

STATE OF TENNESSEE 30th JUDICIAL DISTRICT CHANCERY COURT	<b>SUMMONS**</b>	DOCKET NUMBER CH- 15-0820-3
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Plaintiff  John R. Wills, Jr.	Defendant  The City of Memphis and Memphis City Council
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TO: (NAME AND ADDRESS OF DEFENDANT) Herman Morris, Esq. City Attorney City of Memphis 125 North Main Street, Room 336 Memphis, TN 38103-2079	Method of Service: <input type="checkbox"/> Shelby County Sheriff <input checked="" type="checkbox"/> Private Process Server <input type="checkbox"/> Out of County Sheriff* <input type="checkbox"/> Secretary of State* <input type="checkbox"/> Comm. Of Insurance* <input type="checkbox"/> Certified Mail <input type="checkbox"/> Other *Attach Required Fees
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RECEIVED  
JUN 22 2015  
CITY ATTORNEY'S OFFICE

You are summoned to defend a civil action filed against you in the Chancery Court of Shelby County, Tennessee. Your defense to this action must be made within thirty (30) days from the date this summons is served upon you. You must file your defense with the Clerk of the Court and send a copy to the Plaintiff/Plaintiff's attorney at the address listed below. If you fail to defend this action within thirty (30) days of service, judgment by default may be rendered against you for the relief sought in the Complaint. Questions regarding this summons and the attached documents should be addressed to the Attorney/Plaintiff listed below.

Attorney for Plaintiff or Plaintiff if filing Pro Se: (Name, address & telephone number) Ricky E. Wilkins, Esq. (BPR #14526) The Law Offices of Ricky E. Wilkins The Shrine Building, 66 Monroe Ave., Ste. 103 Memphis, TN 38103-2471 / Tel: 901.322.4450	ISSUED 19 of June, 2015 Donna L. Russell, Clerk and Master By: <i>Debra J. Hobbs</i> Deputy Clerk & Master 140 Adams, Room 308 Memphis, TN 38103
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TO THE SHERIFF:	Came to hand _____ day of _____, 20____ Sheriff
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I, Donna L. Russell, Clerk of Tennessee, Shelby County, do hereby certify that this is a true and correct copy of the original summons.

\*\*Submit one original copy of this summons to the defendant. If you need a copy of this summons, you must pay the fee of \$1.00 per copy. Notice of Personal Appearance TO THE DEFENDANT: Tennessee Code Annotated § 26-2-101. Judgment should be entered against the defendant if the defendant fails to appear and do not need to be served with a copy of this summons. This summons should be entered against the defendant if the defendant fails to appear and do not need to be served with a copy of this summons. This summons should be entered against the defendant if the defendant fails to appear and do not need to be served with a copy of this summons.

*Note: 30 days from June 19, 2015*

1-2341.  
If a judgment is entered against you, you must file a copy of the judgment with the clerk of the court within 30 days of the date of the judgment. If you fail to do so, the clerk of the court may file a copy of the judgment with the sheriff of the county for enforcement. If you wish to claim an exemption from enforcement, you must file a copy of the exemption with the clerk of the court within 30 days of the date of the judgment. If you fail to do so, the clerk of the court may file a copy of the exemption with the sheriff of the county for enforcement.

**RETURN OF SERVICE OF SUMMONS**

I hereby certify that I HAVE served the within summons:

By delivering on the 22 day of June, 2015 at 12:00pm am/pm a copy of the

summons and a copy of the Complaint to the following Defendant Herman Morris C/o Roane Waring III

at 125 N. Main

Signature of person accepting service

By: [Signature]  
Sheriff or other authorized person to serve process

**RETURN OF NON-SERVICE OF SUMMONS**

I hereby certify that I HAVE NOT served the within summons:

To the named defendant \_\_\_\_\_ because \_\_\_\_\_

is (are) not to be found in this county after diligent search and inquiry for the following reason(s): \_\_\_\_\_

This \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

By: \_\_\_\_\_  
Sheriff or other authorized person to serve process

**RETURN ON SERVICE OF SUMMONS BY MAIL**

I hereby certify and return that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, I sent, postage prepaid, by registered return receipt mail or certified return receipt mail, a certified copy of the summons and a copy of the complaint in case CH-\_\_\_\_\_ to the defendant \_\_\_\_\_. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, I received the return receipt, which had been signed by \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_. The return receipt is attached to this original summons to be filed by the Chancery Court Clerk & Master.

