

IN THE MISSISSIPPI SUPREME COURT

NO. 2009-CA-00710

RIVERSIDE TRAFFIC SYSTEMS, INC., BOOKER FARR, AND LEHMAN-ROBERTS
COMPANY
APPELLANTS

VS.

ROBIN BOSTWICK, ERIC FROHN, ALLEN MAXWELL,
HERBERT G. ROGERS, AND RAY TATE
APPELLEES

Appeal From The Circuit Court of Union County, Mississippi

BRIEF OF APPELLANTS RIVERSIDE TRAFFIC SYSTEMS, INC. and BOOKER FARR

ORAL ARGUMENT REQUESTED

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RIVERSIDE TRAFFIC SYSTEMS, INC. and
BOOKER FARR

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TATE AND CITY OF NEW ALBANY, MISSISSIPPI
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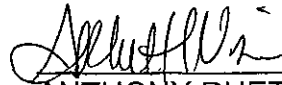
CERTIFICATE OF INTERESTED PERSONS

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

1. E. Patrick Lancaster, Kathryn H. Hester, and Robert T. Jolly, Watkins Ludlam Winter & Stennis, P.A., Counsel for Lehman-Roberts Company, Appellant
2. Lehman-Roberts Company, Appellant
3. Riverside Traffic Systems, Inc. Appellant
4. Booker Farr, Appellant
5. Anthony Rhett Wise, Counsel for Riverside Traffic Systems, Inc., Appellant and for Booker Farr, Appellant
6. Robin Bostwick, Appellee
7. Eric Frohn, Appellee
8. Allen Maxwell, Appellee
9. Herbert G. Rogers, Appellee

10. Ray Tate, Appellee
11. William O. Rutledge, III, Counsel for Robin Bostwick, Appellee, Eric Frohn, Appellee, Allen Maxwell, Appellee, Herbert G. Rogers, Appellee, Ray Tate, Appellee
12. City of New Albany

Respectfully submitted, this the 29th day of December, 2009.



ANTHONY RHETT WISE ATTORNEY FOR
APPELLANTS RIVERSIDE TRAFFIC SYSTEMS,
INC. and BOOKER FAR

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TABLE OF AUTHORITIES

Riverside Traffic Systems, Inc and Booker Farr join in and incorporate the Table of Authorities developed in the Lehman-Roberts Company Appellant Brief

STATEMENT OF THE ISSUES

Appellants Riverside Traffic Systems, Inc., and Booker Farr ("Farr") join in and incorporate by reference, the Statement of the Issues developed in the Appellant Brief of Lehman-Roberts Company ("Lehman-Roberts") with particular emphasis on whether a court can invalidate only a portion of an ordinance, when the basis for the invalidation is that there was insufficient notice of the Ordinance.

ORAL ARGUMENT REQUESTED

Farr joins in and incorporates the request for oral Argument of Lehman-Roberts. The circuit court found that the City of New Albany was arbitrary and capricious in not returning Farr's property to its original Agricultural zoning, and yet multiple other properties were rezoned in the same manner and within the same Ordinance without being declared invalid.

I. STATEMENT OF THE CASE

A. Course of Proceedings and Disposition in the Board of Alderman (Trial Court) Below

Farr joins in the Statement of the Course of Proceeds and Disposition developed in the Lehman-Roberts Appellant Brief.

B. Statement of Facts

Farr joins in the Statement of the Facts developed in the Lehman-Roberts Appellant Brief.

Farr would emphasize to the Court the following facts.

On July 26, 2001, the City of New Albany adopted a new official zoning map which was incorporated in the City's Zoning Ordinance and Comprehensive Plan.

Multiple properties were rezoned by the 2001 City of New Albany Zoning Ordinance. The Maps which are Exhibit 16 to the City of New Albany hearing (Vol. 2, Ex. 16) represent the current and former Official Zoning Maps of the City of New Albany. The first two maps of Exhibit 16, page 1, show the zoning of the area where the Farr Property ("the Subject Property" in the Lehman-Roberts Brief) is located prior to the 2001 Ordinance and the zoning of the area where the Farr Property is located after the 2001 Ordinance. The top map on the first page of Exhibit 16 is a portion of the Official Zoning Map of the City of New Albany prior to the 2001 Ordinance. The bottom map on the first page of Exhibit 16 is the same portion of the Official Zoning Map of the City of New Albany after the 2001 Ordinance. Both official zoning maps show that the Farr Property was zoned I-1 Industrial – before the 2001 Zoning Ordinance and after the 2001 Zoning Ordinance. (Vol. 2, Ex. 16).

The Court can also see from a comparison of the two maps on the first page of Exhibit 16, that the area of Munsford Drive Extended prior to the 2001 Zoning

Ordinance was zoned A-1 Agricultural. The Court can also see that the both sides of Munsford Drive Extended after the 2001 Zoning Ordinance are zoned C-2 Commercial. Likewise, the property between the Rogers Drive R-1 Residential zoning (yellow) and Munsford Drive Extended and the Industrial zoning was A-1 Agricultural Zoning prior to the 2001 Zoning Ordinance. That same area was zoned C-2 Commercial after the 2001 Zoning Ordinance. Those properties were rezoned by the City of New Albany adopting the 2001 Zoning Ordinance. They were not the result of individual property owners petitioning for a rezoning of their property. At the hearing on the 2001 Ordinance on July 26, 2001, moreover, the City Board heard from several property owners who did not like the new zoning of their property, and the City Board changed the zoning for those properties prior to adopting the 2001 Ordinance. (See Vol. 2 CP at 153-164) (R.E. 6)¹.

