IN THE SUPREME COURT OF MISSISSIPPI

LENT E. THOMAS, JR. — **APPELLANT**

VS. — **CAUSE NO. 2009-CA-00347**

BOARD OF SUPERVISORS OF PANOLA COUNTY, MISSISSIPPI — **APPELLEE**

ON APPEAL FROM THE CIRCUIT COURT OF PANOLA COUNTY, MISSISSIPPI
(LOWER COURT CAUSE NO. CV-2008-25BP2)

BRIEF FOR APPELLEE

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ORAL ARGUMENT NOT REQUESTED

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BOARD OF SUPERVISORS
OF PANOLA COUNTY, MISSISSIPPI **APPELLEE**

I.

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court of Mississippi and/or the Judges of the Mississippi Court of Appeals may evaluate possible disqualification or recusal:

1. Chris Aldridge, Applicant;
2. Lent E. Thomas, Jr., Appellant
3. Supervisors of Panola County, Mississippi, Appellee
4. Michael K. Graves, Attorney at Law, Attorney for Appellant
5. Jay Westfaul, Attorney at Law, Attorney for Appellee
6. Larry O. Lewis, Attorney at Law

This is the 5th day of October, 2009.

Jay Westfaul, Miss. Bar No. [redacted]
Attorney of record for the Appellee

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SUMMARY OF THE ARGUMENT

This controversy revolves around the operation of a recycling plant, referred to as a "junkyard" in the Chapeltown community of Panola County, Mississippi. After the Panola County Board of Supervisors rezoned five acres of land owned by Chris Aldridge from "agricultural" to "industrial" so that he might operate a recycling business on the sight where a concrete plant had been previously located, Appellant appealed to the Circuit Court of the Second Judicial District of Panola County, Mississippi. The Circuit Court affirmed the decision of the Board of Supervisors. Appellant maintains the Circuit Court erred in the decision and has perfected this appeal to the Supreme Court of Mississippi.

The Appellants have asserted four errors by the lower court in the previous decision. The first is that the lower court erred in affirming the order of the Board of Supervisors rezoning Aldridge's property from "agricultural" to "industrial" as the order was not supported by substantial evidence ad as arbitrary and capricious. The second is that the lower court erred in affirming the order of the Board of Supervisors rezoning Aldridge's Property from "agricultural" to "industrial" as the rezoning order constituted impermissible "spot zoning." The third is that the lower court erred in affirming the order of the Board of Supervisors granting a special exception for the operation of a "junkyard" on Aldridge's property as the order was not supported by substantial evidence and was arbitrary and capricious. The fourth is that the lower court erred in ruling that the provision of the *Panola County Zoning Ordinance* (called the Panola County Land Use District Ordinance), relating to special exceptions, is not impermissibly vague, thereby making the approval arbitrary and/or

capricious and/or unconstitutional.

The Appellee Board of Supervisors would show that the order of the Circuit Court was correct and supported by substantial evidence. In particular, it would show that prior to granting the Aldridge's request, a lengthy hearing was held in which evidence was presented showing that there had been an apparent mistake in the original zoning, a change in the character of the surrounding area, justifying the rezoning, that there was a public need for additional property to be zoned industrial for employment, and, finally, that there was a public need for the disposal of scrap metal products. Furthermore, there was evidence before the Board in the form of testimony, photographs, maps, exhibits and general knowledge of the area by the Supervisors on which to base their determination.

On appeal, based on prior precedents of this Court, the findings and determinations of Boards of Supervisors are entitled to a presumption of validity, and their orders must be sustained unless the Appellant can establish that the Supervisors' actions were arbitrary, capricious, discriminatory, illegal, and not supported by substantial evidence. On the other hand, if the Supervisors' actions are "fairly debatable," they must be upheld, even if this court would have decided the matter differently. There is no doubt that given the extensive record and the totality of the information before the Supervisors, their decisions were, at a minimum, "fairly debatable."