Sworn to and subscribed before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Signature of \_\_\_\_\_ Notary Public or \_\_\_\_\_ Deputy Court Clerk:

My Commission Expires:

Signature of Plaintiff, Plaintiff's attorney or other person authorized by statute to serve process.

ATTACH RETURN  
RECEIPT HERE  
(IF APPLICABLE)

IN THE CHANCERY COURT OF TENNESSEE FOR THE  
THIRTIETH JUDICIAL DISTRICT AT MEMPH

John R. Wills Jr.,  
Petitioner

v.

The City of Memphis +  
Memphis City Council  
Respondents.

No. CH15-0820-3

WRIT OF CERTIORARI

TO: Allan J. Wade c/o The Waste Firm  
Atty. for City of Memphis / Memphis City Council  
40 South Main St. 38103  
Memphis TN 38103-5508

Whereas in the above captioned matter, a Certiorari was ordered to issue for all records and proceedings taken in the above matter and certification to this Court for judicial review as provided by statute;

You are, therefore, hereby ordered to take out, certify and transmit to the Chancery Court for the Thirtieth Judicial District, Shelby County, Tennessee, on or before thirty (30) days from and after the date of June 19, 2015, all records and proceedings taken in the matter for judicial review as provided by statute and to have you then and there this Writ

Witness, Donna L. Russell, Clerk and Master of said Court, this 19<sup>th</sup> day of June 2015

DONNA L. RUSSELL, CLERK AND MASTER

By Donna L. Russell  
DC & M

SHELBY COUNTY  
CHANCERY COURT  
JUN 19 2015  
DONNA L. RUSSELL, C & M  
BY:

IN THE CHANCERY COURT OF TENNESSEE FOR THE  
THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

John R. Wells, Jr.  
Petitioner

No. CH15-0820-3

v.  
The City of Memphis +  
Memphis City Council  
Respondents.

WRIT OF CERTIORARI

TO: Allan J. Wade c/o The Wade Firm  
Atty. for City of Memphis / Memphis City Council  
40 South Main St. 2nd Fl.  
Memphis TN 38103-5508

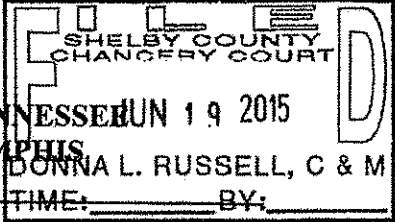
Whereas in the above captioned matter, a Certiorari was ordered to issue for all records and proceedings taken in the above matter and certification to this Court for judicial review as provided by statute;

You are, therefore, hereby ordered to take out, certify and transmit to the Chancery Court for the Thirtieth Judicial District, Shelby County, Tennessee, on or before thirty (30) days from and after the date of June 19, 2015, all records and proceedings taken in the matter for judicial review as provided by statute and to have you then and there this Writ

Witness, Donna L. Russell, Clerk and Master of said Court, this 19<sup>th</sup> day of June 2015

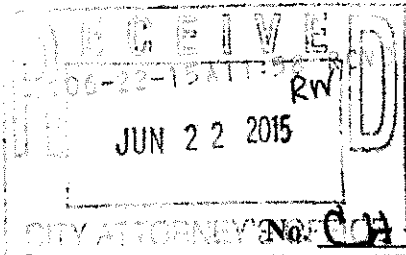
DONNA L. RUSSELL, CLERK AND MASTER

By [Signature]  
DC & M



IN THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE  
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

JOHN R. WILLS, JR.,  
Petitioner,



v.

THE CITY OF MEMPHIS and  
MEMPHIS CITY COUNCIL,  
Respondents,

PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE CHANCELLORS OF THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE:

COMES NOW Plaintiff John R. Wills, Jr. ("Plaintiff") and for his cause of action against Defendants City of Memphis (the "City") and the Memphis City Council (the "Council") would respectfully show to the Court as follows:

**I. PARTIES**

1. The Plaintiff is a resident of Shelby County, Tennessee, and the legal owner of the real property located at 301 Belle Meade Lane, Memphis, Tennessee ("Lot 94") and filed an application with the Memphis and Shelby County Office of Planning and Development as Case No. S-11-007 ("the Development").

