IN THE SUPREME COURT OF MISSISSIPPI

NO. 2008-CP-00477

STEVE LACROIX

APPELLANT

v.

MARSHALL COUNTY BOARD OF SUPERVISORS et al

APPELLEE

DATE OF JUDGMENT: 02/20/08

TRIAL JUDGE: SPECIAL CHANCELLOR, HON. JOHN A. HATCHER

COURT FROM WHICH APPEALED: MARSHALL COUNTY CHANCERY COURT

ATTORNEYS FOR APPELLANT: PRO SE

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NATURE OF THE CASE: CIVIL, CONSTITUTIONAL, US 42 1983

APPELLANT'S RESPONSE TO BRIEF OF THE APPELLEES

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Definitions

RB = Brief of Appellees

ARE = Appellants mandatory excerpts included in Appellants brief

R = court record

RE = New record excerpts to this motion

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ARGUMENT

Defendants have misstated the procedural history as well as significant facts of this case which are evidenced by the record. Their brief is riddled with improper as well as ad hominem arguments which are conclusory, are conjecture, lacking in veracity and reliability and are unsupported by the record and/or authority. Defendant's brief shows a propensity for adding words to the Orders of the Chancellor and stating less than the full facts as well as reciting only self serving portions of the record. Defendant's brief is characterized by generalities, deception, falsehood and divergence from absolute truth. Defendant's brief in large consists only of a continuous argument of the merits of the case as presented to the trial court and offers little or no evidence which might contradict the issues presented to this court on appeal. Defendant's attempt to create factual issues by argument and assertions that are contrary to the evidence, are unsupported by legal authority and which are not before this court.

Defendants state in the February 1, 2008 Bench Order (ARE 13) that the chancellor "found, that the Public Records Act issue regarding Marshall County Zoning Office was nothing more than a mere oversight." (RB- pg 3 ¶ 2) These words or any implication that the Zoning denial was a "mere oversight" do not appear in the Chancellor's "ruling from the bench on February 1, 2008." (ARE 13) This statement is factually frivolous and is an incorrect statement of fact. Defendant's implication is that the nature of denial by Zoning was not significant or worthy of judicial notice.

Defendants assert that the February 1, 2008 'bench ruling' by the Chancellor (ARE 13) directed LaCroix to pay Defendants for the cost of public records within two weeks from February 1, 2008. (RB- pg 3 ¶ 1) This is not the whole truth. The Order specifically provided that LaCroix was to pay the amount to be billed to LaCroix **"if it's a reasonable bill within compliance with the open records Public Records Act."** This order clearly provided that LaCroix was permitted not to pay the bill if it was **"unreasonable" and not in "compliance with the "Public Records Act"** in his discretion, which the bill was not. (RE 1, pg 3) As evidenced by the record, (ARE tab 5) Defendants arbitrarily charged LaCroix for a multitude of records that were never

requested by LaCroix nor were ordered by the court to be produced. Additionally, the bill included an arbitrary $50.00 per hour charge for attorney fees for 4.2 hours, charged by Defendants attorney, Kent Smith for his participation in producing the records to LaCroix pursuant to the order of the court. Defendants failed to bill LaCroix for the records until the day the records were mailed to LaCroix on February 15, 2008 and received on Feb. 16, 2008. (RB pg 28, ¶ 1) Defendants also state in their brief that the 2-1-08 bench ruling specifically ordered LaCroix to pay $206.00 to Marshall County for its costs incurred within two weeks from 2-1-08. (ARE 13) (RB pg 3, ¶ 1) This is factually incorrect and a careless and reckless assertion. The February 1st Bench Order entered by the Court contains no such Order by the Chancellor that LaCroix pay $206.00 to Marshall County. (ARE 13)

Assuming arguendo that defendant's statement that LaCroix was to unequivocally pay Defendants for the cost of their records within fourteen days from 2-1-08 is correct, Defendants did not provide LaCroix with a bill for the records until February 16, 2008, making it impossible for LaCroix to comply with the Court's order even if Defendant's bill was reasonable and in compliance with the Public Records Act. (ARE tab 6)

Defendants attempt to color the March 18, 2008 Order (ARE 15) by stating that, "Marshall County withdrew their Motion for Contempt "due to LaCroix's reluctant compliance with the Supplemental Order issued March 4, 2008." (RE 1) (RB pg 4 ¶ 2) This statement is factually frivolous and is a false statement as the Court's Order dated March 18, 2008 (ARE 18) nor any other portion of the records speak of LaCroix's "reluctant compliance with the Supplemental Order." The March 4, 2008 Order (RE 1) states at III simply that the "Defendants in open court withdrew their Motion for Contempt."

Defendant's claim LaCroix only appealed the February 20, 2008 Judgment. The Notice of Appeal filed was for the purpose of appealing the entire action, including all judgments and/or orders entered as evidenced in LaCroix's Appellant Brief, designation of records and record excerpts filed with the court. (RB pg 5 ¶ 1)

As the Marshall County tax and building records show, 372 River Ridge Circle is

one half of a duplex, the other side being 374 River Ridge Circle. Francisco Leal never lived at 372 River Ridge but did live at 374 River Ridge. Furthermore, as evidenced by the record, the name on the Mississippi Tag renewal form used by the Board of Supervisors and its employees to notify the tax collector to charge a lien and refuse to issue car tags is not Francisco Leal, but is Gonzalez Gabriel Leal. (R36) There is no evidence in the record which shows that Marshall County has or offered any support for denying Francisco Leal a car tag and collecting money from him.