On the issue of "spot zoning," the Board would show that, based on prior decisions of the Mississippi Appellate Courts, "spot zoning," like many other things, is to some extent in the eyes of the beholder. However, the Appellee Supervisors would show that the rezoning of the subject property and the recycling operation would serve a number of public purposes in not only improving employment opportunities, but providing the ability to recycle cans, copper and aluminum, all

providing for the public good. As such, this particular situation does not fall within the category of spot zoning.

As to the "special exception," both the Panola County Land Development Commission, as well as the Panola County Board of Supervisors, gave special consideration to the matter in promulgating strict guidelines and providing for the enforcement thereof prior to granting the "special exception." The Panola County Land Use District Ordinance sets out many specific requirements to be proven in order to obtain a "special exception." It is clear from the record as a whole that the restrictions and conditions approved by the Board were carefully crafted in a conscientious manner to protect the area, the public and nearby home and landowners. As a result, the actions of the Board of Supervisors were "fairly debatable," were in accordance with the prior deliberations and considerations of the Land Use Commission, and are entitled to the respect and deference of the appellate courts, which have repeatedly stated that they do not sit as a "super zoning board."

Finally, as to the fourth assigned issue, the County would most respectfully show that the Ordinance meets all constitutional requirements, is not vague and is valid. However, if the Court should entertain the issue of whether the Land Use Ordinance as it relates to "special exceptions" is unconstitutional, the county would most respectfully show that the Appellants have failed to prove the unconstitutionality by the stringently rigid standard, and the fourth issue must fail.

V.

ARGUMENT

i. STANDARD OF REVIEW

The Supreme Court of Mississippi set forth the appropriate standard of review for rezoning in *Town of Florence v. Sea Lands, Ltd.*, 759 So.2d 1221, 1223-1224 (Miss.2000), by stating:

> This Court has held that zoning is not a judicial matter, but a legislative matter. *Luter v. Hammon*, 529 So.2d 625, 628 (Miss.1988). On appeal, the decision of the Board must be upheld unless it is "arbitrary, capricious, discriminatory, or is illegal, or without a substantial evidentiary basis." *Faircloth v. Lyles*, 592 So.2d 941, 943 (Miss.1991). Therefore, the decision to rezone will not be disturbed where it is "fairly debatable." *Saunders v. City of Jackson*, 511 So.2d 902, 906 (Miss.1987). "'Fairly debatable' is the antithesis of arbitrary and capricious." *Id.*

While Appellant is correct in stating that the burden of meeting the requisite standard of proof is on the property owner requesting the zoning alteration, amendment or special exception, we must always remember that once the local governing authority - the Panola County Board of Supervisors and the Panola County Land Development Commission in the case at Bar - has acted, there exists a presumption of validity of the local governing body's enactment or amendment of a zoning ordinance, and the burden of proof is thereafter on the party asserting its invalidity. *Perez v. Garden Isle Community Assn.*, 882 So.2d 217 (Miss.2004). *Heroman v. McDonald*, 885 So.2d 67 (Miss.2004).

Therefore, the Order of the Board of Supervisors granting the rezoning of the subject property and further granting the special exception is presumed to be valid, and the burden of proof is on the Appellant to establish otherwise. Furthermore, the decision of the Board of Supervisors is to be upheld unless the Appellant establishes that the decision is arbitrary, capricious, discriminatory,

illegal, or is not supported by substantial evidence. *Town of Florence, Supra., City of New Albany v. Ray*, 417 So.2d 550 (Miss.1982). The Board of Supervisors does not have to prove that its decision is not arbitrary and capricious. *Perez v. Garden Isle Community Assn., Supra.*

Moreover, the Supreme Court of Mississippi recently upheld its long-standing essential test for appellate courts to follow in reviewing decisions to be whether the action of the governing body appears "fairly debatable." *Bridge v. Mayor and Board of Aldermen of the City of Oxford, Mississippi, et. al.*, No. 2007-CA-0601-SCT (Sept. 11, 2008). *Gillis v. City of McComb*, 860 So.2d 833 (Miss.Ct.App.2003). "Fairly debatable" is said to be the antithesis of arbitrary and capricious in that if a decision is one which could be considered as such, then it could not be considered arbitrary and capricious. *Mayor and Bd. of Aldermen of Clinton v. Hudson*, 774 So.2d 448 (Miss.Ct.App.2000).