2. The City is a municipal corporation within the State of Tennessee and is the municipal entity having jurisdiction over the Development.

3. The Council is an elected legislative body of the City, charged with the task of reviewing and acting on applications for the approval of developments such as the Development.

## II. JURISDICTION AND VENUE

4. This Court has jurisdiction over the matters contained in this cause pursuant to Tenn. Code. Ann. §§ 16-11-101 and 27-9-101, *et seq.*

5. Venue is proper in this Court pursuant to Tenn. Code Ann. § 20-4-101.

## III. FACTS OF THE CASE

6. This matter comes before the Court following a mandate issued by the Tennessee Court of Appeals directing that the City Council determine the meaning of the word “development” in Section 3.9.2 of the Uniform Development Code (“UDC”), which it determined to be ambiguous. See *Wills v. City of Memphis*, 2014 WL 3939430 at \*17 (Tn. Ct. App. Aug. 13, 2014), copy attached hereto as Exhibit A.

7. The Court of Appeals determined that, because this issue before it involves the proper interpretation of an existing zoning ordinance, and requires specific factual findings regarding the properties surrounding Lot 94, that the interpretation of the ambiguous term “development” should be decided, in the first instance, by the City Council. *Id.* at \*18.

8. Therefore, it remanded this matter to the trial court, with instructions to remand to the City Council to determine the proper interpretation to be given to UDC Section 3.9.2(B)(1). *Id.* Specifically, the Appellate Court instructed, after determining the proper interpretation of “development”:

**[i]f Lot 94 is determined to be “surrounded on all sides by existing single-family detached or single-family attached development legally established before 1950 in a residential district” then the City Council may then consider whether Mr. Wills’ proposed subdivision complies with the contextual infill standards. If, however, Lot 94 is found not to be “surrounded on all sides by existing single-family detached or single-family attached development legally established before 1950 in a residential district”, the City Council is directed to grant Mr. Wills’ application for subdivision of Lot 94.<sup>1</sup>**

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<sup>1</sup> *Id.*

9. The appellate court further determined that the City Council could not consider any evidence not contained in the record regarding the applicability of the UDC, but could consider argument. *Id.* at 19.

10. The appellate court further determined:

“The UDC contains a very specific provision regarding the applicability of the contextual infill standards. See Memphis & Shelby County Unified Dev. Code 12.1(D) (noting that the use of the word shall in the UDC indicates that the requirement is mandatory, rather than permissive). Nothing in UDC Section 3.9.2, however, indicates that the local agency may apply the contextual infill standards to a project, notwithstanding the project’s failure to fall within the stated bounds of applicability. Under these circumstances, we decline to conclude that City Council may apply the contextual infill standards if the residential project does not fall [within] the express bounds of UDC Section 3.9.2(B)(1).”

*Id.* at \*14.

11. Zoning laws, being in derogation of the common law and tending to deprive a property owner of a use of its property that would otherwise be lawful, are to be strictly construed by the courts in favor of the property owner.

12. This matter was placed on the City Council’s April 21, 2015 hearing agenda at which time it was required to follow the mandate issued by the Court of Appeals. A copy of the April 21, 2015 Hearing Transcript (“Transcript”) is attached hereto as Exhibit B.<sup>2</sup>

13. At the April 21, 2015 hearing, counsel for Plaintiff repeated Plaintiff’s argument that the term “development” means lots. Transcript, pp. 24-25.

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<sup>2</sup> A video recording of the April 21, 2015 hearing is available at [http://memphis.granicus.com/MediaPlayer.php?view\\_id=6&clip\\_id=4769](http://memphis.granicus.com/MediaPlayer.php?view_id=6&clip_id=4769). Plaintiff contends that the video recording of the proceeding provides the best illustration of how significantly the hearing deviated from any example of an unbiased and fair hearing and, instead was an engineered and manipulated sham designed to achieve a certain predetermined political goal. It best shows the extent to which the City Council trampled on a citizen’s rights and in so doing, turned this Court’s mandate into a mockery.

14. Plaintiff supported his argument with the 2012 “housekeeping” amendment to UDC Section 3.9.2 wherein the Council replaced the ambiguous term “development” with the term “lots”. *Id.*, p. Vol. 1, p. 24 line 8 – p. 25 line 4.

