

1031

R. E. COOTS,  
Plaintiff.

vs.

L. D. OWEN, EMANUEL DAVIDSON,  
O. J. MANCI, MAXWELL REID, J. H.  
STACEY, and R. H. STUART, as  
members of the Board of Aldermen  
of the town of Bay Minette, Alabama,  
and the Town of Bay Minette, Alabama, a  
municipal corporation,  
Defendants.

In Circuit Court  
Baldwin County, Alabama  
Law Side

In this cause the petitioner filed a petition for the issuance of the writ of mandamus against each member of the Board of Aldermen of the town of Bay Minette, Alabama and later the town of Bay Minette was permitted to intervene and it is now one of the defendants in this cause.

According to the petition the petitioner owns Lot 6 in Block 31 of the Hand Land Company's Addition to the town of Bay Minette, Baldwin County, Alabama and on the 9th day of October, 1946 he was granted a permit by the town of Bay Minette by L. D. Owen, mayor. On the 3rd day of December, 1946 the officials of the town of Bay Minette held a meeting and revoked this permit. On the 7th day of January, 1947 the petitioner was permitted to appear before the officials of the town of Bay Minette and protest against the revoking of his permit to build the building. The officials of the town of Bay Minette relied on Section 10 of the Ordinance of the town of Bay Minette.

This ordinance says that a building cannot be built unless the person who wishes to build a building first obtain a written permission of two-thirds of the property owners within a radius of three hundred feet from the exterior lot lines of the lot on which the building is to be erected. The town council refused to rescind its order revoking the permit heretofore issued by the mayor. It appears from the petition that the mayor is authorized to issue such permit. The petitioner says that he is ready, willing and able to comply with any terms and conditions imposed by the ordinances of the town of Bay Minette and that he is ready, willing and able to build the building. The prayer of the petition is that the writ of mandamus issue to each of the defendants and that they be ordered to refrain from interfering with the petitioner in the construction and erection of said building.

On September 16, 1947 the defendants filed an answer saying that they were not guilty of the matters and things alleged in the petition and that the allegations of the petition are untrue.

On December 19, 1947 the town of Bay Minette, a municipal corporation, by its mayor and aldermen filed a petition to be allowed to intervene. The town of Bay Minette was permitted to intervene.

On January 20, 1948 the defendants filed an answer denying that petitioner owned Lot 6 in Block 31 of the Hand Land Company's addition to the town of Bay Minette; they admitted that a permit was issued by the mayor to the petitioner for the erection of the building, and that the building permit was revoked on December 3, 1946, and the answer sets forth the location of the adjoining buildings to the lot in question and the defendants further say that it will be a public nuisance if he is permitted to erect the building for a garage and machine shop.

On the 20th day of January, 1948 the cause was heard in Bay Minette by agreement of the parties and since that time the trial judge has endeavored to obtain the file in this case that it might be given attention. However, the file was only presented to the undersigned judge on the 22nd day of March, 1948 and while he was engaged in the trial of jury cases in Washington County, Alabama.

On the hearing on January 20, 1948 the petitioner offered in evidence a deed dated October 5, 1946 to him covering the lot in question. He testified that he had started the foundation for the building, placed five hundred concrete blocks on the ground, placed sand and cement blocks there, ordered the roofing, built all necessary sewage and placed some lumber there for the construction of this building. He further testified that he stopped the construction of this building when the building permit was revoked on December 3, 1946. He further testified that he was ready, willing and able to construct the building. The evidence showed that this lot was adjacent to Highway 31. A certified copy of the ordinances and minutes were offered in evidence.

The Supreme Court of Alabama has held that an ordinance that requires a person who desires to build a building to obtain written permission of the people of the town is a void ordinance. This is reasonable because there is no way to reach the whims of different citizens and no reason has to be given why they refuse to grant it.

This petitioner had followed the proper proceeding to obtain a permit to construct this building and the mayor of the town had issued this permit. It appears that the permit was revoked because some of the citizens of Bay Minette made protest against the erection of the building. This is no legal reason.

It is the opinion of the court that this man has been deprived of his property rights and that the writ of mandamus should issue.

The court after hearing the evidence does hereby render judgment finding the issues in favor of the petitioner and orders the preemptory writ of mandamus issued as prayed for to each of the respondents. It is therefore ordered, adjudged and decreed by the Court that the clerk of this court forthwith issue a preemptory writ of mandamus directed to the mayor of the town of Bay Minette, Alabama, a municipal corporation, commanding him to forthwith issue to R. A. Goets a permit to construct the kind of building set forth in the petition in this cause and to each of the aldermen of the town of Bay Minette, a municipal corporation to do what is necessary to see that said permit is legally issued, and that the said Board of Aldermen as a body cancel upon the minutes of the town of Bay Minette the order revoking the permit.

It is further ordered, adjudged and decreed by the Court that the petitioner have and recover of the town of Bay Minette, Alabama a municipal corporation all of the cost in this cause created, for the recovery of which let execution issue.

Issued on this the 26th day of March, 1948.

Presiding Judge.

STATE OF ALABAMA  
COUNTY OF BALDWIN.

TO ANY SHERIFF OF THE STATE OF ALABAMA-GREETINGS:

You are hereby commanded forthwith to serve a copy of the above and foregoing writ of mandamus on L. D. Owen, as mayor of the town of Bay Minette, Alabama, on Emanuel Davidson, O. J. Mancini, Maxwell Reid, J. H. Stacey, and R. H. Stuart, each as members of the Board of Aldermen of the town of Bay Minette, Alabama, a municipal corporation, and on L. D. Owen as mayor in and for the town of Bay Minette, Alabama, a municipal corporation, the respondents in the above styled cause, and make due return hereof according to law.

Witness my hand this the \_\_\_\_ day of March, 1948.

\_\_\_\_\_  
Clerk, Circuit Court, Baldwin County, Alabama.

Writ of Mandamus

M

Complaint filed by defendant and by the state for writ of habeas corpus and for writ of mandamus.

Defendant claims that he is entitled to the writ of habeas corpus and to the writ of mandamus.

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Filed  
3-29-48  
Deputy Clerk

R. E. COOTS,

Plaintiff,

VS.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

L. D. OWEN, as Mayor of the  
Town of Bay Minette, Alabama,  
ET ALS,

AT LAW. NO. 1031.

Defendants.

NOTICE OF APPEAL

Now come the Defendants, each separately and several-  
ly, and appeal to the Supreme Court of the State of Alabama from the  
final judgment rendered by the Circuit Court of Baldwin County,  
Alabama in this cause on March 26, 1948, in which Defendants' motion  
for a new trial was denied on May 24, 1948.

Dated this 22nd day of June, 1948.

*J. B. Blashburn*  
Attorney for Defendants.

Approved for recording.

*Handwritten signature/initials*

Deeds City and Vol. 10, Page 100.

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*Notice of Appeal*

**RECORDED**

*Filed  
6-22-48  
Alice J. Neuch  
Clerk*

THE STATE OF ALABAMA,

Baldwin County.

CIRCUIT COURT, ~~IN EQUITY~~.

At Law

To R. E. Coots or C. LeNoir Thompson, Attorney

GREETING:

WHEREAS, L. D. Owens, as Mayor of the Town of Bay Minette, Alabama

Et Als

have taken an appeal from the <sup>Judgment</sup> ~~decision~~ rendered by the Circuit Court of said County, in <sup>Civil</sup> ~~Equity~~, in the cause of

R. E. Coots

against L. D. Owens et als

Now, you are therefore cited to appear at the ..... Term, 19....., of the  
Supreme Court of Alabama, to defend on said appeal, if you shall think proper so to do.

Witness, this 22nd day of June 1948

Alice J. Luck

Clerk

Register

1031  
THE STATE OF ALABAMA,

Baldwin **RECORDED** County.

CIRCUIT COURT, IN EQUITY.

R. E. COOTS

Complainant.....

vs.

L. D. OWENS ET ALS

Defendant.....

CITATION OF APPEAL.

SERVE THIS NOTICE UPON

C. LENOIR THOMPSON

Solicitors of Record.

Received in office this 26

day of June 1948

Taylor Wilkins  
Sheriff.

Executed by serving a copy of the within  
notice upon Lenoir Thompson  
on this 25 day of

June 1948  
Taylor Wilkins  
Sheriff.  
D. S.



R. E. COOTS,  
Petitioner,  
VS.  
L. D. OWEN, et als,  
Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
AT LAW. NUMBER 1031.

PETITION FOR LEAVE TO INTERVENE

Now comes the Town of Bay Minette, Alabama, a Municipal Corporation, by L. D. Owen, as its Mayor, E. Davidson, O. J. Mancini, Maxwell Reid, J. H. Stacey and R. H. Stuart, as members of the Board of Aldermen of said Town, by their Attorney, and show unto the Court as follows:

1. The Town of Bay Minette, Alabama is a Municipal Corporation organized and existing under the laws of the State of Alabama.

2. The Town of Bay Minette, Alabama is the municipality in which the property involved in this suit is located and the municipality where Petitioner is seeking to compel issuance of a building permit to him.

3. Petitioner, R. E. Coots, has commenced erection of a garage building on a part of Lot Number Six (6) in Block Number Thirty-one (31) in the Hand Land Company's Addition to the Town of Bay Minette, Alabama, according to the official plat thereof recorded in Deed Book 4 N. S. at page 158 et seq., which property is situated at the Northwest intersection of ~~Section~~ <sup>Second</sup> Street and White Avenue, which point is within the corporate limits of the said Town and within the residential area or district of said Town as defined by the ordinances thereof. The erection, maintenance and operation of a garage at the said location will constitute a public nuisance, because of which the said municipality is directly interested in this proceeding.

WHEREFORE, the Town of Bay Minette, Alabama, a Municipal

Corporation, moves the Court to permit it to become a party to this action by joining with the Defendants in resisting the claims of the Petitioner or Plaintiff.

TOWN OF BAY MINETTE, ALABAMA, a Municipal Corporation.

BY J. B. Blackum  
As its Attorney.

I hereby certify that I delivered a copy of the above and foregoing motion to C. LeNoir Thompson, Esq., Attorney for the Petitioner, on this the 4th day of December, 1947.

J. B. Blackum  
Attorney for Movant.

MOTION FOR LEAVE TO INTERVENE.

R. E. COOTS,

Petitioner

RECORDED

VS.

L. D. OWEN, et als,

Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

AT LAW.      NUMBER 1031.

*Filed, Dec 19, 1947  
J. B. Blackburn  
Judge.*

J. B. BLACKBURN  
ATTORNEY AT LAW  
BAY MINETTE, ALABAMA

R. E. COOTS,  
Plaintiff

VS

L. D. OWEN, et als,  
Defendants

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

AT LAW. NUMBER 1031.

DEMURRER

Now comes the Plaintiff, and for demurrer to the PETITION FOR LEAVE TO INTERVENE by THE TOWN OF BAY MINETTE, a Municipal Corporation, by L. D. Owen, as its Mayor, E. Davidson, O. J. Mancini, Maxwell Reid, J. H. Stacey and R. H. Stuart, as members of the Board of Aldermen of said Town, says:

1. Said petition sets up no facts which under the law, authorizes or entitles the petitioner to intervene in such case.

2. Said petitioner alleges that the lot on which the building sought to be erected is within the residential area or district of said town, but does not allege that said area or district is a district restricted to residential purposes by a valid ordinance of any municipality of the State of Alabama.

3. That said petitioner does not allege that the Town of Bay Minette has validly adopted an ordinance restricting area where said building is sought to be erected to residential purposes.

4. Said petition alleges that the building sought to be erected would constitute a public nuisance, but does not allege facts showing by what means and in what manner the building would constitute a nuisance.

5. Because the matters alleged in paragraphs 1 and 2 of said petition do not set up any facts authorizing the town of Bay Minette to intervene in said proceeding.

6. Because the matters alleged in paragraphs 1, 2 and 3, do not set up any facts which would constitute a defense to plaintiff's action against the parties to the said action or to the said intervenors.

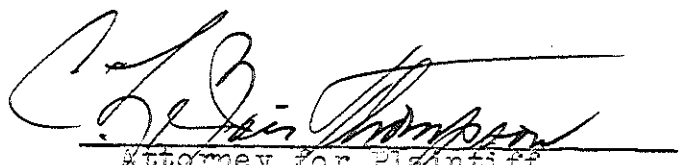
  
Attorney for Plaintiff

Figure 1: Schematic representation of the experimental design. The diagram shows a sequence of steps: 1. 'Preparation of the test material' (a box with a question mark), 2. 'Presentation of the test material' (a box with a question mark), 3. 'Response' (a box with a question mark), 4. 'Feedback' (a box with a question mark), and 5. 'Evaluation' (a box with a question mark). Arrows indicate the flow from 1 to 2, 2 to 3, 3 to 4, and 4 to 5. A feedback loop arrow goes from 4 back to 3. A box labeled 'Control' is connected to the 'Response' and 'Feedback' steps.

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**THE UNIVERSITY OF CHICAGO**

**THE**

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or  
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Secretary of  
Public Health  
and Welfare

Filed Dec  
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Joe M. G. [Signature]  
Judge

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R. E. COOTS,

Petitioner,

VS.

L. D. OWEN, ET ALS,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

AT LAW.

AMENDED ANSWER.

Now come the Defendants, L. D. Owen, as Mayor of the Town of Bay Minette, Alabama, Emanuel Davidson, O. J. Mancini, Maxwell Reid, J. H. Stacey and R. H. Stuart, as members of the Board of Aldermen of the Town of Bay Minette, Alabama, each separately and severally, and amend the answer heretofore filed in this cause so that, as amended, it will read as follows:

1. Defendants admit the allegations of Paragraph One of the amended Petition filed in this cause.

2. The Defendants deny that the Petitioner owns Lot 6 in Block 31 in the Hand Land Company's Addition to the Town of Bay Minette, Alabama, but admit that the said property is situated at the Northwest Corner of Second Street and White Avenue. Defendants are not informed and, therefore, deny all of the other allegations of Paragraph Two of the amended Petition.

3. The Defendants deny that the Petitioner did, on the 9th day of October, 1946, or at any other time, contact them, but admit that he did file with L. D. Owen, as Mayor of the Town of Bay Minette, Alabama, an application to erect a building. Defendants are not informed and, therefore, deny that the Petitioner obtained authority from the Civilian Production Board for construction of the said building. Defendants admit that on, to-wit, October 9, 1946, L. D. Owen, as Mayor of the Town of Bay Minette, Alabama, issued a permit to Petitioner to construct a building. Defendants deny each and all of the other allegations of Paragraph Three of the amended Petition.

4. Defendants admit that the said building permit was revoked on or about December 3, 1946 after a large delegation of citizens and property owners appeared at a meeting of the Town Council.

cil of the said Town of Bay Minette, Alabama, and protested the erection of the said building in an area that was exclusively used for residential purposes. It was pointed out at the said meeting of the said Town Council that Petitioner, R. E. Coots, has at all times since he has operated in the said town surrounded his place of business with disabled and abandoned machinery, partially repaired tractors and automobiles and that, while part of his premises is used for repairing of automobiles and other machinery, it is, in truth and fact, what is known as a junk yard and that such operations, if conducted on Lot 6 in Block 31 in the Hand Land Company's Addition to the Town of Bay Minette, Alabama, would constitute a public nuisance.

5. Defendants admit that the Petitioner had no notice of the said hearing and that J. B. Blackburn, Attorney for the Town of Bay Minette, Alabama, was instructed by the Mayor and Town Council of the said town to notify the Petitioner that his building permit had been revoked. Defendants deny each and all of the other allegations of Paragraph Five of the amended Petition.

6. Defendants admit that the Petitioner was allowed to appear and did appear at a regular meeting of the Mayor and Town Council of the Town of Bay Minette, Alabama on or about Tuesday night, January 7, 1947, and that the Petitioner was notified at the said meeting that the town Attorney had been instructed by the town officials to notify him that the building permit had been revoked. Defendants deny each and all of the other allegations of Paragraph Six of the amended Petition.

7. Defendants admit that only two houses are located on Second Street in the said Block 31, but for further answer to the said amended Petition, allege that the said Block constitutes one of the principal residential blocks within the corporate limits of the Town of Bay Minette, Alabama. This block is bounded on the South by Second Street; on the North by Third Street; on the West by Blackburn Avenue and on the East by White Avenue. This is situated on Lot 1 in the said Block 31 a residence belonging to J. R. Crow, which is rented to various tenants. This lot is situated at

the Southwest Corner of the block and at the Northeast intersection of Blackburn Avenue and Second Street. There is situated on Lot 2 in the said block the residence of Mrs. Gasque McMillan, which is occupied by her. This lot is situated in the middle of the West side of the said block and, together with the residence situated thereon, fronts on Blackburn Avenue. There is situated on Lot 3 in the said block the residence of W. M. Moore, which is occupied by him. This lot is situated at the Northwest Corner of the said block and at the Southeast intersection of Blackburn Avenue and Third Street. There is situated on Lot 4 in the said block the residence of Walter M. Lindsey, which is occupied by him. This lot is situated at the Northeast Corner of the said block and is at the Southwest intersection of White Avenue and Third Street. There is no residence situated on Lot 5 in the said block, but it is a part of the property owned by Walter M. Lindsey and is used as a part of the gardens or grounds surrounding his residence, which is located on Lot 4 in the said block. There is situated on Lot 6 in the said block, which lot is at the Northwest intersection of White Avenue and Second Street, the residence which is occupied by the Petitioner and his family. Block 30, the block South of the said Block 31 and which is South of Second Street or United States Highway Number 31, is occupied by six residences and is used entirely for residential purposes. Blocks Numbered 52, 57 and 77 in the Hand Land Company's Addition to the Town of Bay Minette, Alabama, which are the blocks located East of the said Block 31 and North of Second Street or United States Highway Number 31, and Blocks Numbered 53, 56 and 78, which are the blocks located East of the said Block 30 in the Hand Land Company's Addition to the Town of Bay Minette, Alabama and South of Second Street or United States Highway Number 31, are used exclusively for residential purposes, except for the part of the said blocks which are unoccupied. The said area consisting of Blocks 30, 31, 52, 57, 77, 53, 56 and 78 in the Hand Land Company's Addition to the Town of Bay Minette, Alabama are all within the residential area of the Town of Bay Minette, Alabama and comprise one of the best residential sections within the said town. No part of any of the said blocks is



now used for any business purposes of any kind or nature. At the time the Petitioner purchased the said Lot 6 in the said Block 31, or acquired an interest therein, the said block and the entire area East of Blackburn Avenue and North of First Street in the said town was used solely for residential purposes, which fact was known to Petitioner, as he occupied as a tenant for a number of years the residence which is located on the said Lot 6 in the said Block 31. The Defendants admit that the said Block 31 is the first block adjoining the fire limits as set forth in the Zoning Ordinance Number 433 of the Town of Bay Minette, Alabama.