Defendants state that because Francisco "Leal did not submit payment for the garbage services at 372 River Ridge Circle, which "caused a lien to be placed on his automobile tag which prohibited him from renewing the tag without first paying the past due amount." (RB pg 6 ¶ 2) Defendants fail to state that the tag lien was, in fact, against Gonzalez Gabriel Leal, not Francisco Leal. (ARE 9)

Defendants assert that LaCroix failed to identify the public records to be reviewed in his public records request sent to Zoning which was Zoning's reason for failing to permit the records inspection. (RB pg 7 ¶ 1) Defendants state "On August 6, 2007, LaCroix appeared at the Marshall County Zoning Office to copy the public records, but Marshall County did not have the records available because the specific records were not identified in the request." However, Defendants never offered any evidence to support their allegation. The record shows the notice LaCroix sent to Zoning which includes a list of public records which LaCroix wished to inspect.(R 203, 204) Additionally as the record shows, Wilson, in the zoning office, never stated that he would not make the records available because the records were not identified to him in the request. (R 238) Defendants then assert a different reason LaCroix was not permitted to inspect the records which was because of "impending elections." (RB pg 6 ¶ 2) Additionally, Smith's letter dated August 3, 2007 (R 205), which is dated 3 days prior to the date LaCroix appeared at Zoning to inspect public records, denotes Zoning and Smith's intent not to provide LaCroix with the records on the scheduled date. Furthermore, Moore testified that she was unable, in part, to comply with LaCroix's request because the office clerk, Eloise Finley called in sick on the date of the inspection. (2-21-08 Trial transcript, pg 32 at line 4) This argument by Moore is without

merit, LaCroix was not advised he could not inspect the records because Finley called in sick and Moore made the determination to deny LaCroix's request as early as August 3rd as evidenced by Smith's letter to LaCroix. Finley's unexpected absence was not known prior to the date of inspection and was nothing more than a convenient excuse which was added to Zoning's argument.

The Chancellor found in his January 14, 2008 Corrected Opinion and Partial Summary Judgment, that pursuant to the Public Records Act because LaCroix "did not return to pick up records requested" that "the failure to pick up records is not required to support a claim under the [Public Records] Act". (R 137 ¶3) The Chancellor found the Chancery Clerk and Board guilty of a wilful and knowing violation of the Public Records Act, assessing the statutory penalty.(R 137 ¶3) Defendants corroborate the Chancellors finding in their Appellee's Response Brief, Statement of Facts, stating, "LaCroix appeared in the Chancery Clerk's office and requested to copy and inspect public records. He was told that due to pending elections it was not feasible to make all the records available in such a short time. The Chancery Clerk offered to make the records available at a later date[.]" (RB pg 8, ¶1)

It is perplexing that the denial by the Board and Chancery Clerk due to "pending elections was wilful, yet with the circumstances identical at Zoning, that Zoning was too busy due to "pending elections" this denial was not a wilful denial. It is apparent that there was a complete failure of continuity and application of stare decisis or to adhere to the Chancellor's own dicta when making the two rulings regarding willful. If "the failure to pick up records" is inconsistent with the Public Records Act then being asked to return at a later date, by Zoning, for the same reasons should also be considered a wilful violation, especially when considering the evidence that Zoning was predisposed not to permit the inspection on the scheduled date.(R 137 ¶3) "They simply asked him to accommodate their busy schedule by returning at a later date." (RB pg 27, ¶1). The Act clearly states, "the right to inspect, copy public record of the public body shall be provided within one (1) working day after a written request for a public record is made." (§ 25-61-5(1) An exception for being too busy is not language in the statute.

If this honorable Court allows the ruling of the denial to permit LaCroix to inspect

public records by Zoning as a non-wilful act, the stands that being too busy may be an exception to the Act which will avoid the statutory penalties for denying access to public records. The public body need only state that they are 'too busy' and/or ask that the person requesting records "accommodate their busy schedule by returning at a later date." (R 137 ¶3, RB pg 27, ¶1) If the decision of the trial court is affirmed by this Court, such affirmation will establish precedent which creates an artful way for a public body to avoid compliance with public records requests while at the same time, avoiding being subjected to statutory penalties for its violation. (3-14-08 Trial transcript pg 99 at 12) As argued by LaCroix in his Appellant's brief, if the Mississippi Legislature had intended to make an exception to making records available as required by the Act because the public body is too busy or that the public must accommodate the public body's schedule, such an exception would appear in the statute. Needless to say, it is a failure to 'accommodate' the public in accordance with the Act as well as a causing inconvenience and costs in time and money to schedule a date to inspect public records only to be denied because the public body is too busy or any other reason which it deems appropriate. The public's concerns, such as a desperate or urgent need for access to public records are not addressed by such a constructive ruling made by the Chancery Court.

As the record shows, it was undoubtedly the intent of Zoning and their attorney on June 3, 2007, three days prior to the date of LaCroix's scheduled inspection to deny access to the records. The evidence in the record clearly demonstrates the wilfulness of Zoning to deny LaCroix's inspection. (R 205) Plainly speaking, the trial court's public records rulings are clearly ambiguous. Finally, cooperation with the Public Records Act by a public body is obligatory, not discretionary. [1]

Defendants argue that LaCroix's claim under 42 U.S. § 1983 and Miss. Code Ann. § 19-5-22 was properly dismissed because LaCroix lacked standing to bring a claim as the injured party. Defendants further present the argument that LaCroix's due process was not violated.(RB- pg 9, ¶ 1) Defendant's arguments are bare as they offer

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[1] Miss. Code Ann. 25-61-2 states: It is the policy of this state that public records shall be available for inspection by any person **unless otherwise provided by this chapter.**

no basis for their claim. (RB pg 12, ¶ 1, 2) LaCroix's standing and whether due process was or was not proper is not a question before this court however LaCroix puts forth the following rebuttal to defendants claims. [2]

Miss. Code Ann. § 19-5-22 mandatorily requires that the owner of the property **shall be** notified in writing. Clearly, as the owner of the property with an economic interest in the income derived from his tenants, LaCroix had standing to challenge the ultra vires action of the Board and its employees. *United States v. One 1945 Douglas C54 (DC-4) Aircraft*, 647 F.2d 864, 866 (8th Cir. 1981); see *7725 Unity Ave.*, 294 F.3d at 956; *1998 BMW*, 235 F.3d at 399; *United States v. One 1990 Chevrolet Corvette*, 37 F.3d 421, 422 (8th Cir. 1994) (a colorable interest may be evidenced in a number of ways including showings of actual possession, control, title and financial stake.) It is axiomatic that LaCroix has standing to defend and protect his real property from arbitrary and erroneous tax liens by government officials. As well LaCroix has a duty to hold his tenants harmless from fees and liens which properly are the liability of LaCroix.

