IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 95-CC-00606 COA

THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF PEARL, MISSISSIPPI — **APPELLANT**

v.

MISSISSIPPI MANUFACTURED HOUSING ASSOCIATION, INC. — **APPELLEE**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	04/19/95
TRIAL JUDGE:	HON. ROBERT LOUIS GOZA, JR.
COURT FROM WHICH APPEALED:	RANKIN COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	JAMES A. BOBO
ATTORNEY FOR APPELLEE:	GEE OGLETREE
NATURE OF THE CASE:	CIVIL - OTHER
TRIAL COURT DISPOSITION:	CITY OF PEARL'S ZONING ORDINANCE AMENDMENT AFFECTING MANUFACTURED HOUSING SALES ADJUDGED NULL AND VOID
DISPOSITION:	AFFIRMED - 9/23/97
MOTION FOR REHEARING FILED:	10/8/97
CERTIORARI FILED:	
MANDATE ISSUED:	11/25/97

EN BANC

COLEMAN, J., FOR THE COURT:

The City of Pearl (Pearl) appeals from an order and judgment of the Rankin County Circuit Court which nullified section 405(b) of the Pearl Official Zoning Ordinance (POZO). Section 405(b) reads as follows:

No businesses conducting mobile home sales, new or used, shall be allowed in any district in the City. Existing mobile home sales businesses shall be considered conditional uses allowed in the C-1 district

and shall not be required to report on an annual basis to the planning administrator or to the director of community development. In no event shall a business conducting mobile home sales be allowed to operate said business in more than one location within the City.

The appellee, Mississippi Manufactured Housing Association, Inc. (MMHA), had appealed Pearl's adoption of this ordinance primarily to protest the ordinance's classification of mobile homes sales lots, which had originally been "permitted users," to "conditional users." We affirm the order and judgment of the Rankin County Circuit Court.

I. FACTS

The amorphous nature of the evidence and the general findings of the circuit judge in this case require a thorough narration of the facts which begot this litigation. Prior to 1987, Pearl's zoning ordinance, which the city adopted in 1973, did not specifically affect the location or operation of lots from which manufactured housing, or mobile homes, were sold.(1) However, in 1987, Pearl's Board of Aldermen unanimously adopted an order that "a two (2) year moratorium is ordered on any additional new or used mobile home sales locating in the City of Pearl." On March 7, 1989, the board unanimously renewed this moratorium for an additional period of two years. On December 18, 1990, the board of aldermen formally amended "Appendix A, Zoning Section 405," POZO, to provide:

No additional mobile home sales, new or used, locating or relocating in the City of Pearl shall be allowed with the exception of new or used mobile home sales operating under a valid City Permit as of the effective date of this ordinance. The provisions herein shall remain in effect for two (2) years form the date of passage unless extended, changed, amended, or deleted by the Mayor and Board of Aldermen."

On March 5, 1991, the board conducted a public hearing on this same ordinance, at which four residents of Pearl appeared to express their support of the two-year moratorium. Lem Adams, an attorney, appeared on behalf of Clyde Herrington, who already held a permit to operate a mobile home sales lot but who wanted to open a second mobile home sales lot in Pearl. Adams appeared to object to continuing the moratorium against the establishment of new mobile home sales agencies in Pearl. After the public hearing had ended, the board adopted by unanimous vote the following amended Section 405(b): "No additional mobile home sales, new or used, locating or relocating in the City of Pearl shall be allowed with the exception of new or used mobile home sales operating under a valid City Permit as of the effective date of this ordinance."

At this same board meeting, the board's attorney discussed with his client the litigation which Clyde Herrington had instigated in the United States District Court for the Southern District of Mississippi against Pearl to attack this same ordinance. One consequence of Mr. Herrington's suit was the board's decision to grant Mr. Herrington a permit to open a second mobile home sales lot. However, the decision to grant Mr. Herrington his permit did not allay the litigation. Included in the record in this case is a "statement of material facts as to which there is no dispute," which the City of Pearl filed in Herrington's law suit pending in the United States District Court. In that statement, Pearl stated that it had passed the two-year moratorium "to rid the [c]ity of the stigma of being known as the 'Mobile Home Sales Capital' and the 'Home of the Double-Wides.'"

Almost three years later on January 20, 1994, Jerry Woods, who already held one mobile home sales permit as of March 19, 1991, the date Section 405(b) was last amended, wrote the mayor of Pearl to appeal the decision of the city's director of community development to deny him a second "privilege license to operate a mobile home sales business at the present location of EZ Living Home Sales lot at 2845 Hwy. 80 East, Pearl, Ms." At its meeting conducted on February 15, 1994, the Board of Aldermen voted to "override the decision of the Director of Community Development and grant Mr. Jerry Woods the proper permits." In the same order, the Board, "authorized the city attorney to prepare the proper documents to clarify [Section 205]" and scheduled a public hearing on the matter for March 15, 1994. March 15 was the date of the next regular meeting of Pearl's Board of Aldermen.

At the public hearing held on March 15, 1994, Pearl's mayor proposed to amend Section 405(b) so that it would read as follows:

No businesses conducting mobile home sales, new or used, shall be allowed in any district in the City. Existing mobile home sales businesses shall be considered nonconformities.

Not one person spoke in favor of this amendment during the public hearing which the Board of Aldermen conducted on March 15. Among those present who opposed the amendment were Thad Vann, Executive Director of the Mississippi Manufactured Housing Association, Gee Olgetree, attorney for the MMHA, David Anderson, owner of AAA Homes, a sales agency for mobile homes located in Pearl, Scott Lingle with Clayton Homes, another sales agency for mobile homes with a sales lot located in Pearl, Jerry Woods, owner of Woods Manufactured Housing, also in Pearl, and Jimmy Munn with Munn Mobile Homes in Pearl.

Because of "potential litigation," the board entered executive session at the conclusion of the hearing to deliberate on whether to approve the amendment to Section 405 (b). During its executive session, three members of the board voted to adopt Section 405(b) as amended, and three members voted against its adoption. The tie vote of three to three required the mayor to cast his vote to break the tie. The mayor voted in favor of the amended Section 405(b); thus, the motion carried. The board also elected to have another public hearing at the next meeting of the mayor and board of aldermen on April 5, 1994. The subject of that hearing was to be "the proposed readoption of the ordinance concerning mobile home sales lots and amendments thereto, including, but not limited to a proposal to create a new zoning designation to include new mobile home sales as a permitted use and any other amendments thereto."

The public hearing scheduled for April 5, 1994, began at 10:55 p.m. when the board again emerged from executive session on other matters. As with the public hearing held earlier on March 15, not one person appeared to support the adoption of the amended Section 405(b), but the same coterie of opponents who appeared at the March 15 hearing again appeared to oppose the adoption of Section 405(b). The hearing continued until 2:00 a.m., April 6, when it was mercifully continued until April 19, 1994. After the public hearing had ended on April 19, the board adopted the following amended form of Section 405(b):

No businesses conducting mobile home sales, new or used, shall be allowed in any district in the City. Existing mobile home sales businesses shall be considered conditional uses allowed in the C-1 district and shall not be required to report on an annual basis to the planning administrator or to the director

of community development. In no event shall a business conducting mobile home sales be allowed to operate said business in more than one location within the City.