Neither the Supreme Court nor the Circuit Court should sit as a "super zoning commission." *City of Biloxi v. Hilbert*, 597 So.2d 1276 (Miss.1992). *Gentry v. City of Baldwyn*, 821 So.2d 870 (Miss.Ct.App.2002). In order to have granted the petition to rezone the subject property, the local board should merely find by clear and convincing evidence either (1) that there was a mistake in the original zoning or, (2) the character of the neighborhood has changed to such an extent as to justify rezoning and that a public need exists for rezoning. *Town of Florence*, 759 So.2d at 1223-1224 n.1. *City of Oxford v. Inman*, 405 So.2d 111, 113 (Miss.1981). *Mayor & Bd. Of Aldermen v. Estate of Lewis*, 963 So.2d 1210, 1214 (Miss.Ct.App.2007). On appeal, in determining whether these findings were sufficiently made, the "fairly debatable" standard applies both as to the finding of whether there has been a change in character of the neighborhood and whether there is a public need for rezoning. *Luter, Supra.* Therefore, since the Board of Supervisors' actions are "fairly

debatable," with substantial evidence to support them, then the decision should be upheld, even if this Court in considering the matter might arrive at a different conclusion.

ii. ISSUE A: THE CIRCUIT COURT WAS CORRECT IN AFFIRMING THE APPELLEE'S DECISION IN REZONING ALDRIDGE'S PROPERTY FROM "AGRICULTURAL" TO "INDUSTRIAL" AS THE DECISION WAS SUPPORTED BY SUBSTANTIAL EVIDENCE, AND WAS NEITHER ARBITRARY NOR CAPRICIOUS.

The Supreme Court of Mississippi clearly states the conditions necessary for a rezoning to be legal in *Board of Alderman, City of Clinton v. Conerly*, 509 So.2d 877, 883 (Miss.1987). The Supreme Court of Mississippi mandates that one of two conditions be met before a zoning board may legally rezone property. The first requires that there was a mistake in the original zoning. The second condition is two-part, first there must be a change in the character of the neighborhood such that rezoning is justified coupled with a public need for the rezoning. *Id.* The burden of proof for these conditions is placed on the applicant and same must be shown by clear and convincing evidence. *Id.* at 884

1. THE BOARD OF SUPERVISORS CORRECTED A MISTAKE WHICH WAS MADE IN THE ORIGINAL ZONING PLAN

A notable change occurred in Mississippi Law with the Supreme Court's ruling in *Bridge v. Mayor and Bd. Of Aldermen of the City of Oxford, et. al.*, No. 2007-CA-00601-SCT (Sept. 11, 2008), concerning the issue of "mistake." While it is true that the meaning of "mistake within the meaning of the law is not a mistake of judgment, but, rather, a clerical or administrative mistake," (*quoting New Albany v. Ray*, 417 So.2d 550, 552 (Miss.1982)), the Court, over the strong dissent of Chief Justice Smith joined by another Justice, allowed an error in omission to constitute a mistake. In other words, the governing body was allowed to rezone using common sense in finding that an

error was made in the zoning because the Board surely did not intend to alter what had long been the situation in a particular area, and that in doing so, it made a mistake by omission. This is a clear deviation from prior law, and is extremely important in the case at Bar.

