

IN THE SUPERIOR COURT OF FANNIN COUNTY

STATE OF GEORGIA

FILED IN OFFICE 9:00 AM/PM

THIS 17 DAY OF Oct, 2016

[Signature]
DANA C. CHASTAIN
CLERK OF SUPERIOR COURT, FANNIN CO, GA

ADA STREET, LLC,

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PLAINTIFF

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CIVIL ACTION FILE

v.

§

NO. 2015-V-134

CITY OF BLUE RIDGE, GEORGIA; MAYOR
DONNA WHITENER AND COUNCIL MEMBERS
ANGELA ARP, BRUCE PACK, RODNEY KENDALL
HAROLD HERNDON AND RHONDA THOMAS,

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DEFENDANTS.

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FINAL ORDER

Plaintiff originally filed an "Appeal and Complaint in Equity" which sought to set aside a vote of the Blue Ridge City Council. This Complaint was brought against the City of Blue Ridge and "its Mayor and Council in their official capacities." In Count I, Plaintiff raised a Constitutional attack against the Council's decision to deny an application to rezone its property. A Constitutional attack against a zoning ordinance must be raised before the local governing body in order to afford that body the opportunity to amend its ordinance to bring it within constitutional limits. *Village Centers v. DeKalb County*, 248 Ga. 177 (1981). Plaintiff did not raise its constitutional challenge until after a final decision of City Council and for this reason, in a prior Order, this Court granted Defendants' Motion for Summary Judgement as to Count I of Plaintiff's Complaint.

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In Count II of its original Complaint, Plaintiff alleged that “the actions of Council Member Arp in voting to deny Ada Street’s rezoning application were in bad faith” and that such bad faith “so tainted the City Council’s vote...that the Council’s decision ...should be set aside.” The only prayer for relief was that Council’s vote be set aside and that the case be remanded to City Council for the property to be rezoned to a “constitutional classification”. After the Court ruled on Defendant’s Motion for Summary Judgment as to Count I, Plaintiff amended its Complaint.

In Count II, Plaintiff now alleges that Defendant, Ms. Arp has acted with malice and committed an illegal act by voting when she had a personal interest in the action of City Council. In Count V, Plaintiff asked for damages and attorney’s fees against all Defendants individually and jointly for their actions of “malice, willfulness, or corruption when they wrongly denied Plaintiff’s zoning application.” After Plaintiff amended its Complaint, Defendants filed a pleading which raised the issue of their entitlement to the protection of official immunity.

Plaintiff admitted in its Response to Defendant City of Blue Ridge, Georgia’s Second Request to Produce, that the City of Blue Ridge is no longer a party to this case. No claim in the amended Complaint is against the City of Blue Ridge. Therefore, all claims that were raised against the City of Blue Ridge were dismissed by previous order of this Court.

Further, no claims against Defendants, Mayor Donna Whitener (Mayor), Mr. Herndon or Ms. Thomas have been pursued or proven by Plaintiff, therefore summary judgment as to all claims against these Defendants was granted in a previous order of this Court. Also in the previous order of this court summary judgment was granted as to the claims against Defendants Mr. Kendall and Mr. Pack.

While Plaintiff’s amended Complaint did not demand that Ms. Arp’s vote be set aside, Plaintiff did claim during the hearing that it was still requesting a ruling on that issue, therefore the Court will address it. Thus, the only remaining issues in this case are Plaintiff’s claim that Ms. Arp’s vote should be voided pursuant to O.C.G.A. Section 36-30-6 which states: “It is improper and illegal for a member of a

municipal council to vote upon any question brought before the council in which he is personally interested” and Plaintiff’s claim for special damages under O.C.G.A. Section 36-33-4.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The principals of Ada Street, LLC are Ms. Brenda Battaglia (Ms. Battaglia), Mr. Rick Glueckert (Mr. Glueckert), Mr. Steven Oyer (Mr. Oyer) and Mr. Bob Renneke (Mr. Renneke).

On or about July 11, 2014, Plaintiff purchased, the property designated as 215 River Street, Blue Ridge, Georgia and on or about July 31, 2014, Plaintiff purchased, property designated as 51 Ada Street. On the date of the purchase, both of these properties were zoned under the City of Blue Ridge zoning ordinance as Medium Density Residential (R-2). Plaintiff purchased each property knowing that they were zoned Medium Density Residential (R-2).

The real estate contract for each property did not have a contingency clause making the purchase of the property contingent upon being rezoned from Medium Density Residential (R-2) to General Commercial (C-2). At the time of the purchase, the property was used for residential purposes and the property had residential structures on it which were removed by Plaintiff after the purchase.

Mr. Oyer has been identified as Plaintiff’s managing partner. Mr. Oyer testified that the person from whom he bought the property would not allow a zoning contingency in the sales contract, so he “rolled the dice.” He said he thought it would be “a walk in the park” and a “slam dunk” to get the property rezoned. He admitted that he talked to the Mayor and she didn’t think it would be a problem to put a 32-unit, extended stay project downtown. While Mr. Oyer thought the rezoning request would be approved, he admitted he was concerned about “the acceptance and would it fit into the growth of the city.”

City of Blue Ridge Code of Ordinances (Code), Zoning Procedures and Standards, Section 154.05 (B) provides that “[a]ll proposed amendments...shall be initiated by an application filed with the City Clerk of Blue Ridge on forms provided by the City of Blue Ridge.” On or about October 31, 2014,

Plaintiff submitted an application for amendment of the Blue Ridge zoning ordinance to change the zoning classification of the subject property from Medium Density Residential (R-2) to General Commercial (C-2). A public hearing on this application was held before the Planning Commission pursuant to Section 154.06(B) of the Code.

A “zoning Decision” is defined in Section 154.02 of the Code as “[t]he final legislative action by the City of Blue Ridge” which results in “[t]he adoption of an amendment to a zoning ordinance which rezones property from one zoning classification to another.”

On February 10, 2015, at a regular meeting, Blue Ridge City Council voted 3-2 to deny Plaintiff’s application to rezone (the vote). Council member Ms. Rhonda Thomas (Ms. Thomas) made a motion to approve the request and voted in favor of the motion. Council Members, Ms. Angie Arp (Ms. Arp), Mr. Rodney Kendall (Mr. Kendall) and Mr. Bruce Pack (Mr. Pack) voted against the motion.

At the time Plaintiff filed its zoning application, the properties designated as 70, 85, 105, 150, 170, and 181 on Ada Street; 181 West Davis Street; 110, 115, 133, 134, 150, 151, and 199 River Street, Blue Ridge, Georgia had a zoning classification of Medium Density Residential (R-2). All of these properties are located near Plaintiff’s property.