The more significant change in the March 19 adoption of Section 405(b) was that instead of being "nonconforming users" of their sales lots located in the C-1 zone as they had been classified by the March 15 amendment, mobile home sales agencies became "conditional users" of their sales lots so located. The ordinance also included the provision that "[e]xisting mobile home sales businesses . . . shall not be required to report on an annual basis to the planning administrator or to the director of community development," because Section 606 of Pearl's zoning ordinance, entitled "Conditional Uses," required that if the board of aldermen approved anyone's request for a conditional use, "the subject shall report to the planning administrator on an annual basis, and inspections [shall] be made by the health department and fire department and reported to the director of community development [annually]."

MMHA and its members who owned or operated mobile home sales lots in Pearl had prevailed in two other zoning skirmishes with Pearl between 1991 and the adoption of Section 405(b) on April 19. The first skirmish occurred in 1991, when Pearl considered adopting an ordinance that would require mobile home parks and sales agencies to landscape and fence their lots. The board of aldermen never adopted this ordinance. The second skirmish was an integral part of the case *sub judice*. While the board wrestled with amending Section 405(b) in the spring of 1994, they had considered establishing a new district, not located in an existing commercially zoned area of the city, in which mobile home sales agencies might locate new sales lots. As is evident, Pearl's board of aldermen did not adopt this amended version of Section 405(b).

II. Litigation

The state of the record in this case is less than ideal. Pearl explains in a footnote to its brief that the record was lost when the file was transferred to Madison County for a hearing. However, among the pleadings which appear filed among the clerk's papers are: (1) an order consolidating two separate cases for review by the circuit judge, (2) MMHA's assignment of error required by Rule 4.01 of the then Uniform Circuit Court Rules, and (3) the order and judgment of the circuit court which nullified both versions of Section 405(b) as adopted by Pearl's Board of Aldermen. In its order consolidating two separate cases for review, the circuit court found that MMHA had properly perfected its appeal from both the March and the April adoptions of Section 405(b) by Pearl's Board of Aldermen by filing bills of exceptions on March 29, 1994, in Cause No. 94-86, and on May 6, 1994, in Cause No. 94-118. Because the April 19 adoption necessarily amended the March 15 version of Section 405(b), Pearl as appellant asks this Court to review only the April 19 adoption of Section 405(b).

The following portions of the circuit court's order and judgment are relevant to this Court's disposition of the issues in this case:

2. Pearl adopted Section 405 (b) of the Zoning Ordinances of Pearl on April 21, 1987, in order to create a moratorium on new "mobile home" sales facilities locating within the city limits. At the time of the adoption of this ordinance, there were a number of manufactured housing sales facilities validly operating as a permitted use according to the zoning ordinances of Pearl.

3. Pearl amended the ordinance on March 7, 1989, extending its moratorium but allowing existing "mobile home" sales facilities to relocate within the City.

4. Subsequently, the moratorium was again extended on December 18,1990 and then made permanent on March 19, 1991. The 1991 ordinance allowed existing "mobile home" sales facilities to "locate or relocate" within the City.

5. In March 1994, and April 1994, Pearl adopted ordinances revising Section 405(b) of the Zoning Ordinances claiming that the 1991 revision to the ordinance contained a mistake that could cause it to be read to allow a manufactured housing sales facility to relocate anywhere in the City without regard to the existing zoning of a proposed location.

. . . .

7. Pearl's April 1994 amendment to the ordinance would prohibit "mobile home" sales in any district in the City, would limit existing businesses to one location in the C-1 Limited Commercial District, and would classify existing businesses as conditional uses. Conditional uses are restricted by Pearl's zoning ordinances and do not enjoy the benefits of a permitted use.

8. The 1991 ordinance should not be read to allow manufactured housing sales facilities to locate in any zoning district other than the C-1 District, the district in which they were located at the time they began operations at a location. For example, no manufactured housing sales facility can locate in a Residential District. No manufactured housing sales facility has ever attempted to locate in a Residential District and MMHA has stated that its members do not desire to locate in any district other than a commercial district.

9. There was no mistake in Section 405 (b) of the Zoning Ordinances requiring correction, no change in the circumstances of the City, and no public need for an amendment. The April 1994 ordinance improperly attempted to go beyond correcting a clerical mistake by purportedly amending matters of judgment concerning whether manufactured housing sales facilities should be and enjoy the benefits of a permitted use in the zoning district in which they are located under the zoning ordinances of Pearl.

10. The . . . April 1994 ordinance[] [is] invalid and should be declared null and void.

The circuit court concluded that it was unnecessary "for the resolution of this appeal to reach any constitutional issues raised by this appeal," and it then ordered that "[t]he April 19, 1994 amendment by the City of Pearl to Section 405(b) of the Zoning Ordinances of the City of Pearl is null and void."

Pearl appeals from this order and judgment to present four issues for this Court's analysis and resolution.

III. Resolution and Analysis of the Issues

We quote verbatim Pearl's four issues from its brief:

I. May a Mississippi Municipality having once been plagued by an over-saturation of trailer lots act through its zoning power to protect the character of the heart of its downtown area and regulate the future location of trailer sales lots on commercial property within the Municipality ?

a. Is the April 19, 1994 Ordinance adopted by the City of Pearl, Mississippi, valid and enforceable ?

1. Did the lower court err in failing to apply the "fairly debatable" standard ?

2. Assuming the "change" standard applies did the lower court err in his application of this standard ?

II. May a Mississippi Municipality, upon learning that its zoning ordinance by its express terms mistakenly allows a discrete group to operate an unlimited number of trailer sales lots in any zoning district within the Municipality, then act to modify its zoning ordinance so as to provide for the orderly future development of commercial property within the Municipality ?

III. Does the Mississippi Manufactured Housing Association, Inc., have standing to appeal the adoption of the April 19, 1994 Ordinance by the city of Pearl, Mississippi ?

IV. If the 1991 Ordinance is the applicable zoning provision as held by the lower court then are trailer sales lots a C-1 permitted use under the Code of Ordinances of the City of Pearl, Mississippi?

MMHA filed its own statement of issues in its brief, but because it perfected no cross-appeal, this Court remains unobligated to review them. *See Beck Enterprises, Inc. v. Hester,* 512 So. 2d 672,

678 (Miss. 1987) (holding that "[t]his Court will not consider issues not raised . . . on cross-appeal by an appellee").

Issue 3. Does the Mississippi Manufactured Housing Association, Inc., have standing to appeal the adoption of the April 19, 1994 Ordinance by the City of Pearl, Mississippi?

