governing board, as the decision is to be presumed valid.” **Estate of M.A. Lewis**, 963 So.2d at 1214. Also, the City Council, “is vested with the final authority for determining whether its procedural requisites have been met or, if it pleases, waiving them”. **Thrash v. Mayor and Commissioners of the City of Jackson**, 498 So.2d 801, 807 (Miss.1986). The Council thus had full discretion to modify the text of its existing ordinances on bed and breakfast use to set forth a procedure for an existing Class B Bed and Breakfast Inn permit holder to add a restaurant use under its existing Class B Inn permit.

Text Amendment 5 is a text amendment to the City’s zoning ordinances. Appellants have not shown that the procedure of Text Amendment 5 for the existing Class B Inn permit holder to add a restaurant use resulted in a *de facto* map amendment rezoning of 734 Fairview Street (The Fairview Inn) from R-2 residential zoning of the Inn with a restricted permanent use permit to an unrestricted “C-3 General Commercial

District Restaurant”, or that there was any rezoning at all from R-2, much less illegal “spot zoning”. A Class B Bed and Breakfast Inn with Restaurant is reasonably distinguishable from a C-3 General Commercial District Restaurant, and retains all of the use restrictions applicable to a Class B Bed and Breakfast Inn. Text Amendment 5 is a modest proposal allowing an historic Class B Bed and Breakfast Inn to serve meals on a “non-reservations basis” to the public, as well as on a “reservations-only” basis as in the past to private functions. The Council member for the Belhaven neighborhood stated on the record that adoption of Text Amendment 5 supports a public need to foster a mixed or blended use at the Fairview Inn of the kind that would contribute to the vitality of Belhaven as an urban neighborhood. (R.130-134). As the Court’s Opinion states, “[t]here is evidence of public need in the record, and such evidence vitiates the ‘spot zoning’ argument.” (Opinion, R.E. p. 17).

It was in the discretion of the City Council not to require the existing Class B Bed and Breakfast Inn permanent use permit holder to apply again for a use permit, or to go through a use permit hearing beyond the hearing the Council conducted for the adoption of Text Amendment 5. While not required, the City Council hearing in fact covered all of the criteria for a new use permit listed at Section 1701.02-A of the city ordinance. Both proponents and opponents of Text Amendment 5 participated in a vigorous debate over the Amendment’s adoption. Both sides presented arguments of counsel, lengthy memoranda with exhibits, and public witnesses. The Council afforded due process to the Appellants, who received adequate notice of and participated fully in all stages of the debate over Text Amendment 5, both before the City Planning Board and the City Council. Indeed, the very thorough and intense nature of the public debate, including the presentation of the arguments of counsel for both sides, supported by

memoranda, exhibits, and witnesses, produced a voluminous record that both sides contributed to. The record therefore demonstrates that Appellants cannot meet their burden to show that Amendment 5 was “not supported by substantial evidence”, was “not fairly debatable”, or was “arbitrary and capricious”. Appellants simply failed to persuade the City Council after a full debate, resulting in a unanimous vote by the Council (5-0) on April 7, 2004, to adopt the Amendment. (R.159). This Court, therefore, on appeal must affirm the Opinion of the Circuit Court and of the decision of the City Council adopting Text Amendment 5.

Finally, there is nothing contained in Text Amendment 5 that is unconstitutionally vague. The Appellants fail to demonstrate which portion[s] of the amendment is vague, lacks definition or capable unintended consequences. Instead, it is asserted that the amendment is vague when read as a whole. This argument is without merit. The amendment creating the Bed and Breakfast Inn Class B with Restaurant does not contain language that would deprive an ordinary citizen of “fair notice” of the function of the Bed and Breakfast. Thus, the amendment is not unconstitutionally vague. Moreover, the Appellants fail to prove that Text Amendment 5 will result in an arbitrary, unreasonable or unfair application of the amendment. The hypothetical instances cited by the Appellants are just that – hypothetical. There is absolutely no proof contained in the record that demonstrates the application of the amendment is arbitrary. Thus Text Amendment 5 is constitutional.



