IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2010-CA-00274-COA

ROUNDSTONE DEVELOPMENT, LLC **APPELLANT**

v.

CITY OF NATCHEZ, MISSISSIPPI AND THE MAYOR & BOARD OF ALDERMEN OF THE CITY OF NATCHEZ, MISSISSIPPI **APPELLEES**

DATE OF JUDGMENT:	01/14/2010
TRIAL JUDGE:	HON. FORREST A. JOHNSON JR.
COURT FROM WHICH APPEALED:	ADAMS COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	MICHAEL V. CORY JR. DALE DANKS JR.
ATTORNEY FOR APPELLEES:	EVERETT T. SANDERS
NATURE OF THE CASE:	CIVIL - OTHER
TRIAL COURT DISPOSITION:	AFFIRMED CITY'S DENIAL OF REZONING REQUEST
DISPOSITION:	AFFIRMED: 11/15/2011
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE GRIFFIS, P.J., BARNES AND ROBERTS, JJ.

GRIFFIS, P.J., FOR THE COURT:

¶1. This case concerns a zoning dispute. Roundstone Development, LLC applied to re-zone a parcel of real property in Natchez, Mississippi, from O-L (open land) to R-1 (single-family residential) to develop a residential subdivision on the property. The Natchez mayor and Board of Aldermen ("Board") denied Roundstone's request to re-zone the property. On appeal, the Adams County Circuit Court affirmed the decision of the City of Natchez ("City"). On appeal to this Court, Roundstone argues that: (1) the City improperly required

the property be re-zoned as a prerequisite for the development to go forward; (2) the City's denial of the request to re-zone the property was arbitrary and capricious, discriminatory, illegal, and unsupported by substantial evidence; (3) the City's denial of the request to re-zone the property violated the Fair Housing Act; and (4) the circuit court erred when it denied Roundstone's motions to strike the City's brief and for a judgment on the pleadings. We find no error and affirm the judgment of the circuit court.

FACTS

¶2. Roundstone acquired title to a tract of land in Natchez, Mississippi, with the intent to build a subdivision containing sixty-five homes on the property. The development was to be named the Audubon Terrace Subdivision. The 1,700 square-foot homes were to have three bedrooms and two bathrooms. The subdivision was to include a swimming pool, business center, fitness center, and community center.

¶3. The development was to be subsidized by a federal tax-credit program administered by the Mississippi Home Corporation. In return for the tax credit, Roundstone would be required to rent the homes to qualifying applicants for a period of fifteen years. To qualify, an applicant would have to have an income below a certain level. It was estimated that rent would be between $375 and $425 per month. After fifteen years, the renter would have the option to buy the home at a discounted price, estimated at a purchase price of approximately $65,000.

¶4. The record contains three letters from city officials that Roundstone *claims* it relied on when it decided to purchase the property. Roundstone claims the letters were provided to it and its lenders, but none of the letters were addressed to Roundstone. The record does

not show what relationship, if any, Roundstone had with the recipients of the letters.

¶5. On February 10, 2006, Andrew L. Smith, Planning Director, wrote a letter to David Strange, with Neighborhood Development Alliance, LLC, as follows:

> Re: Zoning Verification
> Neighborhood Development Alliance, LLC
> Audubon Terrace Subdivision, Phase I
>
> Dear Mr. Strange,
>
> The above referenced project is zoned R-1 (Single Family) Residential District according to the Official Zoning Map of the City of Natchez. The use of the property as single-family development is a permitted use under the sites R-1 zoning classification.
>
> Any new construction must be in accordance with the respective subdivision regulations and building codes of the City.
>
> . . . .

¶6. On December 21, 2006, Dennis E. Story, Director of Planning and Zoning, wrote a letter to Strange that tracks verbatim the February 10th letter.