8. The Defendants expressly deny that their action as officials of the Town of Bay Minette, Alabama, a Municipal Corporation, is an arbitrary interference with any of Petitioner's rights. For further answer to the said amended Petition the Defendants allege that when Petitioner purchased the said Lot 6 in the said Block 31, or acquired an interest therein, the title or interest so acquired by him was taken with certain implied restrictions on the use of the said property. For further answer to the said amended Petition, the Defendants allege and aver that the Petitioner, R. E. Coots, has, for a number of years, operated a garage or machine shop on the West side of Hoyle Avenue between First and Second Streets in the Town of Bay Minette, Alabama and that during all of the time that he has conducted a business at the said location, he has kept his place of business and the premises surrounding it filled with junk, disabled automobiles, trucks, tractors, wrecked automobiles and machinery and all other kinds of disabled equipment; that the building which he occupies is so filled with junk that the only place he is able to work in it is just inside of the front door; that situated across the street from the said building is a vacant lot where he conducts some of his repair operations, which lot is also the depository or place of storage for old automobiles, automobile bodies, wrecked automobiles, pieces of old machinery of various kinds and, while a part of it is used for repair purposes, it is, in truth and fact, what is known as a junk yard. The building which Petitioner proposes to erect and for which he has constructed a foundation on Lot 6 in

the said Block 31 is not sufficient in size to house but a small part of the junk which he has accumulated in his present place of business and the lot used by him in connection therewith. If Petitioner conducts his operations on any part of the said Lot 6 in the said Block 31, it will constitute a public nuisance, because the said property is situated on the principal highway leading through the said town and within an area that is used only for residential purposes. Defendants deny each and all of the other allegations of the Paragraph Numbered Eight of the said amended Petition.

9. Defendants deny each and all of the allegations of Paragraph Numbered Nine of Petitioner's amended Petition.

Having fully answered the amended Petition filed against them in this cause, Defendants pray that the said Petition be dismissed and that they be discharged with their reasonable costs in this behalf expended.

J. B. Blaschke  
Attorney for Defendants.

AMENDED ANSWER.

R. E. COOTS,  
Petitioner,

VS.

L. D. OWEN, ET ALS,  
DEFENDANTS.

RECORDED

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
AT LAW.

*Filed Jan 20*  
*1948*  
*John P. Blackburn*  
J. B. BLACKBURN  
ATTORNEY AT LAW  
BAY MINETTE, ALABAMA

R. E. COOTS,

PETITIONER,

VS

L. D. OWEN, ET ATS,

DEFENDANTS.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

AT LAW

COMES THE PLAINTIFF, R. E. Coots, and presents this, A  
MOTION TO STRIKE the following counts of Defendants' Answer, in whole  
or in part, as set out below, on the grounds of prolixity, surplusage  
and irrelevance:

Count 4....."It was pointed out at said meeting of the Town  
Council that Petitioner, R. E. Coots, has at all times, since he has  
operated in the said town, surrounded his place of business, with  
disabled and abandoned machinery, partially repaired tractors and  
automobiles, and that while part of his premises is used for repairing  
of automobiles and other machinery, it is in truth and in fact, what is  
known as a junk yard and that such operations, if conducted on Lot 6,  
in Block 31 in the Hand Land Company's Addition to the Town of Bay  
Minette, Alabama, would constitute a public nuisance."


Count 7....."This is situated on Lot 1 in said Block 31 a  
residence belonging to J. R. Crow, which is rented to various tenants.  
This lot is situated at the Southwest corner of the block and at the  
Northeast intersection of Blackburn Avenue and Second Street. There is  
situated on lot 2 in the said Block, the residence of Mrs. Gasque McMillan  
which is occupied by her. This lot is situated in the middle of the  
West side of said Block and, together with the residence situated thereon,  
fronts on Blackburn Avenue. There is situated in Lot 3 in the said Block  
the residence of W. M. Moore, which is occupied by him. This lot is  
situated on or at the Northeast Corner of the said Block and at the South-  
east intersection of Blackburn Avenue and Third Street. There is situated  
on Lot 4 in the said Block the residence of Walter M. Lindsey, which is  
occupied by him. This lot is situated at the Northeast Corner of the  
said Block and is at the Southwest intersection of White and Third Street.  
There is no residence situated on Lot 5 of said Block, but it is a part  
of the property owned by Walter M. Lindsey and is used as a part of the  
gardens or grounds surrounding his residence, which is located on Lot 4  
in said Block. There is situated on lot 6 in said block, which lot is

at the Northwest intersection of White Avenue and Second Street, the residence which is occupied by Petitioner and his family, Block 30, the block South of the said Block 31 and which is South of Second Street or the United States Highway Number 31, is occupied by six residences and is used entirely for residential purposes. Blocks numbered 52, 57 and 77 in the Hand Land Company's addition to the Town of Bay Minette, Alabama, which are the blocks located East of the said Block 31 and North of Second Street or United States Highway 31, and Blocks Numbered 53, 56, 78, which are the blocks located East of the said Block 30 in the Hand Land Company's Addition to the Town of Bay Minette, Alabama and South of Second Street or United States Highway 31 are used exclusively for residential purposes, except for the part of the said blocks which are unoccupied. The said area consisting of blocks 30, 31, 52, 57, 77, 53, 56 and 78 in the Hand Land Company's addition to the Town of Bay Minette, Alabama are all within the residential area of the town of Bay Minette, Alabama and comprise one of the best residential sections within the said town. No part or any of the said blocks is now used for any business purposes of any kind or nature. At the time the Petitioner purchased the said Lot 6 in the said block 31 or acquired an interest therein, the said block and the entire area East of Blackburn Avenue and North of First street in the said Town of Bay Minette, was used solely for residential purposes, which fact was known to Petitioner as he occupied as a tenant for a number of years the residence which is located on said Lot 6 in the said Block 31.".....

Count 8 ...."For further answer to the said amended petition, the defendants allege and aver that the Petitioner, R. E. Coots, has for a number of years, operated a garage or machine shop on the West side of Hoyle Avenue between First and Second Streets in the Town of Bay Minette, Alabama and that during all of the time that he has conducted a business at the said location, he has kept his place of business and the premises surrounding it filled with junk, disabled automobiles, trucks, tractors, wrecked automobiles and machinery and all other kinds of disabled equipment; that the building which he occupies is so filled with junk that the only place he is able to work in it is just inside of the front door; that just across the street from the said building is a vacant lot where he conducts some of his repair operations, which lot is also the depositor or place of storage for old automobiles, automobile bodies, wrecked

automobiles, pieces of old machinery of various kinds and, while a part of it is used for repair purposes, it is, in truth and in fact, what is known as a junk yard. The building which Petitioner proposes to erect and for which he has constructed a foundation on Lot 6 in said Block is not sufficient in size to house but a small part of the junk which he has x accumulated in his present place of business and the lot used by him in connection therewith. If Petitioner conducts his operations on any part of the said Lot 6 in the said Block 31, it will constitute a public nuisance, because said property is situated on the principal highway leading through the said town....."......

WHEREAS HE PRAYS THE JUDGEMENT OF THE COURT ON SAID MOTION TO STRIKE, and that said surplusage, prolixity and irrelevance be stricken.

  
Attorney for Petitioner

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RECORDED

RECORDED

Filed for  
20 1948  
John R. Brown, Jr.  
Judge

R. E. COOTS,  
Petitioner,  
VS.  
L. D. OWEN, ET ALS,  
Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
AT LAW. NO. 1031.

AMENDED MOTION TO TRANSFER TO EQUITY

Now come the Defendants, the Town of Bay Minette, Alabama, a Municipal Corporation, L. D. Owen, as Mayor of the Town of Bay Minette, Alabama, a Municipal Corporation, E. Davidson, C. J. Mancini, Maxwell Reid, J. H. Stacey and R. H. Stuart, as members of the Board of Aldermen of the Town of Bay Minette, Alabama, and show unto the Court as follows:

1. The Defendants' rights in this case depend upon the assertion of an equitable right or defense, the decision of which should dispose of this cause and which cannot be disposed of on the Law Side of this Court.

2. The Petitioner or Plaintiff, R. E. Coots, together with his wife, Mrs. Carrie M. Coots, own Lot Numbered 6 in Block Numbered 31 in the Hand Land Company's Addition to the Town of Bay Minette, Alabama, according to the official plat thereof recorded in Deed Book 4 N. S. at page 153 et seq., Baldwin County, Alabama Records. The said property is located within the corporate limits of the Town of Bay Minette, Alabama, is situated at the Northwestern intersection of Second Street, which is also United States Highway Number 31, and White Avenue and is within the residential district as defined by ordinances of the Town of Bay Minette, Alabama. The Petitioner or Plaintiff has commenced erection of a building approximately 40 x 55 feet in size with a lean-to addition of the approximate size of 25 x 40 feet, which is to be built of concrete blocks with a metal roof for the purpose of occupying the said building as a garage and machine shop. All of the said Block 31 is used for residential purposes. There is situated on Lot 1 in the said Block a residence which is owned by J. R. Crow and rented to various tenants. There is situated on Lot 2 in the said Block the



residence of Mrs. Gasque McMillan, which is occupied by her. There is situated on Lot 3 in the said Block the residence of W. M. Moore, which is occupied by him. There is situated on Lot 4 in the said Block the residence of Walter Lindsey, which is occupied by him. There is situated on Lot 6 in the said Block the residence of the Petitioner, R. E. Coots, and his wife, Mrs. Carrie M. Coots. Block 30, the block South of the said Block 31 and which is South of Second Street or United States Highway Number 31, is occupied by six residences and is used entirely for residential purposes. Blocks Numbered 52, 57 and 77 in the Hand Land Company's Addition to the Town of Bay Minette, Alabama, which are the blocks located East of the said Block 31 and North of Second Street or United States Highway Number 31, and Blocks Numbered 53, 56 and 78, which are the blocks located East of the said Block 30 in the Hand Land Company's Addition to the Town of Bay Minette, Alabama and South of Second Street or United States Highway Number 31 are used exclusively for residential purposes, except for the parts of the said blocks which are unoccupied. The said area consisting of Blocks 30, 31, 52, 57, 77, 53, 56 and 78 in the Hand Land Company's Addition to the Town of Bay Minette, Alabama are all within the residential area of the said town and comprise one of the best residential sections within the said town. No part of any of the said blocks is now used for any business purpose of any kind or nature.

3. The inevitable incidents attendant upon the operation of a garage, machine shop or repair shop situated on any part of Lot 6 in the said Block 31 are that there will be a continuing emission of ordors, vapors, dust, smoke, gas and noise. The said premises and the street or streets adjacent thereto will be the depository of, or storage place for trucks, tractors, trailers and all kinds of machinery which is disabled and that which is being repaired and the operation of a garage, machine shop or repair shop on the said premises will inevitably be attended by loud and disagreeable noise due to the manipulation of steel or other metal parts with hammers or other instruments and other noises incident to the operation of such business or businesses. The operation of such

business or businesses in the said location will, during the daylight hours, be a nuisance to all persons who own and occupy residences adjacent to or within hearing distance of the noise which will be created and made on the said property by the operation of such business and if such business is carried on in the said location at night, it will disturb the rest of the section within hearing distance thereof. Lights therefrom and from the automobiles, trucks and other vehicles which are being repaired at the said location will be flashed at unreasonable hours of the night into bedrooms and other private parts of the homes or residences which are near the said property. The said Petitioner or Plaintiff, R. E. Coots, has for several years occupied a building on the West side of Hoyle Avenue in the Town of Bay Minette, Alabama, which is now occupied by him, which is approximately 50 x 100 feet in size, which building is almost entirely filled with machinery, second-hand parts, junked automobiles and other machinery which he cannot possibly house on the said Lot 6 in Block 31 without creating a public nuisance. The said Petitioner or Plaintiff, R. E. Coots, also conducts some of his operations outside of the building referred to above and on the East side of Hoyle Avenue on a lot which is situated between Beasley's Grocery and the Rex Grill, which lot is approximately 50 x 144 feet in size. This lot, or the greater part thereof, is now covered almost entirely by disabled machinery, abandoned machinery, partially repaired tractors and automobiles and, while part of it is used for the repairing of automobiles and other machinery, it is, in truth and fact, what is known as a junk yard. The operation of a garage, machine shop or other repair shop on any part of the said Lot 6 in Block 31 in the same way and manner that the Petitioner or Plaintiff is now and has always conducted his operations since he commenced operating within the Town of Bay Minette, Alabama will be a public nuisance working to the hurt, inconvenience and damage of the entire town and the property owners adjacent to the said property. The location of the said proposed site being on the principal highway and the most heavily traveled highway leading through the

Town of Bay Minette, Alabama will be unsightly and detrimental to the entire town and community.

4. The entire occupied area within the corporate limits of the Town of Bay Minette, Alabama which lies North of First Street East of Blackburn Avenue and West of Dennis Avenue, is devoted entirely to residential purposes and there is no business or businesses of any kind or nature within the said area. Second Street which is also United States Highway Number 31 runs through the said area of the said Town and from Blackburn Avenue Eastwardly for three blocks to McConnell Avenue comprises one of the best developed residential sections within the said Town and within this area is situated some of the nicest homes within the said Town and all or practically all of which homes are surrounded by extensive grounds on which are planted expensive flowers, shrubs and other plants for ornamentation of the said property within the said area. The said Highway Number 31 is the principal highway leading through the Town of Bay Minette, Alabama and over which a large number of tourists travel. The erection at the Southeast Corner of Lot 6 in the said Block 31 of a building made of concrete blocks approximately forty by fifty-five feet in size with a lean-to addition of the approximate size of twenty-five by forty feet, all of which will be covered by a tin roof even though it is not occupied by any business whatever will constitute a nuisance to all of the property owners within the said area or within the site of the said property. It will seriously affect, impair and reduce property values within the said area and will be an eyesore which will cause unfavorable comments by tourists and other persons who travel over Second Street or United States Highway Number 31. Because of all of which the erection of the said building on the said site will constitute a public nuisance and will injuriously affect the well being of a substantial portion of the citizens using the streets and sidewalks within the said area.

5. The Petitioner or Plaintiff was notified immediately after he commenced erection of the said building that he would be required to discontinue the construction thereof.

6. The operation of the said business or businesses

at the said location in the manner outlined above should be permanently and perpetually enjoined which relief cannot be given or granted except in and by a Court of Equity.

WHEREFORE, Defendants move the Court to make and enter a proper order or decree transferring this cause to the Equity Docket of the Circuit Court of Baldwin County, Alabama for such other and further proceedings as may be or which may become necessary or proper. Defendants move the Court to grant to them such other, further and general relief as they may be equitably entitled to, the premises considered.

J. B. Blackburn  
Attorney for Defendants.

STATE OF ALABAMA

BALDWIN COUNTY

Before me, the undersigned authority, within and for said County in said State, personally appeared L. D. Owen, who, after being by me first duly and legally sworn, deposes and says: That he is Mayor of the Town of Bay Minette, Alabama and as such officer, is duly authorized to make this affidavit for and on behalf of the said Town and that he is one of the Defendants named in this suit. Affiant has read over the foregoing Amended Motion and the facts stated therein are true.

L. D. Owen (SEAL)

Sworn to and subscribed before me on  
this the 19<sup>th</sup> day of January, 1948.

Betty R. Buck  
Notary Public, Baldwin County, Alabama.

AMENDED MOTION TO TRANSFER TO  
EQUITY.

R. E. COOTS, **RECORDED**

Petitioner,

VS.

L. D. OWEN, ET ALs,

Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
AT LAW. NO. 1031.

**FILED**

JAN 20 1948

**ALICE J. DUCK, Clerk**

J. B. BLACKBURN  
ATTORNEY AT LAW  
BAY MINETTE, ALABAMA

AMENDED MOTION TO TRANSFER TO  
EQUITY.

R. E. COOTS, **RECORDED**

Petitioner,

VS.

L. D. OWEN, ET ALS,  
Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
AT LAW. NO. 1031.

**FILED**

JAN 20 1948

ALICE J. DUCK, Clerk

J. B. BLACKBURN  
ATTORNEY AT LAW  
BAY MINETTE, ALABAMA

R. E. COOTS,  
Plaintiff,  
VS.  
L. D. OWEN, ET ALS,  
Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
AT LAW.

MOTION FOR NEW TRIAL.

Now come the Defendants by their Attorney, each separately and severally and move the Court to set aside the Judgment heretofore rendered in this cause and grant them a new trial and as grounds therefor set down and assign separately and severally the following:

1. The judgment is contrary to the law.
2. The judgment is contrary to the evidence.
3. The judgment is contrary to the law and the evidence.
4. The Court erred in holding that the municipal ordinance of the Town of Bay Minette, Alabama which was questioned in the said proceeding is entirely void.

*J. B. Blackburn*  
Attorney for Defendants.

On this the 24th day of May, 1948 the motion for a new trial filed by the defendants in this cause with the Clerk of the Circuit Court of Baldwin County, Alabama on the 24th day of April, 1948 was called to the attention of the judge, who presided at this trial.

After a consideration of the matter, it is the opinion of the Court that the motion for a new trial is not well taken and should be overruled. It is hereby ordered that said motion for a new trial be, and the same is hereby overruled.

The defendants in open court except to the ruling of the trial judge overruling the motion for a new trial.

Issued on this the 24th day of May, 1948.

*J. B. Blackburn*  
Trial Judge of the above cause.

MOTION FOR NEW TRIAL.

R. E. COOTS,

Plaintiff,

VS.

L. D. OWEN, ET ALS,

Defendants.

**RECORDED**

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
AT LAW.

*Filed*  
*4-24-48*  
*Alisef Duke*  
*clerk*



R. E. COOTS,

Petitioner,

VS.

L. D. OWEN ET ALS,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

AT LAW.

NO. 1031.

### MOTION TO TRANSFER TO EQUITY

Now come the Defendants, the Town of Bay Minette, Alabama, a Municipal Corporation, L. D. Owen, as Mayor of the Town of Bay Minette, Alabama, a Municipal Corporation, E. Davidson, O. J. Mancini, Maxwell Reid, J. H. Stacey and R. H. Stuart, as members of the Board of Aldermen of the Town of Bay Minette, Alabama, and show unto the Court as Follows:

1. The Defendants' rights in this case depend upon the assertion of an equitable right or defense, the decision of which should dispose of this cause and which cannot be disposed of on the Law Side of this Court.