Pearl filed no motion to dismiss this case in the circuit court for any reason, including MMHA's lack of standing to sue. Therefore, Pearl invites this court to reverse the circuit judge on an issue on which it never asked him to rule. The short answer to this issue is that the failure of a party to present an issue for the adjudication of the court from which the appeal emanates justifies an appellate court's declining to review it. *See Touart v. Johnston,* 656 So. 2d 318, 321 (Miss. 1995) (reciting that an

appellant is not entitled to raise new issues on appeal since to do so denies the trial court the opportunity to address the matter). However, if MMHA lacked standing to prosecute the appeal of this case to the circuit court, then no need would remain for this Court to proceed further. Thus, we review this issue.

In a two-sentence argument, Pearl asserts:

In *Belhaven Imp. Ass'n. Inc. v. City of Jackson*, 507 So. 2d 41 (Miss. 1987), the Mississippi Supreme Court held that in order for an association to have standing to appeal under Section 11-51-75 of the Mississippi Code of 1972, as amended, the "[m]embership in the association should be limited to residents and property owners . . . ." 507 So. 2d at 47. In the present case the membership of the Mississippi Manufactured Housing Association, Inc. is not so limited.

We begin our review of this issue with an analysis of *Belhaven Imp. Ass'n. Inc. v. City of Jackson.* In *Belhaven*, the appellant, Belhaven Improvement Association, Inc., was a Mississippi non-profit corporation whose membership was allegedly composed of every property owner in the Belhaven area of Jackson. However, it represented only selected members who opposed the application of the First Presbyterian Church to rezone the property at 747 Belhaven Street from R-2 to "Special Use Religious Institution District." Approximately two hundred members of the First Presbyterian Church were also residents of the Belhaven area of Jackson. *Belhaven*, 507 So. 2d at 43. The City of Jackson voted to grant the church's application, and the Belhaven Improvement Association (BIA), appealed the City's decision to the Circuit Court of Hinds County for its review of that decision pursuant to Section 11-51-75 of the Mississippi Code of 1972. *Id.* at 44. The circuit court dismissed BIA's appeal because it lacked standing to sue. *Id.* The circuit court opined that BIA lacked standing to sue for the reason that it was "not a 'person aggrieved' because it d[id] not own, nor d[id] it have an interest in, property which [was] or [might] be affected by the rezoning of the property at 747 Belhaven Street." *Id.* at 43.

The Mississippi Supreme Court held that BIA had standing to sue and reversed the circuit court's dismissal of BIA's appeal. *Id.* at 46-47. However, the supreme court remanded the case to the circuit court because "[t]he facts relating to the question of standing must be more fully developed in an evidentiary hearing." *Id.* at 47. The supreme court explained, "The record must show the extent of interest, adverse effect, participation of the membership, and authority of BIA to act pursuant to its charter, bylaws and minutes." Thus, *Belhaven*, the only case which Pearl cites to support its position on its third issue, appears to support MMHA's standing to sue in the case *sub judice*.

While the Mississippi Supreme Court advised the bench and bar that it did "not embrace the entire New York test, it should be considered as helpful in developing and deciding the standing question." *Belhaven*, 507 So. 2d at 47. The supreme court had related the four factors with which the New York rule was concerned as follows:

The New York rule requires the Court to consider four factors, i.e.: (1) the capacity of the organization to assume an adversary position, (2) the size and composition of the organization as reflecting a position fairly representative of the community or interest which it seeks to protect, (3) the adverse effect of the decision sought to be reviewed on the group represented by the organization as within the zone of interests sought to be protected, and (4) the availability of full participating

membership in the organization to all residents and property owners in the relevant neighborhood.

Id. at 46.

We find that the four factors included in the New York rule establish that MMHA had standing to sue in the case *sub judice*. As a corporation, it had "the capacity . . . to assume an adversary position." At the public hearing conducted on March 15, Thad Vann, the executive director of MMHA, stated that all six sales agencies for mobile homes who were affected by the amendment of Section 405(b) were members of MMHA. Four of those members appeared with MMHA's director and attorney at one or more of the public hearings which the Board of Aldermen conducted on the subject of amending Section 405(b). Thus, MMHA was of sufficient "size and composition . . .[to] reflect[] a position fairly representative of the community or interest which it [sought] to protect . . . ." The interest which MMHA sought to protect was that of its members whose businesses in Pearl would be affected by the amended Section 405(b). The adverse affect of an amended Section 405(b) to be reviewed by the Pearl Board of Aldermen fell within "the zone of interests" which MMHA sought to protect. The "zone of interests" encompassed the continued viability of the businesses which sold mobile homes in Pearl and which belonged to MMHA. Finally, the record reflects that all six of the mobile home sales agencies with sales lots in Pearl belonged to MMHA. Therefore, the record supports the fourth requirement of the New York test that "the availability of full participating membership [of merchants of mobile homes in Pearl] in [MMHA] was available to all . . . property owners in the relevant neighborhood [or commercial district]." We hold that MMHA had the standing to sue in this case, and we resolve this issue against Pearl.

Issue 1. May a Mississippi Municipality having once been plagued by an over-saturation of trailer lots act through its zoning power to protect the character of the heart of its downtown area and regulate the future location of trailer lots on commercial property within the Municipality ?

a. Is the April 19, 1994 Ordinance adopted by the City of Pearl, Mississippi, valid and enforceable ?

1. Did the lower court err in failing to apply the "fairly debatable" standard ?

2. Assuming the "change" standard applies did the lower court err in his application of this standard ?

A. Basis for municipality's zoning power

Sections 17-1-15 and 17-1-17 of the Mississippi Code of 1972 (Rev. 1995) provide the statutory authority for municipalities and counties to amend, supplement, change, modify, or repeal zoning regulations, restrictions, and boundaries.[(2)] The Mississippi Supreme Court has explained the purpose of municipal zoning statutes in *Broadacres v. City of Hattiesburg*, 489 So. 2d 501, 503-04 (Miss. 1986):

The zoning statutes of this state contemplate the adoption by each municipality of a comprehensive zoning plan. The plan should be designed to bring about "coordinated physical development" of the

community "consistent with its present and *future* needs". Miss. Code § 17-1-11(1) (Supp.1982) [Emphasis added]. Properly designed, the comprehensive plan contemplates a dynamic community. It recognizes the inevitability of change. Its goal is orderly change, balancing the community's growth needs and the individual's interest in using his property as he sees fit. Its calculus is largely utilitarian.

In the end all zoning in this state is for

"the purpose of promoting health, safety, morals, or the general welfare of the community". Miss. Code § 17-1-3 (1972).

Broadacres, 489 So. 2d at 503-504. The supreme court then continued, "The decisions of municipality zoning authorities, because they are legislative decisions, are presumed valid . . . . Because communities grow and changes occur, municipal officials possess the power to rezone." *Id.* at 504.