The Code in Section 154.08(B), requires the City of Blue Ridge to consider any proposed zoning amendment properly initiated in light of the standards set forth in Section 154.08(A). Section 154.08(B) also sets a policy for the City of Blue Ridge to “exercise the zoning power for purposes of assuring the compatibility of the use of adjacent and nearby properties and the preservation of the economic value of adjacent and nearby properties while enabling a reasonable use of all property.”

State Law delegates to local governments the right to regulate zoning in each community. This right has been given to the City of Blue Ridge by O. C. G. A. Section 36-66-1 *et seq.* Zoning ordinances generally are designed to implement the purpose and goals of the comprehensive plan for the community. At the time of enactment, a zoning map is usually drawn up to classify all land within the confines of the community into designated zoning districts.

In the City of Blue Ridge, the ultimate responsibility of changing a zoning ordinance is delegated to the City Council members. The City Charter provides for planning and zoning at Article I, Section 1.12 (23). The City Council is given the power to “provide comprehensive city planning for development by zoning...as the city council deems necessary and reasonable to ensure a safe, healthy, and esthetically pleasing community.” The City Council adopted the Code which included zoning procedures and standards. Those Standards state that the intent was to exercise zoning power in compliance with the constitution of the State of Georgia and O.C.G.A. Title 36, Chapter 66. The Blue Ridge Municipal Planning Commission (the Commission) was formed and “authorized to investigate any proposal for a zoning decision.” After holding “any public hearing necessary for the exercise of any zoning power”, the Commission is to “provide an advisory recommendation to the governing authority concerning the proposed zoning decision.” The planning staff of the City of Blue Ridge is to make a report of its investigation of the proposed zoning decision to the Commission. The planning staff’s report is to provide an evaluation of each of the standards set forth in Section 154.08 (A) of the Code. After the public hearing and receiving the Commission’s recommendation on the proposed zoning decision the Mayor and City Council, “shall take final action.” Section 154.09 (C) of the Code provides that “[t]he authority of the Planning Commission and planning staff in any zoning decision shall be advisory only.” The final consideration and decision is to be made by the Mayor and City Council and they shall either approve or disapprove the proposed zoning amendment.

THE REQUEST TO SET ASIDE MS. ARP’S VOTE

Plaintiff claims that Ms. Arp’s vote should be declared void because of her bias and conflict of interest. This issue may be decided by the Court after hearing evidence. The Court is to determine if there was self-interested voting here and whether it rose to the level of being disqualifying. *Olley Valley Estates, Inc. v Fussell*, 232 Ga 779 at 784 (1974)

At the time of the vote regarding Plaintiff's property, business entities owned by Ms. Arp owned three parcels of real estate which Plaintiff alleges are suitable for a hotel. One property is on the four lane, Highway 515, and is not located in the downtown Blue Ridge area. The other two are a property identified as the concrete plant property which is zoned M-1 and property on Ada Street which is zoned C-1.

At the time of the vote, neither Ms. Arp individually nor any of her business entities had any type of business transactions or financial dealings of any nature with Mr. Oyer, Mr. Renneke, Mr. Glueckert, Ms. Battaglia or Ada Street, LLC.

At the time of the vote, neither Ms. Arp individually nor her business entities operated and did not intend to operate any type of extended stay commercial facility that would compete with the extended stay commercial facility proposed by the Plaintiff for the property that was the subject of the Plaintiff's application for rezoning.

At the time of the vote, neither Ms. Arp individually nor her business entities operated and did not intend to operate any type of hotel, motel, or other over-night commercial facility for guests. She had not taken any action to build any facility that would compete with the extended stay commercial facility proposed by the Plaintiff for the property that was the subject of the Plaintiff's rezoning application. Any comments that Ms. Arp made regarding a hotel were speculative at best. She was last involved in a hotel in 2006 and lost money on that project.

At the time of the vote, neither Ms. Arp individually nor her business entities had any interest, directly or indirectly, in the property subject to the rezoning request or in Ada Street, LLC.

The question for the Court is whether, considering the totality of the circumstances, Ms. Arp's vote was influenced by bias or self-interest and if so, did such bias or self-interest rise to a level that would disqualify her from voting on the Motion to rezone Plaintiff's property under Georgia law?

Courts are generally reluctant to interfere with legislative zoning decisions. "The motives of a zoning board are not, except with respect to fraud or bad faith, i.e. having a direct or indirect financial

interest in the outcome of the zoning vote not shared by the public generally and more than remote or speculative, open to inquiry on judicial review.” *Doyal v. Fulton County*, 259 Ga. 482 (1989).

The rationale for this reluctance is that legislative action is highly visible and widely felt, and hence the appropriate remedy can be had at the polls. Thus, for example, where a zoning decision was made by an elected body, and a member voted on purely political grounds rather than on the merits, the court held that due process was not violated, and would not be violated short of the member accepting a bribe. Similarly, where a zoning official was acting in a legislative capacity, the fact that the official owned affected property did not necessarily disqualify the official. Prejudgment of a zoning issue by an elected official is not a due process problem. 8A McQuillin, Municipal Corporations §25:234 (2016) (footnotes omitted).

The process of making zoning determinations, here a decision to amend a zoning classification is considered legislative, not judicial, thus, it follows that the legislative body making such determinations are not subject to the same rules of conduct or procedure as judicial officers. The right to a totally impartial tribunal is distinctly judicial in concept and function. In the administrative or legislative context, the concept of impartiality is, by necessity and by function, not as formal. The concept of “the appearance of impropriety” which applies to judicial decision making does not apply here. *See generally*, 8A McQuillin §25:234.

The Court is aware of and has considered the recent case of *Schumacher V. City of Roswell*, 337 Ga. App. 268 (2016). That Court held, in the limited context of interpreting the meaning of O.C.G.A. Section 5-6-35(a)(1), that all zoning decisions “that could be characterized as ‘legislative’ in other contexts still can fall within the ambit” of that Code Section. 337 Ga. App. at 271. The Supreme Court of Georgia has held that “the Georgia view is that commissioners in voting on either a zoning or re-zoning proposal are functioning in a legislative capacity.” *Olley Valley Estates, Inc. v Fussell*, 232 Ga 779 at 781 (1974). The Court in *Olley Valley* made a distinction between the act of considering a special use permit and an act of re-zoning, stating that an act regarding a special use permit is regarded as “quasijudicial”, but an act of re-zoning is not. 232 Ga. at 782. However, the Court determined that the final label placed on the action was not determinative when there is an issue of a commissioner’s

disqualification “if he has a financial interest in the subject on which he is voting.” At 782. The reasoning is that self-interested voting is improper “despite its legislative character.” At 783.