The Supreme Court has stated, "In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues" *Warth v. Seldin*, 422 U.S. 490, 498 (1975). Defendants fail to demonstrate that LaCroix was not entitled to have the Chancery Court decide the merits of the issues before the court. Definitively, standing includes injury, which means that LaCroix must have suffered or there must be a real threat of injury as a result of the putative illegal conduct of defendants and the threat of injury may be economic as well as non-economic. *Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464, 472, 102 S. Ct. 752, 760 (1981) Next, there is a causal connection between the injury likely to occur and the conduct LaCroix complained of, thus such injury is traceable to the action of the Defendants. Further,

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[2] determine if a Plaintiff has standing, the court uses several general rules. These rules require that the claimant has suffered an actual or threatened injury; that the case alleges a sufficient connection (or nexus) between the injury and the defendant's action; that the injury can be redressed by a favorable decision; and that the plaintiff neither brings a generalized grievance nor represents a third party. In addition, separate rules govern taxpayers, organizations, legislators, and government entities. *Flast v. Cohen*, 392 U.S. 83, 88 S. Ct. 1942, 20 L. Ed. 2d 947

the trial court rulings did not state that LaCroix did not have standing. If LaCroix has standing to file a Bill of Exceptions as the court ruled, then LaCroix has standing to have a claim heard de novo. *Massachusetts v. Environmental Protection Agency*, 549 U.S. 497 (2007) LaCroix's challenge against the Board's arbitrary and capricious policy did not require LaCroix to show with certainty that he would be deprived under the Board's policy of collections under §19-5-22 in order to show injury, but only that LaCroix has an actual, well-founded fear that the law will be enforced against him or his tenants without fair notice as required by the statute." *Virginia v. American Booksellers Ass'n*, 484 U.S. 383, 393, 108 S. Ct. 636 (1988). There can be no doubt that LaCroix has alleged such a personal stake in the outcome of the controversy that he is entitled to the invocation of the courts. [3]

The continuation of the Board's policy of not providing LaCroix with notice before taking adverse action plainly exposes LaCroix to risk of deprivation and risk of interference with LaCroix's economic interest in his tenants well-being and it is highly likely that a favorable ruling by this court decision may redress such injury or exposure thereto. *Federal Election Commission v. Akins*, 524 U.S. 11 (1998) Exceptions may be made to standing for third parties to bring an action when the law over sweeps into the rights of others, such as occurred with LaCroix's tenant.

Defendant's Counsel sorely misses the mark in his understanding of the totality and breadth of procedural due process in his assertions through his citation of *Suddith v. University of Southern Mississippi*, 977 So.2d 1158, 1170 (Miss.Ap. 2007) (RB pg 17, ¶ 1) that "in order to trigger the procedural due process protections, the claimant must suffer a deprivation of a protected interest", which suggests that LaCroix was only entitled to due process upon proving that he was deprived by Defendants which explicitly implies that due process is only required ex post facto. Counsel asserts that LaCroix is only entitled to due process as a matter of law, if he **is deprived** of a

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[3] [A]n association [a landlord] has standing "in its own right to seek judicial relief from injury to itself" and in so doing may "assert the rights of its members [tenants], at least so long as the challenged infraction adversely affects its [his] members' [tenants'] associated ties." *Warth v. Seldin*, 422 U.S. 490, 511, 95 S. Ct. 2197, __ (1975). Alternatively, "even in the absence of injury to itself, an association may have standing solely as the representative of its members." Id. at 511

protected right.(RB pg 17, ¶ 2)

The 7th Circuit described procedural due process to include the pre-deprivation process which include oral or written notice of the charges, an explanation of the evidence, and an opportunity to tell your story . *Gilbert v. Homar*, 520 U.S. 924, 931-32 (1997) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). The Supreme court has held repeatedly that "Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property." *Carey v. Piphus*, 435 U.S. 247, 259 (1978). The notice sent to the property owner by the Board must be sufficient as to inform LaCroix precisely what action the Board intends to take. *Goldberg v. Kelly*, 397 U.S. 254, 267–68 (1970) And service of that notice must be structured to assure that LaCroix receives it. *Armstrong v. Manzo*, 380 U.S. 545, 550 (1965) ; *Robinson v. Hanrahan*, 409 U.S. 38 (1974) ; *Greene v. Lindsey*, 456 U.S. 444 (1982).

Even where a court finds that a party was not prejudiced by the lack of a hearing, and where an appeal was provided, nonetheless, failure to give notice and hearing is a violation of due process. *Nelson v. Adams USA, Inc.*, 529 U.S. 460, 466-68, 120 S.Ct. 1579, 146 L.Ed.2d 530 (2000) The purpose of this requirement is not only to ensure abstract fair play to the individual. "**Its purpose, more particularly, is to protect [LaCroix's] use and possession of property from arbitrary encroachment**." *Fuentes v. Shevin*, 407 U.S. 67, 80–81 (1972); *Joint Anti–Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 170–71 (1951). "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprize interested parties of the pendency of the action and afford them an opportunity to present their objections." *Richards v. Jefferson County*, 517 U.S. 793 (1996)

Further, the Supreme Court stated in Eldridge, Id "An opportunity to make an oral presentation to the decision-maker includes a pre-deprivation process, rather than post-deprivation, which may be required whenever there is an established state procedure to take away a property interest." There can be no doubt and it is indisputable that the clear language of Miss. Code Ann. §19-5-22 states that a notice

shall be sent before notifying the tax collector to charge a tag lien for unpaid garbage collections. Thus the states procedure clearly and indisputably requires the "pre-deprivation process, rather than post-deprivation."

Defendants argue that "in order to establish a viable procedural due process claim, LaCroix must show that before any of his rights may be affected by the state, he is entitled to a notice and an opportunity to be heard" (RB pg 12, ¶ 2). M.C.A. §19-5-22(2) 1) states in part: If fees are assessed on a basis other than annually, the fees shall become a lien on the real property offered the service on the date that the fees become due and payable. 2) **The county shall mail a notice of the lien, including the amount of unpaid fees and a description of the property subject to the lien, to the owner of the property**. 3) Before notifying the tax collector, the board of supervisors shall provide notice of the delinquency to the person who owes the delinquent fees and shall afford an opportunity for a hearing, that complies with the due process protections. Defendants argument is without merit, Miss. Code Ann. §19-5-22 clearly states LaCroix, as property owner is "entitled to a notice and an opportunity to be heard."