B. Standard of review

The Mississippi Supreme Court has defined our role in reviewing zoning cases in *Broadacres,* from which we quote as follows: "Upon reviewing zoning cases the cause is not tried de novo but the circuit court acts as an appellate court only." *Broadacres,* 489 So. 2d at 503. (citations omitted). Elsewhere in its opinion, that court continued:

In our appellate review of the reasonableness and propriety of zoning ordinances, we have developed some basic rules over the past quarter century. We began by stating in *Ballard v. Smith*, 107 So.2d 580, 234 Miss. 531 (1958), that courts should not constitute themselves zoning boards. . . . [T]he classification of property for zoning purposes is essentially a legislative rather than a judicial responsibility of the city board, and in the absence of its being arbitrary, unreasonable, discriminatory, confiscatory, or an abuse of discretion courts would not interfere; and courts would set aside only if the invalidity was clear.

Id. at 504 (citations omitted). Therefore, "The order of the governing body of a municipality may not be set aside if its validity is fairly debatable, and such order may not be set aside by a reviewing court unless it is clearly shown to be arbitrary, capricious, discriminatory or is illegal or without substantial evidential basis. *Id.* at 505. Hence *Broadacres* instructs this Court that the circuit court sits as an appellate court, that classification of property for zoning purposes is essentially a legislative function of the municipality, and that an appellate court can not set aside a zoning ordinance if its validity is fairly debatable. The ordinance must be "clearly shown to be arbitrary, capricious, discriminatory or is illegal or without substantial evidential basis."

C. Pearl's zoning ordinance

Pearl's zoning ordinance contains no definition of "permitted use." However, it defines "conditional use" as "[a] use granted by the board of aldermen considered to be acceptable within the use district where the zoning ordinance specifically classifies such use as a conditional use." Appendix A, Article

VII, Official Zoning Ordinance, City of Pearl, Mississippi (POZO). Among the conditional uses in Zone C-1, the zone in which the mobile home sales lots are located, are parking lots, multi-family structures and mobile home parks as regulated in the R-2 residential district, and used car sales lots. (Section 303.14, POZO). A sales lot for mobile homes is not included among those conditional uses. The omission of mobile home sales lots from the list of conditional uses for land which had been zoned C-1 would indicate that in the original 1973 zoning ordinance, sales lots for mobile homes were among the uses to which land could be put in zoning district C-1.

Section 606, POZO, of which conditional uses was the subject, provides:

The mayor and board of aldermen shall have the power and original jurisdiction to hear and decide, in accordance with the provisions of this ordinance, applications, filed as hereinbefore provided, for conditional uses. In considering an application for a conditional use, the mayor and board of aldermen shall give due regard to the nature and condition of all adjacent uses and structures and the consistency herewith of the proposed use and development. Before authorizing a use as a conditional use, the mayor and board of aldermen shall determine whether the proposed use would be hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood by reason of noise, smoke, odor, vibration, dust and dirt, cinders, noxious gases, glare and heat, fire and safety hazards, sewage wastes and pollution, transportation and traffic, and aesthetic and psychological effects. Upon authorizing a conditional use, the mayor and board of aldermen may impose such requirements and conditions with respect to location, construction, maintenance and operation, in addition to those expressly stipulated in this ordinance for the particular conditional uses, as the mayor and board of aldermen may deem necessary for the protection of adjacent properties and public interest. Any application for proposed conditional uses shall first be submitted to the planning commission for its written recommendation to the board.

[If] anyone comes before the board requesting a conditional use and the board approves such request, the subject shall report to the planning administrator on an annual basis, and inspections [shall] be made by the health department and fire department and reported to the director of community development [annually].

The purpose of reciting these various zoning ordinances is to demonstrate that Section 405(b) as adopted by Pearl's Board of Aldermen on April 19, 1994, impacted adversely the six mobile home sales' agencies' use of their sales lots, which had originally been "permitted uses." While Section 405(b) eliminated the requirement that the six mobile home sales agencies report annually to the planning administrator, Section 606 renders a conditional use less certain than a permitted use because the conditional use remains subject to supervision and regulation by the Mayor and Board of Aldermen. Moreover, the mobile homes sales agencies remain subject to inspections by the health and fire departments, which are to report their inspections to the director of community development. As permitted users in C-1 District, the mobile home sales agencies were not subject to those inspections.

The record reflects that no fewer than five used car lots, two metal buildings sales places, a portable building sales lot, and a heavy construction equipment sales agency operated in the C-1 District. A video tape of these and other businesses, which MMHA submitted to the Pearl Board of Aldermen

and is included in the record in this case, shows that these types of businesses are similar to sales lots for mobile homes in that their merchandise remains outside, and their business is conducted in usually smaller buildings located on the sales lots. Yet Section 405(b) subjects none of these kinds of businesses to a permanent moratorium; neither does it relegate any of the existing businesses to a conditional sales use.

D. Was Pearl's adoption of Section 405(b) arbitrary or capricious?

MMHA argues that Pearl's adopting the April 19 version of Section 405(b), which converted existing manufactured sales facilities from C-1 permitted use to a conditional use, when taken as a whole in light of prior actions by that city, demonstrates an arbitrary and capricious approach to the manufactured housing sales industry without a plan of logical development serving legitimate state ends. MMHA's argument requires this Court to determine if Pearl's adoption of Section 405(b) on April 19, was arbitrary and capricious. Our standard of review requires that we eschew becoming the zoning board for Pearl. *See City of Biloxi v. Hilbert*, 597 So. 2d 1276, 1281 (Miss. 1992) (opining that "[n]either this Court nor the circuit court should sit as a super-zoning commission"). We properly respect Pearl's Board of Aldermen's legislative power to rezone unless "[i]t is clearly shown to be arbitrary, capricious, discriminatory or is illegal or without substantial evidential basis." *See Broadacre*, 489 So. 2d at 505.

We begin our task by reciting definitions of "arbitrary" and "capricious" which the Mississippi Supreme Court adopted in *McGowan v. Mississippi Oil & Gas Bd.*, 604 So. 2d 312, 322 (Miss. 1992):

"Arbitrary" means fixed or done capriciously or at pleasure. An act is arbitrary when it is done without adequately determining principle; not done according to reason or judgment, but depending upon the will alone, -- absolute in power, tyrannical, despotic, non-rational, -- implying either a lack of understanding of or a disregard for the fundamental nature of things.

"Capricious" means freakish, fickle, or arbitrary. An act is capricious when it is 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. . . .

This Court must also remember that it is reviewing the order and judgment of the circuit court, which does not try this case de novo, but "acts as an appellate court only." *See Broadacres*, 489 So. 2d at 503. Pearl does not attack any of the circuit judge's findings of fact as being unsupported by the evidence compiled in the record of the public hearings which its Mayor and Board of Aldermen conducted on the subject of amending Section 405(b). In addition, it is useful to establish that the case *sub judice* is not about Pearl's re-zoning the mobile home sales lots from their original classification of C-1 to another zonal classification such as industrial or residential. The zoning classification of all seven lots remained C-1 both before and after April 19, the date that Pearl's Board of Aldermen adopted Section 405(b) in its present form.