15. This 2012 amendment was expressly intended to “clarify” the meaning of UDC Section 3.9.2. *Id.* at Vol. 1, p. 24 lines 8-18.

16. Additionally, Plaintiff’s counsel informed the Council that the most recent version of UDC Section 3.9.2, also enacted after Plaintiff’s original application, provides that contextual infill development standards apply if the “site is abutted on two or more sides by parcels containing ... dwellings that were built on lots platted or established by deed before 1950....” See Plaintiff’s City Council Memorandum, pp. 4-5, attached hereto as Exhibit C.

17. This subsequent amendment further supports Plaintiff’s argument that the City Council intended “development” to mean “lots” and has always meant “lots”.

18. In response to Plaintiff’s argument, counsel for the opposing neighbors, Mr. David Wade, without citing any legal support, argued that the term “development” must mean some amorphous general neighborhood area where he spent his childhood, without geographic limitation.

19. It is what the City Council did after hearing argument from counsel for Plaintiff and counsel for opposing neighbors that turned the April 21, 2015 hearing into a mockery.

20. The City Council, based on advice from its attorney, Mr. Allan Wade (“Mr. Wade”), refused to allow OPD or the drafters of the UDC to weigh in on what “development” means.

21. It neither discussed the wording of the zoning law nor the subsequent amendments thereto.



22. Instead, the Council allowed its lawyer in this litigation, who, when defending the Council's prior denial of Plaintiff's application that "development" means "subdivision" to make a fifteen minute (15) legal argument of what he contends "development" means.<sup>3</sup>

23. The Council did not allow Plaintiff's counsel to rebut any of the statements or argument made by Mr. Allan Wade.

24. Mr. Allan Wade made the following legal argument as to what "development" could mean.<sup>4</sup>

I want you to turn to the first page [of the UDC] that I gave you, which says General Provisions. It says "This UDC is applicable -- it says the provisions of this development code shall apply to the development." And that word development is being used -- of all land within the jurisdiction, exclusive of incorporated area.

Then it says: No development shall be undertaken without the prior approval of this development code.

Then if you go down to 1.5(d), it says "This development code is intended to accomplish the following: Prohibit uses, buildings or structures incompatible with the character of established districts."

That is not talking about a single lot. It is talking about a larger context of conglomeration of properties that make up a neighborhood or residential district. And then it reinforces in 1.6 what Mr. David Wade argued in the prior hearing,

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<sup>3</sup> The Council allowed Plaintiff's attorney fifteen (15) minutes to present and rebut the arguments of the opposing neighbors who were also allowed fifteen (15) minutes with no allowance for Plaintiff to refute Mr. Allan Wade's additional fifteen (15) minutes of argument. By allowing its counsel an additional fifteen (15) minutes to make legal argument refuting Plaintiff's arguments following the expiration of Plaintiff's allotted time, the Council allowed Messrs. Allan Wade and David Wade double-time. Of course Mr. Wade's "opinion" was an interpretation which would result in the outcome desired of the Council, as opposed to some objective legal opinion. Previously, Allan Wade had argued that the term "development" refers to other subdivisions surrounding the *Belle Meade* subdivision. He argued that Plaintiff's property was surrounded on the north and east side by the Belle Meade subdivision, on the south by The Village Subdivision, and on the west by the Tuckahoe Subdivision. *Wills*, at \*16.

<sup>4</sup> Counsel for Plaintiff objected to Mr. Wade's participation in the hearing and to his interpreting the term "development" for the Council for the purpose of providing the Council with a legally-defensible reason for its denial of Plaintiff's project.

that these standard[s] -- the UDC set forth minimum requirements, but that doesn't mean that you have to comply with the minimum.

Now, this is what I want you to focus on next. If you go to the page which has the number 777... There is a definition of the term development. That definition says: Any manmade change is defined in construction of buildings or other structures, mining, dredging, paving, filling, or grading or site clearing and grubbing in amounts greater than ten cubic yards.

That is the precise definition of what development is. But if you look at the page immediately preceding the one I just read, there is an Article 12. 12.1, that says when you interpret this article, the provisions and rules of this section shall be observed and applied except when the context clearly requires otherwise. The words in the singular shall include the plural. And the word shall is mandatory.