Additionally, decisions tainted by conflicts of interest are prohibited by O.C.G.A. Section 36-30-6. However, the type of self-interested or conflicted participation in a zoning decision that will invalidate the zoning action is financial. The conflict arises “when a public officer, in the discharge of his public function, acts upon a measure relating to a specific transaction and such transaction shall directly and immediately affect his pecuniary interest.” *White v. Board of Commissioners of McDuffie County*, 252 Ga. App. 120 at 122 (2001). A remote or speculative financial interest is not enough. *Olley Valley Estates, Inc. v. Fussell*, 232 Ga. 779 at 783. The evidence must show that Ms. Arp definitely benefitted financially or definitely stood to benefit financially as a result of simply performing her official duties. *White*, 252 Ga. App. 123. It is not enough to show that Ms. Arp owned property near the property that was to be re-zoned. *Story v. City of Macon*, 205 Ga. 590 (1949).

Looking at the evidence presented as a whole, the Court finds that Ms. Arp did not hold a conflict that would have disqualified her from voting on the issue of Plaintiff’s application to re-zone its property. Therefore, the Court **DENIES** Plaintiff’s request to find that Ms. Arp’s vote was improper, illegal and void.

OFFICIAL IMMUNITY

Official Immunity is a plea in abatement under O.C.G.A. Section 9-11-12(b)(1). Defendants raised this issue in their Amended Theory of Recovery after Plaintiff amended its complaint. The Supreme Court of Georgia recently reaffirmed that when a plea in abatement is raised claiming official immunity, the trial court may hold a hearing during which evidence may be presented on that threshold issue. *Rivera v. Washington*, 298 Ga. 770 (2016); *Cameron v. Lang*, 274 Ga. 122, 124 (2001). On August 30 and 31, this Court heard evidence presented by both Plaintiff and Defendant, Ms. Arp. The parties supplemented the evidence by Consent Order on September 20, 2016. After a consideration of the

record, the evidence presented at trial, as amended, and the argument of counsel, the Court finds as follows:

The Court begins with the finding that Defendant has established a *prima facie* case that her actions were those of a Council member for the City of Blue Ridge, Georgia, therefore she is entitled to qualified/official immunity, unless, Plaintiff can prove that that immunity has been waived as provided by law. The act, for which Plaintiff is complaining is Ms. Arp's vote to deny Plaintiff's application to rezone its property

Insurance

For the first time since this case has been pending, Plaintiff asserts its claim that official immunity has been waived because the City of Blue Ridge obtained insurance under the Georgia Interlocal Risk Management Agency (GIRMA) pursuant to O.C.G.A. Section 36-85-1. Plaintiff asserts that Plaintiff's exhibits 2, 3 and 7 show proof of such coverage for the City of Blue Ridge. Plaintiff is correct in arguing that a City may waive its sovereign/governmental immunity by the purchase of insurance under GIRMA, however Plaintiff has the burden of showing that such insurance exists and that it "covers an occurrence for which the defense of sovereign immunity is available." O.C.G.A. Section 36-33-1. Plaintiff has not met its burden in this regard in this case. While Plaintiff has introduced evidence that The City of Blue Ridge has obtained insurance through GIRMA, it has not proven that such insurance covers the acts of which Plaintiff complains. See *Heirs v. City of Barwick*, 262 Ga. 129 (1992); *Gilbert v Richardson*, 262 Ga. 744 (1994); *Weaver v. City of Statesboro*, 288 Ga. App. 32 (2007). In any event, the City is no longer a party to this action and cannot be held liable for Ms. Arp's actions, so the doctrine of sovereign/governmental immunity does not apply in this case.

Furthermore, even if Plaintiff had proven that the City's GIRMA insurance covered Ms. Arp's alleged acts, such insurance would not waive a City Council Member's official immunity. In *Gilbert v. Richardson*, the Supreme Court of Georgia found that while the purchase of liability insurance under

GIRMA waived sovereign immunity, it did not waive a public official's official immunity. 262 Ga. at 750-753. "Subsection (d) of the 1991 amendment [to the Constitution of the State of Georgia] expressly prohibits the waiver of official immunity, thus protecting public [officials] from personal liability." 262 Ga. at 753.

The immunity enjoyed by public officers and employees was made part of the State Constitution. See Ga. Const. of 1983, Art. I, Sec. II, Par. IX(d). Subsection (d) of the 1991 amendment states:

Except as specifically provided by the General Assembly in a State Tort Claims Act, all officers and employees of the state or its departments and agencies may be subject to suit and may be liable for injuries and damages caused by the negligent performance of, or negligent failure to perform, their ministerial functions and may be liable for injuries and damages if they act with actual malice or with actual intent to cause injury in the performance of their official functions. Except as provided in this subparagraph, officers and employees of the state or its departments and agencies shall not be subject to suit or liability, and no judgment shall be entered against them, for the performance or nonperformance of their official functions. The provisions of this subparagraph shall not be waived.

Qualified/official immunity as it applies to members of a City Council is set forth in O.C.G.A. Section 36-33-4, which provides: "Members of the council ...of a municipal corporation shall be personally liable to one who sustains special damages as the result of any official act of such officers if done oppressively, maliciously, corruptly, or without authority of law." This Code Section is a codification of the State Constitutional provision that provides that city council members may be liable for damages if they "act with actual malice or with actual intent to cause injury in the performance of their official functions." All parties agree that when Ms. Arp voted to deny Plaintiff's application to rezone its property, she was acting in her official capacity as a member of City Council and that her act was an official function. Thus, unless Plaintiff can prove with admissible evidence that Ms. Arp acted with actual malice or with actual intent to cause injury, she is entitled to be immune from suit under the doctrine of qualified/ official immunity.