Prior to its passage of Section 405(b) on April 19, Pearl's board enumerated approximately twelve reasons which the aldermen deemed to be reasons supported by clear and convincing evidence for

necessarily amending Section 405(b). They were:

Businesses conducting mobile home sales are different in their nature and character from other businesses being conducted

in Pearl, Mississippi[,] and the City does not desire that additional acreage be used for use as a mobile home sales site.

Businesses conducting mobile home sales are unsightly and unattractive.

Businesses conducting mobile home sales are disfavored by a significant portion of the citizens of Pearl, Mississippi.

Businesses conducting mobile home sales tend to not permanently improve the lots upon which they conduct their businesses.

Businesses conducting mobile home sales have inventories which are highly mobile and not fixed and said businesses can relocate with relative ease and their structures and inventories can pose dangers in high winds.

Businesses conducting mobile home sales are directly related to the increase movement of "Wide Loads" through the City of Pearl, Mississippi, and the placement of inventory upon existing lots has involved partial blockage of Highway 80, thereby causing delay and increased risk to other motorist[s] .

The location of businesses conducting mobile home sales in Pearl, Mississippi, increases the chances that a resident of Pearl, Mississippi in choosing a residence might elect a mobile home over construction of a new permanent structure.

Businesses conducting mobile home sales are not labor intensive businesses and do not significantly increase the number of available jobs in relation to acreage used when compared with the ratio of jobs to acreage of other business.

The City of Pearl, Mississippi, desires to continue to strive to be more attractive, to increase the construction of permanent structures and residences which enhance the City's appearance and increase its tax base; to limit the danger posed by non-permanent structures and the movement of such structures throughout the City; to encourage businesses to erect fixed permanent structures and to remain in the City because of their investment in said fixed permanent structures.

There already exist sufficient land currently being used for the purpose of conducting mobile home

sales businesses.

The proposed ordinance will not require the discontinuance of any presently existing mobile home sales business.

After the board had recited these reasons for adopting Section 405(b), they then found:

WHEREAS, having considered the above referenced amendment, their individual knowledge and information, and the evidence presented at the said public hearing, the Mayor and Board of Aldermen find that there has been proved, (to the extent required, if at all required) by clear and convincing evidence that a mistake was made in original adoption of § 405(b) as it currently reads (specifically as it reads prior to the effective date of the amendment adopted on March 15, 1994); that there has been a substantial change in the character of the land involved since the adoption of § 405(b) as it currently reads; and that there is a public need for the above referenced amendment; and that the above referenced amendment is justified and required by the public necessity, public convenience, public interest, general welfare, and good zoning practice.

Pearl argues that there is evidence in the record to support each of the foregoing reasons for its adoption of Section 405(b) as amended on April 19 and that, therefore, the circuit judge erred when he voided Section 405(b). MMHA counters that these reasons were not supported by evidence, whether clear and convincing or otherwise, and that, therefore, the adoption of Section 405(b) was arbitrary and capricious. While this case does not involve the reclassification of the mobile home sales lots from their current C-1 to any other classification, *Board of Aldermen, City of Clinton v. Conerly*, 509 So. 2d 877, 884 (Miss. 1987), which involved a municipality's attempt to rezone land, established that there must be sufficient "clear and convincing" evidence to support the municipality's finding that a rezoning of land is necessary. In *Clinton*, the supreme court opined:

Accordingly, we have held it a firmly established rule that before a zoning board reclassifies property from one zone to another, there must be proof either (1) that there was 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* that there was a public need for rezoning.

. . . .

When we have before us an appeal from an action by a governing board rezoning property, unless the record contains specific finding by such board that one or both of these two criteria have been met, and *in addition thereto sufficient evidence to support such finding*, we will inevitably conclude that the governing board acted arbitrarily, unreasonably, and capriciously.

Id. at 883-84 (emphasis added).

Pearl and MMHA's arguments compel this Court to search the record in this case for evidence in support of these twelve reasons and then to analyze that evidence to determine if it was clear and convincing to support Pearl's reasons for adopting Section 405(b). Pearl presented no witness to testify during any of the three public hearings which it conducted on the adoption of this zoning ordinance. However, the Mississippi Supreme Court has held in *Faircloth v. Lyles*, 592 So. 2d 941, 943 (Miss. 1991) that "[i]n determining the factual issues in rezoning, the Board could consider not only the information obtained at the hearing but also their own common knowledge and the familiarity with the ordinance area." (citation omitted).

With the foregoing principles in mind, we initiate our consideration of the reasons which Pearl's Board of Aldermen found to support Section 405(b) with the eleventh reason, which was:

Reason 11: The proposed ordinance will not require the discontinuance of any presently existing mobile home sales business.

No doubt the board related this reason based on its members' interpretation of Section 405(b). Thus, it is hardly an evidentiary finding. We assume, therefore, that it is correct, although we reiterate that the existing mobile home sales lots would continue to operate as conditional users pursuant to Section 606 POZO, rather than as permitted users. This Court next considers other of the remaining eleven reasons out of their numerical sequence so that it may compare them with this eleventh reason.

Reason 5: Businesses conducting mobile home sales have inventories which are highly mobile and not fixed and said businesses can relocate with relative ease and their structures and inventories can pose dangers in high winds.

This finding requires no evidence to establish, and factually it is correct. But inventories of both used cars and metal and portable buildings are highly mobile, and they also can relocate with relative ease. Inventories of mobile homes posed no higher dangers in high winds than inventories of metal and portable buildings.

More importantly to this Court, however, is the contradiction between Reason 11 and Reason 5. The mobile home inventories would remain in place on the seven sales lots operated by the six mobile home dealers after Section 405(b) had been adopted on April 19 because, as Pearl found in its Reason 11, the mobile home sales lots would continue to do business in the same locations after the adoption of Section 405(b). Thus, the adoption of Section 405(b) would do nothing to eliminate the location of mobile homes on these sales lots, and they would continue to "pose dangers in high winds" after the adoption of Section 405(b) along with the portable and metal buildings, the sales lots for which remained unaffected by the adoption of Section 405(b).

Reason 6: Businesses conducting mobile home sales are directly related to the increase movement of "Wide Loads" through the City of Pearl, Mississippi, and the placement of inventory upon existing lots has involved partial blockage of Highway 80, thereby causing delay and increased risk to other

motorist[s].

While we reiterate that Pearl's aldermen could consider their own common knowledge and their familiarity with the area classified as C-1, no alderman stated any evidence into the record of any of their public hearings to support this reason for adopting Section 405(b). There is no other evidence in the record of even one specific instance of a traffic accident which resulted in property damage, a fatality, or a personal injury caused by the ingress or egress of a mobile home onto or away from any of the seven sales lots located in Pearl. MMHA counters Pearl's argument by pointing out that there are facilities for the sale of heavy construction equipment located on Highway 80, and that sales of heavy construction equipment sometimes require the movement of wide loads as would the sales of mobile homes. Perhaps such movements of mobile homes occasionally caused inconvenience and traffic delays, but there is no evidence in the record to establish the frequency or severity of such inconveniences or delays.