Now, that means even though you have a specific definition, you have to consider the context in which the word development is being used. Now I want you to go all the way back to the second page from the front of the document, 1.13.2. And it says "Except as provided in Section 1.13.3, any existing use, lot, building or other structure legally established." You see those words, those magic words appearing here as well -- prior to the effective date of this development code that does not comply with any provisions of this development code shall be subject to conformed position.

This provision in my opinion gives you the context of what development means. **It means either the use, the lot, the building or other structure legally established before a certain date. So it can be any of those things.**

Vol. 1 Transcript, p. 40 line 13, p. 43 line 5.

25. Accordingly, Mr. Allan Wade's argument to the Council was that the term "development" as it appears in UDC Section 3.9.2 can mean "either the use, the lot, the building or other structure legally established before a certain date." *Id.* at Vol. 1, p. 43 lines 2-5.

26. Simply put, Mr. Allan Wade claimed "development" means whatever the Council wants it to mean, notwithstanding the uncertainty created by such interpretation not having a specific definition in which the public can rely when determining their rights in developing their property.

27. After offering this opinion, Mr. Allan Wade told his client, the Council:

You have been given an argument by your lawyer. You've been given an argument by Mr. Wilkins. Simply stated, you should decide whether you accept my argument or his first. And if you accept my argument, then you can proceed to vote whether you want to approve or disapprove it. If you don't accept my argument, then you are obligated to grant the subdivision. That's where you are.

*Id.*, Vol. 2, p. 2 lines 2-9.

28. Mr. Allan Wade then informed the Council what its motion should be stating:

Your motion should be: you move that you -- construe the UDC, the term development, or you construe that the infill contextual standards to include that this property is surrounded by development on all sides legally established before 1950.

*Id.* at Vol. 2, p. 2 lines 4-8.

29. Councilmember Flynn then moved as follows:

My motion is that the term development refers to **other residential subdivisions and residential uses** surrounding Lot 94 in the Belle Meade Subdivision, and that UDC Section 3.9.2 is applicable to the resubdivision of Mr. Wills' property because Mr. Wills' property is surrounded on all sides by residential development established before 1950.

*Id.* at Vol. 2, p. 4 lines 18-25.

30. The Council then passed the motion, therefore, providing the City Council's initial interpretation of the term "development" to be "other residential subdivisions and residential uses."<sup>5</sup>

31. The Council took no further action.

32. The Council approved the minutes of its April 21, 2015 hearing on May 5, 2015.

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<sup>5</sup> The Council did not complete step two (2) of the mandate: to determine whether the application of 3.9.2 results in Plaintiff's application being denied. During his argument, Mr. Allan Wade argued that the lot width and setback would result in the application being denied. Plaintiff's counsel was not provided any time to rebut Mr. Wade's argument, but it is clear that the Council would deny Plaintiff's application regardless of lot width or setback. Regardless, Plaintiff disagrees that the lot width and setback would result in the application being denied.

## COUNT 1

33. In remanding this matter back to the trial court with directions that the City Council provide the initial interpretation of the term “development”, the Court of Appeals surely contemplated that the City Council itself would actually clarify its original intent and articulate its unbiased interpretation of the term as it appears in UDC Section 3.9.2.

34. Perhaps in so doing, the City Council might have actually discussed the term. Perhaps it might have reviewed its subsequent amendments to UDC Section 3.9.2, or possibly even sought clarity from the City personnel responsible for drafting the Uniform Development Code and who proposed the subsequent amendments to Section 3.9.2 thereto.

35. What could not have been contemplated by this Court, however, was that the City Council, through its legal advocate in this litigation, would instead take the posture of a litigant that is adverse to a citizen who is seeking that the zoning laws be fairly employed. It could not have been imagined that it would permit and even likely encourage its lawyer to arrogantly hijack its proceedings thereby making an absolute mockery of the suggestion that this highly political body could possibly even attempt to impartially interpret its own laws in this instance.

36. Moreover, the Council’s ultimate “interpretation”, with the able assistance of its lawyer Mr. Allan Wade, that “development” means “other residential subdivisions and residential uses”, is absurd given the express language in UDC Section 3.9.2, and perhaps even more ambiguous than the term “development”.

