

**IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA**

**TEACHERS' RETIREMENT SYSTEM )**  
**OF ALABAMA; EMPLOYEES' )**  
**RETIREMENT SYSTEM OF )**  
**ALABAMA, )**

**Plaintiffs,**

vs.

**Case No.** \_\_\_\_\_

**THE BALDWIN COUNTY )**  
**COMMISSION; BALDWIN COUNTY, )**  
**ALABAMA, )**

**Defendants.**

**COMPLAINT**

Teachers' Retirement System of Alabama and Employees' Retirement System of Alabama hereby file this Complaint against the Baldwin County Commission ("Commission") and Baldwin County, Alabama ("County") arising from the Commission's adoption of Resolution #2021-076.

**FACTS AND ALLEGATIONS**

1. The Teachers' Retirement System of Alabama is a retirement system established pursuant to Alabama Code § 16-25-2.
2. The Employees' Retirement System of Alabama is a retirement system established pursuant to Alabama Code § 36-27-2. The Teachers' Retirement System of Alabama and the Employees' Retirement System of Alabama are hereafter referred to collectively as "RSA".
3. RSA administers a defined benefit plan which provides retirement benefits to all State of Alabama employees, approximately 860 counties, cities, municipalities, or other local governmental entities, and all public education employees which include teachers, administrators, and support personnel for K-12 schools, community colleges, four-year higher education institutions and state education agencies.

4. The Commission is the governing body of the County.

5. The County is a political subdivision of the State of Alabama.

6. As part of its investment portfolio, RSA owns, among others, The Lakewood Golf Club in Point Clear, Alabama. The Lakewood Golf Club includes two 18-hole golf courses, a club house, and single family housing (collectively, the “Property”). The acquisition of the Property represented a substantial investment by RSA. Prior to June 1, 2021, the Property was unzoned, which permitted RSA to develop a golf course and club house and to construct single family houses around the golf course on the Property. As set out more fully below, in June 2021 the Commission adopted a resolution creating Zoning District 19 in violation of the Baldwin County Zoning Ordinance (“Ordinance”). This resolution has decreased the value of the Property by prohibiting RSA from continuing development of the Property for residential uses and also impeded its clubhouse’s existing use. This resolution affected 351 acres owned by RSA.

7. On July 7, 2020 certain Baldwin County citizens petitioned the County to create Zoning District 19 (“District 19”). On August 4, 2020, the Commission approved the boundaries of District 19. Neither the Commission nor anyone associated with the County notified RSA that its Property and the properties surrounding it were being considered for rezoning as part of District 19.

8. Upon information and belief, the proposed and adopted boundaries for District 19 do not correspond to any voting precinct, and the Commission made no determination that the use of a voting precinct’s or precincts’ boundaries was not feasible. The approval of the District 19 boundaries was thus in contravention of Alabama Code § 45-2-261.07 which provides, in relevant part, for the purposes of the establishment of districts after June 1, 2010, a district shall correspond

to a voting precinct or precincts in the county unless the county governing body determines that the use of voting precinct boundaries is not feasible.

9. On December 29, 2020, a certain number of electors in District 19 voted to institute county zoning.<sup>1</sup> Neither the Commission nor anyone associated with the County gave RSA notice that an election in relation to District 19 was going to take place.

10. On March 2, 2021, the Commission appointed an Advisory Committee to make recommendations regarding the District 19 zoning map and local provisions. On April 20, 2021, the Advisory Committee made its recommendations to the Commission. RSA was given no notice that the Advisory Committee had been appointed or that it had made recommendations to the Commission.

11. On May 6, 2021, the Baldwin County Planning and Zoning Commission (“Planning Commission”) held a hearing at which its members recommended that the Commission adopt and implement District 19 as part of the Ordinance. RSA was not given notice of the May 6, 2021 hearing and therefore had no opportunity to participate and voice its opposition to District 19.

12. On June 1, 2021, the Commission held a public hearing to consider Resolution #2021-076, which proposed to amend the zoning district boundaries of the Ordinance to add District 19, including the District 19 zoning map and local provisions. The Commission voted to approve Resolution #2021-076 during the course of the June 1, 2021 hearing.