Actual Malice

In the context of official immunity, it is not enough to show ill will or that someone harbors bad feelings about another. If this were the test many public officials would be subject to numerous lawsuits, as politics and governing seem to engender such feelings in many human beings. What Plaintiff must prove is that Ms. Arp acted with actual malice, that is a “deliberate intention to do wrong.” *Adams v. Hazelwood*, 271 Ga. 414 (1999). “This definition is consistent with express malice which in criminal law is similarly defined as a deliberate intention to do an unlawful act.” At 415. “The subjective mental state of a public officer...is irrelevant unless that mental state prompts the public officer... to intend a legally unjustifiable action.” At 415. The policy behind this holding in *Adams* was expressed by the Court as follows:

To hold otherwise would mean that any plaintiff who suffers damages as the result of an act of a public officer...can pierce that... defendant’s official immunity solely on the basis of the defendant’s rancorous personal feelings towards the plaintiff, even though the defendant’s actions in regard to the disliked plaintiff may have been completely lawful and legally justified. Equating actual malice with ill will would lead to this absurd result, contrary to well-established rule of constitutional construction. 271 Ga. at 415.

If an official’s action is objectively reasonable, that official’s entitlement to immunity for such action does not depend upon their subjective reasons for making that decision. *Johnson v Randolph County*, 301 Ga. App. 265, 272 (2009).

Actual Intent to Cause Injury

“A deliberate intention to do wrong such as to constitute the actual malice necessary to overcome official immunity must be the intent to cause the harm suffered by the plaintiffs.” *Smith v. Lott*, 317 Ga. App. 37 at 44 (2012). Furthermore,

[t]he phrase “actual intent to cause injury” has been defined in a tort context to mean an actual intent to cause harm to the plaintiff, not merely an intent to do the act purportedly resulting in the claimed injury. This definition of intent contains aspects of malice, perhaps a wicked or evil motive.

Selvey v Morrison, 292 Ga. App. 702 (2008).

The evidence presented at the trial shows that in 2013, there was an election for the Blue Ridge City Council and Mayor of Blue Ridge. Mayor Whitener ran for re-election. Ms. Arp, Mr. Pack and Mr. Kendall were all running for a seat on City Council, as was Ms. Lynda Thompson (Ms. Thompson) and Ms. Thomas. Ms. Arp, Mr. Pack, Ms. Thomas and Mr. Kendall were elected and took office at the first meeting of City Council in January of 2014. Ms. Whitener won her bid for re-election as Mayor. Ms. Thompson lost. Ms. Thomas and Mr. Kendall began their second term as council members.

Mr. Oyer supported Mayor Whitener, Ms. Thomas and Ms. Thompson during the election campaign and contributed financially to Ms. Whitener and Ms. Thomas.

Mr. Oyer is the owner of a downtown restaurant. He has a replica of a vintage car that he uses to advertise his business. He has a habit of parking the vehicle all over town in parking spaces owned by friends and in public parking. Prior to the election, Ms. Arp allowed Mr. Oyer to park this vehicle on her private property. Shortly after the election, Mr. Oyer got word that Ms. Arp wanted him to stop parking his vehicle on her property. He called Ms. Arp to discuss it with her. She asserted that he had used this vehicle to support her opposition. He said he did not; she said he did and they argued. During the exchange, Ms. Arp said to Mr. Oyer "Well if you are not for me you are against me, did you or did you not use your vehicle to support my opponent?" He still denied it and they had some further discussion. Ms. Arp testified that she told Mr. Oyer she was okay with it and that he could leave the car there. She also testified that she thought they had resolved the issue and that there were no ill feelings. This conversation took place in November or early December of 2013.

During the campaign, Ms. Arp, Mr. Pack and Mr. Kendall campaigned together and supported one another. Ms. Arp ran on the platform that she was in favor of keeping the small town feel of Blue Ridge and on the philosophy that commercial development should not encroach on residential neighborhoods. Ms. Arp also ran for City Council because she did not feel the City had been run

according to the dictates of the City Charter. When she ran she supported Mr. Kendall and Mr. Pack and she said people knew that. Ms. Arp was elected with 70% of the vote.

The position Ms. Arp took in her campaign was expressed in an email that she sent to the City Attorney just two days after being sworn in as a Council Member in January of 2014. In that email she states:

I am sure you are aware of the division in the administration. With that being said I will have to say it is unfortunate but there will be some battling as to who has the power and authority in this administration. You might say we just need to work together, but let me explain the situation. The objective and goal of the majority of the administration is to do what we were sworn in to do last night, which is faithfully perform the duties of the city and support and uphold the city charter as well as state laws. In other words, whatever the charter, ordinances and state laws say to do, we intend to abide by them, we plan to make decisions that will be in the best interest of the tax payers keeping in mind of the laws that we have to adhere to when making the decisions. The other part of the administration makes decisions that best suit them and their special interest groups, regardless of what the charter, ordinances or state laws may say.

In the email, she went on to express that she felt the Mayor had violated the City Charter in the previous meeting by moving and reassigning job duties of employees. Ms. Arp asked the City Attorney to clarify sections of the City Charter and attached copies of sections of the Charter to the email. She stated her interpretation of these sections and expressed that "the term Administrative & Executive Authority has been misused for the past 4 years of administration." She further expressed her concerns about the Mayor's actions by stating:

The council has been totally ignored as to their power; the tie vote that the mayor is entitled to in rare cases was misused for 2 years to give the controlling power of the city solely to the Mayor. This is completely wrong and not according to the charter. The majority of the city council has every intention of correcting this matter; however, we do understand that we will have strong opposition by the mayor. We plan to hold firm to what the charter and laws state so ultimately we will complete our goal.

At the end of the email, Ms. Arp asked the attorney that his correspondence pertaining to the email or any other issues discussed be kept confidential; to not tell "Donna, Rhonda, or Harold." She stated that she,

Mr. Kendall and Mr. Pack were “on the same page and it is our intent to stand together as well as vote together in order that we get this administration back on track as it should be so that we can better serve the citizens of Blue ridge and make decisions that will be in the best interest of this city and the citizens.”

The first couple of days after being in office, Mayor Whitener just happened to look on the City Clerk’s desk and saw the email that Ms. Arp had sent to the City Attorney and she picked it up and read it.

One thing everyone agrees upon in this case is that parking is a problem in downtown Blue Ridge. The Mayor stated in one of the meetings that “parking is gold in Blue Ridge.” One of the problems is that passengers on the Blue Ridge Scenic Railway train will park in one spot all day and patrons of the businesses cannot find a parking space. Parking has been a project of Ms. Arp from day one of her tenure as a Council Member. Ms. Arp was not happy that the Mayor and the prior City Council supported one downtown business owner, Ms. Thompson, by marking off over 20 parking spaces as limited parking in front of Ms. Thompson’s restaurant on West Main St. Ms. Arp’s position from the beginning of her tenure has been that there should be limited parking on both East and West Main Streets and that one business should not be given an advantage. She stated that she had complaints from business owners on East Main about train customers taking up the parking spaces on that street. At one Council meeting, Ms. Arp and other council members proposed that there should be metered parking downtown. This was defeated by Council. At another meeting, on Ms. Arp’s motion, Council voted to remove the limited parking in front of Ms. Thompson’s restaurant on West Main.