It is unclear why Defendants cite *Marco Outdoor Advertising, Inc. v. Regional Transit Authority* 489 F.3d at 7 (5th Cir. 2007) (RB pg 13, ¶1) as Marco wholly supports LaCroix's due process claim under M.C.A. §19-5-22. Marco states that a state may satisfy due process requirements by providing an adequate pre-deprivation remedy. An adequate remedy requires that, before it acts, the state must provide notice and an opportunity for a hearing to the property owner, see *Systems Contractors Corp. v. Orleans Parish Sch. Bd.*, 148 F.3d 571, 575-76 (5th Cir. 1998) (applying *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)), for "[w]hen protected interests are implicated, the right to some kind of prior hearing is paramount," *Bd. of Regents v. Roth*, 408 U.S. 564, 569-70, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972). The "root requirement" of due process is "that an individual be given an opportunity for a hearing before he is deprived of any significant property interest." *McKesson Corp. v. Div. of Alcoholic Beverages and Tobacco, Dept. of Bus. Regulation of Fla.*, 496 U.S. 18, 37, 110 S.Ct. 2238, 110 L.Ed.2d 17 (1990) (quoting *Cleveland Bd. of Educ. v.*

Loudermilk, 470 U.S. 532, 542, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985)). LaCroix has proven beyond all doubt that the Board and its employees failed to provide LaCroix any legal process to challenge the Board's action. More so, the Chancellor ruled that Defendants did not provide LaCroix or his tenant with a due process notice as required by the law. (ARE 18)

LaCroix does not disagree with Defendant's assertion that any appeal from a decision of the board of supervisors under §19-5-22 regarding payment of delinquent garbage fees may be taken as provided in Section §11-51-75 (RB pg 9, ¶ 2). However, Defendants argument is without merit because LaCroix's complaint did not challenge the payment owed and paid to the county but challenged the utter failure of the Board and its employees to notify LaCroix that they intended to withhold car tags and collect money from a tenant which he rightfully did not owe. Had LaCroix been notified as required, he could have made an argument in defense of the intended action or more simply, paid the bill, thus avoiding the lien on his property and adverse action against his tenant. Additionally §19-5-22 states only that a decision of the Board regarding payment 'may' be taken as provided in Section §11-51-75. It does not state that violations or any other wilful disobedience of the statute, by the Board and/or its employees 'may' be taken under §11-51-75 and are necessarily unenforceable in court. Additionally, Section 1983 did not require that LaCroix meet Mississippi's administrative remedy of serving the Board with a Bill of Exceptions to sign before bringing his §1983 claim for violation of a constitutional right.

Defendants argue that the Chancellor "did not base his decision to render summary judgment relying solely on Mississippi Code Annotated §19-5-22." (RB pg 9, ¶2) Defendants fail to point to any part of the records which indicates what else, if anything, the Chancellor did rely on and are conjecturing outside of the record. The January 14, 2007 (R 127) Judgement of the Court is silent with respect to any legal principles the chancellor may have relied on when rendering his decision as the chancellor only quotes M.C.A. §19-5-22(4)(b) which may infer that the basis of his decision was only because LaCroix did not file a Bill of Exceptions pursuant to §11-51-75. Defendants further argue that the Trial Court was correct, however, Defendants

offer no authority or any other legal principles in support for their bare assertion that the trial court was correct in this matter of first impression.

Again, not an issue before this court, Defendants argue that the Chancellor did not receive a copy of LaCroix's Motion to Reconsider until the morning of the trial and that counsel for Marshall County also did not receive a copy of LaCroix's Motion to Reconsider until the morning of the trial. (RB pg 23 ¶2) This is a fallacious claim, the record shows that LaCroix in fact filed his Motion for Summary Judgment on January 24, 2007 (as reflected in the court docket) and that Defendant's counsel did receive the Motion prior to the day of the trial as evidenced by it's response to LaCroix's Motion to Reconsider entered on the Court's Docket on January 30, 2007. Furthermore, in chambers, before commencement of the trial when the Chancellor informed LaCroix that he had not seen or considered LaCroix's Motion, LaCroix provided the Chancellor with a copy of the proof of delivery made by FedEx on January 22, 2007. The proof of delivery presumably, was placed in the file maintained by the Chancellor which was not made available to the court or LaCroix and is not part of the record. (RE 2) Further, although not a part of the record, the "file check out" book maintained by the Chancery Court Clerk shows that Chancellor Hatcher never saw the file before his first appearance as Special Chancellor in Marshall County on February 1, 2008.

Defendants then state that LaCroix "often failed to provide copies of his filed pleading" proffered by Counsel's assertion that he "did not receive a copy of LaCroix's Motion to reconsider until the morning of the trial", (RB pg 9, ¶ 2) however, the record shows counsel's claim is factually false. The court docket shows Counsel filed a response to LaCroix's Motion to Reconsider on January 30, 2008, (R 9) six days after being served with a copy by LaCroix. Defendants argue that the trial court correctly denied LaCroix the ability to argue his Motion to reconsider because it was untimely provided to counsel opposite. Defendants argument is not supported by the record. The record is silent regarding why the Motion to Reconsider was denied, the judgment of the trial court fails to state a reason or give any clues for denying LaCroix the ability to argue his motion and this is pure speculation by Defendants. (ARE 15)

Defendant argue that LaCroix claimed that "he was deprived of the right to

purchase a car tag." (RB pg 13, ¶ 2) LaCroix's made no such claims in his original complaint or any subsequent pleading filed which alleged that LaCroix was "deprived of the right to purchase a car tag" or that any lien was ever placed on LaCroix's car tags by Marshall County or that LaCroix was ever prohibited from tagging any of his vehicles. A tag lien was placed against LaCroix's real property which resulted in the wrongful tag lien and collection from LaCroix's tenant.

Defendant's argument that LaCroix never requested a hearing is not only without merit (RB pg 16 ¶ 2) but it is incredible to require that LaCroix have the mental ability to know without the benefit of a notice from the board, exactly what action, if any the Board intended to take. It is unlikely that the Mississippi legislature ever intended or even considered that the public should possess the mental acuity of mindreading in order to receive the benefit of a pre-deprivation due process hearing. Although a conclusory assumption by LaCroix, this perhaps attributes to the language of the statute which states, "before notifying the tax collector, the board of supervisors shall provide notice and shall afford an opportunity for a hearing that complies with the due process protection." In short, Defendant's argument that LaCroix did not request a hearing has no merit because LaCroix did not know what the Board intended to do due to the failure of the Board and its employees to provide notice to LaCroix. This is the crux of the issue before this court, the Boards utter failure to notify LaCroix of their intended actions and that a pre-deprivation hearing could be requested.