13. Section 22-19 of the Ordinance defines a “rezoning” as “[a]n amendment to the zoning district boundaries as delineated on the [Ordinance’s] zoning map.” Resolution #2021-076

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<sup>1</sup> On February 25, 2021, two residents of District 19 filed a lawsuit in the Circuit Court of Baldwin County, Alabama, Case No. 05-CV-2021-900206.00, against the Commission and the County alleging that District 19 is unlawful because, among other things, (1) District 19 was designed to disenfranchise African American residents; (2) the boundaries of District 19 do not conform to a voting precinct in the County; (3) many African American residents did not receive proper notice of the election as required by law; and (4) less than a majority of the qualified electors voted in favor of implementing District 19.

constitutes a “rezoning” within the meaning of the Ordinance because it amended the Ordinance’s zoning map to add District 19.

14. District 19 encompasses the Property as well as a number of surrounding parcels on which single family homes and other structures are built. The zoning map for District 19 singles out the Property and zones it, in particular, as an Outdoor Recreation (OR) district – one of the most restrictive, if not the most restrictive, zoning designations. Articles 2.3.19.3 and 6.2 of the Ordinance prohibit the construction of new residential homes in OR districts like that now applicable to the Property. The OR district designation would even require RSA to seek a variance to make renovations to its existing Lakewood Golf Club clubhouse.

15. Resolution #2021-076 and the District 19 zoning map are void, however, because they violate Alabama procedural and substantive law, including the Ordinance.

16. Section 19.16.3 requires that before acting on any proposed rezoning, the Planning Commission must give “notice by certified mail at least 5 days prior to the hearing ... to all adjacent property owners as their names appear in the County tax records.” Section 19.16.3 was violated here when, upon information and belief, the Planning Commission failed to give RSA timely notice of the Planning Commission hearing by certified mail.

17. Alabama Code § 45-2-261.04(b) and Section 19.16.4 of the Ordinance require that a “conspicuously located sign” indicating any proposed amendment be posted on the property subject to the amendment at least three weeks prior to the date of the Commission hearing. These provisions were violated because no sign was placed on the Property indicating that Planning District 19 was under consideration or that the Commission intended to hold a public hearing to consider whether to amend the Ordinance to add the Planning District 19 zoning map and local provisions.

18. Section 19.16.6 of the Ordinance provides that prior to a Commission hearing, “a copy of the proposed rezoning, amendment, supplement, modification, or repeal shall be made available for public inspection at the nearest County Courthouse or satellite County Courthouse, which locations will be included in the notice.” On May 5, 12 and 19, 2021, the Planning Commission and the Baldwin County Planning and Zoning Department (“Department”) ran notices in the local newspaper to the effect that the proposed District 19 zoning map and text amendments were purportedly available for public viewing at the Department and the Foley Satellite Courthouse (“Courthouse”).

19. However, the Commission made changes to Resolution #2021-076 (*i.e.*, the proposed rezoning) during the June 1, 2021 hearing. Specifically, the minutes of that hearing reflect that Interim Planning Director Matthew Brown appeared before the Commission and presented several changes to the District 19 zoning map that had been raised following the Planning Commission’s meeting on May 6, 2021:

- 1) The additional designation of parcels with PINs 50393 (portion in District 19), 50398 (portion in District 19) and 376883 to RTF-4; and**
- 2) The additional designation of PINs 44438, 44437 and 245610 as RSF-1 versus RSF-E.**

(Commission Minutes, Ex. A, at 18). The Commission approved these changes as part of its adoption of Resolution #2021-076. (*Id.* at 19). Therefore, upon information and belief, the “copy of the proposed rezoning” that was available at the Department and Courthouse was different than what was presented and adopted at the June 1<sup>st</sup> hearing, thus violating Section 19.16.6.

20. The changes to the Ordinance for select property owners underscores the necessity for full compliance with the zoning ordinance’s notice requirements for rezoning. Due to the lack

of actual notice, RSA was not afforded the opportunity to seek reclassifications for portions of its property included in District 19.<sup>2</sup>

21. Section 19.16.1 of the Ordinance requires that “[a]ny proposed rezoning, amendment, supplement, modification, or repeal shall be submitted to the Planning Commission for its consideration and recommendation to the County Commission.”