2. The Petitioner or Plaintiff, R. E. Coots, together with his wife, Mrs. Carrie M. Coots, own Lot Numbered 6 in Block Numbered 31 in the Hand Land Company's Addition to the Town of Bay Minette, Alabama, according to the official plat thereof recorded in Deed Book 4 N. S. at Page 158 et seq., Baldwin County, Alabama Records. The said property is located within the corporate limits of the Town of Bay Minette, Alabama, is situated at the Northwestern intersection of Second Street, which is also United States Highway Number 31, and White Avenue and is within the residential district as defined by ordinances of the Town of Bay Minette, Alabama. The Petitioner or Plaintiff has commenced erection of a building approximately 40 x 55 feet in size with a lean-to addition of the approximate size of 25 x 40 feet, which is to be built of concrete blocks with a metal roof for the purpose of occupying the said building as a garage and machine shop. All of the said Block 31 is used for residential purposes. There is situated on Lot 1 in the said Block a residence which is owned by J. R. Crow and rented to various tenants. There is situated on Lot 2 in the said Block the

residence of Mrs. Gasque McMillan, which is occupied by her. There is situated on Lot 3 in the said Block the residence of W. M. Moore, which is occupied by him. There is situated on Lot 4 in the said Block the residence of Walter Lindsey, which is occupied by him. There is situated on Lot 6 in the said Block the residence of the Petitioner, R. E. Coots, and his wife, Mrs. Carrie M. Coots. Block 30, the block South of the said Block 31 and which is South of Second Street or United States Highway Number 31, is occupied by six residences and is used entirely for residential purposes. Blocks Numbered 52, 57 and 77 in the Hand Land Company's Addition to the Town of Bay Minette, Alabama, which are the blocks located East of the said Block 31 and North of Second Street or United States Highway Number 31, and Blocks Numbered 53, 56 and 78, which are the blocks located East of the said Block 30 in the Hand Land Company's Addition to the Town of Bay Minette, Alabama and South of Second Street or United States Highway Number 31 are used exclusively for residential purposes, except for the parts of the said blocks which are unoccupied. The said area consisting of Blocks 30, 31, 52, 57, 77, 53, 56 and 78 in the Hand Land Company's Addition to the Town of Bay Minette, Alabama are all within the residential area of the said town and comprise one of the best residential sections within the said town. No part of any of the said blocks is now used for any business purpose of any kind or nature.

3. The inevitable incidents attendant upon the operation of a garage, machine shop or repair shop situated on any part of Lot 6 in the said Block 31 are that there will be a continuing emission of odors, vapors, dust, smoke, gas and noise. The said premises and the street or streets adjacent thereto will be the depository of, or storage place for trucks, tractors, trailers and all kinds of machinery which is disabled and that which is being repaired and the operation of a garage, machine shop or repair shop on the said premises will inevitably be attended by loud and disagreeable noise due to the manipulation of steel or other metal parts with hammers or other instruments and other noises incident to the

operation of such business or businesses. The operation of such business or businesses in the said location will, during the daylight hours, be a nuisance to all persons who own and occupy residences adjacent to or within hearing distance of the noise which will be created and made on the said property by the operation of such business and if such business is carried on in the said location at night, it will disturb the rest of the section within hearing distance thereof. Lights therefrom and from the automobiles, trucks and other vehicles which are being repaired at the said location will be flashed at unreasonable hours of the night into bedrooms and other private parts of the homes or residences which are near the said property. The said Petitioner or Plaintiff, R. E. Coots, has for several years occupied a building on the West side of Hoyle Avenue in the Town of Bay Minette, Alabama, which is now occupied by him, which is approximately 50 x 100 feet in size, which building is almost entirely filled with machinery, second-hand parts, junked automobiles and other machinery which he cannot possibly house on the said Lot 6 in Block 31 without creating a public nuisance. The said Petitioner or Plaintiff, R. E. Coots, also conducts some of his operations outside of the building referred to above and on the East side of Hoyle Avenue on a lot which is situated between Beasley's Grocery and the Rex Grill, which lot is approximately 50 x 144 feet in size. This lot, or the greater part thereof, is now covered almost entirely by disabled machinery, abandoned machinery, partially repaired tractors and automobiles and, while part of it is used for the repairing of automobiles and other machinery, it is, in truth and fact, what is known as a junk yard. The operation of a garage, machine shop or other repair shop on any part of the said Lot 6 in Block 31 in the same way and manner that the Petitioner or Plaintiff is now and has always conducted his operations since he commenced operating within the Town of Bay Minette, Alabama will be a public nuisance working to the hurt, inconvenience and damage of the entire town and the property owners adjacent to the said property. The location of the said proposed site being on the principal

highway and the most heavily traveled highway leading through the Town of Bay Minette, Alabama will be unsightly and detrimental to the entire town and community.

4. The Petitioner or Plaintiff was notified immediately after he commenced erection of the said building that he would be required to discontinue the construction thereof.

5. The operation of the said business or businesses at the said location in the manner outlined above should be permanently and perpetually enjoined which relief cannot be given or granted except in and by a Court of Equity.

WHEREFORE, Defendants move the Court to make and enter a proper order or decree transferring this cause to the Equity Docket of the Circuit Court of Baldwin County, Alabama for such other and further proceedings as may be or which may become necessary or proper. Defendants move the Court to grant to them such other, further and general relief as they may be equitably entitle to, the premises considered.

J. B. Blackburn  
Attorney for Defendants.

STATE OF ALABAMA }  
BALDWIN COUNTY }

Before me, the undersigned authority, within and for said County in said State, personally appeared L. D. Owen, who, after being by me first duly and legally sworn, deposes and says: That he is Mayor of the Town of Bay Minette, Alabama and as such officer, is duly authorized to make this affidavit for and on behalf of the said Town and that he is one of the Defendants named in this suit. Affiant has read over the foregoing Motion and the facts stated therein are true.

L. D. Owen (SEAL)

Sworn to and subscribed before me on  
this the 5th day of December, 1947.

Betty R. Buck  
Notary Public, Baldwin County, Alabama.

MOTION TO TRANSFER TO

EQUITY.

R. E. COOTS,

Petitioner

VS.

L. D. OWEN, et als,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

AT LAW. NUMBER 1031.

*Filed Dec 19,*

*1947*

*J. B. Blackburn*

J. B. BLACKBURN

ATTORNEY AT LAW

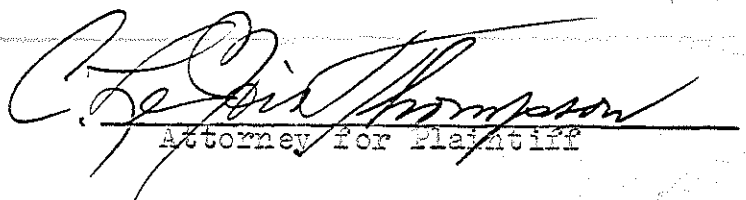
BAY MINETTE, ALABAMA

R. E. COOTS,  
Plaintiff,  
VS  
L. D. OWEN, et al,  
Defendants

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW. NUMBER 1031.

Now comes the Plaintiff, and for Demurrer to the MOTION TO TRANSFER TO EQUITY by the Town of Bay Minette, a Municipal Corporation, L. D. Owen, as Mayor of the Town of Bay Minette, a Municipal Corporation, E. Davidson, O. J. Manci, Maxwell Reid, J. H. Stacey and R. H. Stuart, as members of the Board of Aldermen of the Town of Bay Minette, and says:

1. That said defendants have a full, adequate and complete remedy at Law.
2. That said motion has not shown that said defendants have no full adequate and complete remedy at Law.
3. For that the motion is insufficient in presenting an equity based on the facts set forth in paragraphs 2, 3 and 4, of said motion.
4. For that the averments of paragraphs 2, 3 and 4, of said motion do not constitute an equitable right, such as would authorize the removal of a cause of purely legal cognizance from the law side to the equity side of the docket.
5. For that said motion will not cure the defendant's violation of the Constitution of the United States, and of the State of Alabama, as set forth in Plaintiff's petition.
6. No facts are alleged in paragraphs 1, 2, 3, 4 and 5, which would constitute a defense to Plaintiff's action against the parties to said action.
7. That said motion fails to sufficiently assert and show an equitable right of defense.
8. That defendants have not shown that said lot 6, block 31, of Hand Land Company's addition to the Town of Bay Minette is within an area legally restricted to residential purposes by a valid zoning ordinance.
9. For that such motion alleging facts constituting a good and equitable defense and praying for transfer to Equity Docket does not give right of removal as a matter of course.

  
Attorney for Plaintiff

Deceased to Motive  
to transfer to Equity of  
R.E. Coats

L.D. Owen et al

RECORDED

From  
The Law Office of  
C. L. Thompson  
Bay Minette, Ala

*[Signature]*

SUMMONS AND COMPLAINT

THE STATE OF ALABAMA  
Baldwin County

CIRCUIT COURT, BALDWIN COUNTY

No. \_\_\_\_\_

\_\_\_\_\_ TERM, 194\_\_\_\_\_

TO ANY SHERIFF OF THE STATE OF ALABAMA :

You are hereby commanded to summon

L. V. Owens, Emanuel

Davidson, O. J. Mancie, Maxwell Reid

J. H. Stacy, Ed. F. Stevenson

to appear and plead, answer or demur, within thirty days from the service hereof, to the Complaint filed in  
the Circuit Court of Baldwin County, State of Alabama, at Bay Minette, against \_\_\_\_\_

L. V. Owens

\_\_\_\_\_, Defendant \_\_\_\_\_

by \_\_\_\_\_

R. E. Coote

\_\_\_\_\_, Plaintiff \_\_\_\_\_

Witness my hand this

15<sup>th</sup>

day of

Feb

1947

Alice J. Leach

\_\_\_\_\_, Clerk



No. 1031

Page \_\_\_\_\_

THE STATE of ALABAMA,  
BALDWIN COUNTY

CIRCUIT COURT

R. E. Cavis

Plaintiffs

vs.

L. D. Owens & Co

Defendants

SUMMONS and COMPLAINT

Filed 2-15, 1947

Alice J. Ruck Clerk

Plaintiff's Attorney

Defendant's Attorney

Moore Printing Co., Bay Minette, Ala.

Defendant lives at

RECEIVED IN OFFICE

\_\_\_\_\_, 1947

Sheriff

I have executed this summons

this 2-15, 1947  
by leaving a copy with

L. D. Owens

Emanuel Davidson

D. J. Marci

Maxwell Reid

J. H. Stacey

G. F. Stevenson

Taylor Walker Sheriff

H. F. Hall Deputy Sheriff

TO- The Honorable Francis W. Hare, Judge of the Circuit Court of Baldwin County, Alabama:

Your Petitioner, R. E. Coots of Bay Minette, Alabama, Showeth:

1. That Petitioner is a citizen of the State of Alabama and is over the age of twenty-one years, and is a resident of the Town of Bay Minette.

That L. D. Owens, is Mayor of the Town of Bay Minette, Alabama and that Emanuel Davidson, O. J. Mancini, Maxwell Reid, J. H. Stacey and G. F. Stevenson are members of the Board of Aldermen, which is the governing body of the Town of Bay Minette, Baldwin County, Alabama; and that said Mayor and members of the Board of Alderman are each over the age of twenty-one years, and reside in the Town of Bay Minette, Alabama.

2. Petitioner avers and shows unto the Court that he is the owner, in fee simple of lot number six in Block 31 of Hand Land Company's addition to the town of Bay Minette, Baldwin County, Alabama, which said lot is situated in the Northwest corner of Second Street and White Avenue, and upon which property Petitioner is desirous to erect a fireproof garage building in which to operate a machine shop and repair service.

And Petitioner avers that said building is to house a necessary service to the community and to the Veterans' Housing and Pulpwood Programs,

3. That heretofore and approximately on the 9th day of October 1946, Petitioner contacted said officials of the Town of Bay Minette, and filed with the Town of Bay Minette and its duly qualified officers, plans and specifications acceptable to the Town of Bay Minette, Alabama. Petitioner also obtained authority or priority from the Civilian Production Board of the United States of America, being authorization No. 4-6-1517 for the construction of said building. Said plans were duly and regularly approved by the Mayor of the Town of Bay Minette. That said building was to cost an estimated sum of \$4,000.00. It was to be approximately 40 feet by 55 feet, with a lean-to addition of 25 feet by 40 feet, and was to be of concrete block construction with metal roof.

That on said 9th day of October, there was issued to Petitioner a permit to construct said building, which permit was in words and figures as follows: to-wit:

TOWN OF BAY MINETTE

BAY MINETTE, ALABAMA

October 9, 1946

Mr. R. E. Coots,  
Bay Minette, Alabama

Dear Mr. Coots:

Permission is hereby granted to you to erect a garage building 40' x 50' to be constructed of concrete blocks with a tin roof with a 24' x 40' shed to be covered with tin, situated on the North side of said building on Lot 6, Block 31 in the Hand Land Company's Addition to the Town of Bay Minette, according to the application filed by you with the Town of Bay Minette.

Very truly yours,

TOWN OF BAY MINETTE

(signed) L. B. Owen

MAYOR

That all terms of said permit were met by said Petitioner.

4. That on December 3, 1946 at a regular meeting of said Board of Aldermen, certain property owners and residents of the neighborhood in which said building was being constructed, appeared and protested orally to the Town of Bay Minette the erection of said building, and as a result, a motion was offered and passed by said Board of Aldermen, revoking your petitioner's building permit; said action of the Board of Aldermen being recorded in the minutes of the aforesaid regular meeting, and read in part as follows:

"A large number of citizens came before the Council to protest R. E. Coots building a garage in the residential section of Second Street. After hearing their protests and the Council discussing the matter, Councilman Stacey made a motion that the Council pass a Resolution revoking Mr. Coots' building permit. Councilman Reid seconded the motion and the same was unanimously carried."

5. Your Petitioner avers that he had no notice of such hearing orally until notified/on December 4, 1946 by J. B. Blackburn, Attorney for the Town of Bay Minette, Alabama, to cease and desist construction on said building, notwithstanding that at this date, Petitioner had expended approximately the sum of \$2,000.00 in labor and materials, including the installation of sewage lines and connections and the pouring of concrete foundations; proceeding with the construction of said building in accordance with permission granted by the Town of Bay Minette, in said Building Permit issued October 9, 1946.

6. That upon protest to said officials of the Town of Bay Minette, Alabama, Petitioner was allowed to appear at a regular meeting of the Mayor and Board of Aldermen of the Town of Bay Minette, for a hearing. Said appearance was made on Tuesday night, January 7, 1947 at 7:30 P. M.

There Petitioner was informed orally by the Alderman presiding, that said Town Attorney had been instructed by the Board of Aldermen of the Town of Bay Minette to notify Petitioner of said revocation of his Building Permit, and such instructions were hereby confirmed; that Petitioner's building Permit had been revoked by action of said Board of Aldermen of the Town of Bay Minette, due to the protest of the adjoining property owners, and that Petitioner had failed to comply with Ordinance Number 433 of the Town of Bay Minette, Alabama enacted May 6, 1941, which reads in part:

SECTION 10. Outside of the Fire Limits, but within the corporate limits it shall be unlawful for any person, firm or corporation on and after the passage and posting of this Ordinance.

(a) To erect or repair any bill board, store, sign board, store building, filling station, automobile garage, or other type of building to be used to house bottling plants or other commercial businesses within the corporate limits and outside of the fire limits of the Town of Bay Minette, Alabama, unless such person first obtain a written permission of two-thirds of the property owners within a radius of 300 feet from the exterior lot lines of the lot whereon such building is proposed to be erected, with or without consent of said property owners, within 1,000 feet of property owned by the Town of Bay Minette and used for school purposes. It shall be unlawful for the Mayor to issue a permit for erection or repair of a building to be used for commercial purposes within 1,000 feet of the line of said school property. This section shall not apply to any building to be used as a Post Office.

7. Petitioner avers and shows to the Court that only two houses are located on Second street in the block in which Petitioner began construction of said building; one house, your Petitioner owns, the other being across the street and at the far end of the block from site of Petitioner's building. It is further shown that Petitioner's building site is in the first block adjoining the fire limits, as set forth in said zoning Ordinance number 433 of the Town of Bay Minette, Alabama.

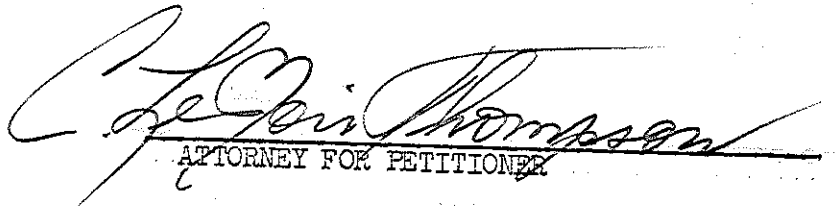
8. That as shown by said action of the Board of Aldermen of the Town of Bay Minette, as recorded in the minutes of the regular meeting of December 3, 1946, supra: there was denied Petitioner, the right to complete the erection of his building on his property for the purpose of using same to conduct his business of machine shop and repair work, and Petitioner avers that said order or action is an arbitrary interference with the rights of private property granted this Petitioner by the Constitution of Alabama and of the United States of America.

9. Petitioner further avers that said Ordinance No. 433, is invalid, inasmuch as said Ordinance purported to establish Building Zones, yet was not advertised as expressly directed for such Ordinances by Section 1879 of the Code of Alabama of 1923.

9. Petitioner further avers that he is now ready and has been ready, willing and able at all times to comply with any reasonable terms and conditions imposed by said Town of Bay Minette, for the issuance of its Permit, but avers that he has complied with all of the statutes and Ordinances of the Town of Bay Minette, to entitle it to have issued to him a building permit to construct the building involved, and that only the question involved as to the issuance of said permit and as to the denial thereof, is as set forth in the minutes of said meeting of the Board of Aldermen of Bay Minette, and that the portion of Ordinance number 433 of the 1941 Code of Ordinances of the Town of Bay Minette, Alabama, is the applicable Ordinance of the Town of Bay Minette, controlling the right of said Board of Aldermen to deny a permit to Petitioner and that no other Ordinances are applicable or relate thereto except Ordinances as to types of building, method of construction, etc., with which this Petitioner has complied.

THE PREMISES CONSIDERED: Petitioner prays for all orders and proceedings necessary herein and that a Writ of Mandamus issue in the premises to each of the defendants, commanding and requiring them, and each of them, respectively, or in the alternative to such of said defendants as may be proper to issue to Petitioner a proper permit to erect said building on said property owned by Petitioner, as above described, and if deemed proper by the Court, to refrain from interfering with Petitioner ~~in~~ the construction and erection of said building.

AND if Petitioner is in any manner mistaken in the relief herein prayed for, then he prays for such other, further, different and general relief as in equity and good conscience the Court may deem meet and proper to grant.