Defendants make the absolutely ridiculous and meritless argument that **"Mississippi Code Ann. 19-5-22 does not require that a hearing date be assigned to individuals wishing to dispute the amount owed, instead all that is required is that an opportunity to be heard offered."** (RB pg 16, ¶ 1) This is an inane argument, common sense dictates that if an opportunity to be heard is required it then follows that a hearing date would be set or 'assigned' for the purpose of permitting the individual 'wishing to dispute' the issue, to do so. Defendants then, in furtherance of their vacuous argument, state that "Marshall County Board of Supervisors would have gladly complied with LaCroix's tenant's request for a hearing however, no such hearing was ever requested[.]" (RB pg 16, ¶ 1)

Appellee's argue that "LaCroix did not inform the County of his rental agreement" which is without merit. (RB pg 16, ¶ 2) Miss. Code Ann. §19-5-22 places no duty on LaCroix to inform the county of his rental agreements in order to receive the benefits of a due process notice. However, LaCroix did, more than once, advise the county, in writing, that he was responsible for paying all garbage bills for all property he owns in Marshall County and as such, all bills were to be sent to LaCroix at his residence and not to the tenant's addresses. (MSJ Exhibits 14, 15). The notice specifically instructs the county to bill LaCroix for any and all of LaCroix's properties for garbage collections "to avoid any problems for my tenants." It is self-evident, due to the mandatory notice requirement of §19-5-22 that it is incumbent on the Board and its employees, when preparing to take final action, to make a determination through County tax records to obtain the name of the owner of the property receiving garbage service so the owner may be notified. Thus the assertion that "LaCroix did not inform the County of his rental agreement" has no merit. (RB pg 16, ¶ 3)

Because LaCroix did not offer any counter-affidavits or evidence that the garbage account was established in any other way than claimed by Marshall County is wholly irrelevant to the issue at bar.(RB pg 16, ¶ 3) LaCroix accepted the Defendants version of how the account was established even though he did not then and does not now accept the credibility of the affidavits submitted by Braddock. How and/or when the account was established does not alter the issue before the court, which is, the statute forbids the county from collecting from a tenant who pays his garbage bill with his rent and the Board of Supervisors "shall" furnish the owner of the property with a notice affording the owner an opportunity for a pre-deprivation hearing. (§19-5-22)

Defendant's challenge LaCroix's reference to *Felder v. Casey*, 487 U.S. 131 (1988) (holding that a state's notice of claim requirement not necessary to support a 1983 claim) (RB pg 18, ¶ 3) Because the issue of the Board's violation of Miss. Code Ann. §19-5-22 is a matter of first impression, there is no case law with regard to the requirement to file a Bill of Exceptions for violations of §19-5-22 by the Board and its employees. *Felder's* ruling that state administrative requirements are not required to file a Section 1983 claim is however analogous to Mississippi §11-51-75 which requires

that an aggrieved party may challenge Board action via a Bill of Exceptions. §11-51-75 requires that the injured party submit the Bill of Exceptions to the President of the Board for his signature before having his claim heard by the court. This court has stated: [M]erely because there is no existing Mississippi or other law on the subject matter before the court would have a chilling effect on all litigation involving questions of first impression. *Scruggs v. Saterfiel*, NO. 96-CA-00245-SCT, (Miss. 1997)

More importantly M.C.A. §11-51-75 is for the sole purpose of making an appeal from a decision of a municipal authority. LaCroix's original Chancery Complaint was not for the purpose of making an appeal from a decision of the Board or for the purpose of appealing the payment collected. LaCroix's complaint without doubt complained of the violation of the statute which is not properly heard on appeal. [4] Additionally, §11-51-75 states in part: Any person aggrieved by a judgment or decision of the board of supervisors, or municipal authorities of a city, town, or village, may appeal within ten (10) days from the date of adjournment at which session the board of supervisors or municipal authorities rendered such judgment or decision." For the sake of argument, even if there had been a session wherein a judgment was rendered to deny LaCroix's tenant car tags and collect LaCroix's tax from him, there is no record of any such session and LaCroix was not made aware of the Board's judgment. Thus it would have been impossible for LaCroix to have known when the ten (10) day time period had begun. Suffice to say, the Board is required to notify LaCroix of it's decision, pursuant to M.C.A. §19-5-22. Also, the Board's clerk has no obligation to start the appeal in the circuit court for the appellant by filing a bill of exceptions by any particular date. "The authority and jurisdiction of the circuit court are thus limited and circumscribed by statute." *Stewart v. City of Pascagoula*, 206 So. 2d 326 (Miss. 1968)

Miss. Code Ann. §11-51-75 requires that any person aggrieved by a judgment or decision of the board of supervisors may embody the facts, judgment and decision in a bill of exceptions which shall be signed by the person acting as president of the board

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[4] Miss. Code Ann. § 11-51-75 (1972) states that the person aggrieved may "embody the facts, judgment and decision in a bill of exceptions" which will be transmitted to the circuit court acting as an appellate court. *Van Meter v. City of Greenwood*, NO. 97-CA-01146 COA, ¶7, (1998) (citing *Stewart v. City of Pascagoula*, 206 So. 2d 325, 328 (Miss. 1968)

of supervisors thus a Bill of Exceptions is in fact a quasi-notice to the Board that LaCroix intends to "appeal a decision made by the board, at a session or hearing" to the Circuit Court. As LaCroix argued in his Appellant's brief, *Cook v. Bd. of Supervisors of Lowndes County*, 571 So. 2d 932, 934 (Miss. 1990) stands for where there was no hearing, notice to the board through a Bill of Exceptions is not required. §11-51-75 serves as an appeal from a decision of the board wherein LaCroix had an opportunity to dispute the action of the board but was unable to alter the outcome of the board's decision. Because LaCroix was not afforded the opportunity to dispute the board's notice to the tax office to place a tag lien against his property and was not afforded the opportunity to challenge collection from his tenant prior to those actions occurring, a bill of exceptions is not appropriate to hear de novo, arbitrary and capricious acts of the board, which violate state and federal law. Miss. Code Ann. §11-51-75 states in part: **If the judgment be reversed, the circuit court shall render such judgment as the board or municipal authorities ought to have rendered, and certify the same to the board of supervisors or municipal authorities**. Clearly the circuit court, on a bill of exceptions could not change or alter the effects of the adverse actions of the Board. This portion of §11-51-75 clearly contemplates that a decision or order of the Board which is continuous tense may be reversed by the circuit court on a bill of exceptions. It does not make any provisions, nor is it likely that our legislature intended that §11-51-75 be used as a means to assert claims for punitive corrections of violations of established law.

Furthermore Defendants fail to articulate how a Bill of Exceptions (M.C.A. 11-51-75) provides for or otherwise permits appealing arbitrary and capricious action of the Board and its employees which violate state and federal laws.