22. As stated above, at the June 1, 2021 hearing, the Commission made changes to the proposed District 19 zoning map and local provisions that had been previously considered by the Planning Commission. Resolution #2021-076 thus violates Section 19.16.1 because it includes provisions that were never submitted to the Planning Commission for its consideration and recommendation.

23. As set forth below, Alabama Code § 45-2-261.04(b) requires that specific notice of any ordinance or regulation under consideration be made in the legal section of a newspaper of general circulation for three consecutive weeks:

*The notice shall state that an ordinance or regulation, or amendment thereto, will be considered by the Baldwin County Commission pursuant to this subpart and that a copy of the proposed ordinance or regulation, or amendment thereto, is available for public inspection at the nearest county courthouse or the nearest county courthouse satellite office which locations shall be clearly published in the notice.*

(emphasis added).

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<sup>2</sup> A review of the video of the May 6, 2021 meeting of the Planning Commission reveals that the District 19 zoning map originally proposed that three lots owned by RSA in the Polo Ridge subdivision would be subjected to the highly restrictive OR designation, despite the fact that a subdivision plat had been filed as to the three lots. Although the Planning Commission ultimately agreed to change the designation of those lots to RSF-1, this sequence of events underscores the fundamental unfairness of the process which resulted in the Property (which represents a substantial investment by RSA) being subjected to a highly restrictive zoning designation without RSA having any input into the process.

24. Alabama Code § 45-2-261.04(b)'s requirement that the Commission's notice state that the proposed ordinance or regulation will be considered "pursuant to this subpart" thus requires all notices to expressly cite Alabama Code § 45-2-261.04(b).

25. As stated above, on May 5, 12 and 19, 2021, the Planning Commission and the Department ran notices in a local newspaper to the effect that the Commission intended to hold a public hearing on June 1, 2021 to consider the proposed zoning map and text amendments for Planning District 19. However, none of the notices cited Alabama Code § 45-2-261.04(b), as required by that subpart.

26. Alabama Code § 45-2-261.04(a) provides that "ordinances and 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 the view of conserving the value of the buildings and encouraging the most appropriate use of land throughout the district." Resolution #2021-076 violates Ala. Code § 45-2-261.04(a), and is arbitrary and capricious, because it is inconsistent with the character of the district and its suitability for particular uses, including the particular uses of the Property.

27. District 19, and Resolution #2021-076's zoning of the Property as an OR district in particular, constitutes piecemeal or spot zoning in violation of Alabama law. More specifically, Resolution #2021-076 singled out the Property despite it not being part of any comprehensive plan.

#### **COUNT FOR DECLARATORY JUDGMENT**

28. RSA adopts and realleges the foregoing allegations of this Complaint as if set forth fully herein.

29. Pursuant to Alabama Rule of Civil Procedure 57 and Alabama Code § 6-6-220 *et seq.*, a justiciable controversy exists between RSA, the Commission and the County regarding

whether Resolution #2021-076, District 19 and the District 19 zoning map and text amendments comply with Alabama procedural and substantive law, including the Ordinance.

30. RSA thus seeks the following declaration from the Court:
- A. That Resolution #2021-076 is void because it violates Alabama Code § 45-2-261.04 and Sections 19.16.1, 19.16.3, 19.16.4 and 19.16.6 of the Ordinance.
  - B. That Resolution #2021-076 is void because it is arbitrary and capricious, in that it zoned the Property in a manner that is inconsistent with the land use pattern of the area and bears no substantial relationship to the public health, safety, morals and general welfare of the community.
  - C. That Resolution #2021-076, and specifically its zoning of the Property, constitutes impermissible spot zoning.

WHEREFORE, RSA respectfully requests that this Court enter a declaratory judgment in its favor as set forth above and for such other, further or different relief to which RSA may be entitled.

*/s/ J. Marshall Gardner*

J. MARSHALL GARDNER (GAR036)

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Defendants to be served via Certified Mail as follows:

Baldwin County, Alabama  
c/o Wayne Dyess  
County Administrator  
312 Courthouse Square, Ste. 12  
Bay Minette, AL 36507

Baldwin County Commission  
c/o Wayne Dyess  
County Administrator  
312 Courthouse Square, Ste. 12  
Bay Minette, AL 36507