37. What the City Council did at its April 21, 2015 hearing was to ignore all indicia of fair play and due process. It did so by turning the hearing into an adversarial process driven by its lawyer whereby it took a posture adverse to Plaintiff, while also acting as judge.

38. The City Council allowed its attorney, who had crafted and argued the unsuccessful legal arguments regarding the term "development" previously raised in this litigation for the sole purpose of defending the City Council's denial of Plaintiff's application based solely on neighborhood opposition, to participate in the hearing as the City Council's lawyer and affectively argue his legal theories to a judicial body that was his client against Plaintiff who filed suit regarding the same legal dispute that gave rise to the Court's mandate.

39. Mr. Allan Wade reiterated his unsuccessful arguments as to the meaning of "development" and inappropriately and vigorously argued for a particular definition of the term "development" that supported the City Council's prior action, instead of allowing his client, the City Council, to even pretend to attempt to determine what it meant when enacting Section 3.9.2 of the UDC.

40. In effect, at the City Council hearing, Mr. Allan Wade represented both the opposing neighbors in opposition to the Plaintiff and the judicial body which was predisposed to interpret the UDC in any manner necessary to deny the Plaintiff's application.

41. Essentially this rigged hearing amounted to a quasi-judicial body permitting its lawyer to participate in the hearing as its legal advocate arguing for a particular interpretation of an ordinance during a hearing wherein the same quasi-judicial body served as the judge.

42. The City Council's lawyer participated as an advocate in the hearing in order to put in the record sufficient information to defend an interpretation he knew his client would adopt with his urging without regards to the Council's honest deliberations and statements of its original intention, and in order to advance the same legal arguments the lawyer previously unsuccessfully advanced to this Court and the Court of Appeals in defense of the City Council's prior arbitrary and capricious action.

43. Not surprisingly, the City Council sat silently and followed the direction of its advocate because the members knew that in so following, it would achieve the result in this case it desired to achieve and provide its lawyer with ammunition to thwart any further subsequent legal challenge.

44. In so allowing Mr. Wade to participate in the hearing to such an extent that he acted as the 14<sup>th</sup> council member who not-so-subtly spoke for the council members, improperly conducted the hearing, made inappropriate statements during the hearing, and turned what was required to be a hearing with at least an appearance of impartiality, into an adversarial proceeding at which Plaintiff was adverse to the City Council sitting in a quasi-judicial capacity deciding his case.

45. There was not, and there never will be with this political City Council, a fair interpretation of UDC Section 3.9.2, and its actions have completely undermined the ordinance's validity.

46. Under no set of circumstances is it proper for a quasi-judicial body which is adjudicating a case wherein two (2) adverse parties are arguing as to the interpretation of a law, to hire its own lawyer who also argues as an advocate for the adoption of an interpretation benefiting one (1) of the adverse parties during the hearing.

47. That is exactly what happened here: (i.e., Plaintiff versus both opposing and the City Council's attorney).

48. There was never any question as to the outcome of the April 21, 2015 hearing as it was rigged from the start.<sup>6</sup>

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<sup>6</sup> One council member (Harold Collins) let it slip that the Council had been "briefed" on the matter before the hearing by Mr. Allan Wade, the Council's lawyer, who moved later to hijack the hearing with his client's blessing.

49. The City Council never attempted to determine how it intended to judge applications for resubdivisions in the City of Memphis from this point forward.

50. Instead, Council, with the assistance of its lawyer, adopted the interpretation required to allow it to deny Plaintiff's application and attempt to tie this Court's hand in providing relief to Plaintiff based on established legal review.

51. The manner in which the hearing was conducted, together with the inappropriate participation therein by the City Council's attorney, Mr. Allan Wade, resulted in a flagrant violation of Mr. Wills' due process rights to a fair hearing before an impartial tribunal, was so fraught with error and flagrant misconduct, and the decision reached by the City Council so arbitrary, capricious and improper, that it resulted in the City Council evading and violating the appellate court's mandate.

52. The Council's action was without any material evidence sufficient to deny the proposed Development.

53. The Council's action failed to properly construe the existing zoning laws strictly in favor of the property owner.

54. The City Council failed to meet its constitutional requirement to treat Plaintiff and the developers of other resubdivisions, who are similarly situated, alike in applying standards contained in local zoning ordinance.