One of the Petitioner/Appellees in this case, Robin Bostwick, confirmed in testimony before the City Board of Aldermen, that his own property was rezoned from Agricultural to Commercial without his petitioning the City for a rezoning. (See Vol.1, Ex. K at 88-89, R.E. 9). And yet the circuit court listed as one reason to invalidate the zoning of Booker Farr's Property, the fact that neither Booker Farr himself nor his predecessors asked the City to change the zoning.²

¹ Volume 1 of the Exhibits contains the Bill of Exceptions and Exhibits to the Bill of Exceptions to the Union County Circuit Court ("Vol. 1, Ex. ____"). The pages are not numbered and are cited by their Exhibit number. Volume 2 of the Exhibits contains the Exhibits to the August 28, 2008 Hearing before the New Albany Board of Alderman ("Vol. 2, Ex. ____"). The pages are not numbered, and they are cited to their Tab Number. The remaining record is Vol. 1-3 Clerk Papers before the Union County Circuit Court ("Vol. 1 CP at ____") and Vol. 4 of 4, the Transcript of the March 24, 2009 Union County Circuit Court Hearing ("Vol. 4 CP Tr."). Record Excerpts are cited by their Tab Number ("R. E. ____").

² "The Farr tract was classified as Agricultural when it was brought into the City and neither Mr. Farr, nor his predecessors in title ever requested its designation as

Both official zoning maps show that the Farr Property was zoned I-1. (Vol. 2, Ex. 16). Booker Farr has relied on the 2001 Official Zoning Map and on the results of his inquiries to the City with regard to the zoning classification of his property. In 2002 before he placed the Subject Property for sale, Farr contacted the City Zoning Administrator to determine the zoning of the Subject Property and was told that its zoning classification was Industrial. (Vol. 1, Ex. K at 10, 16-25). He, as well as all of the property owners who had their property rezoned by the 2001 Zoning Ordinance, had a right to rely on the zoning shown on the 2001 Official Zoning Map. For at least eleven years prior to the City of New Albany 2008 hearing on the Petitioner/Appellee rezoning request, Booker Farr's Property (the Subject Property) was classified as Industrial on the City's Official Zoning Maps, and the City and Booker Farr relied on the Industrial classification of the Subject Property. The City did not act arbitrarily and capriciously

Agricultural be changed. Therefore the Court is of the opinion that the determination of Issue numbered 5 is dispositive of the remaining issues. In order to comply with its own Ordinances as well as state statutes, the City was required to give proper, adequate notice of its intent to change the classification of the Farr tract from Agricultural to Industrial. The "Notice" upon Mayor and Board of Aldermen at a meeting apparently held in July, 2001. This "Notice" does not meet the requirements of Notice to the public. It contradicts the results claimed by the City in that it states "Zoning has not been changed in the part of the city not annexed ... " It is without question that the Farr property was within the city limits at this time. In addition, the "Notice" states that a hearing would be held on Thursday, July 26 at 6 p.m. but fails to give the year of the hearing. In order to suffice as Notice, the language must be simple, concise, clear, unambiguous and not subject to interpretation. The newspaper article relied upon by the City as legal notice fails to meet these requirements.

Therefore, the Court concludes that the actions of the City, declaring the Farr tract to be classified as Industrial rather than Agricultural is arbitrary and capricious and should be reversed."
(Vol. 3 CP at 310-314)(R.E. 5).

and without substantial evidence when it found that (1) there was no mistake in the Official Zoning Map and that (2) the Subject Property was legally zoned Industrial.

II. SUMMARY OF THE ARGUMENT

Farr joins in the Summary of the Argument and the Argument developed in the Lehman-Roberts Appellant Brief.

Farr emphasizes to the Court the fact that the City filed twelve pages of Findings (Vol. 2 CP at 153-164)(R.E. 6) in which it outlined the evidence that was presented to the City on August 29, 2008, in support of, and in opposition to the request for, rezoning the Subject Property from Industrial to Agricultural and found that there was not a mistake in the 2001 Official Zoning Map and that the Petitioners/Appellees had not provided evidence to prove that the Farr Property should be rezoned from Industrial to Agricultural. The City's decision was and is supported by substantial evidence, and it should be upheld.

CONCLUSION

For the reasons stated and for those developed in the Lehman-Roberts Appellant Brief, which Farr joins and incorporates herein, Riverside Traffic Systems, Inc. and Booker Farr move the Court to reverse the circuit court's decision that invalidated the 2008 zoning decision of the City of New Albany. The City's decision was clearly founded upon substantial evidence and is therefore binding upon this Court. Its decision must be reinstated.

This the 29th day of December, 2009.

Respectfully submitted,

RIVERSIDE TRAFFIC SYSTEMS, INC.,
BOOKER FARR, APPELLANTS

By Their Attorney,
PRIEST & WISE

By: 

ANTHONY RHETT WISE

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CERTIFICATE OF SERVICE

I, Anthony Rhett Wise, attorney for Appellants Riverside Traffic Systems, Inc. and Booker Farr, do hereby certify that I have this day filed the Brief of Appellants Riverside Traffic Systems, Inc. and Booker Farr with the clerk of this Court and have mailed, via United States mail, postage prepaid, a true and correct copy of the Brief of Appellants Riverside Traffic Systems, Inc. and Booker Farr to the following:

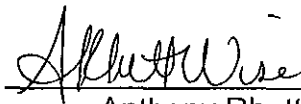
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Honorable Henry L. Lackey
Union County Circuit Court Judge
P. O. Box T
Calhoun City, MS 38916

This the 29th day of December, 2009.



Anthony Rhett Wise