If it can be proven that there was a mistake in the original zoning by the applicant then a rezoning may legally occur. The Intervenor applicant in the Circuit Court further details the "mistake" found by the Board of Supervisors in his Brief which is in the record. The Panola County Land Development Commission discovered in a finding that Panola Country was blanket zoned "agricultural"(R.433). Counsel for Intervenor Appellee asserts in his brief to the Circuit Court that ninety-nine percent of Panola Country was zoned "agricultural" when the ordinance was adopted, (R.433). Obviously, as was well pointed out in the evidence presented before the Board, a "mistake" was made in not zoning the subject area industrial in the first place. The position is clearly analogous to *Bridge*, *Id.*

> [T]here are numerous business, most of which are commercial instead of industrial. However, the same area, about a mile and a half down the road, is where the ACI industry is. That, too, was left zoned agricultural at the time you adopted your ordinance. . .there's a great big industrial plant called the - I think it's called Tennessee Gas plant. . .All these areas that were being used for industrial purposes before you adopted the ordinance appear to me to still be zoned agricultural under your ordinance. That means if those business go out of business or something happens to them and somebody else needs to come in behind these businesses, just like Mr. Aldridge did behind this concrete place, they are zoned agricultural. . .(R.182)

Notwithstanding the Memphis planner's statement which was presented on behalf of the Appellant (R.197), the Board was charged with assessing the testimony, evidence and arguments as a whole, coupled with their personal knowledge of the situation, and was free to make the well-reasoned and obvious decision that it was a mistake to zone the area agricultural, obviously

not desiring to close down some of the largest employers in the county. As this Court well knows, "expert" testimony has to be closely scrutinized for obvious reasons. As in *Bridge, Supra.*, the Board was charged with correcting a mistake to make the permitted land usage consistent with goals and objectives of the comprehensive plan. The Board of Supervisors was simply following the law which states, in part, that "[z]oning regulations shall be made in accordance with a comprehensive plan." Miss.Code Ann. § 17-1-9 (Rev.2003).

2. CHANGE IN CHARACTER OF NEIGHBORHOOD IS "FAIRLY DEBATABLE" AND THERE WAS A PUBLIC NEED FOR THE REZONING

If we have a "fairly debatable" question as to the change of the character of the neighborhood and the public need for rezoning, then the decision cannot be "arbitrary and capricious." *Saunders v. City of Jackson,* 511 So.2d at 902, 906 (Miss.1987). Here we have pages of testimony and documentary evidence as to the change of the character of the neighborhood, ". . .[C]onsider all documents that are within your control, that is, documents that are given to you dealing with business expansion, business growth, population growth in this area, particularly in the area along Highway 6 that we are talking about." (R.189) The massive expansion of Heafner Motors was also before the Board (R.214-215). While it is true that the Mississippi Court of Appeals reversed the Panola County Board of Supervisors in a zoning case because "change of character" was not proven, that case is distinguishable from the instant case in that the Court of Appeals was extremely concerned with the fact that the scrap metal business which was to be operated on the rezoned property was unsightly, offensive and causing pollution problems which were not in accord with the master plan. *Cockrell v. Panola County Board of Supervisors,* No. 2005-CA-02240-COA (¶ 9, f.n. 1). *Cockrell* is far different than this case. The record shows that the operation upon which the Applicant's use was

permitted is a very neat, attractive, and clean operation, causing no pollution. These facts are discussed more fully below.

Clearly, the Board had before it a "fairly debatable" question as to the change of the character of the neighborhood, and that question was resolved in favor of the Applicant.

As to whether there is a public need for rezoning, the undersigned need not recite the entire record upon which the decision was based. Suffice it to say that the required change was necessary for [1] economic development (R.190), [2] business growth (R.190), [3] public convenience (R.191), [4] public safety and health (R.191), and [5] elimination of harm to the environment (R.191).