  
ATTORNEY FOR PETITIONER

ATTACHED -

Certified Copy of Ordinance No. 433 - Marked Exhibit "A"

Certified Excerpt of Minutes of Regular meeting of Mayor and Board of Aldermen of December 3, 1946 - Marked Exhibit "B"

STATE OF ALABAMA

BALDWIN COUNTY

Before the undersigned officer, duly and legally authorized to take and certify affidavits, personally appeared R. E. Coots, who having been duly sworn, deposes and says that he is the Petitioner in this matter, and that he is over the age of twenty one years, and resides in the Town of Bay Minette, Alabama; that he has knowledge of the facts and that the allegations averred as facts in the foregoing petition are true and that insofar as its allegations are on information and belief, or may be conclusions, that he is informed and believes and upon such information and belief states the same to be true.

A E Coots

Petitioner

Sworn to and subscribed before me

this 12 day of February, 1947

Alice J. Duck  
Circuit Clerk

*plfts Exh 2*  
ORDINANCE NO. 433

BE IT ORDAINED BY THE TOWN COUNCIL OF  
THE TOWN OF BAY MINETTE, AS FOLLOWS:

SECTION 1. It shall be unlawful on and after passage and posting of this Ordinance to erect or repair within the corporate limits of the Town of Bay Minette, Alabama, a building of any kind not in conformity with the Building Code, recommended by the National Board of Fire Underwriters, New York, Fifth Edition, Revised Reprint, 1934, published in due form and approved by the Underwriters Laboratories, Inc. Said Code is hereby made a part of this Ordinance and a copy thereof shall be at all times kept in the office of the Town Clerk.

SECTION 2. No building or structure or contrivance shall be permitted to be erected or repaired within the corporate limits of the Town of Bay Minette, Alabama, until the plans thereof shall have been submitted to the Mayor, showing the type of building and the exact location thereof, who shall, if in accordance, issue a building permit for the proposed construction or repairs.

SECTION 3. If, during the progress of Construction, it appears to the Mayor that said work is not being done in conformity to said Building Code mentioned in Paragraph 1 hereof, the Mayor is authorized and directed to immediately revoke any permit which has been granted by him, and after said revocation, it shall be unlawful for any person to proceed with the construction, erection or repair of said building until until when and as the Mayor shall have issued another permit authorizing the work to be continued. No permit shall be issued if the proposed structure or repair work is not to be done in conformity with said Building Code.

SECTION 4. The following shall be and are hereby declared to be the fire limits of the Town of Bay Minette, Alabama:-

Commence at a point where the West line of Blackburn Avenue intersects the North line of the right-of-way of the Louisville and Nashville Railroad and run North along Blackburn Avenue to its intersection with Third Street: thence West along the South side of Third Street to the Intersection of Third Street and McMillan Avenue, thence South along the East line of McMillan Avenue to a point which is the Northwest corner of the Northeast Quarter of Section 16, Township 2 South Range 3 East; thence South along the West line of the Northeast Quarter of the Said Section 16, to its intersection with the South line of Oak Street; thence East along Oak Street to Myrtle Street; thence South along the West line of Myrtle Street to the North right-of-way line of the Louisville and Nashville railroad; thence Northeasterly along the North right-of-way line of the said Louisville and Nashville Railroad to Blackburn Avenue.

Also begin at a point where the South right-of-way line of the Louisville and Nashville Railroad intersects the West line of Orange Street, thence South along Orange Street to South Street; thence Northeasterly along the North line of South Street to the West line of the East half of the Northeast Quarter of said Section 16, thence continuing the same course Northeasterly to a point where the said line intersects the North line of Section 16, thence North 27 degrees 30 minutes West to a point on the right-of-way line of the Louisville and Nashville Railroad

SECTION 5. (a) Structures or buildings hereafter erected without a permit as required herein, or hereafter erected not in conformity with this Ordinance, shall be removed at once.

Page Two of Ordinance No. 433  
of the Town of Bay Minette

(b) No building shall be moved until a permit has been obtained from the Mayor and such official shall not issue such permit if in his judgement the proposed new location of the building would seriously increase the fire hazard of the surrounding buildings.

SECTION 6. Every building hereafter erected or enlarged within the fire limits shall be enclosed on all sides with walls constructed of stone, well burned brick, terra-cotta, hollow tile, and/or concrete, and shall have the roof, together with all sides, covered with an incombustible material. All cornices shall be of an incombustible material.

SECTION 7. No bill board or sign board, frame, wooden, corrugated iron or metal structure or building of any kind shall hereafter be built within the fire limits as established herein, or as they may hereafter be established, and no corrugated iron or metal structure or building of any kind shall be erected within 300 feet of said fire limits and then only in accordance with Section Numbered Ten of this Ordinance with reference to permission of adjacent property owners, except the following:-

(a) Temporary one-story frame building for use of building constructors;

(b) Small outhouses not to exceed 150 square feet in area and eight feet in height, which shall not be located within five feet of any lot line nor within thirty feet of any other building;

(c) Bay windows when covered with incombustible material; and placed on excepted buildings or structures shall have an incombustible covering. No frame building shall be moved from without to within the fire limits.

Bill board or sign board as defined herein shall not be held to mean, apply to or prohibit sign boards of incombustible material which are a part of, or attached to any piece of business within the said fire limits or to the highway signs or markers placed or installed by the State or Federal Government.

SECTION 8. Any existing frame building within the fire limits which may hereafter be damaged by fire, decay or otherwise to an amount greater than one-half of its present value exclusive of its foundation, shall not be repaired or rebuilt but shall be removed.

SECTION 9. No building hereafter erected shall be used for a public garage, bakery, dry cleaning or pressing shop within the fire limits unless the building be constructed as stated herein, and when any frame, wooden, corrugated iron or metal structure or building which has been heretofore erected and which is now used as a public garage, bakery, dry cleaning, or pressing shop within the fire limits of said Town ceases to be used for such purpose it shall not hereafter be used for such purpose until the owner thereof first secure a permit for the said use of such property from the Mayor of the said Town which shall not be granted until the written consent of all persons, firms, or corporations owning real property within three hundred feet thereof is obtained and filed with the Town Clerk of said Town.



Page Three of Ordinance No. 433  
of the Town of Bay Minette

SECTION 10. Outside of the fire limits, but within the corporate limits it shall be unlawful for any person, firm or corporation on and after the passage and posting of this Ordinance.

(a) To erect or repair any bill board, store, sign board, store building, filling station, automobile garage, or other type of building to be used to house bottling plants or other commercial businesses within the corporate limits and outside of the fire limits of the Town of Bay Minette, Alabama, unless such person first obtain a written permission of two-thirds of the property owners within a radius of 300 feet from the exterior lot lines of the lot whereon such building is proposed to be erected, with or without consent of said property owners, within 1,000 feet of property owned by the Town of Bay Minette and used for school purposes. It shall be unlawful for the Mayor to issue a permit for erection or repair of a building to be used for commercial purposes within 1,000 feet of the line of said school property. This section shall not apply to any building to be used as a post office.

(b) It shall be unlawful for any person to erect any residence or building of any kind within the corporate limits and outside of the fire limits nearer than ten feet to the sidewalk.

SECTION 11. All electrical installations shall be in accordance with the National Electric Code and no installation of electrical equipment shall be made except in conformity thereto.

SECTION 12. Bricks set on edge shall not be permitted on chimney or flue construction.

SECTION 13. Any and all persons who violate any of the provisions of this Ordinance, or fail to comply therewith, or shall violate or fail to comply with any order or regulation made thereunder or who shall build in violation of any details, statement, or specification or plans submitted thereunder, shall severally for and every such violation and non-compliance respectively be fined not more than one hundred dollars (\$100.00) for each offense. The imposition of one fine for any violation of this Ordinance shall not excuse additional violation hereunder, and all such persons shall be required to correct or remedy such violations within a reasonable time; and when not otherwise specified each ten days that prohibited conditions are maintained shall constitute a separate offense. A conviction hereunder, shall not prevent enforcement of the specific provisions of this Ordinance in such manner as may be provided by law.

SECTION 14. Any Ordinance or provision thereof in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 15. The invalidity of one or more provisions of this Ordinance shall not affect other valid provisions hereof.

SECTION 16. This Ordinance shall be published by posting copies hereof in three public places in the Town of Bay Minette, Alabama, one of which shall be the Mayor's office in said Town, and shall become effective five days after posting.

Adopted this 6th day of May, 1941.

(Signed) Malena Mae Whitley  
Acting Town Clerk

I hereby certify the foregoing three pages to be a true and correct copy of Ordinance No. 433, of the Town of Bay Minette, Alabama made this, the 8th day of January 1947.

*May 7, 1941*  
Town Clerk

pgs Ex 3

MINUTES OF THE REGULAR MEETING  
OF THE TOWN COUNCIL OF THE TOWN  
OF BAY MINETTE, ALABAMA, as held  
December 3, 1946

The Town Council of the Town of Bay Minette, Alabama, met in regular session on the night of the first Tuesday in December, being December 3, 1946 at 7:30 P.M., that being the time, place and date for such meeting.

Upon roll call the following members of the Council were found to be present: Councilman O. J. Mancini, Maxwell Reid, J. H. Stacey and G. F. Stevenson, Mayor L. D. Owen presiding. Smith, Town Clerk, acted in her capacity.

(EXTRACT FROM THE MINUTES OF SAID MEETING,  
BEING ALL OF RECORD IN SAID MINUTES CONCERNING  
THE BUILDING PERMIT ISSUED R. E. COOTS.)

"A large number of citizens came before the Council to protest R. E. Coots building a garage in the residential section of Second Street. After hearing their protests and the Council discussing the matter Councilman Stacey made a motion that the Council pass a Resolution revoking Mr. Coots' building permit. Councilman Reid seconded the motion and the same was unanimously carried."

I hereby certify the above to be a true and correct copy of an excerpt from the minutes of the Council Meeting of the Town Council of the Town of Bay Minette, Alabama, held on December 3, 1946, said copy being made on January 8, 1947

Mary F. Smith,  
Town Clerk

RECORDED

RECORDED

RECORDED

RECORDED



R. E. COOTS,

Plaintiff,

VS

L. D. OWEN, as Mayor of  
the Town of Bay Minette,  
Alabama, et als,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 1031

DEMURRER

Now come the Defendants, each separately and severally,  
and for demurrer to the complaint or petition filed in this cause  
and to each and every paragraph thereof separately and severally,  
say:

1. It does not state a cause of action.
2. The allegations of the complaint or petition are  
not sufficient to entitle Plaintiff or Petitioner to the relief  
prayed for.

*J. B. Blackburn*  
Attorney for L. D. Owen, as Mayor,  
and Emanuel Davidson, O. J. Mancini,  
Maxwell Reid, J. H. Stacey and G. F.  
Stevenson, as members of the Board of  
Aldermen of the Town of Bay Minette,  
Alabama, Defendants

DEMURRER

RECORDED

R. E. COOTS,

Plaintiff,

VS

L. D. OWEN, as Mayor  
of the Town of Bay Minette,  
Alabama, et als,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO. 1031

*Filed*

*3-17-41*

*Alice J. Smith  
Clerk*

R. E. COOTS,

Plaintiff,

VS

L. D. OWEN, as Mayor of  
the Town of Bay Minette,  
Alabama, et als,

Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW

NO. 1031

DEMURRER

Now come the Defendants, each separately and severally, and for demurrer to the complaint or petition filed in this cause and to each and every paragraph thereof, separately and severally, say:

1. It does not state a cause of action.
2. There is a misjoinder of parties Defendant.
3. No facts are alleged to show that Petitioner has a clear legal right to have a building permit issued by E. Davidson, O. J. Mancini, Maxwell Reid, J. H. Stacey and G. F. Stevenson, as members of the Board of Aldermen of the Town of Bay Minette, Alabama, a Municipal Corporation and no facts are alleged to show any duty on the said Aldermen or any of them to issue such permit.
4. The allegations of the Petition are conclusions of the Petitioner.
5. The Petition filed in this cause fails to show a clear legal right in the Petitioner to the relief prayed for by him in the Petition filed in this cause.
6. It affirmatively appears from the Petition that the Petitioner does not have a clear legal right to the relief prayed for by him in the Petition filed in this cause.
7. No facts are alleged to show that there is no other adequate remedy to which Petitioner may resort.
8. The granting of a Writ of Mandamus in this case will compel the Defendants or one or more of them to allow an act in contravention of an Ordinance of the Town of Bay Minette, Alabama, a Municipal Corporation.

9. It affirmatively appears from the Petition that Petitioner is required by an Ordinance of the Town of Bay Minette, Alabama, a Municipal Corporation, to obtain written permission from two-thirds of the property owners within a radius of 300 feet from the exterior lot lines of the lot on which the building is to be erected before a permit can be granted to him for the purpose of erecting a garage on the said lot and that he has not obtained permission from two-thirds of the said property owners.

10. No facts are alleged to show that the Petitioner has an absolute legal right to have such building permit issued.

11. The Petition does not allege~~d~~ that the Petitioner has complied with all of the provisions of Ordinance Number 433 of the Town of Bay Minette, Alabama, a Municipal Corporation, adopted on May 6, 1941.

12. No facts are alleged to show that the building for which the Petitioner is seeking to compel the issuance of a permit, will be built and located as required by Ordinances of the Town of Bay Minette, Alabama, a Municipal Corporation.

13. The issuance of a building permit to Petitioner as alleged in the Petition filed in this cause is a matter which involves the exercise of discretion or judgment on the part of the defendants, or one or more of them, which cannot be compelled by mandamus.

14. The action of the defendants or one or more of them in refusing to grant a building permit to Petitioner, is not subject to review or control by this Court in a mandamus proceeding.

15. It affirmatively appears from the petition filed in this cause, that the building permit issued to the Petitioner by L. D. Owen, Mayor, dated October 9, 1946 has been revoked, which revocation constituted an exercise of discretion or judgment by the defendants as said officers which cannot be reviewed or controlled by this court in a mandamus proceeding.

16. It affirmatively appears that Petitioner's right to a building permit depends upon controverted facts demanding the exercise of judicial discretion.

17. No facts are alleged to show that Petitioner is entitled to restraining order as prayed for by him in his prayer for relief.

18. A law court is without authority to issue a restraining order and no facts are alleged to entitle Petitioner to such an order or decree.

19. This suit is a proceeding on the law side of the Court and such court is without authority to issue a restraining order.

J. B. Bladell  
Attorney for Defendants.



DEMURRER

RECORDED

R. E. COOTS,

Plaintiff,

VS

L. D. OWEN, as Mayor of  
the Town of Bay Minette,  
Alabama, et als,

Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW. NO. 1031

*Filed*  
*8-9-47*  
*Alice J. Welch*  
*Clerk*

J. B. BLACKBURN  
ATTORNEY AT LAW  
BAY MINETTE, ALABAMA

R. E. COOTS,

Plaintiff,  
VS.

L. D. OWEN ET ALS,  
Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

AT LAW. NUMBER 1031.

ANSWER

Now come the Defendants, each separately and severally, and for answer to the Petition filed in this cause and to each and every count thereof, separately and severally, say:

1. Not guilty.
2. The allegations of the Petition are untrue.

J. B. Bladlum

Attorney for Defendants.

RECORDED

ANSWER

R. E. COOTS,

Plaintiff,

VS.

L. D. OWEN ET ALS,

Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

AT LAW.      NUMBER 1031.

*Filed*  
*September 16, 1947*  
*Alice J. Duck*  
*Clerk*

12. That said motion does not allege with sufficient certainty that plaintiffs building or operation will be a nuisance per se

~~13. That said motion was not filed by the Attorney General in support of a public nuisance.~~

13. That said motion alleging apprehension of a public nuisance was not filed by the Attorney General of Ark.

14. For that said motion does not show irreparable injury not compensable in a single action at law.

Plaintiff,

9. OWEN, et al,  
Defendants

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW. NUMBER 1031.

Now comes the Plaintiff, and for Demurrer to the MOTION TO  
TRANSFER TO EQUITY by the Town of Bay Minette, a Municipal Corporation  
L. D. Owen, as Mayor of the Town of Bay Minette, a Municipal Corporation  
E. Davidson, O. J. Manci, Maxwell Reid, J. H. Stacey and R. H. Stuart,  
as members of the Board of Aldermen of the Town of Bay Minette, and sa

1. That said defendants have a full, adequate and complete remedy  
at Law.

2. That said motion has not shown that said defendants have no  
adequate and complete remedy at Law.

3. For that the motion is insufficient in presenting an equity  
based on the facts set forth in paragraphs 2, 3 and 4, of said motion.

4. For that the averments of paragraphs 2, 3 and 4, of said  
motion do not constitute an equitable right, such as would authorize the  
removal of a cause of purely legal cognizance from the law side to the  
equity side of the docket.

5. For that said motion will not cure the defendant's violation  
of the Constitution of the United States, and of the State of Alabama,  
as set forth in Plaintiff's petition.

6. No facts are alleged in paragraphs 1, 2, 3, 4 and 5, which  
would constitute a defense to Plaintiff's action against the parties  
to said action.

7. That said motion fails to sufficiently assert and show an  
equitable right of defense.

8. That defendants have not shown that said lot 6, block 31, of  
Hand Land Company's addition to the Town of Bay Minette is within an  
area legally restricted to residential purposes by a valid zoning  
ordinance.

9. For that such motion alleging facts constituting a good  
and equitable defense and praying for transfer to Equity Docket does  
not give right of removal as a matter of course.

10. For that Count 4 of said amended motion  
does not allege the adjoining property owners to  
be parties to said suit.

11. For that Count 4 fails to sufficiently assert  
the requirements of a Public Nuisance.

*C. Le. J. Thompson*  
Attorney for Petitioner

Approved for G. H. H. H.

The proceedings of a public hearing.

For the Court to take into consideration the

the proceedings of a public hearing.

For the Court to take into consideration the

not give right of removal as a matter of course.

and educate defense and paying for transfer to Educational

2. For that such motion alleging facts constituting a

circumstance.

are legally restricted to receive

King Long Company's application to the town of

3. That defendants have not shown that they are

educational right of defense.

4. That said motion fails to establish

to said motion.

would constitute a defense to

5. No facts are alleged in

as set forth in

of the constitution of the United States

6. That said motion will

educational right of defense.

removal of a cause of

motion do not constitute an

4. For that the

passed on the facts set forth in

3. For that the motion is

defendants and complete remedy at law.

2. That said motion has not shown

at law.

1. That said motion has not shown

as members of the Board of

M. Davidson, O. E. Hance,

J. D. Owen, as Mayor of the town of

SHANGHAI TO BEHOLD BY THE TOWN OF

for comes the

VS H. H. H. H.

VS H. H. H. H.

VS H. H. H. H.

IN THE CIRCUIT COURT OF

R. E. COOTS,

vs.

L. D. OWEN ET AL

CIRCUIT COURT  
BALDWIN COUNTY  
Alabama

The petitioner filed demurrers to the petition of intervention  
filed by the Town of Bay Minette.