¶7. On May 16, 2007, Walter Huston, Land Use Planner, wrote a letter to Mr. Phillips[1], with the SunAmerica Housing Fund, LP, which states:

> Re: Audubon Terrace, Natchez, Mississippi ("the Project")
>
> Please be advised that: (i) the Project is zoned R-1 (Single-Family Residential District) which zoning allows single-family use as a matter of right and is within the city limits of Natchez, Mississippi . . . and (iii) there are no violations of zoning law, or non-conforming uses and the Project is in compliance with all applicable zoning and subdivision laws, ordinances and regulations. . . . Further, there are no other requirements which must be satisfied in order for the Project to fully comply with applicable zoning and subdivision laws, ordinances, regulations[,] and parking requirements.

[1] Mr. Phillips's first name is not indicated in the record.

. . . .

¶8. The letters were incorrect about the zoning status of the land. Approximately nine acres of the land were zoned R-1. The remaining seventeen acres were zoned O-L. The City's ordinance defines O-L zones, stating:

> [O-L] districts are composed mainly of unsubdivided lands that are vacant or in agricultural or forestry uses, with some dwellings and some accessory uses. The regulations are designed to protect the essentially open character of the districts by prohibiting the establishment of scattered uses that are unrelated to any general plan of development and that might inhibit the best future urban utilization of the land. *It is intended that land in these districts will be reclassified to its appropriate residential, commercial, and industrial category in accordance with the amendment procedure set forth herein whenever such land is subdivided into urban building sites.*

City of Natchez Zoning Ordinance and Subdivision Regulations § IV(1) (emphasis added). The ordinance defines R-1 zones as follows:

> These districts are composed mainly of areas containing one-family dwellings and open areas where similar residential development seems likely to occur; few two-family and multiple-family dwellings are found in these areas. The district regulations are designed to protect the residential character of the areas by prohibiting all commercial and industrial activities, to encourage a suitable neighborhood environment for family life by including among the permitted uses such facilities as schools and churches[,] and to preserve the openness of the areas by requiring certain minimum yard and area standards to be met.

City of Natchez Zoning Ordinance and Subdivision Regulations § IV(2). The ordinance provides that "Dwelling, one-family" is a "Use by Right" in both O-L and R-1 zones.

¶9. Roundstone sought approval for its site plan and subdivision plat from the Natchez Planning Commission ("Commission"). The Commission decided that before it could approve the site plan and subdivision, the O-L area had to be re-zoned to R-1. Roundstone then submitted an application to the Commission to re-zone the property. The Commission

voted to deny the request to re-zone. Roundstone then appealed the Commission's decision to the Board.

¶10. On February 16, 2008, at its regularly scheduled meeting, the Board considered the zoning issue. Roundstone's attorney presented argument in favor of the request to re-zone. Those same arguments are renewed on appeal, so we will discuss them below. Next, a representative of the Mississippi Home Corporation explained the tax-credit program. Then, concerned citizens were allowed to speak, the majority of whom were opposed to the development. A motion was made to "affirm the . . . Commission's decision and deny the development." The motion carried unanimously.

¶11. Roundstone filed a bill of exceptions with the circuit court. The circuit court affirmed the Board's decision. Roundstone appealed to the Mississippi Supreme Court, which deflected the appeal to this Court for review.

STANDARD OF REVIEW

¶12. When the decision of a local zoning authority is appealed to the circuit court, the court acts as an appellate court. *Broadacres, Inc. v. City of Hattiesburg*, 489 So. 2d 501, 503 (Miss. 1986). This Court and the circuit court, in an appellate capacity, must apply the same standard of review. *City of Biloxi v. Hilbert*, 597 So. 2d 1276, 1280 (Miss. 1992). We can reverse the zoning authority's decision only if that decision was "arbitrary, capricious, discriminatory, illegal, or not supported by substantial evidence." *Id.* Indeed, if the zoning authority's decision appears "fairly debatable," the decision must be affirmed. *Id.*

ANALYSIS

1. Whether the City improperly required that the property be re-zoned as

a prerequisite for the development to go forward.