In reviewing the zoning decisions of a public body, the appellate court is to treat the public body as untethered and free when using "their common knowledge and familiarity" in the disputed matter in addition to the testimony and debate provided at the hearing. *Mayor and Bd. Of Aldermen of Clinton v. Hudson,* 770 So.2d at 451. In addition, it is not necessary for an Order of the Board of Supervisors to recite the factual basis for its findings – just so such a factual basis exists. *Gillis v. City of McComb*, 860 So.2d at 836.

The Supervisors were not involved in a court proceeding when they held the public hearing contained in the record. There is no requirement that the *Mississippi Rules of Evidence* be followed in such meetings. In fact, the Supervisors may, and did, consider all evidence and information presented to them, including hearsay evidence, and may give such weight to all of it as they as deciders of fact deem appropriate. To be sure, the Supervisors may further consider not only information obtained at the hearing but also their own common knowledge and familiarity with the area. *Faircloth v. Lyles*, 592 So.2d 941, 943 (Miss.1991).

In *Gillis*, the Court defined an arbitrary act as one "done not according to reason or judgment,

but solely upon the will alone," and a capricious one as "done without reason, in a whimsical manner, implying either a lack of understanding of or a disregard for the surrounding facts and settled controlling principals." *Gillis v. City of McComb*, 860 So.2d at 836.

It is unfathomable that, given the facts before both the Panola County Board of Supervisors and the Panola County Land Development Commission, and the careful consideration given by both bodies over a series of meetings, how either of those terms could be applied to their actions. Apparently, Appellant desires that this court act as a "super zoning board." Although, as in *Gillis*, some provided testimony contrary to the party seeking rezoning, that fact did not make the Board's decision to rezone arbitrary and capricious. *Id.* The divergence of views and opinions clearly shows that the decision is "fairly debatable."

iii. ISSUE B: THE CIRCUIT COURT WAS CORRECT IN AFFIRMING THE APPELLEE'S DECISION REZONING ALRIDGE'S PROPERTY FROM "AGRICULTURAL" TO "INDUSTRIAL" AS THE DECISION TO RE-ZONE THE SUBJECT PROPERTY DID NOT CONSTITUTE "SPOT ZONING".

The Board of Supervisors takes issue with Appellant's assertion that impermissible "spot zoning" has occurred in the instant case. Whether "spot zoning" has occurred depends on the circumstances of the particular case. *Druge v. City of Hattiesburg*, 904 So.2d 138, 141 (Miss.2005), *McWaters v. City of Biloxi*, 591 So.2d 824, 828 (Miss.1991). Appellant's counsel is correct in asserting that . . ."In most cases, impermissible 'spot zoning' is found . . .[when rezoning occurs] for some benefit peculiar only to that landowner." [Appellant's Brief 32].

However, each amendment to a zoning ordinance is going to favor someone, presumably the person seeking the amendment. If the person seeking the amendment did not feel that he would be advantaged by the amendment, he would not have sought it in the first place. It should also be

stressed that anyone who is contesting a zoning change is certainly going to act under the belief that he is going to be disadvantaged by the proposed amendment. Otherwise, he would welcome the change.[1] Therefore the fact that the Applicant perceives a benefit from the change while the

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[1]However, at the hearing a rather bizarre exchange took place tending to support the Applicant in that testimony was elicited by the President of the Board of Supervisors which led to the conclusion that the surrounding homeowners were not bothered by this particular Applicant's operation-they were merely concerned with what *might* happen:

> BY MR. AVANT: How long did the concrete plant operate?
>
> BY MS. THOMAS: The concrete plant operated four or five years. I don't know.
>
> BY MS. THOMAS: The houses that were back there when the concrete plant was open are the houses that are there now, us, the Elmores, the Robinsons. All these people. I don't know if you need these letters that all the people behind are opposing. They are acting like it's no houses back there. I am the first. But there are a lot back there. You do need these letters beforehand. I just wanted it stated that, you know, it's not anything personal to Mr. Aldridge. He is nice. I'm so proud - - hardworking, opening a business. I don't know of anybody that would want this in front of their house.
>
> BY MR. AVANT: Just so I understand, you don't have an objection to what he's done so far out there.
>
> BY MS. THOMAS: The objection I have is that they were saying they were not going to operate on this hours, they were not going to do this, and every single thing that was said - - if you live out there and you drive past there every day, you do see that it happens. It's not that it's bothersome. It's not that it's horrible. It's just that I know what it's *going* to become because it's already become something that it wasn't supposed to be. And that is what is very fretful in front of me and I know in the future it is going to devalue, it is going to cause serious problems, it's going to become looking like this because this is what Metal Management is, on less than five acres.
>
> [Then there is an exchange where a photograph of some Memphis operation is discussed.]
>
> (R.223-224) [Emphasis and redaction added].
>
> BY MS. THOMAS: It's not, but it's what it's going to become is what is so scary.
>
> BY MR. AVANT: We are not going to allow it to become anything like that [the Memphis operation] (R.225).
>
> BY MR. ALDRIDGE: . . .[S]ome of the people that's made these accusations against me, they have come back and apologized to me. Even the Thomases here have brought me their cans and stuff to my scrap yard. They said they are pleased with what is there. The Elmores, they are pleased with what has happened. I try to run a respectable business. It is contained. It's nothing in the road, blocking the roads. It's a clean atmosphere. . . (R.57)

Appellant does not, makes this case no different than any other contested zoning case arriving before this Court. As heretofore stated, the Board of Supervisors had to find a public need for the rezoning.

This is not a case where the Board attempted to impermissibly assist one citizen of the county while ignoring the general public. The sole case presented by Appellant on the issue of "spot zoning," *McKibben v. City of Jackson*, 193 So.2d 741 (Miss.1967), lends no credence to the Appellant's argument. Given the facts of this particular case, taken as a whole, the rezoning was enacted for the betterment of Panola County, not just the Applicant.

iv. ISSUE C: THE CIRCUIT COURT WAS CORRECT IN AFFIRMING THE APPELLEE'S DECISION TO GRANT A "SPECIAL EXCEPTION" FOR THE OPERATION OF A RECYLING CENTER, AS THE DECISION WAS SUPPORTED BY SUBSTANTIAL EVIDENCE, AND WAS NEITHER ARBITRARY NOR CAPRICIOUS.

The Panola County Board of Supervisors voted to uphold the decision of the Panola County Land Development Commission approving the change of zoning from agricultural to industrial and in granting the special exception with the conditions approved by the Land Development Commission. Appellant argues that Aldridge failed before the Board of Supervisors to meet the essential elements to obtain a special exception.

In making the argument, Appellant relied on *Perez v. Garden Isle Community Assn.*, 882 So.2d 217 (Miss.2004), for the proposition that the Applicant was required to prove by a preponderance of the evidence that he met the essential elements to obtain a special use permit. As a statement of law, such an assertion is correct. However, a careful study of *Perez*, as well as a review of other cases cited therein such as *Barnes v. DeSoto County Bd. of Supervisors*,

553 So.2d 508 (Miss.1989), makes it clear that those situations involved specific provisions of zoning ordinances which provided for the granting of special exceptions only upon the establishment of certain specific facts as set forth therein. *Perez*, 882 So.2d 218, 219 (setting requirements for the special exceptions) and *Barnes*, 553 So.2d at 508 (requirements for conditional use permits). Those cases pertained to specific ordinances which are not applicable here.

The Panola County Land Use Ordinance requires the satisfaction of specific procedural and technical requirements in order to obtain a "special exception." The ordinance provides as follows:

> Special Exception: A special exception, as used in this Ordinance, is granted by the Land Development Commission and is limited to those special exceptions specifically set forth in this Ordinance. A special exception is a use that would not be appropriate generally or without restriction throughout the land use district but which, if controlled as to number, area, location or relation to the neighborhood, would promote public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare.