## ARGUMENT

### **I. STANDARD OF REVIEW**

The Appellees adopt the Standard of Review Argument recited by them in their response to the brief of Appellants, Daniel M. and Katherine S. Baker and incorporate same by reference herein. The Appellees would further point out that the “fairly debatable” standard of limited review adopted in Mississippi jurisprudence has its roots in *Euclid* (See *Thrash* at 806) and has been consistently applied by our courts ever since the legislature first authorized municipal adoption of zoning or land use planning ordinances.

### **II. Text Amendment 5 is a Text Amendment, not a Map amendment or a de facto Rezoning of 734 Fairview Street from R-2 to C-3, thus did not result in illegal “spot zoning.”**

#### **a. Text amendment 5 is a Text Amendment, not a de facto map amendment rezoning to an unrestricted C-3 General Commercial District Restaurant**

The Appellees adopt the arguments recited by them in their response to the brief of Appellants, Daniel M. and Katherine S. Baker, relative to the fact/issue that Text Amendment 5 is a text amendment to the City of Jackson Zoning Ordinance and not a de facto map amendment and incorporate same by reference herein. The Appellees would further point out that the City’s Zoning Ordinance contains no mechanism or procedure for a citizen or property owner (or even for the City Planning Department staff) to make application for an amendment of the text of the Zoning Ordinance. Such a change must be initiated and supported by the motion of a Council member in order to be considered.

**b. Text amendment 5 creating a procedure for an existing Class B Bed and Breakfast Inn permit holder to obtain a restaurant use did not create illegal “spot zoning”**

The Appellees adopt the arguments recited by them in their response to the brief of Appellants, Daniel M. and Katherine S. Baker, relative to the fact/issue that Text Amendment 5 did not create illegal “spot zoning” and incorporate same by reference herein. The Appellees would further point out that the City adopted a new comprehensive land use plan on March 2, 2004, only 1 month before the April 7, 2004 hearing before and action by the City Council, which fundamentally changed the land use planning focus of the City from urban and suburban/ residential and commercial segregation to a more New Urban mixed use planning focus, particularly for central city neighborhoods like Belhaven (with its North State Street Corridor plan and Fortification Street overlay district) and Fondren (with its North State Street and Old Canton Road commercial/retail districts). The action of the City Council on April 7, 2004 was one of the early acts by the City Council implementing that change in planning focus toward mixed use implementation. See comments of Councilwoman Margaret Barrett-Simon [R.130-134]. As a consequence, the adoption of Text Amendment 5 was and is consistent with the current comprehensive land use plan and cannot be “spot-zoning” as recited by this learned Court in *Fondren North Renaissance v. City of Jackson*, 749, So.2d 974, 979 (Miss.1999):

‘Spot-zoning’ is a term used by the courts to describe an amendment which is not in harmony with the comprehensive or well-considered land use plan of a municipality. [Citation omitted]. Consequently, it is not spot-zoning when an ordinance or amendment is enacted in accordance with a comprehensive zoning plan.

**III. The procedures the Council used in its adoption of Text Amendment 5 were within the City's discretion and did not violate the Appellants' due process rights to a full and fair hearing.**

The Appellees adopt the arguments recited by them in their response to the brief of Appellants, Daniel M. and Katherine S. Baker, relative to the fact/issue that the procedures used in the adoption Text Amendment 5 and the procedures contained in Text Amendment 5 were all wholly within the City Council's discretion and did not violate the Appellants' rights to a full and fair hearing which hearing was conducted twice, first before the Planning Board and then before the City Council, and the Appellants meaningfully and actively participated in both. In addition, Appellees would point out that state and federal jurisprudence identify a person's procedural due process rights relative to a state action which would allegedly affect protected property rights as being the right to timely notice of the proposed state action and a right to a hearing at which the complaining person would have a right to be heard and to present witnesses and evidence. *Miss. Power Co v. Gowdy*, 459 So.2d 257 (Miss. 1984) and *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 56 L. Ed. 2d 30, 98 S. Ct. 1554 (1978). In this instance, the Appellees were afforded all of those protections and availed themselves thereof vehemently and effectively before both the City of Jackson Planning Board on January 28, 2004 and the Jackson City Council on April 7, 2004. See R. pages 1-147 and 358-445.