Reason 6 falls into the same category of Reason 5 because the alleged deficiency, "delays in traffic caused by partial highway blockage," remained after the adoption of Section 405(b) on April 19.

Reason 8: Businesses conducting mobile home sales are not labor intensive businesses and do not significantly increase the number of available jobs in relation to acreage used when compared with the ratio of jobs to acreage of other business.

During the public hearing which the board of aldermen conducted on April 5, Thad Vann, the executive director of MMHA, provided the following evidence about the number of jobs provided by mobile home sales agencies in Pearl and the average size of their sales lots. The sales lots in Pearl occupied on an average about 2.53 acres. They employed on an annualized basis over fifty four individuals among all six of the centers for an average of about nine employees per center. Their annual payroll averaged over $1,726,498. The record contains no evidence about the number of employees and size of sales lots of the used car dealers and purveyors of metal and portable buildings -- or any other business located in the C-1 district. Even were this finding relevant to the adoption of Section 405(b), there is no evidence to establish it.

Moreover, as with Reasons 5 and 6 which Pearl espoused to support the adoption of Section 405(b), its adoption will not result in the discontinuance of mobile home dealers doing business on the same lots located in the C-1 zone; therefore, the alleged deficiency, "[m]obile home sales lots are not labor intensive businesses and do not significantly increase the number of available jobs in relation to acreage used," remained unaltered after Section 405(b)'s adoption.

Reason 1: Businesses conducting mobile home sales are different in their nature and character from other businesses being conducted

in Pearl, Mississippi[,] and the City does not desire that additional acreage be used for use as a mobile home sales site.

Pearl asserts generally that "[t]he record supports this conclusion," and it then cites pages in the

record and its record excerpts where that support is located. Those pages are photographs of the various mobile home sales lots in Pearl which would be affected by Section 405(b) and copies of the minutes of the board which contain these findings. It also cites general planning authorities for the proposition that different zoning requirements can be placed upon manufactured homes as residences in residential zoning. It further argues that Section 17-1-39 of the Mississippi Code enables cities to ban "trailers," to employ Pearl's term for manufactured housing found in its brief, from the majority of the city,[(3)] but this Section applies only to the power of municipalities and counties to zone for manufactured housing and not to its power to zone for sellers of manufactured housing.

We have already noted similarities between the use of land by used car dealers and portable and steel building dealers who are permitted users of land included in Pearl's C-1 zone. In the absence of more specific suggestions by Pearl to support its finding that "[b]usinesses conducting mobile home sales are different in their nature and character from other businesses being conducted

in Pearl," we find that there was no substantial evidence to support this reason which the Pearl Board of Aldermen adduced to support their adoption of Section 405(b).

Reason 2: Businesses conducting mobile home sales are unsightly and unattractive.

Pearl points to no evidence in the record to support this finding. MMHA invites this Court's attention to the photographs in the record and the videotape to determine whether mobile home sites are unsightly and unattractive. Four residents of Pearl had appeared before the Pearl Board of Aldermen in 1991 to comment about the condition of the mobile home sales lots when the board was considering the adoption of an ordinance that would require the mobile home sales lots and apartment complexes to beautify and to fence their properties, but this ordinance was never adopted. The pictures of the lots included in the record were available for the circuit judge's examination and evaluation. This Court finds nothing in the record to support this finding.

Reason 3: Businesses conducting mobile home sales are disfavored by a significant portion of the citizens of Pearl, Mississippi.

We noted earlier that not one resident of Pearl appeared before its Board of Aldermen during any of the three public hearings on the adoption of Section 405(b) to express disfavor with businesses conducting mobile home sales in Pearl. This finding is wholly devoid of support in the record.

Reason 4. Businesses conducting mobile home sales tend to not permanently improve the lots upon which they conduct their businesses.

Pearl cites the same photographs and minutes in the record which it cited to support its first finding. However, mobile home sales lots require no more permanent improvements to their lots than do used car sales lots and lots for the sale of metal and portable buildings. Nonetheless, Section 405(b) singles out mobile home sales lots and excludes used car and metal and portable buildings sales lots. The supreme court has defined an arbitrary act as one "done without adequately determining principle."

See McGowan, 604 So. 2d at 322. This Court cannot fathom from the record in the case *sub judice* the "determining principle" by which "[b]usinesses conducting mobile home sales tend to not permanently improve the lots upon which they conduct their businesses," but used car lots, portable and metal buildings sales lots do. We find no clear and convincing evidence to support this reason, which is clearly arbitrary in the absence of such evidence.

Reason 7: The location of businesses conducting mobile home sales in Pearl, Mississippi, increases the chances that a resident of Pearl, Mississippi, in choosing a residence might elect a mobile home over construction of a new permanent structure.

MMHA describes this reason for adopting Section 405(b) as "the most offensive." It argues that "Mississippi statutes recognize that as a matter of public policy that manufactured housing offers safe and appropriate housing" by citing Sections 17-1-39 and 75-49-1 of the Mississippi Code of 1972. It then argues that "[b]ecause Mississippi's public policy favors manufactured housing and recognizes it as safe and appropriate, any exercise of police power by . . . Pearl must yield to the [s]tate's public policy considerations." *See Great South Fair v. City of Petal*, 548 So. 2d 1289, 1291 (Miss. 1989) (holding that the police power to promote the public health, safety, morals and general welfare, peace and order, and public comfort and convenience is "entirely consistent with the purposes of zoning law"). Regardless of the merits of MMHA's argument on this reason, the record contains no evidence that such a finding is correct.

Pearl also argues that "[a] factor such as availability which increases the demands for land upon which trailers will be located and most likely taxed as personal property is a proper consideration in making a zoning decision," but it cites no authority to support its argument. This Court can find no evidence in the record to support this reason for adopting Section 405(b).

Reason 9: The City of Pearl, Mississippi, desires to continue to strive to be more attractive, to increase the construction of permanent structures and residences which enhance the City's appearance and increase its tax base; to limit the danger posed by non-permanent structures and the movement of such structures throughout the City; to encourage businesses to erect fixed permanent structures and to remain in the City because of their investment in said fixed permanent structures.

This reason is but a restatement of aspects of Reasons 4, 6, and 7, all of which this Court has rejected because: (1) there was no evidence in the record to support them, (2) they were irrelevant to the consequence of adopting Section 405(b), or (3) the deficiencies of which the reasons complained would continue after the adoption of Section 405(b). Unique to this reason is Pearl's assertion that "permanent structures and residences . . . increase its tax base," but there is no evidence in the record to support this conclusion. This Court rejects this reason because there is no clear and convincing evidence in the record to support it.

Reason 10: There already exist sufficient land currently being used for the purpose of conducting mobile home sales businesses.