Again, not a matter before the court and Defendants never asserted that §19-5-22 is confusing or ambiguous, Defendants have attempted to circumvent the clear language by claiming now that Mississippi §19-5-22 is confusing and ambiguous. (RB pg 15) Defendants previously stated, "Marshall County concedes that the statute [19-5-22] does require that such notice be mailed to the owner, and the tenant is not responsible for payment of fees[.]" (RB pg 14, ¶ 2) This concession by Defendants

that notice is required to be sent to the property owner makes their proposal and inference that the statute is less than clear meritless.

On the issue of ambiguity and/or clarity of the statute, LaCroix postulates that §19-5-22 when read as a whole while giving consideration to the legislative history which makes clear the purpose of the 1997 amendments to §19-5-22 inter alia is to insure that no fees be collected from tenants who pay garbage collection fees with their rent and that the owner of the property shall be notified before any adverse action is taken by the Board and/or its employees. Reading the last sentence of §19-5-22(1) which states: "The fees shall become a lien upon the real property offered garbage or rubbish collection or disposal." Taking that declaration and the second sentence of §19-5-22(4) which declares: "Before notifying the tax collector, the board of supervisors shall provide notice of the delinquency to the person who owes the delinquent fees and shall afford an opportunity that complies with the Constitution]" it is undisputed that the owner of "real property" is "the person who owes the delinquent fees" and who is legally responsible for the payment of any "lien upon the property." Reading the language of the statute considering the intent of the Board in it's October 1, 2001 Order (R206) declaring the property owner as the ultimate party responsible for payment of garbage fees, it can not be disputed that 'the buck stops' with LaCroix, the owner. As such, the owner of the property is the responsible party for payment of a tax lien charged to his property, pursuant to §19-5-22. Defendants failed to state what other party may be held liable for a tax lien placed on LaCroix's real property for unpaid garbage fees or show any authority which makes the tenant of LaCroix's rental property the person who owes the fees or tax assessed to the property. (RB pg 14, ¶ 2)

More importantly, courts cannot restrict or enlarge the meaning of an unambiguous statute. Courts have a duty to give statutes a practical application consistent with their wording, unless such application is inconsistent with the obvious intent of the legislature. *Marx v. Broom*, 632 So.2d (Miss. 1994) The primary rule of construction is to ascertain the intent of the legislature from the statute as a whole and from the language used therein. *Clark v. State ex rel. Miss. State Med. Ass'n*, 381 So.2d 1046, (Miss. 1980). 'In the construction of a statute, the object is to get at its

spirit and meaning,--its design and scope; and that construction will be justified which evidently embraces the meaning and carries out the object of the law[.] *Ott v. State ex rel. Lowery*, 78 Miss. 487, 500, 29 So. 520, 521

Defendants erroneously argue that the fees imposed on a property for garbage collection is not a tax under the definition of 'assessed taxes". (RB pg 20 at B, ¶ 1). Yet, M.C.A. §19-5-22 clearly states that **"the fees for garbage collection becomes a tax lien, assessed against the property on the date they become due for payment."** If the fees become a **tax** lien, it's axiomatic that taxes are assessed which caused the lien. Thus the fees collected from LaCroixs tenant were taxes that were assessed against LaCroix's property consistent with *Lenoir v. Madison*, 641 So.2d 1124, 1132 (Miss.1994) which provides that ad valorem tax matters were to be heard de novo. Defendants argue that neither LaCroix or his tenant was "assessed taxes for failure to pay delinquent garbage bills" to which LaCroix would agree. There was no additional tax assessed, as penalties or otherwise, because of the delinquent garbage bill. The amount collected by Defendants corresponds with the amount it allegedly billed LaCroix's tenant. Also, it is not and never has been LaCroix's position that a tenant may not be assessed a fee for garbage collection. (RB pg 14, ¶ 2) However if the tenant fails to pay, pursuant to the Order of the Board and the statute, the tax collector is instructed by the Board and its employees to charge a lien against the property that received that garbage services. But before doing so, the Board shall notify the owner of the property. (§19-5-22(2) As stated hereinabove, the owner bears the burden of satisfying liens charged against his property.

Defendants misread *Baldwin v. Brown*, 466 U.S. 147, 104 S.Ct. 1723 (1984) (RB pg 24, ¶3) which states in part: "**[a]ll pleading** shall be so construed as to do substantial justice. We have frequently stated that pro se pleadings are to be given liberal construction." Defendants argue that the court must only give liberal constructions to the Complaint, however as the court stated in Baldwin, "all pleading" shall receive the benefit of liberal construction, this benefit does not exclusively belong to the complaint. *Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972) ("[W]e liberally construe the pleadings of individuals who proceed pro se" on

review of a grant of summary judgment.) [P]ro se pleadings must be given a liberal construction when considering whether an issue has been raised for jurisdictional purposes. *Forshey v. Principi*, 99-7064,US Ct Ap FedCir (2002)

Defendants state that LaCroix argued that the trial court committed error when it denied LaCroix's Motion for Protective Order.(RB pg 25, ¶1) LaCroix made no such argument, as the trial court agreed with and granted LaCroix's request to reverse the Order of the Board which exempted and otherwise secreted public records by turning them over to their counsel, Kent Smith so that they could be claimed as protected by attorney client privilege and not available to LaCroix. (ARE 10) (R135)

Defendants claim that it was the finding of the trial court that LaCroix agreed to Marshall County's Motion for Protective Order as filed on March 24, 2008 that, 'Plaintiff shall not disclose or disseminate the computer printouts maintained by the County Administrator's Office for Marshall County, Mississippi....which shows taxpayer payment or status or social security numbers or personal information." (RB pg 25, ¶ 1) Although a correct assertion, it is an incomplete and misleading quotation from the Order of the Court. (ARE 15) LaCroix only agreed to and it was only Ordered that the records pursuant to Order, are "records maintained by R.E.S. Inc", and no others. As the records of R.E.S. were not relevant to LaCroix's public records request, LaCroix to expedite the proceedings, agreed to the Order only to the extent that is stated in the Court's Order, only pertaining to R.E.S. records. (ARE 15)