**IV. The Modak-Trurans fail to demonstrate that the Text Amendment 5 is unconstitutional.**

The Modak-Trurans assert that Text Amendment 5 is unconstitutionally vague; however, the appellants fail to articulate how the zoning amendment is "vague, unclear and capable of unintended consequences." See *Mayor & Board of Aldermen, City*

*of Clinton v. Welch*, 888 So.2d 416, 422 (Miss. 2004). Additionally, it “must be said before the zoning ordinance can be declared unconstitutional, that such provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.” *City of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395, 47 S.Ct. 114, 121, 71 L.Ed. 303 (1926). The Modak-Trurans have likewise failed to demonstrate how the alleged “arbitrary enforcement” of the zoning ordinance has a substantial relation to public health and safety.

**a. The amendments are not “unconstitutionally vague.”**

The adopted text change, which is the center of the argument in the case *sub judice*, amended Section 202.17 of the City Zoning Ordinance. Specifically, said section defining Bed and Breakfast Inn Class B was amended to add a new definition for Class B Bed and Breakfast with Restaurant, as Section 202.17(a). This section states:

Section 202.17(a) Bed and Breakfast Inn with Restaurant:

An owner-occupied dwelling, which is the primary residence of the owner and where a portion of the dwelling is available for short-term lodging and where receptions or other similar private functions may be held. Meals may be served to ledgers, guests of receptions and other private functions and the general public as follows: A Bed and Breakfast Inn, Class B with Restaurant may engage in the preparation and retail sale of food and beverages including sale of alcoholic beverages. Customers are served their foods, or beverages by a restaurant employee at the same table at which said items are consumed. Advertising on local billboards is prohibited. This prohibition will not preclude, however, mailings or advertisements in newspapers and in national, regional state or local travel and tourism periodicals. (See Section 302.03 – 3).

(R.E. at p. 1). A government enactment is impermissibly vague where it fails to provide persons of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. *Hill v. Colorado*, 530 U.S. 703, 732, 120 S.Ct. 2480, 147 L.Ed.2d 597 (2000) (citing *City of Chicago v. Morales*, 527 U.S. 41, 54-57, 119 S.Ct. 1849, 114 L.Ed.2d 67 (1999) (ordinance prohibiting anyone from remaining “in any one place

with no apparent purpose” held unconstitutionally vague)). See also **Smith v. Goguen**, 415 U.S. 566, 582, 94 S.Ct. 1242, 1252, 39 L.Ed.2d 605 (1974) (term “treats contemptuously” the flag of the United States held void for vagueness.); **Connaly v. General Constr. Co.**, 269 U.S. 385, 46 S.Ct. 126, 70 L.Ed. 322 (1926) (“not less than the current rate of per diem wages in the locality” so uncertain as to be unconstitutional); **Nichols v. City of Gulfport**, 589 So.2d 1280 (Miss. 1991) (ordinance prohibiting “unnecessary or unusual noises” declared void for vagueness).

The leading Mississippi case that provides guidance as to whether an ordinance is impermissibly vague is **Mayor & Board of Aldermen, City of Clinton v. Welch**, *supra*. In **Welch**, the Supreme Court addressed the constitutionality of an ordinance that contained the phrase “accessory structure or use.” The Court found that the term “accessory structure or use” was unconstitutionally vague because the ordinance did not provide definitions for the terms “accessory structure” or “use.” **Welch**, 888 So.2d at 423 – 24. The City in **Welch** attempted to use the word “accessory building” to mean “accessory structure.” The Court found the ordinance unconstitutional because “the City provides no notice to the public that it utilizes the definition of ‘accessory structure or use’ to define ‘accessory building or use.’” *Id.* at 423. The Court ultimately concluded that the vagueness of these terms left the public to “guess” what is an accessory building and what is not, thus leaving the citizen to “appeal to the unfettered discretion of a City official who, on an ad hoc basis, decides the ‘accessory building’ du jour.” *Id.* The Court found that this not only deprived the citizen of fair notice, but unfairly required the City official to make a decision without providing a clear standard or guideline. *Id.*

There is nothing contained in the ordinance defining a Bed and Breakfast Inn Class B with Restaurant that could be considered impermissibly vague. More importantly, the Modak-Trurans fail to highlight which section of the ordinance is allegedly unconstitutional, instead, it is asserted that the ordinance is impermissibly vague when read as a whole. However, when one reads Section 202.17(a) in its entirety, the ordinance gives clear definitions as to what kind of food and beverages the establishment may serve, what advertising is allowed, and defines the establishment as one in which the owner occupies as a full time residence. Stated another way, there is absolutely nothing contained in the ordinance that would deprive any citizen of "fair notice" as to the function of a Bed And Breakfast Inn Class B with Restaurant, and there is nothing in the ordinance that would require a City official to make a decision regarding the ordinance without a clear guideline. Thus, the ordinance is not unconstitutionally vague.