¶13. Roundstone argues the development was in compliance with the ordinance and that the City's decision to require re-zoning was arbitrary and capricious. Roundstone points out that single-family dwellings are permitted uses in both R-1 and O-L zones. Roundstone contends that because its subdivision was to contain single-family dwellings, no re-zoning was necessary.

¶14. The ordinance states: "It is intended that land in [O-L] districts will be reclassified to its appropriate residential, commercial, and industrial category . . . whenever such land is subdivided into urban building sites." City of Natchez Zoning Ordinance and Subdivision Regulations § IV(1). Neither party disputes that Roundstone's residential subdivision required "subdivision into urban building sites."

¶15. There may be a question as to whether the ordinance required that O-L districts be reclassified *before* they can be subdivided into urban building sites. Perhaps, the ordinance might be read to mean that the land should be reclassified after it is subdivided. In addition, the ordinance does not state that reclassification is required. Rather, the ordinance merely states that there must be an intent to reclassify whenever the land is subdivided.

¶16. "In construing a zoning ordinance, unless manifestly unreasonable, great weight should be given to the construction placed upon the words by the local authorities." *Hall v. City of Ridgeland*, 37 So. 3d 25, 40 (¶50) (Miss. 2010) (quoting *Columbus & Greenville Ry. Co. v. Scales*, 578 So. 2d 275, 279 (Miss. 1991)). Here, the City decided the ordinance did, in fact, require O-L districts to be reclassified before they could be subdivided into urban building sites. The language of the ordinance is indeed flexible enough to accommodate the

City's interpretation. The City's interpretation is consistent with the following provision of the ordinance: "The regulations [of O-L districts] are designed to protect the essentially open character of the districts by prohibiting the establishment of scattered uses that are unrelated to any general plan of development and that might inhibit the best future urban utilization of the land." City of Natchez Zoning Ordinance and Subdivision Regulations § IV(1). By requiring a developer to seek reclassification before he can undertake a large project in an O-L district, the City reserves the authority to make sure that the proposed use fits within the City's larger, long-term goals.

¶17. We find that the City's interpretation of the ordinance was not manifestly unreasonable. Therefore, the City did not act arbitrarily or capriciously when it required Roundstone to re-zone the property. This issue is without merit.

2. Whether the Board's denial of Roundstone's request to re-zone the property was arbitrary and capricious.

¶18. Next, Roundstone contends that its request to re-zone the property should have been approved. Roundstone argues that the City's denial of the request was arbitrary and capricious.

¶19. Ordinarily, the proponent of a request to re-zone property would be required to show, by clear and convincing evidence, "either[:] (1) . . . a mistake in the original zoning, or (2) that the character of the neighborhood has changed to such an extent as to justify reclassification, and there was a public need for rezoning." *Adams v. Mayor and Bd. of Aldermen of Natchez*, 964 So. 2d 629, 633-34 (¶12) (Miss. Ct. App. 2007) (citation and quotation omitted).

¶20. Here, because of the unusual nature of the O-L zone, we are faced with a different analysis. The ordinance's amendment procedure provides in part:

> It is . . . declared to be the public policy to amend this ordinance only when one or more of the following conditions prevail:
>
> a. Error. There is a manifest error in the ordinance;
>
> b. Change in conditions. Change or changing conditions in a particular area, or in the metropolitan area generally, make a change in the ordinance necessary and desirable;
>
> . . . .
>
> d. Subdivision of land. The subdivision or imminent subdivision of open land into urban building sites makes reclassification necessary and desirable.

City of Natchez Zoning Ordinance and Subdivision Regulations § XV(1). Thus, as the ordinance provides, the reclassification of O-L areas, when there is an imminent subdivision of those areas into urban building sites, is different from the usual mistake or change-in-character re-zoning.

¶21. Neither party disputes that there was an "imminent subdivision of open land," as Roundstone had applied for subdivision approval. The only question under the ordinance was whether reclassification was "necessary and desirable." That phrase confers substantial discretion on the Board to reject or deny an application to reclassify O-L areas.