Demurrers 2 and 3 to Paragraph 3 of this petition sustained.  
The Town of Bay Minette excepts.

Ordered that the petition for intervention by the Town of  
Bay Minette be granted.

Petition filed by all defendants to transfer the cause to  
the equity side of the circuit court.

Demurrers to this petition filed by petitioner.

The demurrers to the petition to transfer to equity sustained.  
The defendants except to the ruling of the court sustaining demurrers.

Dear Mrs. Duck:

Please enter for me on your trial docket the above. Mr. Blackburn  
and Mr. Thompson will give you any other information you need and will  
probably assist you in writing your minutes.

Yours sincerely,

*See M. J. [Signature]*  
*Judge*

JMP:s

C. LeNoir Thompson

R. E. COOTS vs L. D. OWENS, et al.

Section 6, Article 1, Constitution of Alabama, 1901.

"Nor be deprived of life, liberty or property, except by due process of law."

14th Amendment to the Constitution of the United States:

"Nor shall any State deprive any person of life, liberty or property without due process of law".

1st Avenue Coal and Laundry Company vs. Johnson:

171 Ala. Ap. 470 - 54 So. 598.

"This case in discussing nuisance states: "The State's power in this respect, however, is limited and confined by the Constitutional provisions that the citizens shall not thereby unreasonably, arbitrarily, or without due process of law, be deprived of life, liberty, or property".

E. Shelby Johnson vs City of Huntsville, a municipal corp.,

8 Div. 359 - decided March 6, 1947 by the

SUPREME COURT OF ALABAMA

Spring Term 1947

Justice Brown quotes from "Bassett" in his work on 'Zoning' observes, "No municipality is compelled by law to enter into zoning. The State enabling acts are permissive only. But if a municipality decides to zone it must follow the procedure given in the State act: otherwise its ordinance will be null and void." (page 31)

Nor can the exercise of property rights be left to the caprice, whim or esthetic sense of a special group of individuals who may object to the use of property by a property owner of the rights fixed by such ordinance or left unrestricted thereby.) Pentecostal Holiness Church of Montgomery v. Dunn et al., 27 So. 2d 561

WHITE vs LUQUIRE FUNERAL HOME

221 Ala 440 - 129 So. 84

(2) It does not follow the Legislature is without power to confer upon municipalities in this state the authority to enact valid zoning ordinances as provided by Code of 1923 section 1878.

Such power was recognized in Longshore v. City of Montgomery, 22 Ala App. 620, 119 So. 599, certiorari denied without opinion in ~~119~~ 218 Ala 597, 119 So. 601.

The ordinance there involved was condemned because of the arbitrary discretion conferred on other property owners to grant or to deny to the owner of property the privilege of using it for stated purposes.

The law of zoning in cities, including the division of its territory into residence and business districts, is mainly the growth of the present century.

The authority therefor is found in the police power. The public health, safety, convenience and general welfare all enter into the difficult and delicate problems confronting zoning boards in laying out such districts.

A broad and comprehensive scheme worked out upon full information by competent authority on the ground is the natural order. The courts in recognition of the legitimate government functions committed to them, their superior opportunity to know and consider all the varied and conflicting interest involved, to balance the burdens and benefits, to lay out zoning districts with a view to the general welfare of the city, are slow to set up their own opinions as against those charged with and in position to rightly perform such duty.



PENTECOSTAL HOLINESS CHURCH of MONTGOMERY v. DUNN ET AL  
27 So. 2nd 561

(3) An ordinance so far as it restricts absolute dominion of owners over their property, should furnish uniform rule of action and its application cannot be left to arbitrary will of governing authorities.

(4) Montgomery ordinance which prohibits building of a different type or size from existing buildings in an immediate vicinity in a Class "A" residential district unless consent of property owner in vicinity is obtained, is unconstitutional as violative of the Fourteenth Amendment. U S C A Constitution Amendment 14.

CHAPMAN v. CITY OF TROY et al - 241 Ala 637

2. A State zoning Act, which requires that City Zoning regulations be made according to plan, contemplates that a smaller city's governing body, undertaking to deal with entire matter of zoning, shall keep in view welfare of whole city. Gen. Acts 1935 P-1121

6. A zoning ordinance creating a single residential zone or district in a city and penalizing erection or use of any building therein for business, commercial or industrial purposes, HELD void as violating State zoning act and particularly section thereof requiring zoning regulations in accordance with comprehensive plan. Gen. Acts 1935 p.1121 par.3

LEARY v. ADAMS et al - 226 Ala 472

3. Zoning ordinances and restrictions incident to them must bear some substantial relation to public health, safety, morals or general welfare. Gen. Acts 1923 - p-581.

WHITE v. LUQUIRE FUNERAL HOME 221 Ala 440 - 129 So. 84

3. In fixing boundaries of commercial and residential districts, and privileges accorded therein, zoning authorities of municipalities must consider the trend of development.

(2) It is common knowledge that in ever growing cities, areas first occupied as residence property frequently undergo a transition and become commercial areas. Such changes are the normal result of growth.

(3) In fixing the boundaries of commercial and of residence districts and the privileges accorded therein, the zoning authorities must needs consider the trend of development, the purposes for which values of property are decreasing or increasing. Zones must be laid out with some regard to the future.

EUCLID v. AMBLER - ALR 54 - 1016

Regulations sought to be imposed by laws or ordinances must have a real or substantial bearing upon the public health, public safety, public morals, or general public welfare, and a belief, no matter how fervently or widely entertained, that Municipal Authorities can assert some sort of communal control over privately owned land, is at variance with the fundamental nature of private ownership and in derogation of the protection of private ownership.

ALABAMA APPEALS 1912

Statutes granting power to municipal corporations are strictly construed, and any reasonable doubt as to existence of powers must be resolved against municipalities. Exparte Rowe, 59 So 69 - 4 Ala Ap 254.

(3) An ordinance so far as it restricts absolute dominion of owners over their property, should furnish uniform rule of action and its application cannot be left to arbitrary will of governing authorities.

(4) Montgomery ordinance which prohibits building of a different type or size from existing buildings in an immediate vicinity in a Class "A" residential district unless consent of property owners in vicinity is obtained, is unconstitutional as violative of the Fourteenth Amendment. U S C A Constitution Amendment 14.

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ALA & SO DIGEST Key 110 - ALA AP 1921 1  
Smith vs. Town of Eclectic - 92 So 212

Head publication of ordinance to be mandatory, but recording of ordinance merely directory.

EUBANK VS RICHMOND (Va 1912) 228 U S 137 - 57 L Ed 156  
42 L R A (N S) 1123

EATON VS VILLAGE OF SOUTH ORANGE (N.J. Sup. 1925) 130 A. 362.

CONSTITUTION OF THE UNITED STATES - Revised and Annotated  
(Senate Document 232 - 74th Congress - 2nd Session)

(Annotations of cases decided by the Supreme Court of the United States to January 1, 1938 - Page 847:

"A requirement in a zoning ordinance that the consent of owners of two-thirds of the property within 400 feet of the site of a proposed philanthropic home be obtained is repugnant to the due process clause." Washington Ex rel Seattle Title Trust Co., v. Roberge, 278 U S 116 (1928)

REVOCATION OF PERMIT - C J 38 - 7

Where the statute providing for the issuance of permits for the erection or maintenance of a garage does not expressly confer a power of revocation, it cannot be revoked where it has been lawfully granted and acted on and the licensee has violated no law or regulations, (General Baking Co. vs Boston St Commissioners 242 Mass 194 - 136 NE 245) particularly in the absence of notice or hearing (Gen. Baking Co. supra) Where by resolution of a municipal council, a permit has been granted for the erection of a filling station and garage, the council will not be permitted to revoke the permit after the party to whom it is granted has expended money thereon unless there is some change in the use or additional information to the council showing danger to the health and safety of which its members were not informed at the time of the resolution. Pratt vs Denver - 72 Colo. 51, 209 Pacific 508.

RELATED DECISIONS

Ala App 1924

Ordinances must be clear, certain and duly promulgated.

Green v. City of Demopolis 101 So 529 - 20 Ala App 13

Cert. den Ex Parte Green 101 So 531 - 211 Ala 610

Ala 1930

In fixing boundaries of commercial and residential districts, and privileges accorded therein, zoning authorities of a municipality must consider trend of development - White v. Luquire Funeral Home 129 So 84 - 221 Ala 440.

Ala 1933

Zoning ordinance and restrictions incident to them must have no bear some relation to public health, safety, morals or general welfare. Gen. Acts 1923 p-581 - Leary v. Adams 147 So 391 226 Ala 472.

Ala App 1928

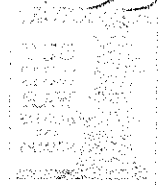
Ordinance prohibiting construction of commercial building except with consent of two-thirds of all property owners, and unanimous consent of adjoining owners - held unconstitutional. U S CONST. AMEND. 14) Longshore v. City of Montgomery 119 So 599 - 22 Ala App 620 - Cert. denied (1929) 11 So 601 - 210 Ala 597.

Quoting from the Longshore case:

"Sec. 8 of the zoning ordinance of the City of Montgomery, above quoted, seems to us to fall directly under the ban of the 14th Amendment of the Constitution of the United States in the same way and to the same extent as the municipal enactment discussed in the opinion in the case of City of Montgomery v. West (149 Ala 311 - 42 So 1,000) The views expressed in the opinion in that case by the Supreme Court of Alabama, which are controlling upon us, appear never to have been changed.

"An ordinance, and of course any part of an ordinance... of a City ~~is valid~~ to be valid, must be impartial and general in its operation, so far as it restricts the absolute dominion of the owner over its property, it should furnish a uniform rule or action and its application cannot be left to the arbitrary will of the governing authorities. Ordinances which invest a City Council (and we may interpolate adjoining property owners) with a discretion which is purely arbitrary, and which may be exercised in the interest of a favored few, are unreasonable and invalid."

*The Pentecostal Holiness Church vs. David E. Duan*  
*(City of Montgomery)*  
*Sustains above rulings*



IN RE COOTS CASE

ALA AP 1912 -

Statutes granting power to Municipal Corporations are strictly construed, and any reasonable doubt as to existence of power must be resolved against municipality. *Exparte Rowe*, 59 So 69, 4 Ala Ap 254.

Ala 1935:-

A municipal corporation possesses such power as the legislature confers upon it. *Casey v. City of Haleyville* 161 So 496 - 230 Ala 401.

LA APPEALS 1914 -

An ordinance by a Municipal Corporation violatate of the provisions of a legislative act is void. *Bloomfield v. Thompson*, 11 Orleans App 319.

THORNTON Vs McDONALD - 218 Ala 190 - 117 So 643

Ordinance of City of Carbon Hill establishing Fire Limits and prescribing character of buildings to be erected within limits, held invalid as conflicting with CODE 1923 Sec. 2012 (Municipal Corporations)

GEN. ACTS 1935 - Page 1121, pp-3.

A zoning ordinance creating a single residential zone or district in City and penalizing erection of use of any building therein for business, commercial or industrial purposes, held void as violating State Zoning Act and particularly section thereof requiring zoning regulations in accordance with comprehensive plan.

VILLAGE OF EUCLID, OHIO, v. AMBLER REALTY CO.

A municipality may not, under the guise of the Police power, arbitrarily divert property from its appropriate and most economical uses, or diminish its value by imposing restrictions which have no other basis than the ~~momentary~~ momentary taste of the public authorities.

The enactment of a zoning ordinance and other similar ordinances under color of authority while outstanding, create a substantial cloud on the title of the property and the only adequate relief is a decree ascertaining and declaring their invalidity and canceling the cloud.

Donnegan & Tabor v. Wood - 49 Ala 242:

Such demurrer does not come within the requisitions of the statute. ~~It merely declares the pleas~~

It merely declares the pleas are insufficient in law. This is not enough. It should state specifically the ground of objection, why the pleas are insufficient so that the court could see at once what amendment, if any could be made.

Such demurrers are not to be allowed, and it is the duty of the Court to overrule them. Note additional citations.

Municipal Ordinance is not enforceable until every Charter Provision necessary to give it Legal existence complied with - Adams vs Isler.

A statute cannot be repealed, destroying vested contract rights.

State VS- Brown Service Funeral Co  
236 Ala. 249 - 182 So. 16  
Art-1- Sec. 22 P. 72 Vol. 1

A valid contract entered into by a municipality can no more be repudiated than the Contract of a private Corporation individual.  
Weller V. Gadsden 141-Ala.-642 37 So. 662

Vol-1 Pg. 74 - Art. 1 Sec. 22  
Absolute power in a city is never implied.

R. E. COOTS,

Petitioner,

VS.

L. D. OWEN, ET ALS,

Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

AT LAW. NO. 1031.

AMENDED MOTION TO TRANSFER TO EQUITY

Now come the Defendants, the Town of Bay Minette, Alabama, a Municipal Corporation, L. D. Owen, as Mayor of the Town of Bay Minette, Alabama, a Municipal Corporation, E. Davidson, O. J. Mancini, Maxwell Reid, J. H. Stacey and R. H. Stuart, as members of the Board of Aldermen of the Town of Bay Minette, Alabama, and show unto the Court as follows:

1. The Defendants' rights in this case depend upon the assertion of an equitable right or defense, the decision of which should dispose of this cause and which cannot be disposed of on the Law Side of this Court.

2. The Petitioner or Plaintiff, R. E. Coots, together with his wife, Mrs. Carrie M. Coots, own Lot Numbered 6 in Block Numbered 31 in the Hand Land Company's Addition to the Town of Bay Minette, Alabama, according to the official plat thereof recorded in Deed Book 4 N. S. at page 158 et seq., Baldwin County, Alabama Records. The said property is located within the corporate limits of the Town of Bay Minette, Alabama, is situated at the Northwestern intersection of Second Street, which is also United States Highway Number 31, and White Avenue and is within *a* residential district ~~as defined by ordinances~~ of the Town of Bay Minette, Alabama. The Petitioner or Plaintiff has commenced erection of a building approximately 40 x 55 feet in size with a lean-to addition of the approximate size of 25 x 40 feet, which is to be built of concrete blocks with a metal roof for the purpose of occupying the said building as a garage and machine shop. All of the said Block 31 is used for residential purposes. There is situated on Lot 1 in the said Block a residence which is owned by J. R. Crow and rented to various tenants. There is situated on Lot 2 in the said Block the



residence of Mrs. Gasque McMillan, which is occupied by her. There is situated on Lot 3 in the said Block the residence of W. M. Moore, which is occupied by him. There is situated on Lot 4 in the said Block the residence of Walter Lindsey, which is occupied by him. There is situated on Lot 6 in the said Block the residence of the Petitioner, R. E. Coots, and his wife, Mrs. Carrie M. Coots. Block 30, the block South of the said Block 31 and which is South of Second Street or United States Highway Number 31, is occupied by six residences and is used entirely for residential purposes. Blocks Numbered 52, 57 and 77 in the Hand Land Company's Addition to the Town of Bay Minette, Alabama, which are the blocks located East of the said Block 31 and North of Second Street or United States Highway Number 31, and Blocks Numbered 53, 56 and 78, which are the blocks located East of the said Block 30 in the Hand Land Company's Addition to the Town of Bay Minette, Alabama and South of Second Street or United States Highway Number 31 are used exclusively for residential purposes, except for the parts of the said blocks which are unoccupied. The said area consisting of Blocks 30, 31, 52, 57, 77, 53, 56 and 78 in the Hand Land Company's Addition to the Town of Bay Minette, Alabama are all within the residential area of the said town and comprise one of the best residential sections within the said town. No part of any of the said blocks is now used for any business purpose of any kind or nature.

3. The inevitable incidents attendant upon the operation of a garage, machine shop or repair shop situated on any part of Lot 6 in the said Block 31 are that there will be a continuing emission of orders, vapors, dust, smoke, gas and noise. The said premises and the street or streets adjacent thereto will be the depository of, or storage place for trucks, tractors, trailers and all kinds of machinery which is disabled and that which is being repaired and the operation of a garage, machine shop or repair shop on the said premises will inevitably be attended by loud and disagreeable noise due to the manipulation of steel or other metal parts with hammers or other instruments and other noises incident to the operation of such business or businesses. The operation of such

business or businesses in the said location will, during the daylight hours, be a nuisance to all persons who own and occupy residences adjacent to or within hearing distance of the noise which will be created and made on the said property by the operation of such business and if such business is carried on in the said location at night, it will disturb the rest of the section within hearing distance thereof. Lights therefrom and from the automobiles, trucks and other vehicles which are being repaired at the said location will be flashed at unreasonable hours of the night into bedrooms and other private parts of the homes or residences which are near the said property. The said Petitioner or Plaintiff, R. E. Coots, has for several years occupied a building on the West side of Hoyle Avenue in the Town of Bay Minette, Alabama, which is now occupied by him, which is approximately 50 x 100 feet in size, which building is almost entirely filled with machinery, second-hand parts, junked automobiles and other machinery which he cannot possibly house on the said Lot 6 in Block 31 without creating a public nuisance. The said Petitioner or Plaintiff, R. E. Coots, also conducts some of his operations outside of the building referred to above and on the East side of Hoyle Avenue on a lot which is situated between Beasley's Grocery and the Rex Grill, which lot is approximately 50 x 144 feet in size. This lot, or the greater part thereof, is now covered almost entirely by disabled machinery, abandoned machinery, partially repaired tractors and automobiles and, while part of it is used for the repairing of automobiles and other machinery, it is, in truth and fact, what is known as a junk yard. The operation of a garage, machine shop or other repair shop on any part of the said Lot 6 in Block 31 in the same way and manner that the Petitioner or Plaintiff is now and has always conducted his operations since he commenced operating within the Town of Bay Minette, Alabama will be a public nuisance working to the hurt, inconvenience and damage of the entire town and the property owners adjacent to the said property. The location of the said proposed site being on the principal highway and the most heavily traveled highway leading through the

Town of Bay Minette, Alabama will be unsightly and detrimental to the entire town and community.

4. The entire occupied area within the corporate limits of the Town of Bay Minette, Alabama which lies North of First Street, East of Blackburn Avenue and West of Dennis Avenue, is devoted entirely to residential purposes and there is no business or businesses of any kind or nature within the said area. Second Street which is also United States Highway Number 31 runs through the said area of the said Town and from Blackburn Avenue Eastwardly for three blocks to McConnell Avenue comprises one of the best developed residential sections within the said Town and within this area is situated some of the nicest homes within the said Town and all or practically all of which homes are surrounded by extensive grounds on which are planted expensive flowers, shrubs and other plants for ornamentation of the said property within the said area. The said Highway Number 31 is the principal highway leading through the Town of Bay Minette, Alabama and over which a large number of tourists travel. The erection at the Southeast Corner of Lot 6 in the said Block 31 of a building made of concrete blocks approximately forty by fifty-five feet in size with a lean-to addition of the approximate size of twenty-five by forty feet, all of which will be covered by a tin roof even though it is not occupied by any business whatever will constitute a nuisance to all of the property owners within the said area or within the site of the said property. It will seriously affect, impair and reduce property values within the said area and will be an eyesore which will cause unfavorable comments by tourists and other persons who travel over Second Street or United States Highway Number 31. Because of all of which the erection of the said building on the said site will constitute a public nuisance and will injuriously affect the well being of a substantial portion of the citizens using the streets and sidewalks within the said area.