55. The Council's April 21, 2015, vote denying the Development was illegal, arbitrary, and capricious.

## COUNT 2

56. In order to comply with the appellate court's mandate, the City Council first had to determine the meaning of the term "development". If it interpreted the term "development" in

a way that made Section 3.9.2 applicable to Plaintiff's project, then it was then tasked with reviewing the provisions of Section 3.9.2 as applied to Plaintiff's application to determine whether Section 3.9.2 allowed it to deny Plaintiff's application. See the applicable version of UDC Section 3.9.2 attached hereto as Exhibit D.

57. The City Council did not even bother to perform this exercise because it knew that it fully intended to deny Plaintiff's application regardless of the zoning law.

### COUNT 3

58. At the April 21, 2015 hearing, Plaintiff's counsel placed the Council on notice that under the current version of UDC Section 3.9.2, which provides that contextual infill development standards apply if the "site is abutted on two or more sides by parcels containing ... dwellings that were built on lots platted or established by deed before 1950....", Plaintiff's application must be approved. Because Mr. Wills' site is not abutted on two or more side by "lots" established before 1950, his application must be approved under the current law.

59. Immediately thereafter, two Council members sponsored a new amendment to Section 3.9.2 solely designed to stop Plaintiff from proceeding under this current, recently amended zoning law. A copy of said Resolution is attached hereto as Exhibit E.

60. A copy of the Office of Planning and Development Staff Report explaining the purpose of the amendment and the understanding that "without this [new and amended] language, the Board and Bodies have little authority to reject subdivisions, which calls into question the purpose of holding public hearings on this type of land use request is attached hereto as Exhibit F."

61. The City Council's actions subsequent to its April 21, 2015 hearing, in passing its May 5, 2015 Resolution to quickly amend the UDC yet again, shows that the City Council and



its lawyer fully understood that its zoning laws did not allow it to deny Plaintiff's pending application and are now attempting to quickly change the UDC in a further effort to thwart Plaintiff's application being approved under the current law.

62. Very shortly after the City Council's April 21, 2015 decision, Plaintiff appeared at the Office of Planning and Development to file a new application to subdivide his property under the current zoning scheme.

63. He was then informed by City employees that filing a new application was a "waste of time" pursuant to the "pending ordinance doctrine." See *Harding Academy v. Metropolitan Government of Nashville and Davidson County*, 222 S.W.3d 359 Tenn. 2007.

64. Obviously, the employees of the Office of Planning and Development had been informed that Plaintiff's application to subdivide would be denied if he filed another application, thus providing proof that the purpose behind the amendment is to defeat Plaintiff's rights to develop his property under the current law.

65. The City Council, through interested and biased Council members, is making a sprint to change its zoning law before Plaintiff can file a new application.

66. This behavior provides clear and indisputable evidence of the City Council's bad faith in this action and contempt for this Court and its abject refusal to interpret the term "development" in any way other than a way which prohibits Plaintiff from developing his property.

**WHEREFORE, PREMISES CONSIDERED, Plaintiff prays:**

1. That a Writ of Certiorari be issued compelling the City and the Council to: (1) prepare a certified transcript of all proceedings in this case from the date the Court of Appeals issued its mandate and all evidence presented before the Council at the hearing on April 21,

2015, and file it with the Clerk for review by the Court in these proceedings; and (2) prepare a certified transcript of all proceedings in any zoning case wherein a petition was filed on or after January 1, 2011, involving a resubdivision of a residential area.

2. That the April 21, 2015 actions of the City Council be declared invalid, and be set aside and declared null, void and of no legal effect.

3. That the City Council's definition of the term "development" be declared illegal, arbitrary, improper, vague, and unsupported by any evidence.

4. That the City Council's decision to allow its Council to argue and participate in the April 21, 2015 hearing be declared improper and violative of Plaintiff's rights to a fair and impartial hearing.

5. That the City Council's refusal to follow the appellate Court's mandate be declared illegal, arbitrary, and improper.

6. That the City Council's attempt to change the zoning law to affect Plaintiff's development be set aside and declared null, void and of no legal effect in regard to Plaintiff's application.

7. That Plaintiff has such other and further relief, both general and special, including attorneys' fees, to which he may be entitled.

**THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF IN THIS CASE.**