¶22. The law prohibits a zoning authority from applying its ordinance in an arbitrary and capricious manner. *Briarwood, Inc. v. City of Clarksdale*, 766 So. 2d 73, 80 (¶25) (Miss. Ct. App. 2000). Those terms are defined as follows:

> Arbitrary, as defined by our supreme court, refers to an act done not according to reason or judgment, but which is solely dependent upon the will alone. It

> has defined capricious "as any act done without reason, in a whimsical manner, implying either a lack of understanding of or a disregard for the surrounding facts and settled controlling principles."

Id. at (¶26) (quoting *Burks v. Amite County Sch. Dist.*, 708 So. 2d 1366, 1370 (¶14) (Miss. 1998)). The party challenging the zoning authority's decision bears the burden of proving that the decision was arbitrary and capricious. *Id.* at (¶25).

¶23. Here, the Board decided that, under the ordinance, the reclassification of the O-L area at issue was not necessary and desirable. Upon our review of the minutes of the Board meeting held on February 16, 2008, we find that the Board's decision was not arbitrary and capricious.

¶24. There were three distinct issues raised at the meeting. Concerned citizens and some Board members stated that the land had been contaminated by a chemical spill some years prior, and this might present health hazards to the future occupants of the subdivision. Some Board members also expressed concerns that the development would cause traffic congestion. Also, surrounding property owners expressed concerns that a large, densely populated cluster of rental houses would have a negative impact on their use and enjoyment of their properties.

¶25. Roundstone responded to the environmental concern by stating that it had hired a private company to perform some environmental tests. Those tests did not raise substantial concerns about the safety of the land, aside from the presence of some old railroad ties that had been treated with creosote, which is toxic. In response to the traffic-congestion concern, Roundstone pointed out that city engineers had performed a traffic study. The study opined that the development would not pose a significant traffic problem. As to the impact on

surrounding properties, Roundstone argues the concerns about the development's impact on surrounding properties were motivated by class and/or racial animus.

¶26. The Board was not bound by the results of the environmental tests or the traffic study. The Mississippi Supreme Court has stated:

> [T]he Mayor and Board of Alderman were authorized to consider the statements expressed by all the landowners at the hearing, as well as to call upon their own common knowledge and experience in their town. It is manifest that the Mayor and Board took into consideration all statements, both sworn and unsworn, and their common knowledge and familiarity about their small community, in reaching their decision. We believe this method to be sound and practical, and courts should respect such findings unless they are arbitrary, capricious, and unreasonable.

City of Jackson v. Aldridge, 487 So. 2d 1345, 1347 (Miss. 1986) (quoting *Board of Alderman of Bay Springs v. Jenkins*, 423 So. 2d 1323, 1327-28 (Miss. 1982)). As such, the Board was authorized to use its common knowledge about the community.

¶27. In *Hillside Terrace, LP ex rel. Hillside Terrace I LLC. v. City of Gulfport*, 18 So. 3d 339, 343 (¶¶10-12) (Miss. Ct. App. 2009), this Court affirmed the zoning authority's decision to deny a permit to construct an apartment complex on a parcel of property. The zoning authority's decision was based, in part, on a concern that the property was prone to flooding. *Id.* On appeal, the landowner argued that the zoning authority lacked the expertise to base its decision on what was essentially an engineering issue. *Id.* This Court disagreed, stating the city officials were authorized to use their common knowledge about the community. *Id.* Likewise, here, we find the Board was authorized to use its common knowledge when considering potential traffic and environmental problems with the proposed development.

¶28. Furthermore, this Court is not persuaded that racial and/or class animus played a role

in the Board's decision. Roundstone offers no proof to support its assertion that the Board had such a discriminatory motive. Indeed, Roundstone seems to imply that because the Board's decision blocked the construction of low-income housing, a presumption of an improper motive is raised. The Board's decision is presumptively valid. *Briarwood, Inc.*, 766 So. 2d at 80 (¶25). To prevail before this Court, Roundstone bears the burden to prove the Board's decision was arbitrary and capricious. In the absence of such evidence, we cannot conclude that the Board's decision was based on improper considerations of class and/or race.