Mayor Whitener acknowledged that from the day Ms. Arp took office she has been questioning her authority and that it was done on a constant basis. The evidence in this case, and most notably, the recordings of City Council meetings evince a deep rift between some of the Members of Blue Ridge City Council and between the Council and the Mayor.

In the prior administration of the City, a group was appointed to look into the future of the City of Blue Ridge (2020 group). The 2020 group was composed of citizens of Blue Ridge and downtown business owners. Ms. Cindy Trimble (Ms. Trimble) was one of the members of this group, as was Mr. Oyer and Mr. Jack Morton (Mr. Morton). 2020 group members spent numerous hours of personal time over the period of a year and were devoted to the betterment of the City of Blue Ridge. As Mr. Oyer testified they were private citizens "talking about what we can do with the downtown, doing future overlay of where our growth should be." One of the recommendations that came out of the work of this group was a recommendation that City Council form a Downtown Development Authority (DDA).

The October 14, 2014 City Council Meeting

At the October 14 meeting, Ms. Trimble presented recommendations of another group of citizens and business owners who met and evaluated the needs of the City of Blue Ridge. Many of the recommendations of this group mirrored those of the 2020 group. Ms. Trimble also urged Council members to support the formation of a DDA.

This meeting took a nasty turn when the Mayor, during the "Mayor Report/Concerns" attacked Ms. Arp. The Mayor was obviously very upset with Ms. Arp and addressed her directly in an angry tone. She stated that Ms. Arp had challenged her authority in "email after email." She admonished Ms. Arp to stop wasting tax payer's money with legal fees by constantly asking for the advice of the City Attorney. She said that she knew Ms. Arp hated that she was the Mayor and told Ms. Arp that her behavior was silly and childish. The Mayor said that she was "here" and will keep doing her job. She asserted that the argument is over and we are moving forward with this City whether you like it or not.

In her Council Member report, Ms. Rhonda Thomas expressed that she and other members of the 2020 group put in so much time and that they planned to move forward. She praised the work done by Ms. Trimble and her group.

At that point, the Mayor allowed Ms. Thompson to speak and she brought up a parking issue. She stated that spaces had been blocked off at the train depot and asked who authorized it. The Mayor said that she didn't know who did it. Mr. Oyer then stood up and said he had an idea who did it. He said it was Councilwoman Arp. He began to berate her about the removal of parking spaces where he parked his vintage car bringing up the conversation they had right after the election. Ms. Arp tried to explain what happened and the Mayor yelled "let him finish." Mr. Oyer continued with his complaint and stated that he parked his car in public spaces for no more than three days at a time. Ms. Arp and Mr. Oyer proceeded to get into a heated exchange about this parking. Ms. Arp tried to explain her reasoning that they were in violation of State law. Mr. Oyer told the group that Ms. Arp was costing the City over \$30,000.00. The Mayor continued to support Mr. Oyer's position.

Ms. Arp said Council needs to look at it as" by law it needs to be no parking." The crowd hollered "Says who?" Ms. Arp explained that she and Mr. Bill Sowers (the City Clerk) and Mr. Kendall looked at the law. The Mayor said well, I guess I can paint those spaces back. The Mayor and Ms. Arp then began another argument about the law. Ms. Thompson, Mr. Horton and Ms. Trimble started arguing with Ms. Arp about the issue. Another person in the crowd defended Ms. Arp and stated that she guessed that everyone would like one-hour parking in front of their business. Another person said that the Council had taken away their parking for safety issues and they didn't complain. Ms. Thompson and Ms. Trimble continued to make accusations regarding the removal of the spaces and brought up the removal of the signs in front of Ms. Thompson's business.

When Mr. Kendall had a chance to make his report as a council member, he stated that everyone should try to get along and that it didn't help when a lot of people come in and jumped on someone. He said people should just voice their concerns and say they didn't like the way someone did something instead of making it a team effort. Mr. Pack said he agreed with this statement, that they are all in this together. He said we all have our ideas, but kindness goes a long way. He said we all want what is in the best interest of the City; "[w]e are citizens too not just business owners."

When Ms. Arp had a chance to speak she was angry. She expressed that she had different ideas than the Mayor, Mr. Kendall or anybody and that the bottom line was that they are all elected officials, but that they had to adhere to the City Charter and state laws. She said that she intended to follow the law and that was why she was back and forth with the attorney. She indicated that she had a notebook full of violations of the Charter and the law. She said she wanted to make sure that what she was saying and doing was right according to the law and Charter. Ms. Arp said she had more invested in the City than anyone. The crowd in an angry manner booed and laughed at Ms. Arp.

Ms. Arp continued saying: "I am here for all of Blue Ridge; the citizens, downtown merchants, everybody, not just this select group." She addressed the crowd and stated that she would not make decision for a "select group of people." She asserted that she would take what they said into consideration, but the ultimate decision was up to City Council. She avowed that she was not going to take persecution or a group trying to pressure her, but that she was going to do things right according to state law and the Charter. She told Mr. Oyer that she was very sorry he thought it was a vendetta, but that it wasn't by her.

The Mayor then turned the meeting over to public comment. The first person to speak was Mr. Greg Martin (Mr. Martin) who brought up the 2020 group again. Ms. Arp, the Mayor and Ms. Thomas all got into another argument about an interpretation of the City Charter. Again, voices were raised.

The next speaker was Mr. Morton who also addressed Ms. Arp and took her to task for her behavior regarding the 2020 group. He thanked the Mayor for her support of that group. He said he asked for and got all of the emails from City Council members regarding the DDA. He asserted that he got forty-five of them and told Ms. Arp that after reading hers he felt he had wasted his time. He read a part of an email sent to Council by Ms. Arp which stated, in part, that there were always two sides and they all had their agenda; that she, Mr. Kendall and Mr. Pack were friends and all had the City's interest at heart. In response to Mr. Morton, Ms. Arp agreed that the DDA was not her agenda and that it was no secret that she was not for a DDA. Mr. Morton then yelled at Ms. Arp that she was wasting his time and

Ms. Arp yelled back. They then got into an argument about a section of the City Charter. Ms. Thomas and the Mayor entered the argument to support Mr. Morton's position and to argue with Ms. Arp. The Mayor asserted that it wasn't just the DDA, it was questioning her authority and "that was the fight." The argument continued between the Mayor and Ms. Arp with Ms. Thomas adding her opinion. It was quite obvious that the Mayor and Ms. Thomas supported the formation of a DDA and that Ms. Arp did not. Ms. Arp raised several issues she had with a DDA. She thought it was more government and that it would borrow money and the City might have to pay the debt. Mr. Oyer interjected and expressed his support of the DDA. He addressed Ms. Arp and told her she just proved that she didn't know the purpose of a DDA. He said the 2020 group had great plans, spent a lot of time and then got dumped on. He accused people of having closed minds. Ms. Arp asked if just because she didn't agree with him that it meant she was closed minded? She and Mr. Oyer began arguing.