Further Defendants, as well as LaCroix, mentioned a subsequent denial of the records (RB pg 25, ¶ 2) which were ruled by the Chancellor not to be exempt, specifically the Mississippi State Tax Commission Motor Vehicle Title/registration Sys County Pre-renewal Registration Edit County: Marshall report which the State sends to each county tax collectors monthly to inform them of car tags that will be due for renewal in the following month, and which is used to 'flag' a garbage account for a lien for the benefit of the tax collector. This issue is important and judicial notice may be taken that denial goes to the heart of another appeal currently before this court, and of which the court may take judicial notice. Case Number 2008-TS-01744, which stems from the same nucleus of operative facts as those tried and ruled on in the instant chancery court

case. After Chancellor Hatcher ruled on Defendant's Motion for Protective Order, finding that the Mississippi State Tax Commission Motor Vehicle Title/registration Sys County Pre-renewal Registration Edit County: Marshall are necessarily public records, the Board of Supervisors, through their attorney, Kent Smith filed an identical action in a new chancery cause seeking a declaratory judgment to exempt those same records which Chancellor Judge Hatcher had already ruled to be public records and not exempt. In the second cause, Chancellor Glenn Alderson also ruled that the Mississippi State Tax Commission Motor Vehicle Title/registration Sys County Pre-renewal Registration Edit County: Marshall are necessarily public records and ordered them to be made available to LaCroix under the Public Records Act. The Defendants did not make the records available to LaCroix as ordered by either court but appealed Alderson's ruling to this court. (see Case Number 2008-TS-01744) Appeal number 2008-TS-01744, factually stems from the same nucleus of operative facts as those contained in the instant cause.

Defendants aver that "Marshall County conducts all business in open session as to give the public a right to listen and comment on the actions taken by the Board. (RB pg 25, ¶2). The records of the Board do not support this claim by Defendants, clearly, the Minutes of the Board show numerous instances where the Board held closed session without informing the public of the specific reason for doing so.(ARE 2) The Board a called an executive session to discuss "personnel and pending litigation" upon returning to open session, Supervisor Taylor immediately without any discussions before the public, made a motion to hire attorney Smith to represent the Board in litigation filed by LaCroix. Suffice it to say, there was no discussion of this subject prior to entering executive session and it obviously was a matter that was discussed in closed session, where the public could not listen and comment.

Further circumstantial evidence immediately follows on page 670 of the Sept. 4, 2007 Minutes. Immediately upon returning from closed session, "Board attorney, Kent Smith requested that the Board enter a formal Board Order directing that any and all tapes, cassettes, CD recordings and/or rough drafts of meetings and minutes be discarded each month after the Board formally approves and adopts the minutes for the month[.] It was further ordered that "any material can be turned over to Smith-Whaley,

as attorneys for the Board, to be maintained as confidential attorney/client privileged information and/or work product materials[.]" (ARE 2) It is telling that there was no discussion in open meetings leading up to these Orders of the Board, but the Orders were entered immediately upon returning from closed session. The claim that the Board "conducts all business in open session as to give the public a right to listen and comment on the actions taken by the Board" is not supported by the records of the Board nor are they supported by the limited records before this court. The Board's common practice of closing meetings in fact prevents the public from gauging the responsiveness and effectiveness of the Board and makes the Board's assertion that it "conducts all business in open session as to give the public a right to listen and comment" a mere trope and oxymoron.

This Court stated: "No doubt there are occasions when board members would speak more frankly on some matter if only the board members were present, and no doubt there are instances in which a board member would personally prefer to speak only to his colleagues. Of far greater importance, however, is that all public business be open to the public. Every member of every public board and commission in this state should always bear in mind that the spirit of the Act is that a citizen spectator, including any representative of the press, has just as much right to attend the meeting and see and hear everything that is going on as has any member of the board or commission."

As this court has consistently held, The reason given for going into executive session must be meaningful and must be of sufficient specificity to inform those present that there is in reality a specific, discrete matter or area which the public body had determined should be discussed in executive session; "To simply say, 'personnel matters,' or 'litigation' tells nothing," the justices said, and **failure to be specific constitutes a violation.** Without a specific summary of why an issue requires a closed session, the public cannot be certain a discussion requires a closed session. *Hinds County Bd. of Supervisors v. Common Cause of Mississippi* 551 So.2d 107 (Miss. 1989) The Open Meetings Act requires that the minutes summarize at a minimum the subject matter discussed, who was present and a record of deliberations in closed sessions. The minutes of the Marshall County Board of Supervisors clearly demonstrate the

board's utter failure to be specific when announcing a closed session. (ARE 2)

Finally, this court has stated that: [A] measure of speculation and conjecture is required on the part of those whose duty it is to settle the dispute by choosing what seems to them to be the most reasonable inference. Some guesswork and speculation are necessarily involved" . *City of Jackson v. Locklar*, 431 So. 2d 475, 478-79 (Miss. 1983) *Burdsal v. Marshall County*, 937 So. 2d 45 (¶8) (Miss. COA 2006) *Lavender v. Kurn*, 327 U.S. 653 (1946) ; *Butler v. Bd. of Supervisors for Hinds County* , 659 So.2d 578, 579 (Miss. 1995); *Colle Towing Co. v. Harrison County*, 57 So.2d 171, 172 (Miss. 1952) (The only admissible evidence of a Board's action are its final Minutes)

Defendants state that LaCroix and defendants presented evidence regarding Zoning's denial in trial. (RB pg 27, ¶3). This is a false assertion, LaCroix only gave testimony at the trial. The evidence which is contained in the record was submitted with LaCroix's Motion for Summary Judgment. The judgment of the Court on February 1, was made on testimony as no new evidence was submitted or entered at the Feb, 1st trial.