5. The Petitioner or Plaintiff was notified immediately after he commenced erection of the said building that he would be required to discontinue the construction thereof.

6. The operation of the said business or businesses

at the said location in the manner outlined above should be permanently and perpetually enjoined which relief cannot be given or granted except in and by a Court of Equity.

WHEREFORE, Defendants move the Court to make and enter a proper order or decree transferring this cause to the Equity Docket of the Circuit Court of Baldwin County, Alabama for such other and further proceedings as may be or which may become necessary or proper. Defendants move the Court to grant to them such other, further and general relief as they may be equitably entitled to, the premises considered.

J. B. Blackburn  
Attorney for Defendants.

STATE OF ALABAMA  
BALDWIN COUNTY

Before me, the undersigned authority, within and for said County in said State, personally appeared L. D. Owen, who, after being by me first duly and legally sworn, deposes and says: That he is Mayor of the Town of Bay Minette, Alabama and as such officer, is duly authorized to make this affidavit for and on behalf of the said Town and that he is one of the Defendants named in this suit. Affiant has read over the foregoing Amended Motion and the facts stated therein are true.

L. D. Owen (SEAL)

Sworn to and subscribed before me on  
this the 28th day of January, 1948.

Betty R. Buck  
Notary Public, Baldwin County, Alabama.

Notary Public, BELGIAN COUNTY, ALABAMA.

*[Signature]*

this the ~~25th~~ day of January, 1918.  
Sworn to and subscribed before me on

stated therein are true.

*[Signature]*

(SEAL)

Witness has read over the foregoing Amended Motion and the facts  
said town and that he is one of the Defendants named in this suit.  
is duly authorized to make this affidavit for and on behalf of the  
he is Mayor of the town of Bay Minette, Alabama and as such officer,  
being by me first duly and legally sworn, deposes and says: That  
County in said State, personally appeared P. D. Owen, who, of said

BEFORE ME, the undersigned authority, on this and for said  
BAYMINN COUNTY  
STATE OF ALABAMA

Before me, the undersigned authority, on this and for said

Attorney for Defendants.

*[Signature]*  
J. T. B. *[Signature]*

Amended motion  
to transfer to  
equity

premises considered.

her and herself relief as they may be suitably entitled to the  
proper. Defendants move the Court to grant to Defendant Owen  
and further proceedings as may be or which may become necessary or

et of the Circuit Court of Belgian County, Alabama for such other  
proper order or decree transferring this cause to the Equity Dock-  
AMERICAN, Defendants move the Court to make and enter a  
granted except in and by a Court of Equity.

mentally and verbally enjoined which relief cannot be given or  
at the said location in the manner outlined above should be per-

Dr E Coats - Jan 20, 1948 -

+ Deed dated Oct 5, 1946  
to Lot 6 Bldg 31.  
made appli. for building permit

+ Building permit granted me  
Oct 9 - 1946 -

measured lot - started Founda-  
tion for 40 X 53 ft. Bldg.

Concrete foundation -

500 concrete blocks placed  
on ground -

Sand & cement blocks on  
ground, ready to go to work.

But cement, about cement  
blocks, sand, cancelled  
order for roofing, lumber  
piled up there -

Drainage all built -

I stopped brick layers

No objection from building  
affairs -

I am ready, willing & able  
to proceed with Bldg -  
no notice of Town meeting 9 Dec 3.

- cross -

Lived on Lot 6 13 yrs -

I know block sand & wood  
used for building residence

no business on any blocks  
you (Blackburn) asked about.  
+ Pictures of my present place live.  
Mayor is only one I appeared before  
to get old permit.  
- Re-visit -

+ This permit issued 1946.  
I got my permit from Mr  
Blackburn & took it to Mayor.  
- Cross -

my next line is etched off.  
- Re-visit -

Highway 31 is 100 ft wide  
Cross

There in house on lot 1 Ref 6.

5m ft block @ \$65<sup>00</sup> -

J.D. Stapleton -

- Cross -

---

Mayor Owen - Mayor of R.M.

+ Certified copy of ordinance &  
minutes offered  
I never notified local & state.  
- Cross -

I sent costs to you (Blackburn).  
Delegation protested.  
Permit revoked later at meeting.

Sept -



COOTS vs. OWEN ET AL

Circuit Court,  
Baldwin County, Alabama  
Law Side.

It is hereby ordered that the above styled cause be, and it hereby  
is set for hearing at Bay Minette, Alabama on Tuesday morning, January  
20th, 1948 at Ten A. M.

The Clerk is ordered to notify all interested parties of the special  
setting of this case.

Issued this the 30th day of December, 1947.

  
Judge.

J. B. BLACKBURN  
ATTORNEY AT LAW  
BAY MINETTE, ALABAMA

AUGUST 9, 1947

Judge F. W. Hare  
Monroeville, Alabama

Dear Judge Hare:

When Mr. Thompson and I were in Monroeville sometime ago in connection with the case of R. E. Coots vs. L. D. Owen et als, I told him on the way back that I wanted to amend my demurrer by adding additional grounds, which I have done, which are grounds 17, 18 and 19.

The demurrer to the petition for writ of mandamus in this case presents several principal propositions, which are as follows:

1. The invariable test by which the party applying for a mandamus is determined is to inquire, first, whether he has a clear legal right; and if he has, then, secondly, whether there is any other adequate remedy to which he can resort to enforce his right. Withers vs. State, 36 Ala. 260. Speed vs. Cocke, 57 Ala. 209.

In this case the Petitioner has attached to his petition a copy of Ordinance Number 433 of the Town of Bay Minette. Sub-section B of Section 10 of this ordinance reads as follows: "It shall be unlawful for any person to erect any residence or building of any kind within the corporate limits or outside of the fire limits nearer than ten feet to the sidewalk."

Section 15 of the ordinance reads as follows: "The invalidating of one or more provisions of this ordinance shall not affect other valid provisions hereof."

As Petitioner has made the ordinance referred to above a part of the petition filed by him, he must show that he has complied with all of the terms and provisions thereof. Unless he does so, he does not show a clear legal right to the thing demanded. This is pointed out by the Defendants' demurrer and we respectfully submit that this demurrer should be sustained. He must clearly allege that the building which he proposes to erect is not located within ten feet of the sidewalk, as provided in and by Sub-section B of Section 10 of the said ordinance. He has not made such allegation in his petition and without it, it is subject to the Defendants' demurrer.

J. B. BLACKBURN  
ATTORNEY AT LAW  
BAY MINETTE, ALABAMA

Page 2  
Judge F. W. Hare  
August 9, 1947

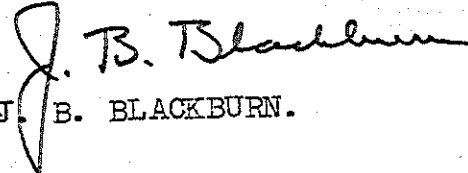
2. This suit has been filed against L. D. Owen, as Mayor, and against all of the members of the Town Council of the Town of Bay Minette, Alabama. The members of the Town Council are not proper parties; therefore, there is a misjoinder of parties defendant and the petition is also subject to the demurrer which points out this defect.

3. As pointed out in the rule of law first above cited, a pertinent inquiry in such matters is whether there is any other adequate remedy to which Petitioner can resort. He has a right to ask for a mandatory injunction or to file a petition for a declaratory judgment. As he has such other, full, adequate and complete remedies, he has further failed to show a clear legal right to the thing demanded.

4. There is nothing in the petition which has been filed in this cause to show whether the Petitioner intends to proceed on the Law Side or on the Equity Side of the Court. The petition is addressed to the Judge of the Court, but not to any particular side; however, it was filed by the Clerk and has been docketed on the Law Side of the Court. In Petitioner's Prayer for Relief, the following is found: "...and if it be deemed proper by the Court to refrain from interfering with Petitioner in the construction and erection of said building". This is, in effect, a prayer for an injunction or restraining order. This cannot be granted by a Law Court. Grounds Numbered 17, 18 and 19 of the Defendants' demurrer point out this defect and, as the petition does not allege any facts to entitle the Petitioner to such injunction or restraining order, these grounds of demurrer are also well taken and should be sustained.

Mrs. Duck will mail you the file and docket sheet.

Very truly yours,

  
J. B. BLACKBURN.

JBB:MLB  
Copy: Mr. C. Lenoir Thompson  
Attorney at Law  
Bay Minette, Alabama

R. E. COOTS vs L. D. OWENS, et al.

Section 6, Article 1, Constitution of Alabama, 1901.

"Nor be deprived of life, liberty or property, except by due process of law."

14th Amendment to the Constitution of the United States:

"Nor shall any State deprive any person of life, liberty or property without due process of law".

1st Avenue Coal and Laundry Company vs. Johnson:

171 Ala. Ap. 470 - 54 So. 598.

"This case in discussing nuisance states: "The State's power in this respect, however, is limited and confined by the Constitutional provisions that the citizens shall not thereby unreasonably, arbitrarily, or without due process of law, be deprived of life, liberty, or property".

R. Shelby Johnson vs City of Huntsville, a municipal corp., 27 Ala. 2d 341  
8 Div. 359 - decided March 6, 1947 by the  
SUPREME COURT OF ALABAMA  
Spring Term 1947

Justice Brown quotes from "Bassett" in his work on 'Zoning' observes, "No municipality is compelled by law to enter into zoning. The State enabling acts are permissive only. But if a municipality decides to zone it must follow the procedure given in the State act: otherwise its ordinance will be null and void." (page 31)

Nor can the exercise of property rights be left to the caprice, whim or esthetic sense of a special group of individuals who may object to the use of property by a property owner of the rights fixed by such ordinance or left unrestricted thereby.) Pentecostal Holiness Church of Montgomery v. Dunn et al., 27 So. 2d 561

WHITE vs LUQUIRE FUNERAL HOME

221 Ala 440 - 129 So. 84

(2) It does not follow the Legislature is without power to confer upon municipalities in this state the authority to enact valid zoning ordinances as provided by Code of 1923 section 1878.

Such power was recognized in Longshore v. City of Montgomery, 22 Ala App. 620, 119 So. 599, certiorari denied without opinion in ~~218~~ 218 Ala 597, 119 So. 601.

The ordinance there involved was condemned because of the arbitrary discretion conferred on other property owners to grant or to deny to the owner of property the privilege of using it for stated purposes.

The law of zoning in cities, including the division of its territory into residence and business districts, is mainly the growth of the present century.

The authority therefor is found in the police power. The public health, safety, convenience and general welfare all enter into the difficult and delicate problems confronting zoning boards in laying out such districts.

A broad and comprehensive scheme worked out upon full information by competent authority on the ground is the natural order. The courts in recognition of the legitimate government functions committed to them, their superior opportunity to know and consider all the varied and conflicting interest involved, to balance the burdens and benefits, to lay out zoning districts with a view to the general welfare of the city, are slow to set up their own opinions as against those charged with and in position to rightly perform such duty.

PENTECOSTAL HOLINESS CHURCH of MONTGOMERY v. DUEN ET AL  
27 So. 2nd 561

(3) An ordinance so far as it restricts absolute dominion of owners over their property, should furnish uniform rule of action and its application cannot be left to arbitrary will of governing authorities.

(4) Montgomery ordinance which prohibits building of a different type or size from existing buildings in an immediate vicinity in a Class "A" residential district unless consent of property owners in vicinity is obtained, is unconstitutional as violative of the Fourteenth Amendment. U S C A Constitution Amendment 14.

CHAPMAN v. CITY OF TROY et al - 241 Ala 637

2. A State zoning Act, which requires that City Zoning regulations be made according to plan, contemplates that a smaller city's governing body, undertaking to deal with entire matter of zoning, shall keep in view welfare of whole city. Gen. Acts 1935 P-1121

6. A zoning ordinance creating a single residential zone or district in a city and penalizing erection or use of any building therein for business, commercial or industrial purposes, HELD void as violating State zoning act and particularly section thereof requiring zoning regulations in accordance with comprehensive plan. Gen. Acts 1935 p.1121 par.3

LEARY v. ADAMS et al - 226 Ala 472

3. Zoning ordinances and restrictions incident to them must bear some substantial relation to public health, safety, morals or general welfare. Gen. Acts 1923 - p-581.

WHITE v. LUQUIRE FURNACE HOME 221 Ala 440 - 129 So. 84

3.

In fixing boundaries of commercial and residential districts, and privileges accorded therein, zoning authorities of municipalities must consider the trend of development.

(2) It is common knowledge that in ever growing cities, areas first occupied as residence property frequently undergo a transition and become commercial areas. Such changes are the normal result of growth.

(3) In fixing the boundaries of commercial and of residence districts and the privileges accorded therein, the zoning authorities must needs consider the trend of development, the purposes for which values of property are decreasing or increasing. Zones must be laid out with some regard to the future.

EUCLID v. AMBLER - ALR 54 - 1016

Regulations sought to be imposed by laws or ordinances must have a real or substantial bearing upon the public health, public safety, public morals, or general public welfare, and a belief, no matter how fervently or widely entertained, that Municipal Authorities can assert some sort of communal control over privately owned land, is at variance with the fundamental nature of private ownership and in derogation of the protection of private ownership.

ALABAMA APPEALS 1912

Statutes granting power to municipal corporations are strictly construed, and any reasonable doubt as to existence of powers must be resolved against municipalities. Ex parte Rowe, 59 So 99 - 4 Ala Ap 254.

THORNTON VS McDONALD - 218 Ala 100 - 117 So. 643  
Gen. Acts 1935 - page 1121, par.3

A zoning ordinance creating single residential zone or district in city and penalizing erection or use of any building therein for business, commercial or industrial purposes, held VOID as violating State zoning Act and particularly section thereof, requiring zoning regulations in accordance with comprehensive plan.

ALA & SO DIGEST Key 110 - ALA AP 1921

Smith vs. Town of Eclectic

Held publication of ordinance to be mandatory, but recording of ordinance merely directory.

EUBANK VS RICHMOND (Va 1912) 226 U S 137 - 57 L Ed 156

42 L R A (N S) 1123

EATON VS VILLAGE OF SOUTH ORANGE (N.J. Sup.1925)130 A. 362.

CONSTITUTION OF THE UNITED STATES - Revised and Annotated  
(Senate Document 232 - 74th Congress - 2nd Session)

(Annotations of cases decided by the Supreme Court of the United States to January 1, 1933 - Page 847:

"A requirement in a zoning ordinance that the consent of owners of two-thirds of the property within 400 feet of the site of a proposed philanthropic home be obtained is repugnant to the due process clause." Washington Ex rel Seattle Title Trust Co., v. Roberge, 270 U S 116 (1926)

REVOCATION OF PERMIT - C J 38 - 7

Where the statute providing for the issuance of permits for the erection or maintenance of a garage does not expressly confer a power of revocation, it cannot be revoked where it has been lawfully granted and acted on and the licensee has violated no law or regulations, (General Baking Co. vs Boston St Commissioners 242 Mass 194 - 136 NE 245) particularly in the absence of notice or hearing (Gen. Baking Co. supra) where by resolution of a municipal council, a permit has been granted for the erection of a filling station and garage, the council will not be permitted to revoke the permit after the party to whom it is granted has expended money thereon unless there is some change in the use or additional information to the council showing danger to the health and safety of which its members were not informed at the time of the resolution.  
Pratt vs Denver - 72 Colo. 51, 209 Pacific 508.


43 C. J. 245 - CONSENT OF OTHER PROPERTY OWNERS.

Since the police power of a municipal corporation cannot be exercised for the benefit of particular individuals or classes, it has been held that regulations or ordinances requiring the consent of property owners or a specified percentage thereof, in the vicinity, for the erection, alteration or use of particular kinds of buildings or for the <sup>maintenance of a</sup> particular business, are INVALID on the grounds that such is a delegation of the governmental power to private citizens, and that such regulations deprive the applicant of the equal protection of the law, and <sup>of</sup> their property without due process of the law.

(Annotation 46) BY THE OVERWHELMING WEIGHT OF AUTHORITY,

with scarcely any decisions to the contrary, such legislation is ~~invalid~~ invalid. It is the fundamental right of government to restrict for the public good the use of private property by the individual owning it, and this is included in the term police power, the exercise of which is seen in regulations of the construction of buildings for the safety of the public and of the prohibition against certain kinds of business to preserve public health. But all regulations must be reasonable, general and uniform, and the power must be exercised by the legislative body directly and not be delegated to any individual. THEREFORE, an ordinance which prohibits the erection of a public garage in the residence portion of a city, without the consent of the owners of adjoining lands is unreasonable, is not uniform and is a delegation of power to the adjoining owners, of power which can be ~~exercised~~ exercised only by the duly constituted legislative body. By it an owner of land may be restricted in a particular use of his land for a particular purpose by his failure to obtain the consent of his neighbor, either because of the arbitrary will or caprice of his neighbor, or because he is inaccessible or hostile, or for any reason indifferent. The adjoining owner and not the Council makes the ordinance effective. The liberty to erect the garage, is granted or withheld not by the City, or any of its officers, but by some one or more of the owners of property adjoining the land on which the garage is to be erected. This is unreasonable and an unwarranted delegation of legislative power. - Dangel v. Williams, 11 Del. ch. 213 216 - - 99 A 84 - Cited as a Ruling Case.

*L. D. Jones*  
*L. D. Jones*  
*L. D. Jones*



of Boston to  
the University  
of Boston  
Department  
of Education  
Central Library



R. E. COOTS

PLAINTIFF

VS

L. D. OWENS, EMANUEL DAVIDSON,  
O. J. MANCI, MAXWELL REID,  
J. H. STACEY AND R. H. STUART

DEFENDANTS

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW NO. 1031

PETITION FOR MANDAMUS

Now comes the Plaintiff and amends the summons and complaint, heretofore filed in this cause by substituting a party defendant so that said Summons and Complaint shall read as follows:

STATE OF ALABAMA  
BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA, GREETINGS:

WE COMMAND YOU THAT YOU SUMMONS L. D. OWENS, AS MAYOR OF THE TOWN OF BAY MINETTE, ALABAMA, AND EMANUEL DAVIDSON, O. J. MANCI, MAXWELL REID, J. H. STACEY AND R. H. STUART AS MEMBERS OF THE BOARD OF ALDERMEN OF THE TOWN OF BAY MINETTE, ALABAMA,

to be and appear before the Judge of the Circuit Court of Baldwin County, Alabama, within thirty days after service of summons and complaint lately exhibited by R. E. Coots, and against them and each of them, further to do and perform what the said Judge shall order and direct in their behalf and this the Defendants shall in no wise omit under penalty of law. AND we command that you return this writ with your execution thereon, to our said Court immediately upon the execution thereof.