Pearl points out no evidence in the record to support this reason, which, in the absence of expert

opinion, seems to be purely speculative. MMHA does not object to the moratorium on the location of new mobile home sales lots which Section 405(b) imposes. It would seem logical that until the moratorium is challenged by a would-be new dealer in mobile homes, there does indeed already exist "sufficient land currently being used for the purpose of conducting mobile home sales businesses." Because the adoption of Section 405(b) does not affect this finding, it would seem totally irrelevant even if there were evidence in the record to support it.

Reason 12: [T]he Mayor and Board of Aldermen find that there has been proved, (to the extent required, if at all required) by clear and convincing evidence that a mistake was made in original adoption of § 405(b) as it currently reads (specifically as it reads prior to the effective date of the amendment adopted on March 15, 1994); that there has been a substantial change in the character of the land involved since the adoption of § 405(b) as it currently reads; and that there is a public need for the above referenced amendment; and that the above referenced amendment is justified and required by the public necessity, public convenience, public interest, general welfare, and good zoning practice.

This finding reflects the three elements which the Mississippi Supreme Court has held were essential to permit a municipality or a county to rezone this property. *See Clinton*, 509 So. 2d at 884. First of all, there is absolutely no evidence that "there has been a substantial change in the character of the land involved since the adoption of § 405(b) as it currently reads." The land where all seven of the six mobile home sales agencies' lots are located remains classified as C-1, and there is absolutely no evidence that the land in this area is changing to residential, industrial, or agricultural uses. To the contrary, the evidence establishes that used car lots, portable building sales lots, building supply houses, used appliance dealers, a pawn shop, a tire store, and a U-Haul representative are all located in the area which was originally zoned C-1.

However, whether "a mistake was made in original adoption of § 405(b) as it currently reads . . ." has yet to be addressed in this opinion. As of March 19, 1991, Section 405(b) read as follows:

No additional mobile home sales, new or used, locating or relocating in the City of Pearl shall be allowed with the exception of new or used mobile home sales operating under a valid City Permit as of the effective date of this ordinance.

Pearl maintains that this section of its zoning ordinance allowed an agency for the sale of mobile homes, which had a valid city permit as of March 19, to relocate into any other zone in the city, whether that zone was residential, industrial, or agricultural. Pearl further asserts that its Board of Aldermen did not become aware of this unintended result until almost three years later when the board overrrode the decision of the city's director of community development to deny Jerry Woods a second privilege license to operate a mobile home sales business at what was then the location of EZ Living Home Sales in Pearl. Pearl further asserts that EZ Living Home Sales (EZ) relocated its sales lot onto another location.

The record does not reveal whether EZ's old location to which Jerry Woods moved was located in a zone other than C-1 or whether EZ's new location was in a zone other than C-1. Neither does Pearl explain why these two relocations of mobile home sales lots demonstrated for the first time a mistake

in the language of Section 405(b) as it read on and after its adoption on March 19, 1991, which allowed a mobile home sales agency to relocate into any other area of that city. The record contains no evidence that any mobile home sales lot moved into residential, industrial, or agricultural zone after the adoption of Section 405(b) on March 19, 1991. However, Pearl's board's concern that Section 405(b) would permit a mobile home sales lot to relocate anywhere within its corporate limits, regardless of zoning classification, initiated the chain of events which culminated in this litigation.

In *Martinson v. City of Jackson*, 215 So. 2d 414, 417 (Miss. 1968), the Mississippi Supreme Court emphasized the presumption "that the original zoning is well planned and designed to be permanent." It is true that the Mississippi Supreme Court has also opined that the presumption of validity that normally accompanies a zoning ordinance does not apply "to the same degree" to rezoning as it does to original zoning. *See Lewis v. City of Jackson*, 184 So. 2d 384, 388 (Miss. 1966). But Pearl must overcome this presumption that the 1991 version of Section 405(b) was "well planned and designed to be permanent," if it is to prevail in its contention that Section 405(b) was so ambiguous that it allowed a purveyor of mobile home sales who owned a permit on March 19, 1991, to relocate in a residential, industrial, or agricultural zoning district.

The record contains no evidence that any seller of mobile homes moved into any zoning district other than C-1 after March 19, 1991, the date of adoption of Section 405(b). The record is also silent about whether any seller of mobile homes undertook litigation to adjudicate that this section allowed it to relocate in any zone other than C-1. This Court finds no clear and convincing evidence that a mistake had been made in the March 19, 1991, adoption of Section 405(b) that would have permitted a seller of mobile homes to relocate in any zoning district in Pearl.

Thus, we accept the circuit court's finding that "[t]he 1991 ordinance should not be read to allow manufactured housing sales facilities to locate in any zoning district other than the C-1 District, the district in which they were located at the time they began operations at a location." The evidence in the record clearly supports the circuit court's finding that "[n]o manufactured housing sales facility has ever attempted to locate in a Residential District . . . ." Our acceptance of the foregoing findings of the circuit court compels us also to accept that court's adjudication that "[t]here was no mistake in Section 405 (b) of the Zoning Ordinances requiring correction, no change in the circumstances of the City, and no public need for an amendment." In summary, we affirm the circuit court's order that "[t] he April 19, 1994 amendment by the City of Pearl to Section 405(b) of the Zoning Ordinances of the City of Pearl is null and void."

E. "Fairly debatable" and "change" standards

In this issue Pearl includes the questions of whether the circuit court erred "in failing to apply the 'fairly debatable' and the 'change' standards." In *Saunders v. City of Jackson*, 511 So. 2d 902, 906 (Miss. 1987), the Mississippi Supreme Court held that "[a] 'fairly debatable' decision will be affirmed." It offered the following explanation of the relationship of "fairly debatable" and "arbitrary and capricious": "'Fairly debatable' is the antithesis of arbitrary and capricious. If a decision is one which could be considered 'fairly debatable,' then it could not be considered arbitrary of capricious, although we continue to use both standards." *Id.*

This Court has accepted the circuit court's finding that "[n]onconforming uses are restricted by Pearl's zoning ordinances and do not enjoy the benefits of a permitted use." However, we reviewed

all of the reasons which Pearl assigned for adopting Section 405(b) only to find that they were not supported by clear and convincing evidence or that the adoption of Section 405(b) did nothing to further the reason for the adoption. Thus, we concluded that the reasons for adopting Section 405(b) were arbitrary and capricious and that there was no public need for adopting the ordinance, especially since it impinged adversely on the mobile home sellers' rights as permitted users. Therefore, we could not escape the conclusion that Pearl's adoption of Section 405(b) was arbitrary and capricious and that the circuit court's order and judgment nullifying it must be affirmed. To us, the decision was not fairly debatable, so whether the circuit court applied the "fairly debatable" standard, it reached the right result, as our affirmation attests. *See Riley v. Doerner*, 677 So. 2d 740, 745 (Miss. 1996) (holding that on appeal the supreme court will affirm a decision where the right result was reached, even though it may disagree with the reason for the result).