Ms. Donna Gay spoke to express her dismay about the group's treatment of Ms. Arp. She said she thought there were different agendas in the area. She was for keeping residential areas clear with no encroachment by the business district. She wanted to know what Ms. Arp had done to deserve the kind of "outrageous response" from the audience. She said that she and lots of people voted for the Mayor and Council to run the City and she felt they didn't need an extra element to do these things like borrowing money. The Mayor stepped in to defend the formation of a DDA. She told Ms. Gay that the City was not in as bad a shape as "some would have you believe." Ms. Arp disagreed and the Mayor and Ms. Arp argued about City finances.

Mr. Oyer was the last of the public to speak. He began by stating that he was a part of the original 2020 group. He extolled the work of the group and the benefits of a DDA. He expressed his views of where the City was headed in the future. He addressed Mr. Kendall and stated that he owned property on Ada Street and that Ada Street would become a major artery in twenty years as it led to the industrial park. He mentioned that he and friends had bought property on Ada Street and cleared it and that they had a dream to have cottages in downtown Blue Ridge.

A person in the audience questioned whether you had to have a DDA to do the projects the 2020 group had recommended. The Mayor, Mr. Oyer and Ms. Thomas asserted that the formation of a DDA was the way to go. A person in the audience suggested that the formation of a Blue ridge development authority would be better than a DDA as they could do overall City planning.

Shortly after the October 14 meeting, on October 31, 2014, Plaintiff, through its managing partner, Mr. Oyer, filed the Application for Amendment of the Blue Ridge Zoning Ordinance.

Also, after the October 14 meeting, the issue of parking did not go away. Apparently, the Mayor restored the parking spaces at the depot that had been blocked off, as she said she would do. Ms. Arp sought the advice of the City Attorney and on December 19, 2014, he sent an email to the Mayor and Council members giving his opinion "as to whether the City could validly have permanent parking spaces within the downtown area within 50 feet of the nearest rail of a railroad crossing." He stated his opinion that "the Georgia Uniform Rules of the Road, do not allow the City to create permanent parking spaces that are within 50 feet of the nearest rail of a railroad crossing." He indicated in the email that he had spoken to the Mayor about her position that the rail in question was rarely used and that the law did not apply. He said that "technically the nearest rail of the crossing closest to the depot can still in theory handle trains and therefore the statutory prohibition would still apply." He stated further that "where an issue of traffic safety arises, that [the City Clerk] or any other agent should take those measures to comply with the Uniform Rules of Road...and they do not necessarily have to wait for direction of the Council." After the Attorney's email was sent, City employees blocked off the parking spaces that violated the 50-foot provision.

The January 13, 2014 City Council Meeting

During the January 13 City Council Meeting, after taking care of several items of business, the parking issue surfaced again. Mr. Oyer rose to address Council and the crowd. He read part of the City Attorney's email of December 19, 2014. He defended his practice of parking his vehicle used for

advertising in spots all over the City. He said that he was in compliance with City Ordinance that allowed him to park in a spot for three days. He felt that he was being singled out by the removal of the parking spots at the depot, because these were some of the spots where he parked his car. He stated that he and the Blue Ridge Tax Payer's Association, LLC were requesting all emails that each Council member sent to the City Attorney. He addressed Ms. Arp and she responded and they began an argument about the interpretation of the law. The Mayor and Ms. Thomas argued with Mr. Kendall about his interpretation of the attorney's email. Mr. Oyer again mentioned Ms. Arp's objection to the 2020 group and a DDA. The Mayor read a letter she obtained from the President of Georgia Northeastern Railroad, Inc., the Company that owns the Blue Ridge Scenic Railway. The Mayor presented the letter in support of her position that the law the City Attorney quoted did not apply to downtown Blue Ridge. Ms. Thomas added comments in support of Mr. Oyer and the Mayor's position. Ms. Arp continued to assert that she was going to follow the law and that Council could not ignore the rules. The discussion continued with people from the audience making statements and asking questions.

After tempers had calmed down a bit, Ms. Trimble brought the conversation back to Ms. Arp's behavior. She again alleged that the parking spaces had been removed after hours on New Year's Eve Day. She wanted to know who authorized the removal. Another argument ensued. The Mayor asked that they move on. A woman in the audience addressed Ms. Arp and asked the Mayor if she knew it was taking place when she was out of town. The Mayor said she did not and she was not notified. The Mayor again began defending her position. Mr. Kendall brought up an issue of money being spent without Council approval and an argument began about that issue. While Mr. Kendall and Ms. Thomas argued about this issue, Mr. Oyer, Ms. Arp and the Mayor continued to argue about the parking issue, which was joined by Ms. Thomas.

The next person to speak was Mr. Morton. He read a letter to introduce the Blue Ridge Tax Payer's Association, LLC. That letter is attached to the minutes of the meeting.

Again, the meeting moved on to the business of the City. Unfortunately, during the "Business Association Monthly Update," Ms. Trimble began to speak and directed the focus, once again, on Ms. Arp. Ms. Trimble read parts of the email that the Mayor had picked up and read from the City Clerk's desk in January of 2014 which was the email sent by Ms. Arp to the City Attorney. Ms. Trimble said she was offended by Ms. Arp's comments and yelled that it was illegal. She brought up Ms. Arp's statement that she, Mr. Kendall and Mr. Pack would stand together. She read a part of the State Sunshine law that stated that public officials should not take part in closed meetings and if they did they would be subject to immediate recall. Ms. Arp argued that they had not met together. Ms. Trimble declared that it was obvious that they met together. She addressed Mr. Kendall and asked if Ms. Arp jumped off a cliff "are y'all going with her?" Mr. Kendall said that they didn't always vote together and he made up his own mind. Ms. Arp said that the City Attorney corrected her on that and that she sent another email that said all emails go to everybody. She stated that when the campaign was going on, "we three were a campaign team and them two or three were a campaign team." She said "[t]hat's the way of government- you've got this side, this side..." She declared: "I know what I think is right for Blue Ridge, they think somewhat like I do but totally against those two." An argument began between the Mayor, Ms. Arp and Ms. Thomas with Mr. Morton making some comments. Ms. Arp finally said that from day one it was obvious there was a division and she didn't think it was a secret.