¶29. As the Mississippi Supreme Court has stated, an appellate court "will not substitute [its] judgment as to the wisdom or soundness of the municipality's action." *Aldridge*, 487 So. 2d at 1347. When the zoning authority's decision appears "fairly debatable," the decision must be affirmed. *Id.* (citing *Killegrew v. City of Gulfport*, 487 So. 2d 21, 22 (Miss. 1974); *Currie v. Ryan*, 243 So. 2d 48, 51-52 (Miss. 1970)).

¶30. After a careful review of the record, we conclude that the Board did not act arbitrarily and capriciously when it denied Roundstone's request to re-zone the property. Accordingly, this issue lacks merit.

3. Whether the City's denial of the request to re-zone the property violated the Fair Housing Act.

¶31. Roundstone next argues the City violated the Fair Housing Act ("Act"). Roundstone contends the City discriminated against the future tenants of the subdivision on the basis of class and/or race in violation of the Act.

¶32. Ordinarily, a claim under the Act is litigated in a trial court. *See Homebuilders Ass'n*

of Miss., Inc. v. City of Brandon, 640 F. Supp. 2d 835, 836-37 (S.D. Miss. 2009). At trial, evidence would be presented, and on appeal, the appellate court would have an adequate record to review. *See Woods-Drake v. Lundy*, 667 F.2d 1198, 1199 (5th Cir. 1982). This case is an appeal from the Board's decision to deny a re-zoning request. We have no testimony or exhibits to examine, and we have no rulings from a trial court or verdicts from a jury on the issues that arise in a claim under the Act. We are of the opinion that an appeal from the Board is not an appropriate forum to assert a claim under the Act.

¶33. Further, the Act is a complicated federal statute. *See* 42 U.S.C. §§ 3601- 3619 (2006). Yet Roundstone's brief devotes a mere five sentences to this issue. The only authority cited is the statute itself, and it is cited only by its common name. The "argument" is simply a conclusory assertion that the City had an improper motive.

¶34. Mississippi Rule of Appellate Procedure 28(a)(6) provides: "The argument shall contain the contentions of the appellant . . . and *the reasons for those contentions*, with citations to the authorities, statutes, and parts of the record relied on." (Emphasis added). It is not enough to make a mere assertion and a reference to some authority. This Court has no obligation to develop an appellant's argument. Simply stated, we will not act as an advocate for one party to an appeal. When the appellant fails to make a meaningful argument on an issue, the issue is considered waived. *Randolph v. State*, 852 So. 2d 547, 558 (¶30) (Miss. 2002). Based on Roundstone's non-compliance with Mississippi Rule of Appellate Procedure 28(a)(6), he has waived his issue by failing to present a meaningful argument.

4. Whether the circuit court erred when it denied Roundstone's motions to strike the City's brief and for a judgment on the pleadings.

¶35. Roundstone contends that the circuit court should have stricken the City's appellate brief and entered a judgment on the pleadings because the City did not file its brief with the circuit court within the time frame established by the rules.

¶36. Uniform Rule of Circuit and County Court 5.06 provides in part: "Briefs filed in an appeal on the record must conform to the practice in the Supreme Court, including . . . time of filing . . . . The consequences of failure to timely file a brief will be the same as in the Supreme Court." Mississippi Rule of Appellate Procedure 31(b) provides in part: "The appellee shall serve and file the appellee's brief within 30 days after service of the brief of the appellant." Rule 31(d) provides in part: "If an appellee fails to file the appellee's brief as required, such brief, if later filed, may be stricken from the record on motion of appellant[.]"