WITNESS, ALICE J. DUCK, Register of said Court this

the 26 day of Nov 1947.

Alice J. Duck  
Register

(Set forth Complaint)

To- The Honorable Francis W. Hare, Judge of the Circuit Court of Baldwin County, Alabama:

Your Petitioner, R. E. Coots of Bay Minette, Alabama, Showeth:

1. That Petitioner is a citizen of the State of Alabama and is over the age of twenty-one years, and is a resident of the town of Bay Minette.

That L. D. Owens, is Mayor of the town of Bay Minette, Alabama and that Emanuel Davidson, O. J. Mancini, Maxwell Reid, J. H. Stacey and R. H. Stuart are members of the board of Aldermen, which is the governing body of the Town of Bay Minette, Baldwin County, Alabama; and that said Mayor and members of the Board of Aldermen are each over the age of twenty-one years, and reside in the Town of Bay Minette, Alabama.

2. Petitioner avers and shows unto the Court that he is the owner, in fee simple of lot number six in Block 31 of Hand Land Company's addition to the town of Bay Minette, Baldwin County, Alabama, which said lot is situated in the Northwest corner of Second Street and White Avenue, and upon which property Petitioner is desirous to erect a fire-proof garage building in which to operate a machine shop and repair service.

And Petitioner avers that said building is to house a necessary service to the community and to the Veterans' Housing and Pulpwood Program.

3. That heretofore and approximately on the 9th day of October 1946, Petitioner contacted said officials of the Town of Bay Minette, and filed with the Town of Bay Minette and its duly qualified officers, plans and specifications acceptable to the Town of Bay Minette, Alabama. Petitioner also obtained authority or priority from the Civilian Production Board of the United States of America, being authorization No. 4-6-1517 for the construction of said building. Said plans were duly and regularly approved by the Mayor of the Town of Bay Minette. That said building was to cost an estimated sum of \$4,000.00. It was to be approximately 40 feet by 55 feet, with a lean-to addition of 25 feet by 40 feet, and was to be of concrete block construction with metal roof.

That on said 9th day of October, there was issued to Petitioner a permit to construct said building, which permit was in words and figures as follows: to-wit:

TOWN OF BAY MINETTE  
BAY MINETTE, ALABAMA

October 9, 1946

Mr. R. E. Coots,  
Bay Minette, Alabama

Dear Mr. Coots:

Permission is hereby granted to you to erect a garage building 40' x 50' to be constructed of concrete blocks with a tin roof with a 24'x40' shed to be covered with tin, situated on the north side of said building on Lot 6, Block 31 in the Hard Land Company's Addition to the Town of Bay Minette, according to the application filed by you with the Town of Bay Minette.

Very truly yours,

TOWN OF BAY MINETTE

(signed) E. D. OWEN

MAYOR

That all terms of said permit were met by said Petitioner.

4. That on December 3, 1946 at a regular meeting of said Board of Aldermen, certain property owners and residents of the neighborhood in which said building was being constructed, appeared and protested orally to the Town of Bay Minette the erection of said building, and as a result, a motion was offered and passed by said Board of Aldermen, revoking your petitioner's building permit; said action of the Board of Aldermen being recorded in the minutes of the aforesaid regular meeting, and read in part as follows:

"A large number of citizens came before the Council to protest R. E. Coots building a garage in the residential section of Second Street. After hearing their protests and the Council discussing the matter, Councilman Stacey made a motion that the Council pass a Resolution revoking Mr. Coots' building permit. Councilman Reid seconded the motion and the same was unanimously carried."

5. Your Petitioner avers that he had no notice of such hearing until notified orally on December 4, 1946 by J. E. Blackburn, Attorney for the Town of Bay Minette, Alabama, to cease and desist construction on said building, notwithstanding that at this date, Petitioner had expended approximately the sum of \$2,000.00 in labor and materials, including the installation of sewage lines and connections and the pouring of concrete foundations; proceeding with the construction of said building in accordance with permission granted by the Town of Bay Minette, in said Building Permit issued October 9, 1946.

6. That upon protest to said officials of the Town of Bay Minette, Alabama, Petitioner was allowed to appear at a regular meeting of the Mayor and Board of Aldermen of the Town of Bay Minette,

for a hearing. Said appearance was made on Tuesday night, January 7, 1947 at 7:30 P. M.

There Petitioner was informed orally by the Aldermen presiding, that said Town Attorney had been instructed by the Board of Aldermen of the Town of Bay Minette to notify Petitioner of said revocation of his Building Permit, and such instructions were hereby confirmed; that Petitioner's building Permit had been revoked by action of said Board of Aldermen of the Town of Bay Minette, due to the protest of the adjoining property owners, and that Petitioner had failed to comply with Ordinance Number 433 of the Town of Bay Minette, Alabama enacted May 6, 1941, which reads in part:

SECTION 10. Outside of the Fire Limits, but within the corporate limits it shall be unlawful for any person, firm or corporation on and after the passage and posting of this Ordinance.

(a) To erect or repair any bill board, store, sign board, store building, filling station, automobile garage, or other type of building to be used to house bottling plants or other commercial businesses within the corporate limits and outside of the fire limits of the Town of Bay Minette, Alabama, unless such person first obtain a written permission of two-thirds of the property owners within a radius of 300 feet from the exterior lot lines of the lot whereon such building is proposed to be erected, with or without consent of said property owners, within 1,000 feet of property owned by the Town of Bay Minette and used for school purposes. It shall be unlawful for the Mayor to issue a permit for erection or repair of a building to be used for commercial purposes within 1,000 feet of the line of said school property. This section shall not apply to any building to be used as a Post Office.

7. Petitioner avers and shows to the Court that only two houses are located on Second street in the block in which Petitioner began construction of said building; one house, your Petitioner owns, the other being across the street and at the far end of the block from site of Petitioner's building. It is further shown that Petitioner's building site is in the first block adjoining the fire limits, as set forth in said zoning Ordinance number 433 of the Town of Bay Minette, Alabama.

8. That as shown by said action of the Board of Aldermen of the Town of Bay Minette, as recorded in the minutes of the regular meeting of December 3, 1946, supra: there was denied Petitioner, the right to complete the erection of his building on his property for the purpose of using same to conduct his business of machine shop and repair work, and Petitioner avers that said order or action is an arbitrary interference with the rights of private property granted this Petitioner by the Constitution of Alabama and of the United States of America.

9. Petitioner further avers that said Ordinance No. 433, is invalid, inasmuch as said Ordinance purported to establish Building zones, yet was not advertised as expressly directed for such Ordinances by Section 1879 of the Code of Alabama of 1923.

9. Petitioner further avers that he is now ready and has been ready, willing and able at all times to comply with any reasonable terms and conditions imposed by said Town of Bay Minette, for the issuance of its Permit, but avers that he has complied with all of the statutes and Ordinances of the Town of Bay Minette, to entitle it to have issued to him a building permit to construct the building involved, and that only the question involved as to the issuance of said permit and as to the denial thereof, is as set forth in the minutes of said meeting of the Board of Aldermen of Bay Minette, and that the portion of Ordinance number 433 of the 1941 Code of Ordinances of the Town of Bay Minette, Alabama, is the applicable Ordinance of the Town of Bay Minette, controlling the right of said Board of Aldermen to deny a permit to Petitioner and that no other Ordinances are applicable or relate thereto except Ordinances as to types of building, method of construction, etc., with which this Petitioner has complied.

~~THE PREMISES CONSIDERED:~~ Petitioner prays for all orders and proceedings necessary herein and that a Writ of Mandamus issue in the premises to each of the defendants, commanding and requiring them, and each of them, respectively, or in the alternative to such of said defendants as may be proper to issue to Petitioner a proper permit to erect said building on said property owned by Petitioner, as above described, and if deemed proper by the Court, to refrain from interfering with Petitioner in the construction and erection of said building.

AND if Petitioner is in any manner mistaken in the relief herein prayed for, then he prays for such, further, different and general relief as in equity and good conscience the Court may deem meet and proper to grant.

  
ATTORNEY FOR PETITIONER

Attached-

Certified Copy of Ordinance No. 433- Marked Exhibit "A"  
Certified Excerpt of Minutes of Regular meeting of Mayor and Board of Aldermen of December 3, 1946- Marked Exhibit "B"

*[The page contains faint, illegible markings and a large, dark, irregular smudge or ink blot across the center.]*

**Abstract**

[illegible]

The first of these is the fact that the
 Commission has not yet received any
 information from the Government of
 the United States regarding the
 activities of the Committee.
 The second is the fact that the
 Commission has not yet received any
 information from the Government of
 the United States regarding the
 activities of the Committee.
 The third is the fact that the
 Commission has not yet received any
 information from the Government of
 the United States regarding the
 activities of the Committee.

[illegible]

FILED  
NOV 18 1947  
MISS J. DUCK, CLERK

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MAR 6 1947

THE STATE OF ALABAMA - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

SPRING TERM, 1947

8 Div. 359

F. Shelby Johnson,

v.

City of Huntsville,  
a municipal corp.,

Appeal from Madison Circuit Court,  
In Equity.

BROWN, JUSTICE.

This appeal is by the complainant from a final decree of the circuit court, in equity, dismissing his bill filed against the City of Huntsville, a municipal corporation, to restrain and enjoin the defendant from enforcing Ordinance No. 66-F, adopted and approved on the 22nd of November, 1945, zoning a segment in the City of Huntsville theretofore unzoned, and within the following boundaries:

2.

"All that part of the City of Huntsville, Madison County, Alabama, embraced within the following boundaries, viz: Beginning at a point on the north margin of Half Street, said point being the southeast corner of Lot three (3) Block two hundred and thirteen (213) according to Quigley's Map of the City of Huntsville; thence North  $56-1/2$  degrees east along the north margin of Half Street 281 feet to a point on the east margin of Franklin Street, said point being located on the west boundary of Lot Five (5) Block two hundred eight (208) according to the Jones Map of the City of Huntsville, thence south  $33-1/2$  degrees east along the east margin of Franklin Street 230 feet to the intersection of the east margin of Franklin Street and the North margin of Townsend Street, thence North  $56-1/2$  degrees east along the North margin of Townsend Street with the east margin of South Greene Street; thence South  $33-1/2$  degrees east 510 feet to a point at the city limits of the City of Huntsville, said point being the southwest corner of lot twenty-six (26) of the Cramer Addition to the City of Huntsville, according to Quigley's map of the City of Huntsville, thence along the city limits of the City of Huntsville, south  $56-1/2$  degrees west 870 feet to a point on the south boundary of the city limits 150 feet eastwardly from the intersection of Madison Street with the South boundary of the city limits; thence Northwardly 150 feet east from Madison Street and parallel with same 850 feet to the place of beginning, said area being now designated as a residential area."



3.

The above zoning ordinance embraced a part of two blocks situated between South Greene Street and Madison Street with Franklin Street running practically through the center of the zone, leaving free and unzoned a part of the territory abutting the easterly side of Madison Street.

The evidence illustrating the facts upon which complainant rests his right to relief is without dispute. The complainant is a resident of the City of Huntsville. At the time of the passage of said ordinance and prior thereto, complainant owned a vacant lot which he purchased on July 18, 1945, and received a deed therefor, situated on the southeast corner of Townsend and Franklin Streets in the City of Huntsville. He also had procured, what the evidence shows by a practice of many years in respect to such matters, a building permit from the clerk of the City of Huntsville, Alabama, and had paid therefor the sum of \$15.00. He had employed a contractor and had begun excavation for a building for use as a drycleaning plant and laundry; had procured necessary equipment and incurred other expenses running into several thousand dollars, when the city council took up consideration of the passage of said ordinance on the petition of white residents and property owners along Franklin Street in the white district. The property of the complainant was and is located in a district "across the creek" from residences occupied by white residents, petitioning for the passage of the ordinance, and is occupied exclusively by negroes. One of the white petitioners against the building operations owns property in said area. Complainant presented to the council a petition signed by the negro residents protesting against preventing the complainant from proceeding with his building by incorporating his property in the residence zone.

4.

The evidence further shows that on Madison Street equidistance from the objecting residence owners, the White Swan Laundry and Cleaning Plant is located and operated, the same being located a block immediately west of complainant's property. The evidence further shows that a "gentleman" offered to reimburse the complainant for his lot, as we construe the evidence, offering to purchase his lot for the amount complainant paid therefor, not including expenses incurred in cleaning off the lot and in preparing for the construction of the building, which complainant refused to accept.

It is further shown without dispute, in fact admitted by the defendant's answer, that the City Code of Huntsville adopted in 1941 by the respondent municipal corporation, only embodied an ordinance defining "a residence district" in which "no store, plant, building, structure, improvement or place of business or industrial projects shall be erected, established or maintained", except on certain properties in said defined area, expressly excepted from the ban of the ordinance.

Section 4 of Chapter 22 of the City Code prohibited junk yards, bone yards, etc., in a defined area, unless conducted within "a suitable building". The area outside those specifically defined and described was not embodied in a zone by ordinance or by-law, but the city code embodied building restrictions and fire prevention regulations. Ordinance 66-E, the enforcement of which the bill seeks to enjoin, merely added a small segment to the previously described residential district.

5.

The defendant offered evidence going to show that prior to the passage of the ordinance embodied in Chapter 22, Section 1 of the Code of Ordinances, the city caused to be made by a competent civil engineer maps of the City of Huntsville, showing the location of different business institutions and buildings and location of residences in the thickly populated districts and the mayor and city council after much consideration of the needs and wants of the City of Huntsville adopted said ordinance, constituting Section 1 of Title 22 of the Code of Ordinances of the City of Huntsville, but passed no other zoning ordinance, leaving all the remaining portions of the city without restriction or regulation, except as hereinbefore stated. No one of the said maps were adopted and made a part of an ordinance defining zones.

The contention of appellant is that the acts of the governing body of the City of Huntsville show an absence of a comprehensive zoning ordinance as authorized by § 772, Title 37, Code of 1940, and that said Ordinance 66-E violates constitutional due process and denies complainant equal protection of the law.

The contention of appellee on the other hand, to state it in the language of the brief, is: " \* \* \* In the case at bar, the Appellee took into consideration the entire City of Huntsville, and according to the testimony of one of the Councilmen, almost a year was consumed in the study of the needs and the conditions that existed. The City Engineer states that at least 30 conferences were held. The Engineer first platted the entire City with a plat showing where all businesses and industries were

6.

located within the corporate limits, which clearly shows that a thorough and comprehensive study was made before a general zoning ordinance was finally adopted for the City of Huntsville, and was based upon the knowledge acquired by the City Council of the conditions as they existed, and from an exhaustive study by them, and such ordinance after being adopted became Chapter 22 of the City Code of Huntsville, \* \* \*." This ordinance, not only created residential zones as set out in Section One of said chapter, but included building restrictions and said ordinance also restricted certain areas against their use as junk-yards, bone-yards, scrap-yards and the business of demolished and wrecked automobiles. \* \* \*."

Section 772, supra, originated in the General Acts of 1923 and appeared in the Code of 1923 as § 1878. —Code of 1923, Vol. 1, § 1878; Acts of 1923, p. 590. Said section provides:

"772. (1878) Business, industrial, or residential zones authorized.— Each municipal corporation in the State of Alabama may divide the territory within its corporate limits into business, industrial, and residential zones or districts and may provide the kind, character and use of structures and improvements that may be erected or made within the several zones or districts established and may, from time to time, rearrange or alter the boundaries of such zones or districts and may also adopt such ordinances as necessary to carry into effect and make effective the provisions of this article."

Bassett in his work on "Zoning" observes, "No municipality is compelled by law to enter into zoning. The state enabling acts are permissive only. But if a municipality decides to zone it must follow the procedure given in the state act; otherwise its ordinance will be null and void. \* \*." —Page 31. "A zoning ordinance covers a single political subdivision—a city, village, borough, town or county. Inasmuch as lands situated alike should be zoned alike, the zoning map ought to cover the whole of the political subdivision. \* \*." —P. 48.

7.

This section was considered in the decision of Chapman v. City of Troy, 241 Ala. 637, 4 So. (2d) 1, and is cited in briefs of both parties, wherein the court pronounced void an ordinance passed by the City Council of Troy creating and establishing a zone for residential purposes only, defining the boundaries of such district. Appellant insists that this decision is applicable to and governs the case presented on this record. There can be no escape from the conclusion that § 772 of Title 37, Code of 1940, as was its predecessor, is a delegation in part of the police power of the state to be exercised within the limits prescribed by the statute and the state and federal constitutions protecting property rights, for the promotion of the public good and general welfare. — Arverne Bay Construction Co. v. Thatcher, Comm'r. of Buildings, et al., 278 N. Y. 222, 15 N. E. (2d) 587, 117 A. L. R. 1110, and see annotations on page 1130 et seq. The quoted statute clearly contemplates such zoning ordinance should include the whole municipality in a "comprehensive plan." — Bassett on Zoning, p. 48. Spot zoning and zoning by piecemeal is not authorized. This is the effect of the decision in Chapman's case. [ The restriction on property rights in the several zones must be declared as a rule of law in the ordinance and not left to the uncertainty of proof by extrinsic evidence, parol or written. — Eastern Theological Seminary v. Evanston, 325 Ill. 511, 156 N. E. 778; Phibbs v. Chicago, 339 Ill. 315, 171 N. E. 289. Nor can the exercise of property rights be left to the caprice, whim or aesthetic sense of a special group of individuals who may object to the use by a property owner of the rights fixed by such ordinance or left unrestricted thereby. — Pentecostal Holiness Church of Montgomery v. Dunn et al., 27 So. (2d) 561. This concept is given emphasis by §§ 776 and 777 of said title, which provide:

8.

"776.—Number, shape and area of districts;  
uniformity of regulations.— For any or all of said purposes the local legislative body may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this article, and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in any one district may differ from those in other districts."

"777.—Purpose of regulations.—Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets, to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provisions of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality."

9.

As heretofore stated, the only zone established within the corporate limits of the City of Huntsville was the residential zone. This case is governed by the decision in Chapman v. City of Troy, supra.

The decree of the circuit court is, therefore, reversed and one here rendered granting complainant relief as prayed in his bill, perpetually enjoining the enforcement of said ordinance 66-E which we here and now declare void.

Reversed and rendered.

Gardner, C.J., Livingston and Simpson, JJ., concur.