Ms. Carlie Hammond (Ms. Hammond) spoke up and admonished the Downtown Business Association members for reading an old email and trying to pit one member against another. She said she was embarrassed and that it was not appropriate to single out one member of Council and attack her. Ms. Trimble argued about the parking issue and Ms. Hammond responded that she was talking about an email that was old and that Ms. Arp said she was corrected by the attorney and that should be the end of it. The Mayor told Ms. Hammond to take her association's problems to their meeting.

The Mayor proposed an application process for persons interested in board appointments. She said that two members were up for re-appointment; Mr. Oyer and Mr. Martin. She said they had done a really good job.

The February 10, 2015 City Council Meeting

After preliminary business was addressed, the Mayor called on Mr. Morton to address the group. He wanted Council to vote on a DDA. He said he was addressing each Council member individually. He implored them to work together for the betterment of Blue Ridge. He asked each member of Council if they had talked about a DDA. Ms. Thomas said they couldn't do that. The Mayor said she and Ms. Thomas talked about a DDA; she and Mr. Kendall talked about a DDA; she and Mr. Herndon talked about it, "so some of them do understand and have some information." Ms. Thomas indicated that it was on the agenda. He again urged Council to consider the formation of a DDA.

Next to speak was Ms. Jan Eaton (Ms. Eaton.) Ms. Eaton began by stating that she was a lifelong native of the area. She grew up on East Main Street in the City. She said that while she had not been to many meetings, she watched them on the video provided by a news agency. She said she watched "these pep rallies" where "you" badger City Council and come back and beg and she didn't appreciate it. She added she had watched the "parade" of people who say what is best for Blue Ridge such as a Development Authority. She said rarely is there a local face to that. She told the Mayor that she wanted to be on some of these committees and she was not called and not many other locals were called either. She said:

I've watched the path of our community being driven by the dollar. I see it as we're going to make a buck. We are going to commercialize everything. We are going to buy up all those houses and build some big apartments. We as locals, I as a local, simply don't want to lose our sense of community that we've had. I'm not against people moving in here, but I sure am against the change that they are going to bulldoze right over us and do whatever they might. I'm scared that we are losing our little town to these self-formed-I know how to do it better than you group. And I've looked at these groups and I'm gonna be blunt- I'm gonna say what everybody else is thinking, but nobody else will say, because that's my style. I watched these little groups and I've watched these groups who are here tonight- telling y'all what we need and in God's good graces if you

could understand what a DDA is maybe you can understand it. Yeah, we understand it alright- I understand it well.

Ms. Eaton went on to address a personal issue she and her family had with Mr. Oyer as the owner of the Blacksheep Restaurant. She felt that the memory of a family member was being taken advantage of to advertise the Restaurant. She was very upset with Mr. Oyer and what she perceived had occurred. The Mayor stopped her and asked her what this had to do with City business? Ms. Thomas declared: "Thank you!" Ms. Eaton said it was City business, as he was on committees and was the driving force behind the DDA. The Mayor interrupted and said that he was on committees and one of the members of the DDA committee, but that she was the driving force behind the DDA, not Mr. Oyer. The Mayor and Ms. Thomas told Ms. Eaton this was a personal matter and then they and Ms. Eaton argued about this. Ms. Eaton ended by saying that "[T]he problem is committees are formed and this is one of the persons who is on the committees to drive the City toward wherever it is going with all the rezoning and various things in the future planned for the City."

Council voted on the new members of the Planning and Zoning Board of Appeals. Mr. Oyer and Mr. Martin were not re-appointed. Mr. Ralph Garner (Mr. Garner) obtained three votes and Ms. Angelena Powell (Ms. Powell) obtained four votes. Ms. Thomas was the only Council member to vote for Mr. Oyer to be re-appointed. Council voted 4-1 to appoint Mr. Garner and Ms. Powell to the Board. Ms. Thomas was the sole opposing vote.

Council considered and voted on several other matters. Then the issue of the DDA was opened for discussion and vote. The Mayor opened by extolling the benefits of a DDA and explaining why it would be good for the City. Ms. Thomas added her words of support as did Mr. Morton. Mr. Garner raised the issue of debt and who would pay money borrowed. He accused Mr. Morton of being part of a group with the Fannin County DDA that led a move to get the taxpayers to take on an \$800,00.00 debt to build a building and pay \$40,000.00 per acre for property. The Mayor admonished Mr. Garner that they

were talking about the City, not county business. In any event, the Mayor explained that she could have rented that building if it had been built. Mr. Morton began arguing with Mr. Garner. Ms. Battaglia and other people spoke in favor of a DDA and tried to answer questions about the nature of a DDA.

After the Mayor spoke again and addressed some of the questions raised, Mr. Oyer began speaking. He addressed the borrowing issue and who would pay any debt incurred. Ms. Hammond began asking Mr. Oyer questions. She suggested that the DDA not be a DDA, but be a Blue Ridge Development Authority. The Mayor said that it could be. Mr. Oyer said that they were wrong and that the original was based on the "overlay" which shows that the DDA was for the Core district only; for the people downtown. He said anyone on the side could be embraced by the DDA as a tax district. A discussion about this ensued between Ms. Hammond, the Mayor and Mr. Oyer. Mr. Oyer brought up the Ada Street property that he and his partners were asking to be rezoned. He said it was part of the overlay developed by the 2020 group. Ms. Hammond said "that's what scares people. Some outside group is going to tell them how to rezone where they lived all their lives." The Mayor insisted that was two separate issues. The Mayor said a DDA can start at the core and then go to work on other areas. Ms. Hammond indicated that if all of the City was included, it might ease some of the anxiety that is out there.

After the discussion was over, Ms. Thomas made a motion that Council establish a DDA based on the original committee's proposal. There was no second to the motion, so the motion failed.

A resolution was passed by Council and then the next item of business was Plaintiff's application to rezone its property. The Mayor read the Planning Commission's recommendation letter. Ms. Thomas made a motion to accept the recommendation of the Planning Commission to rezone the property. There was not an immediate second to the motion. Mr. Herndon asked if they were looking at widening the street and adding sidewalks. The Mayor answered that Ada Street would be improved to handle additional traffic and sidewalks would be installed. Ms. Thomas interjected to remind the Council that "we all voted to put these people in office who are making these recommendations, you know, it is more

respectful that we at least look at their recommendations. We are the ones who placed them in these positions just like the people tonight.”