¶37. The record shows that Roundstone filed and served its brief on January 28, 2009. Therefore, the City's brief was due on or about March 2, 2009. The City did not file its brief by that date. Instead, on March 13, 2009, the City filed a motion for enlargement of time, requesting an extension until April 2, 2009. The circuit court never ruled on the motion. By June 17, 2009, the City still had not filed its brief, so Roundstone filed a motion for a judgment on the pleadings. Before a ruling was obtained on that motion, on June 25, 2009, the City filed another motion for enlargement of time, requesting an extension until July 15, 2009. The circuit court granted the City's motion by order dated June 29, 2009. The City filed another motion for enlargement of time on July 15, 2009, requesting an extension until July 22, 2009. The circuit court never ruled on the motion. Finally, on July 24, 2009, the City filed its brief.

¶38. Roundstone filed a motion to strike the City's brief. A motion hearing was held on August 3, 2009. The circuit court denied the motion, stating:

> [T]he City on this appeal could have been more diligent in filing its brief. It has now been filed. . . . This is a matter where the court does have a great deal of discretion. The law does favor deciding matters on the merits without deciding them on procedural deficiencies. That being said, however, there are situations where clearly enough is enough . . . . The court is going to allow the appeal to proceed as a matter of discretion.

The rules do, indeed, give appellate courts discretion on this issue. Rule 31(d) states that the appellee's brief *may* be stricken if untimely filed. We cannot find error in the circuit court's decision. The circuit court properly exercised its discretion. Accordingly, this issue is without merit.

¶39. THE JUDGMENT OF THE CIRCUIT COURT OF ADAMS COUNTY IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.

LEE, C.J., MYERS, BARNES, ISHEE, ROBERTS AND MAXWELL, JJ., CONCUR. CARLTON, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY RUSSELL, J. IRVING, P.J., NOT PARTICIPATING.

CARLTON, J., DISSENTING:

¶40. I respectfully dissent from the majority's opinion. The order of the circuit court reflects that the court used the wrong standard in reviewing the decision by the Mayor and the Board of Aldermen of the City of Natchez, wherein the City affirmed the City's Planning Commission's denial of Roundstone Development, LLC's request for approval of a site plan, subdivision plat approval, and re-zoning of Audubon Terrace Development. The circuit court found the decision to deny Roundstone's site plan, subdivision plat, and re-zoning was fairly debatable and supported by substantial evidence and was neither arbitrary nor

capricious. However, I submit that approval of a site plan and subdivision plan must be reviewed differently than re-zoning decisions.

¶41. Re-zoning decisions constitute quasi legislative decisions[2] and are properly reviewed with the standard applied by the circuit court herein, as fairly debatable and supported by substantial evidence and neither arbitrary or capricious. However, I submit that approval of site plans and subdivision plats, like building permits, constitute ministerial acts. Since the site plan and subdivision plat met current zoning requirements and no re-zoning was needed, then the City cannot deny approval without a legally valid reason.[3]

¶42. A letter from the City,[4] to Mr. Phillips[5] of SunAmerica Housing Fund, LP[6] contained

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[2] *See McKee v. City of Starkville,* 2010 WL 3547993 *4 (¶12) (Miss. Ct. App. Sept. 14, 2010) (recognizing that zoning and re-zoning are legislative matters); *Childs v. Hancock County Bd. of Supervisors,* 1 So. 3d 855, 859 (¶12) (Miss. 2009) (The classification of property for zoning purposes is a legislative rather than judicial matter, and the burden of proof for re-zoning is on the individual asserting invalidity of the re-zoning or seeking re-zoning); *Miss. Manufactured Housing Ass'n v. Bd. of Supervisors of Tate County,* 878 So. 2d 180, 187 (¶17) (Miss. Ct. App. 2004) ("[Z]oning ordinance must be construed as a whole, and it may not be dissected and considered as a multitude of ordinances having no relation to the general scheme of zoning."). *See generally Sherman v. City of Colorado Springs Planning Comm'n,* 763 P.2d 292 (Col. Ct. App. 1983); 83 Am. Jur. 2d *Zoning and Planning* § 480 (2d. ed. 2003) ("Conditions imposed for approval of subdivision plans must be reasonable in the context of the subdivision in issue, be necessary for the harmonious development of the municipality, and be specifically stated.").