The Law Offices of  
C. LeNOIR THOMPSON  
Bay Minette, Alabama.

ARGUMENT OR  
IN REBUTTAL OF DEMURRERS filed by the Defendants in the case:

R. E. COOTS

VS

L. D. OWENS, et al.)

PETITION FOR MANDAMUS

1. (filing 3-17-47) General demurrers are abolished, note Title 7, Section 236, Code of Alabama of 1940.

"Demurrers on the grounds that 'complaint set forth no cause of action', was a General Demurrer, which is abolished by this section in suits at law. Ala. Power Co. v. Curry, 228 Ala. 444, 153 So. 634.

C. J. 38, Mandamus 587:...."sets forth the requirements of a complaint or petition for Writ of Mandamus." Note also C.J. 38 Mandamus 629, page 900, annotation (g). Note also, State v. Hogan - 204 Ala 325 - 85 So 557.

2. (filing 3-17-47) Eden Dist. Tp. v. Templeton Independent Dist. 72 Iowa 687, 34 NW 432 (a demurrer on the ground that "the facts stated therein, do not entitle the plaintiff to the relief demanded," is not sufficiently specific. (cited as ruling case by C.J.

ADDITIONAL DEMURRERS FILED AS AMENDING FILING 3-17-47

AUTHORITY FOR ARGUMENT:

1. Is a General Demurrer. Note Section 236, Title 7, Code 1940.

2. Is a General Demurrer. "Grounds of demurrers to complaint that there was a misjoinder of causes of action and misjoinder of parties defendant held not sufficiently specific." Findlay v. Hardwick, 230 Ala 197, 160 So 336. Farnsworth v. Boston, 121 Mass 173, held that alternate writ of Mandamus should issue to Mayor as well as to Council, and cited as ruling case by C.J. 38, 657(80) Also, the unanimous action of the members of the Town Council of the Town of Bay Minette, present at both meetings, that of Dec. 3, 1946 and Jan. 7, 1947 as set forth in the Petition, represented individually the action of the entire membership of said Town Council, and the responsibility for such action lies on said membership as stated.



3. Section 2 of Ordinance 433 of the Town of Bay Minette described and set forth requirements to be met by applicant, upon which he shall be legally entitled to a building permit. Sections 3 and 9 of the Petition show that such compliance has been and can be made by petitioner. Also note C.J.43, sec.379(1945)Annotations "When a permit has been issued by a municipality, it is presumed that such action was taken only after necessary facts had been ascertained and found. Lindell v. Board of Permit Appeals of the City and County of San Francisco, 144 Pacific 2nd 4.

Applicant having complied with Section 2, of Ordinance 433 of the Town of Bay Minette(submitted as exhibit "A" and as provided by Sections 772 and 774 of Title 37, Code of Alabama of 1940, the duty rests upon the City Council, its authorized officers or agents to issue said permit to such applicant as a ministerial act. Also note City Council v. West, 149 Ala 311, 42 So 1,000, which quotes, "An ordinance, and of course any part of an ordinance .... of a city to be valid, MUST BE IMPARTIAL AND GENERAL IN ITS OPERATION. So far as it restricts the absolute dominion of the owner over his property, it should furnish a uniform rule of action, and its application cannot be left to the arbitrary will of the governing authorities." Note also Pentecostal Holiness Church v. Dunn et al, 27 So 2nd, 561, also Note 38 C.J. 6 & 7, and especially 38 C.J. 273, "In conformity to general rules already stated, a ministerial duty of the Mayor or other Chief Executive of a municipal corporation may be enforced by Mandamus." 38 C J 274, "In conformity with general rules already stated, performance of ministerial duties by the officers of a Common Council may be enforced by Mandamus, also held in State v. Warrior, Alabama, 18 Ala 642; 62 So 69. It being evident from the minutes of the Council of the Town of Bay Minette, that said Council serves also as the Zoning Commission, Note 43 C J 373, "Regulations requiring building permits must contain the conditions in pursuance of which applicant is entitled to his permit. It has been held that if the governing body enacting the regulation has the power to prohibit the erection of a particular structure, it may retain the power to pass upon each application for a building permit to erect such structure.... If applicant complies with all the requirements prescribed by the regulation, the duty of the board or official to grant the permit, is absolute, and the board or official has no discretion to refuse the permit for any other reason.

4. Is a General Demurrer, and so cited among annotations under Title 7, Section 236, page 227, 1940 Code of Ala. Note Devon Mfg. Co., v. So. Express Co., 200 Ala 273, 76 So 39.

5. Is a General Demurrer. The prayer for relief is not in itself subject to demurrer. NC&StL RR Co v. Campbell, 212 Ala 27, 101 So 615,. Also note 49 C J 489, "All that is necessary to sustain the pleading is that a cause of action can be reasonably inferred from the averments in the pleading." Hartford Fire Ins Co v. King, 106 Ala 519, 17 So 707. Also note Cook v. Rome Brick Co. 98 Ala 409, 12 So 918, which points out, "A demurrer to a complaint that it fails to show enough to entitle plaintiff to a lien on the property is too general."

6. This is a general demurrer. Allegations presented in Pentecostal Holiness Church of Montgomery v. Dunn, et al, 27 So 2nd 561, this complaint of your petitioner being paraphrased therefrom, was sufficient in the eyes of the Supreme Court of Alabama. Note also 43 C J 380, "But when once the proper authorities grant a permit for the erection or alteration of a structure, after applicant has made contracts and incurred liabilities thereon, he acquires a kind of property right on which he is entitled to protection, and under such circumstances it is generally held that the permit cannot be revoked without cause, or the absence of any public necessity for such action." Note also 38 C J 357, (anno. 61) Mandamus will lie to compell the issuance of a building permit where the refusal to allow it is based solely on the requirements of an invalid ordinance. State v. Edgecomb 108 Neb. 859, 189 NW 617. Also Pentecostal Holiness Church v. Dunn et al, cited supra, and City Council v. West, 149 Ala 311, 42 So 1,000.

7. 38 C J 357 - "Where a building permit has been improperly revoked, mandamus is the proper remedy to compel issuance of another permit. Hamilton v. Chicago, 227 Ill A 391; City Council Council v.

West, cited supra. Note also, 38 C J 263, "But the mere fact that there is another remedy will not prevent the issuance of a writ of mandamus, if the remedy is not adequate, or in other words, if the remedy is not equally convenient, beneficial and effectual. Note also Alabama cases decided by the Supreme Court of Alabama, viz: Longshore v. Montgomery, West v. City Council and Pentecostal Holiness Church of Montgomery, v. Dunn et al, cited supra.

(7. continued) 38 C J 32 (2) The mere fact that there is another remedy will not prevent the issuance of a writ of mandamus if the other remedy is not adequate, and where it is doubtful whether or not there is adequate specific remedy in the ordinary course of law, mandamus will ordinarily issue.

8. Mandamus will lie to compel the issuance of a building permit where the refusal to allow it is based solely on the requirements of an invalid ordinance. State v. Edgecomb 27 A L R 437, Pentecostal Holiness Church of Montgomery v. Dunn et al, cited supra, also West v. City Council. Please note, White v. Luquire Funeral Home, 221 Ala 440, 129 So 84 - "The ordinance there involved was condemned because of the arbitrary discretion conferred on other property owners to grant or to deny to the owner of property the privilege of using it for stated purposes. Note also, CONSTITUTION OF THE UNITED STATES, Revised and annotated (Senate Document 232 - 74th Congress, 2nd session) Annotation of cases decided by the U S Supreme Court to Jan.1, 1938, page 847: "A requirement in a zoning ordinance that the consent of owners of two-thirds of the property within 400 feet of the site of a proposed philanthropic home be obtained is repugnant to the Due Process clause," Washington Ex rel Seattle Trust Co., v. Roberge, 278 US 116 (1928).

9. Pentecostal Holiness Church of Montgomery v. Dunn et al, and West v. City Council, 149 Ala 311, 42 So 1,000 have decided this point. Longshore v. City of Montgomery, 119 So 599, "Ordinance prohibiting constructing of commercial building except with consent of two thirds of property owners, and unanimous consent of adjoining owners - held unconstitutional. Also said Ordinance of the Town of Bay Minette is a violation of the 14th U S Constitutional Amendment. "The views in that case (City of Montgomery v. West) expressed by the Supreme Court of Alabama, which are controlling upon us, appear never to have been changed. 22 Ala App 620. Note U S Constitution citation in pp8, supra.

10. Applicant complied with section 2 of Ordinance 433 of the Town of Bay Minette, as pointed out in Section 3 of Petition, and also note Section 9 of said Petition filed by Complainant. Note also authorities and precedent cited supra, pp8 and 9.

11. Note Sections 3 and 9 of Complainant's Petition, in which full compliance has been alleged. Note also 38 C J 357, cited under pp 8, supra, as being applicable. Compliance with an unconstitutional ordinance has never been a requirement of our courts.

12. Full compliance with the legal requirements of Ordinance 433 of the Town of Bay Minette was alleged in Sections 3 and 9 of said Petition. Note Section or paragraph 3 of Argument cited supra: "43 C J 379 (1945) Annotations, When a permit has been issued by a municipality, it is presumed that such action was taken only after the necessary facts had been ascertained and found. Lindell v. Board of Permit Appeals of the City and County of San Francisco, 144 Pac.2nd 4

13. Issuance of a building permit is a ministerial function or act. Note Longshore v. City of Montgomery, 119 So 599, 22 Ala Ap 620, (Cert. denied 1929) 11 So 601 - 216 Ala 597, 119 So 599, "An ordinance and of course any part of an ordinance to be valid, must be impartial and general in its operation, so far as it restricts the absolute dominion of its owner over its property, it should furnish a uniform rule of action and its application cannot be left to the arbitrary will of the governing authorities. Note also authorities and precedent cited under 8 supra.

Justice Brown in his opinion in E Shelby Johnson v. City of Huntsville, 8 Div. 359, Spring Term 1947, quotes: "The restriction on property rights in the several zones must be declared as a rule of law in the ordinance and not left to the uncertainty of proof by extrinsic evidence, parol or written. (continuing to quote Justice Brown) Western Theological Seminary v. Evanston, 325 Ill 511, 156 N E 778; Phipps v. Chicago, 339 Ill, 171 N E 289. Nor can the exercise of property rights be left to the caprice, whim or esthetic sense of a special group of individuals who may object to the use by a property owner of the rights fixed by such ordinance or left unrestricted thereby. ----Pentecostal Holiness Church of Montgomery v. Dunn et al., 27 So 2(d) 561. This concept is given emphasis by Sections 776 and 777 of Title 37 of the Code of Alabama 1940.

14. Note citations in 7 supra. Also, "Violation by a municipality of Petitioner's Constitutional rights is properly reviewed in the Circuit Court.

(14. continued) "Mandamus is the proper action to correct arbitrary action." Village of Euclid, Ohio v. Ambler Realty Co., 272 U S 365 71 L Ed 303, 54 A L R 1016.

15. Issuance of a building permit is a ministerial function or act, Longshore v. City of Montgomery, 119 So 599, 22 Ala Ap 620. Note, Village of Euclid, Ohio v. Ambler Realty Co., Violation by a Municipality of Petitioner's Constitutional rights is properly reviewed in the Circuit Court. Note also, "Mandamus will lie to compel the issuance of a building permit where the refusal to allow it is based solely on the requirements of an invalid ordinance. State v. Edgecomb 27 A L R 437, and Pentecostal Holiness Church v. Dunn et al, and preceding citations quoted therein, and cited supra.

16. Exercise of discretion in the issuance of a building permit is too likely to permit arbitrary or unreasonable action and is looked upon with disfavor by the Supreme Court of Alabama. Note Pentecostal Holiness Church of Montgomery v. Dunn et al, and E. Shelby Johnson v. City of Huntsville, cited supra, the latter in 13 supra. 43 C J 373: "If applicant complies with all the requirements prescribed by the regulation, the duty of the Board or Official to grant the permit, is absolute, and the Board or Official has NO discretion to refuse the permit for any other reason."

From the Law Offices  
of

C. LeNoir Thompson  
Bay Minette, Alabama

R. E. COOTS

vs

L. D. OWENS et al

Filed

8-7-47

Alice J. Duck  
Clerk.

C. LENOIR THOMPSON

Attorney-At-Law  
BAY MINETTE, ALA.

August 12, 1947

Judge Francis Hare,  
Monroeville, Ala.

In Re: R. E. Coots

VS

L. D. Owens, et al.

Dear Judge Hare:

Attached is brief in argument on further demurrers filed in the above styled cause by the Defendants on August 9, should such further amendment be ruled proper by you, inasmuch as the final date on previously filed demurrers was set on August 8, in our appearance before you in the Court House in Bay Minette.

Sincerely,



T:1

copy to

Hon. J. B. Blackburn  
Attorney at Law

From the Law Offices of

C. LeNoir Thompson,  
Bay Minette, Ala.

ARGUMENTS IN REBUTTAL OF DEMURRERS FILED ON AUGUST 9, 1947 BY  
DEFENDANTS IN THE CASE:

R. E. Coots

PETITION FOR MANDAMUS

vs

L. D. Owens, et al

2nd Amendment of Demurrers - August 9, 1947

16. Please note paragraph 13, of argument filed, my letter August 6, 1947. This paragraph effectively answers paragraph 16, showing that issuance of building permit, held an administrative function and is not discretionary.

17. 1st, The legal right has been shown in allegations set forth in paragraph 3 of Plaintiff's Complaint.

2nd, Note paragraph 5 of argument cited supra, in which the Court held "that Prayer for Relief is not subject to Demurrer," NC & StL RR Co v. Campbell, 212 Ala 27, 101 So 615.

18. The Prayer for Relief being in the alternative, the Court of Law has the authority to act on the Prayer for Mandamus as prayed for in the Complaint.

18. Again attention is called to paragraph 5 of the argument brief cited supra, wherein it is pointed out that "Prayer for Relief is not in itself subject to Demurrer. However it will again be noted that since the prayer for relief is in the alternative no question exists as to the judgement of the Court as to which phase of the prayer is applicable to an action for Mandamus, nor as to the authority of the Court to issue such writ.





THE STATE OF ALABAMA--JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 1948-49

To the Clerk of the Circuit Court of  
Baldwin County, Greeting:

Whereas, the Record and Proceedings of the Circuit Court  
of said county, in a certain cause lately pending in said Court between  
L. D. Owen, as Mayor of Town of Bay Minette,  
et al  
and  
L. E. Coots, Appellee,

wherein by said Court, ~~at the~~ ~~term of~~, it was considered  
adversely to said appellant, were brought before our Supreme Court, by appeal taken, pursuant  
to law, on behalf of said appellant:

ordered and adjudged  
Now, it is hereby certified, That it was thereupon considered by our Supreme Court on the  
11th day of January 1949,

~~on motion of appellants~~, that the said appeal be and stand  
~~ordered and adjudged~~  
dismissed; and that it was further considered ~~that the appellant and~~ L. D. Owen, as Mayor  
of Town of Bay Minette, appellant, and J. B. Blackburn, surety on the  
appeal bond, pay

the costs accruing on said appeal in this Court and in the Court below for which costs let  
execution issue.

Witness, J. Render Thomas, Clerk of the Supreme  
Court of Alabama, at the Capitol, this the  
11th day of January, 1949  
J. Render Thomas,  
Clerk of the Supreme Court of Alabama.

THE SUPREME COURT OF ALABAMA

October Term, 19 48-49

1 Div., No. 334

L. D. Owen, as Mayor of  
Town of Bay Minette, et al

Appellant,

v.

L. E. Coots

Appellee.

From Baldwin Circuit Court.

CERTIFICATE OF DISMISSAL

The State of Alabama,

Baldwin County. } Filed

this 12<sup>th</sup> day of January 19 49

W. J. Smith  
Clerk

JOE M. PELHAM, JR.  
JUDGE

ELIZABETH C. SCOTT  
COURT REPORTER

CIRCUIT COURT

**First Judicial Circuit of Alabama**

CHATOM, ALABAMA

March 26, 1948

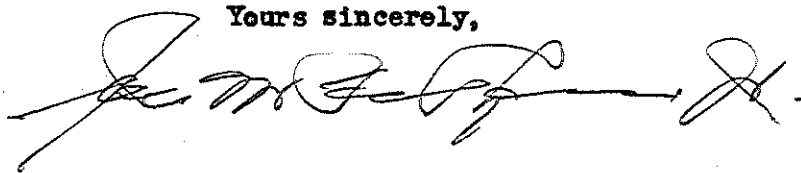
Mrs. Alice J. Duck  
Clerk of the Circuit Court, Baldwin County, Alabama  
Bay Minette, Alabama

Dear Mrs. Duck:

Inclosed herewith I hand you order for writ of mandamus and on the bottom you will find your order to each defendant. Please sign and turn over to the sheriff for service. I am sending you the file under separate cover.

With very kind regards, I am

Yours sincerely,

A handwritten signature in dark ink, appearing to read "Joe M. Pelham, Jr.", followed by a large, stylized flourish or initial.

JMP:s

enclosure as above noted.

R. E. COOTS,

Plaintiff,

VS.

L. D. OWEN, as Mayor of the  
Town of Bay Minette, Alabama,  
ET ALS,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

AT LAW.

NO. 1031.

SECURITY FOR COSTS

I hereby acknowledge myself security for costs of  
the appeal taken by the Defendants in this cause to the Supreme  
Court of the State of Alabama on this date.

Dated this 22nd day of June, 1948.

J. B. Blackburn

Taken and approved on this the  
22nd day of June, 1948.

Alice J. Luck

Clerk of the Circuit Court of Baldwin  
County, Alabama.

Security for Costs

RECORDED

TO BEHOLD + HIRE TO SEE ME

TO BEHOLD + HIRE TO SEE ME

TO BEHOLD + HIRE TO SEE ME

STENO FOR TUTOR

TO BEHOLD + HIRE TO SEE ME

TO BEHOLD + HIRE TO SEE ME

TO BEHOLD + HIRE TO SEE ME

TO BEHOLD + HIRE TO SEE ME

Filed 6-4-48  
Miss J. White  
clerk

TO BEHOLD + HIRE TO SEE ME

TO BEHOLD + HIRE TO SEE ME

R E Cotts

in the Circuit Court  
of Baltimore County, Cal.

Comes the Plaintiff R. E. Cotts, and demands  
of Defendants <sup>Amended</sup> Answer, and for damages, says

1. For that Allegations in Defendants  
Answer Counts 4, 7 and 8,  
~~do not constitute~~ <sup>do not constitute</sup> Petitioner's present ~~and~~ Method  
of Operations constitute a  
frivolous answer and do  
not constitute a defense  
to Petitioner's Complaint

1031

Gallop June 20,  
1948,

Jason R. B. Jr.  
Judge -