As for the "change" standard, Pearl cites no definition of that standard, so this Court adopts the definition which we earlier quoted from *City of Clinton*, *i. e*., "the character of the neighborhood has changed to such an extent as to justify reclassification . . . ." *See City of Clinton*, 509 So. 2d at 883. If the record in this case makes anything clear, it is that there has been no change in the area classified as C-1. Therefore, this standard as the Mississippi Supreme Court enunciated it in *Clinton* correctly supports the order and judgment of the circuit court.

F. Summary of Pearl's first issue

While the circuit court and this court must defer to Pearl's exercise of its power to rezone land which Sections 17-1-15 and 17-1-17 have given it and which is legislative in nature, Pearl cannot exercise that power to rezone property or otherwise amend its zoning ordinances in an arbitrary and capricious manner. Pearl's adoption of Section 405(b) POZO on April 19, 1994, relegated the mobile home sales lots from permitted status to conditional status. Pearl's reasons for doing so were either not supported by clear and convincing evidence or they were contradictory among themselves. There was no evidence that the area zoned as C-1 had changed in such a way that warranted modifying the classification of the mobile home sales lots from permitted use, their status prior to the April 19, 1994, amendment of Section 405(b), to conditional use. Finally, other businesses similar in nature to mobile home sales lots such as used car lots, metal and portable building sales lots, and heavy construction equipment sales lots remained permitted users, which we have also found to have been arbitrary. Thus, Pearl's adoption of Section 405(b) on April 19, 1994, was arbitrary and capricious, and this Court accordingly affirms the circuit court's order and judgment nullifying that section of Pearl's zoning ordinance.

Issue 2. May a Mississippi [m]unicipality, upon learning that its zoning ordinance by its express terms mistakenly allows a discrete group to operate an unlimited number of trailer sales lots in any zoning district within the Municipality, then act to modify its zoning ordinance so as to provide for the orderly future development of commercial property within the Municipality ?

Pearl uses this issue to re-argue the proposition that the error in Section 405(b) as adopted on March 19, 1991, authorized it to adopt the current version of Section 405(b) more than three years later on April 19, 1994. It cites *City of Gulfport v. Daniels*, 231 Miss. 599, 97 So. 2d 218, 220 (1957) in which the Mississippi Supreme Court opined:

Zoning ordinances should be given a fair and reasonable construction, in the light of their terminology, the objects sought to be obtained, the natural import of the words used in common and accepted usage, the setting in which they are employed, and the general structure of the zoning ordinance as a whole.

Pearl also cites *Columbus & Greenville Railway Co. v. Scales*, 578 So. 2d 275, 279 (Miss. 1991), in which the Mississippi Supreme Court opined that "the best interpretation of what the wording in the ordinance means is the manner in which it is interpreted and applied by the enacting and enforcement authorities."

We have already noted that the two sellers of mobile homes who relocated their sales lots in 1994 did so in an area included in the C-1 zone. Moreover, the remainder of Pearl's zoning ordinance which defined the agricultural, industrial, commercial, and residential areas remained unchanged both before and after all the amendments to Section 405(b) which Pearl's Board of Aldermen adopted between March 19, 1991, and April 19, 1994. Thus, it hardly seems clear to this Court that the 1991 version of Section 405(b) automatically allowed a purveyor of mobile homes which had a current permit, whether active or not, to relocate anywhere within the city. Instead, the record establishes that the two relocations of mobile home sales lots which occurred in 1994 were in the C-1 district. The manner in which Section 405(b) was applied to these two relocations strongly indicates that no mobile home dealer attempted to construe that section in the manner that Pearl contends Section 405(b) allowed.

Even if a mistake occurred in the March 19, 1991 adoption of Section 405(b), that mistake could not justify Pearl's arbitrary and capricious amendment of that section to reduce the classification of the mobile home sales lots from permitted to conditional users as we have already held. This Court's resolution of Pearl's first issue against it effectively resolves Pearl's third issue against it.

Issue 4. If the 1991 Ordinance is the applicable zoning provision as held by the lower court then are trailer sales lots a C-1 permitted use under the Code of Ordinances of the City of Pearl, Mississippi?

In this issue, Pearl states:

The [circuit] [c]ourt apparently ruled that implied in the 1991 Ordinance was the provision that the permit holders were limited to C-1 properties. The problem is that under the Zoning Ordinance trailer sales lots are not a permitted use in C-1 and appear to be more compatible with C-2 property. If the [circuit] [c]ourt ruling stand[s] then the City of Pearl, Mississippi, needs guidance from this Court on whether trailer sales lots are C-1 or C-2.

This is not an issue; instead, it is a request of this Court for its advice. In *In Interest of T.H.,III*, 681 So. 2d 110, 114 (Miss. 1996), the Mississippi Supreme Court repeated that "[w]e have held that the review procedure should not be allowed for the purpose of settling abstract or academic questions, and that we have no power to issue advisory opinions." If the supreme court does not have that power, then neither does this Court.

Because we have previously summarized our analysis and resolution of Pearl's first issue, the determinative issue in this case, no further summary is required other than to affirm the order and judgment of the Rankin County Circuit Court.

THE ORDER AND JUDGMENT OF THE RANKIN COUNTY CIRCUIT COURT IS AFFIRMED. COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANTS.

McMILLIN AND THOMAS, P.JJ., DIAZ, HERRING, KING, AND SOUTHWICK, JJ., CONCUR. BRIDGES, C.J., HINKEBEIN AND PAYNE, JJ., NOT PARTICIPATING.

1. In its brief, MMHA points out that "[p]ursuant to [Section 75-49-3(a) and (b) of the Mississippi Code], 'manufactured home' means a structure defined by, and constructed in accordance with, the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended (42 U.S.C. § 5401, et seq.) and manufactured after June 14, 1976." "Mobile home means a structure manufactured before June 15, 1976, that is not constructed in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended (42 U.S.C. § 5401, et seq.)." Nonetheless, we use the term "mobile home" because that is the term which Pearl used in its ordinance.

2. In relevant part, Section 17-1-17 provides:

Zoning regulations, restrictions and boundaries may, from time to time, be amended, supplemented, changed, modified or repealed upon at least fifteen (15) days' notice of a hearing on such amendment, supplement, change, modification or repeal, said notice to be given in an official paper or a paper of general circulation in such municipality or county specifying a time and place for said hearing.

Miss. Code Ann. § 17-1-17 (Rev. 1995).

3. Section 17-1-39 provides:

Any municipality or county of this state may adopt and enforce zoning or other land use regulations or ordinances relating to factory manufactured movable homes, including, but not limited to, regulations and ordinances which establish reasonable appearance and dimensional criteria for factory manufactured movable homes, provided that such regulations and ordinances do not have the effect of prohibiting factory manufactured movable homes which otherwise meet applicable building code requirements from being lawfully located in at least some part or portion of the municipality or county.

Miss. Code Ann. § 17-1-39 (Rev. 1995).