[3] *See Vineyeard Inv., LLC v. City of Madison*, 999 So. 2d 438, 440-41 (¶7) (Miss. Ct. App. 2009).

[4] Walter Huston, Land Use Planner for the Department of Planning and Zoning, drafted the letter.

[5] Mr. Phillips's first name is not indicated in the record.

[6] Regardless of whether the letter was addressed to Roundstone or to SunAmerica Housing Fund, LP, one of Roundstone's alleged lenders, the letter clearly provided that the project met the current zoning requirements. This letter is indicative of the other two letters

in the record, dated May 16, 2007, states the proposed subdivision met current standards, as the following excerpt demonstrates:

> Please be advised that: (I) the Project is zoned R-1 (Single-Family Residential District) which zoning allows single-family use as a matter of right and is within the city limits of Natchez, Mississippi[;] (ii) the Project is not located within an overlay zone district (such as, for example a PUD or an historical district)[;] and (iii) there are no violations of zoning law, or non-conforming uses and the Project is in compliance with all applicable zoning and subdivision laws, ordinances and regulations (including, without limitation, all those establishing or relating to parking requirements). Further, there are no other requirements which must be satisfied in order for the Project to fully comply with applicable zoning and subdivision laws, ordinances, regulations[,] and parking requirements.
>
> Copies of the regulations and ordinances of the City of Natchez, Mississippi[,] that establish and define the parking requirements and permitted uses for the R-1 (Single-Family Residential Zoning District) zone are attached to this letter.

¶43. As stated, the record reflects that when the property was purchased, the proposed use met existing zoning requirements for development of the property, and the subsequent re-zoning demanded by the City was unnecessary for the property's development. Moreover, the re-zoning demanded by the City differed from zoning requirements existing when the property was purchased for the proposed use.[7] The unnecessary demand for re-zoning delayed the project and provided a frustrating distraction in confusing the review of the legality of the City's denial of the site plan and subdivision plat, particularly since the proposed project met existing zoning requirements. In denying approval of the site plan and subdivision plat, the City abused its discretion as Roundstone submitted it as a matter of right

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in the record showing that Roundstone's proposed subdivision met the zoning requirements.

[7] The use of land is subject to a valid exercise of a municipality's power to zone and control property use within its boundaries. *See* 101A C.J.S. *Zoning & Land Planning* § 6 (2005).

in compliance with existing zoning requirements.

¶44. This Court, in *Vineyard Investments, LLC v. City of Madison*, 999 So. 2d 438, 442 (¶10) (Miss. Ct. App. 2009), previously held that a City had acted outside of its discretion by denying building permits that met current zoning ordinances and building regulations. Similarly, in *Berry v. Embrey*, 238 Miss. 819, 824, 120 So. 2d 165, 167 (1960), the Mississippi Supreme Court recognized that a building permit for a shopping center, which conformed to building regulations, could not be denied because of a proposed use where the area was not zoned against such use. Furthermore, precedent has recognized that the issuance of a permit constitutes a purely ministerial act, and a city lacks discretion to deny when applicable building code and zoning ordinances are met. *See Thompson v. Mayfield,* 204 So. 2d 878, 880 (Miss. 1967). In applying precedent to this case, I respectfully submit that the City abused its discretion in denying approval of the site plan and subdivision plat for a use that met existing requirements.