Defendant's argument that LaCroix "failed to remit payment as ordered from the bench" (RB pg 27, ¶1) is factually false. The order of the court made clear that LaCroix's duty was contingent on receiving "a reasonable bill within compliance with the Public Records Act." (ARE 14) The bill as originally submitted was not a reasonable bill due to the inclusion of a charge for "time" by Smith for his attorney fees (ARE 5) and a substantial charge for copies of records which were not requested by LaCroix nor ordered to be produced by the court in it's bench order. (ARE 13) Defendants then state that "later in his Judgment the Chancellor stated. "the Plaintiff shall pay unto defendants within two weeks the sum of $206.00 for satisfaction of the Defendant's bill for $353.00" This is factually misleading as Defendants prefaced their argument by stating language which is contained in the Bench Order dated Feb.1, 2008, (ARE 13) that is that LaCroix was to pay "if it's a reasonable bill", but conclude their argument by asserting language contained in the Feb. 20, 2008 final judgment (ARE 14) which was entered, after the court received LaCroix's Motion in Opposition to Payment of Judgment, which brought the unreasonable charges made by Defendant's and their lawyer, Kent Smith, to the Chancellor's attention. Chancellor Hatcher reduced the amount of the bill and LaCroix

paid the reduced amount due as instructed in accordance with the Judgment. (ARE 6)

The Defendant's argument that their Motion for Contempt filed against LaCroix is supported by the Chancellor's bench Ruling dated Feb. 1, 2008 is factually false. As asserted hereinabove, this is a frivolous argument and is not supported by the facts as determined by the Chancellor. (ARE 14)

Defendant's further aver that "In no was [Defendants'] Motion frivolous and upon receipt of payment Marshall County dismissed their motion [for contempt against Lacroix]" (RB pg 29 ¶1) Again, this is factually false, LaCroix paid the corrected invoice as ordered by the Court on March, 3, 2008.(ARE 6) Defendants did not withdraw their Motion against LaCroix until prompted to do so by the Chancellor in open court on the date the Motion was set for hearing on March 14, 2008. (3-18-08 trial transcript pg 109 line 2)

In consideration of the foregoing LaCroix respectfully requests that this Honorable Court reverse the judgments and orders of the trial court as prayed for in LaCroix's Appellant Brief.

Steve LaCroix
Plaintiff, Pro Se
384 River Ridge Circle
Byhalia, MS 38611
(662) 838-5412

CERTIFICATE OF SERVICE

I, Steve LaCroix, certify that I have this day 25th Nov. 08 filed this document with the Clerk of this Court and have served a copy of this pleading by1st class mail to the Hon. John A. Hatcher, Chancellor of the District One Chancery Court at P.O. Box 7395, Tupelo, Mississippi 38802 and Kent Smith at 120 E. College Ave, Holly Springs, MS 38635

Steve LaCroix

(2)

IN THE CHANCERY COURT OF MARSHALL COUNTY, MISSISSIPPI

STEVE LACROIX — PLAINTIFF

V.

#07-0437-A

MARSHALL COUNTY BOARD OF SUPERVISORS; EDDIE DIXON; KEITH TAYLOR; WILLIE FLEMON; GEORGE ZINN; RONNIE JOE BENNETT; MARSHALL COUNTY PLANNING COMMISSION; CONWAY MOORE; STEVEN WILSON; LARRY HALL; KAY BROWNLEE; C. W. "CHUCK" THOMAS; AND SUSIE HILL AND JOHN DOE 1-10 — DEFENDANTS

SUPPLEMENTAL ORDER

THIS COURT rendered its Corrected Opinion and Partial Summary Judgment and Other Relief on the 14th day of January, 2008, and then its Judgment of February 20, 2008, after a trial on the merits on the 1st day of February, 2008, numerous motions by the parties have since been filed, all of which are pending and have been set by the Court to be heard on March 14, 2008, at 2:00 p.m. in the Marshall County, Mississippi Courthouse, which were set for hearing by the Court, as the parties did not agree on a date, and counsel and all of the parties were directed to be present. A copy of the Order for Setting dated the 29th day of February, 2008, has been furnished by facsimile transmission on February 29, 2008, by the Court Administrator to the Plaintiff, and the Attorney for the Defendants.

In supplementation of said Corrected Opinion and Partial Summary Judgment and Other Relief, Judgment, and Order for Setting the parties and counsel are further Ordered to be and appear before this Court on the 14th day of March, 2008, at 2:00 o'clock p.m. in the Courtroom of the Marshall County, Mississippi Courthouse and then and there do, bring or perform the following:

RE 1

1. The Plaintiff shall have paid to the Defendant through the office of the Marshall County, Mississippi Chancery Clerk the sum of $206.00 for satisfaction in payment of the costs for production of the records provided by the Defendants, and provide proof thereof in the form of an official receipt.

2. The Defendants shall deliver to the Court for *in camera* examination each and every document, record, file or thing, with electronic records reduced to writing, which the Defendants claim are subject to exemption and/or are to be protected, and for the Court to rule on same.

3. The Defendants shall procure and shall deliver to the Court such records of its contract agent, R.E.S., Inc., and the State Tax Commission the Defendants have or had in their possession and those of the Marshall County Tax Assessor and/or Tax Collector, which are applicable to the Court's Judgment for such an *in camera* examination and determination.

4. The Defendants shall produce to the Court a Certified Copy of the Order of the Marshall County Mississippi Board of Supervisors which revokes its previous Order of September 4, 2007 as directed in said Corrected Opinion and Partial Summary Judgment and Other Relief.

The Court Administrator and Clerk are authorized, directed and empowered to forthwith furnish a copy hereby to the parties and counsel.

ORDERED, ADJUDGED AND DECREED this the 4th day of March, 2008.

CHANCELLOR

IN THE CHANCERY COURT OF MARSHALL COUNTY, MISSISSIPPI

STEVE LACROIX — PLAINTIFF

V. — NO. 07-0437-A

MARSHALL COUNTY BOARD OF SUPERVISORS;
EDDIE DIXON; KEITH TAYLOR; WILLIE FLEMON;
GEORGE ZINN; RONNIE JOE BENNETT;
MARSHALL COUNTY PLANNING COMMISSION;
CONWAY MOORE; STEVEN WILSON; LARRY HALL;
KAY BROWNLEE; C. W. "CHUCK" THOMAS; AND
SUSIE HILL AND JOHN DOE 1-10 — DEFENDANTS

ORDER FOR SETTING

THIS CAUSE is hereby set on all pending matters at 2:00 p.m. on the 14th day of March, 2008. The hearing shall be held in the main courtroom of the Marshall County Courthouse, Holly Springs, Mississippi. All parties and counsel are hereby Ordered to be in attendance at the said place and time. This Court's Administrator shall provide a copy of this Order to the pro se Plaintiff and to counsel for Defendants by facsimile transmission.

ORDERED, ADJUDGED AND DECREED this the 28th day of February, 2008

CHANCELLOR

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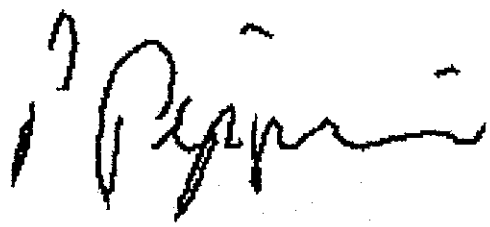

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