**b. The Modak-Trurans fail to establish that the ordinance is arbitrary in its enforcement.**

The Modak-Trurans submit numerous examples of how the Fairview Inn will become a bar or a nightclub "with a dance floor or live entertainment." However, there is absolutely no proof that the new adoption of a Bed and Breakfast Inn Class B with Restaurant will result in this overly-dramatized outcome. Further, there is absolutely no proof that other businesses will be treated unequally by the enforcement of these sections. The only "proof" is a hypothetical argument asserted by the Modak-Trurans, who have no interest in a hotel or restaurant that would allegedly suffer by the enactments of the amendments. The Supreme Court has held numerous times that:

All presumptions must be indulged in favor of the validity of zoning ordinances. It is presumed to be reasonable and for the public good. It is presumed that the legislative body investigated it and found conditions such that the action which it took was appropriate. **The one assailing the validity has the burden of proof to establish that the ordinance is invalid or arbitrary or unreasonable as to his property, and this must be by clear and convincing evidence.**

***Ballard v. Smith***, 107 So. 2d 580, 586 (Miss. 1958)(emphasis added).

Here, there is no proof that the establishment of a Bed and Breakfast Inn Class B is arbitrary, unreasonable or unfair in its application. Nothing in the ordinance is discriminatory and nothing in the ordinance will result in a violation of one's due process. Thus, the Modak-Trurans argument that the amendments are arbitrary or that the Fairview Inn is afforded preferential treatment is without merit.

### **CONCLUSION**

The adoption of Text Amendment 5 was the well considered act of the City Council of the City of Jackson and was in the lawful exercise of its legislative discretion. The Appellants have not met their burden on appeal to show that Text Amendment 5 was "not supported by substantial evidence", was "illegal", was "not fairly debatable", or was "arbitrary and capricious" nor have shown that they were deprived of any of their constitutionally guaranteed due process protections or that the Text Amendments were in any wise unconstitutionally vague. Therefore, this Court on appeal should affirm the Opinion of the Circuit Court upholding the Jackson City Council's adoption of Text Amendment 5.

Respectfully submitted,

MAYOR HARVEY JOHNSON, IN HIS OFFICIAL  
CAPACITY ONLY, AND THE CITY COUNCIL OF  
JACKSON, MISSISSIPPI, APPELLEES

BY: SARAH O'REILLY EVANS, City Attorney

By: 

Pieter Teeuwissen (MSB # [REDACTED])  
Special Assistant to the City Attorney  
Claire Barker Hawkins (MSB #101312)  
Deputy City Attorney

Office of the City Attorney  
455 East Capitol Street  
Jackson, Mississippi 39201  
Telephone: (601) 960-1799  
Fax: (601) 960-1756



**AMENDED CERTIFICATE OF SERVICE**

I, CLAIRE BARKER HAWKINS, attorney for Appellees, do hereby certify that I have this day served via United States mail, a true and correct copy of the foregoing Response Brief to be mailed by U.S. mail, postage prepaid, to the Appellants as follows:

Dan M. Baker, Esq.  
Katherine S. Baker, Esq.  
729 Fairview Street  
Jackson, MS 39202  
*Appellants*


Dr. Mark C. Modak-Truran, Esq.  
Anita Modak-Truran, Esq.  
735 Fairview Street  
Jackson, MS 39202  
*Appellants*

Crane D. Kipp, Esq.  
Wise Carter Child & Caraway, P.A.  
P.O. Box 651  
Jackson, MS 39205  
*Attorney for Interveners*

Robert P. Wise, Esq.  
Sharpe & Wise PLLC  
120 North Congress Street, Suite 902  
Jackson, MS 39201  
*Attorney for Interveners*

Hon. Bobby DeLaughter  
Hinds County Circuit Court  
407 East Pascagoula Street  
Jackson, Mississippi 39201  
*Presiding Judge*

This the 5<sup>th</sup> day of January, 2009.

  
\_\_\_\_\_  
Claire Barker Hawkins