¶45. Additionally, Roundstone asserts that the City considered improper criteria of an alleged undesirable class of people in demanding re-zoning. Roundstone essentially argues that the City's requirement of re-zoning constituted a subterfuge and a tainting of its consideration of improper demographic criteria to block the development,[8] since the proposed use met zoning and building requirements when the property was purchased. If shown by sufficient evidence that the City of Natchez indeed considered improper

[8] Regarding exclusionary zoning tactics, *see generally BAC, Inc. v. Bd. of Supervisors of Millcreek Twp.*, 633 A.2d 144 (Pa. 1993); *Toll Bros. v. Twp. of W. Windsor*, 803 A.2d 53 (N.J. 2002).

discriminatory demographic criteria, then precedent reflects that such decision by the City would be arbitrary, capricious, and improper in denying approval of the site plan and subdivision plat for the use that met existing requirements.[9]

¶46. However, we need not reach that issue today. The approval of the site plan and subdivision plat herein required no re-zoning for approval; therefore, the denial of the re-zoning fails to impact the approval of the site plan and subdivision plat submitted in compliance with current zoning requirements. The proposed use satisfied existing zoning and building ordinances; therefore, the City abused its discretion in denying approval of the site plan and subdivision plat without a legally valid reason. *See* 83 Am. Jr. 2d *Zoning and Planning* § 400 ("Where the creation of a planned unit development is authorized, the applicant must meet the standards of the ordinance, but the applicant need not adduce the proof essential to the granting of a variance.") (citing *Chandler v Kroiss*, 190 N.W.2d 472 (Minn. 1971)). *See generally Woodhouse v. Bd. of Comm'rs. of Town of Nags Head*, 261 S.E.2d 882 (N.C. 1980) (denial improper where development was not prohibited by current zoning ordinances); *LaSalle Nat'l Bank v. Lake County,* 325 N.E.2d 105 (Ill. Ct. App. 1975) (denial was arbitrary, capricious, and unreasonable where developers substantially complied with requirements of existing ordinances).

¶47. Returning to review the key analysis before us – was there error in the trial court's review of whether the City had abused its discretion in performing the ministerial acts of approving a site plan and subdivision plat. In *Vineyard Investments, LLC,* 999 So. 2d at 441-

[9] *See generally Resident Advisory Bd. v. Rizzo,* 564 F.2d 126, 146-49 (3rd Cir. 1977); *United States v. City of Black Jack, Mo.*, 508 F.2d 1179, 1184-85 (8th Cir. 1974).

42 (¶10), this Court recognized that an applicant's right to erect a building for which a permit is sought is otherwise absolute where no legally valid reason exists to deny the building permit. As stated differently, issuance of a permit constitutes a ministerial act, and where zoning and building requirements are satisfied, then no legal basis exists for the city to deny the permit. *Id.* at 440-41 (¶7); *see Berry*, 238 Miss. at 824-25, 120 So. 2d at 168 (finding city officials act outside of their authority when denying building permit where existing requirements are met, and aggrieved property owner may obtain a writ of mandamus or may appeal from the order of the municipality denying such permit).[10]

¶48. In applying the foregoing precedent to the present case, since the proposed use, site plan, and subdivision plat met the existing zoning requirements, as acknowledged by the City in the May 16, 2007 letter quoted herein, then the City possessed no discretion to deny the permit without a legally valid reason. The circuit court failed to review whether any legally valid reason existed to deny approval of the site plan or subdivision plat. This Court in *Vineyard Investments, LLC*, 999 So. 2d at 441-42 (¶10), acknowledged that an applicant's right to erect a building, which met current zoning requirements, was absolute, and this Court reversed and remanded the case to the circuit court.

¶49. Based upon the foregoing reasons, I respectfully dissent.

RUSSELL, J., JOINS THIS OPINION.

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[10] Regarding ministerial acts, *see generally Powell v State Tax Comm'n*, 233 Miss. 185, 101 So. 2d 350 (1958); *City of Jackson v. Sunray DX Oil Co.*, 197 So. 2d 882 (Miss. 1967). *See also* 5 Rathkopf's *The Law of Zoning and Planning*, § 87:3 (2005) ("Site plan approval is the process by which a local board, typically the planning board or commission, reviews a project that is permitted as a matter of right.").