These guidelines for a special exception are far different than those required in the detailed ordinance requirements as set forth in *Perez* and *Barnes*, and those cases are inapplicable to the case at Bar. The Land Development Commission and Board of Supervisors paid considerable attention to the issue of the "special exception" and, in fact, placed restrictions on the "special exception" so that the specially permitted use would be controlled and in harmony with the purposes of the land use regulations. The matter was to be reviewed after a period of time to ensure compliance.

Contrary to Appellant's assertion that no evidence exists that the Commission and/or Board considered the guidelines for a "special exception," the matter has been discussed in the rezoning portion of this Brief, *Supra.* Note the word "or" before the word "general welfare" in the portion of the ordinance quoted above. Only one factor need exist to meet the established guidelines.

Appellee has already discussed these guidelines. The "special exception" was necessary for [1] economic development (R.190), [2] business growth (R.190), [3] public convenience (R.191), [4] public safety and health (R.191), and [5] elimination of harm to the environment (R.191). Perhaps reasonable minds could disagree, but the record is full of examples of how these guidelines were met by the Commission and Board, and, at any rate, the contentions raised in this issue fall within the "fairly debatable" standard and the Board's actions certainly were not "arbitrary or capricious."

v. ISSUE D: THE CIRCUIT COURT WAS CORRECT IN RULING THAT THE PROVISION OF THE PANOLA COUNTY ZONING ORDINANCE RELATING TO SPECIAL EXCEPTIONS IS CONSTITUTIONAL.

A constitutional question will not be passed on where the issues involved in a particular case are such that the case may be decided on other grounds. *Broadhead v. Monaghan*, 238 Miss. 239, 117 So.2d 881 (1960). There is no issue of "substantive due process" in this case. Appellant was provided notice of hearings before the Commission and the Board. He and his counsel attended, made a lengthy presentation, were given the opportunity to create a record, and had available the statutory avenue of appeal to this Court, of which Appellant has availed himself.

The Ordinance is not "unconstitutionally vague." We have a very detailed test which is specific and is in no way "vague." If more than a scintilla of evidence can be found in the record proving by a preponderance of the evidence that any of the ten factors were met, the "special exception" may be granted. The high standard to hold the Ordinance unconstitutional cannot be met.

The unconstitutionality of a law must appear beyond a reasonable doubt before the court will be justified in striking it down. *Burge v. Bd. of Supervisors*, 213 Miss. 752, 57 So.2d 718 (1952).

The propriety, wisdom and expediency of an act is a legislative question and not one for the courts. *Miss. State Tax Com. v. Tenn. Gas Transmission Co.*, 239 Miss. 191, 116 So.2d 550, *app. dismissed* 364 U. S. 290, 81 S.Ct. 61, 5 L.Ed. 39 (1959).

VI.

CONCLUSION

Appellant has failed by the requisite standards to provide a convincing argument that any of his issues would rise to the level of reversing the decision of the Circuit Court of Panola County. The matter was carefully considered. Evidence was adduced. A mistake was made in the original ordinance which has now been corrected. The decisions were in no way "arbitrary or capricious," and most importantly, considering the record as a whole, the decision of the Board of Supervisors is "fairly debatable" and should thus be affirmed.

This is the 5th day of October, 2009.

Respectfully submitted,

PANOLA COUNTY BOARD OF SUPERVISORS

By: _____

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CERTIFICATE OF SERVICE

I, Jay Westfaul, Attorney for the Appellee, hereby certify that I have this day served a copy of the above and foregoing *Brief of Appellee*, via First Class United States Mail, postage prepaid, by mailing same to the following attorneys, *viz*:

Honorable Andrew C. Baker
Circuit Court Judge
Post Office Drawer 368
Charleston, Mississippi 38921

Honorable Michael K. Graves
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Walker, Brown, Brown & Graves, P. A.
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Hernando, Mississippi 38632

CERTIFIED, this, the 5th day of October, 2009.

Jay Westfaul, Attorney at Law