Mr. Oyer then asked to speak. He started with a brief history of the dire straits the City was in in the 70's and 80's. He informed the group that it was a “five-million-dollar development with thirty-two units.” He said he had already done one development downtown of an old house that should have been torn down, but he saved it and it is part of the community. He addressed Ms. Eaton and told her that he did not put anything on a website or on Facebook. He said his new development would add tax dollars; bed tax, and sales tax. He said he did more than he had to do when he developed his restaurant because he always did more than he was asked to do. The Mayor agreed that he did more than he had to do on that development. Mr. Oyer said “I have a vision” and you have to have vision. He admonished Council that “he had already seen them make one mistake tonight because as council people they control the DDA.” He raised his voice and said you are always complaining about not having funds. “Now I'm giving you a five- million- dollar project with 32 units; long term stay.” He told them to use your common sense. A man in the audience asked “[w]hat about the citizens of Ada Street?” Mr. Oyer said it would be good for the citizens of Ada Street. The man asked “[h]ave you talked to any of them?” Mr. Oyer replied that he had. The man said “I have too.” Mr. Oyer replied well, “you probably talked to them at another time I didn't.” Mr. Oyer then expressed his thoughts about the future of the Ada Street area. He told the group that there was commercial all around the property in question. That in fifteen years Ada Street would be a main artery to downtown and the industrial park. He addressed Mr. Kendall, who owns property on Ada Street and said that it would make his “ground” more valuable because that is where the traffic is going to be. He again stated “I have a vision.” Mr. Michael Eaton spoke up and asked what if the people on Ada Street don't want to be on a main artery? Mr. Oyer said “it's going to change; it will be driven by change and you can't stop change as it is happening now.” The man said I am not trying to stop change, I am just trying to hold on to Blue Ridge. Mr. Oyer said “open your eyes and look at the vision.” Ms. Powell asked “you think all of us don't have a vision? Mr. Oyer said “I'm

not saying you don't, I'm saying maybe we don't see the same things." Ms. Powell replied, "but we have a vision" and then was cut off by the Mayor who said "Let's go back to the project." Mr. Oyer said "I've said all I am going to say, it is a good project and good for the City."

The Mayor began asking Mr. Oyer questions about the project and he answered. Mr. Oyer added that he never thought he would even have to say a word at the meeting, as "I thought it was a slam dunk." The Mayor said it is a five-million-dollar project, it increases our tax base; our hotel/motel tax and sales tax revenue. Ms. Thomas again mentioned that there is a recommendation by the Planning Commission who all voted in favor of the rezoning. She said they listened to a couple of people that were at the public hearing and that she had talked to a person who owns property on Ada who was in favor of the project. Ms. Thomas acknowledged that some of the neighbors do agree and some don't and added that the planning commission did agree.

Mr. Martin demanded that those voting "no" should give the reasons for their vote. Ms. Thomas said there had been no second to the Motion at that time.

Mr. Renneke spoke next and talked about how beautiful the project would be and how much demand there would be to fill the rooms.

The Mayor asked "Greg": "You said there were people that were in objection- I haven't heard from any of them. You talk to people on Ada who don't want this development?" He responded that he had a mother say she would be afraid to even let her children out and that he had other people expressing the same thing. The Mayor said she hadn't heard the first complaint. Another man spoke up and said he had heard people complain. He asked the Mayor if "she would like to live near that and wouldn't the traffic bother her?" Mr. Renneke said that there wouldn't be any cars on Ada Street or Davis Street. Mr. Herndon asked if they contained their own parking and Mr. Renneke told him that was accurate.

The Mayor and Ms. Thomas discussed the merits of the project. Mr. Herndon pointed out that there was really no opposition at the public hearing and Ms. Thomas agreed. There was a question about

the nature of an extended stay hotel and a discussion began regarding that issue. Ms. Thompson and Ms. Trimble spoke in favor of the project and the need for places to stay downtown.

The Mayor called the Motion and asked for a second. Mr. Herndon seconded the motion and the crowd cheered. Council Members Ms. Thomas and Mr. Herndon voted in favor and Members Ms. Arp, Mr. Kendall and Mr. Pack voted to oppose the motion.

As is reflected in the recording of the meeting things got ugly at that point. Mr. John Soave stood up and addressed the Council saying: “[i]f Steve wasn’t part of this would you guys have voted yes? I really feel...that’s a rhetorical question, I really feel it’s not the project, it’s the people behind it. That’s not how you should look at this folks!” He continued and said “I might be wrong.” The Mayor said that’s a lot of tax revenue. Ms. Thomas told Mr. Martin that they could answer his question now. Mr. Martin asked “who has the courage?” Mr. Pack volunteered. Mr. Pack stated that he had contact with several people who have told him they are definitely against it. He said he had known these people all of his life and that they lived there. He stated that “I’m representing these people, they backed me and I’m not going to turn on them.” He said that was just one example that he had several people call him and say that were against it. Mr. Pack added that “if y’all notice, every time we come to these meetings it seems like, you know, we see a lot of you folks, and I care about you, but we don’t hardly ever see any folks that have lived here nearly their whole life.” Mr. Oyer exclaimed: “Oh my God, you’re going to answer the names of all those folks that have talked to you because you are going to be deposed to death because when I file a suit this time and you know you have already said on record that you do things to spite me now let’s have a law suit and see what happens!” Mr. Pack said he hadn’t finished and continued: “[s]o those people I guess they are putting their trust into the people that they voted for.” People in the crowd started arguing with Mr. Pack. One man pointed out that the people who he said opposed it had a right to go to the Planning Commission meeting. The Mayor said that they did and that they did not go. Ms. Thomas agreed with the Mayor. The Mayor then asserted that that is where their voice should have been heard. Mr. Oyer yelled, “[j]ust get ready for a lawsuit!” People began talking over one another and the

Mayor called the meeting to order. Then she asked Mr. Pack if he was finished. Oyer thanked Mr. Pack for his answer and Mr. Pack replied that it was an honest answer. He repeated that he knew the people supported him. He was then interrupted by someone from the audience who asked: I supported you. What people are you supporting? Are you supporting locals or anybody who voted for you...see your problem is? Mr. Pack answered I'm saying somebody who lives right there. You know, that is all I know to tell you."

Mr. Kendall gave reasons why he voted as he did, but finally gave up when Ms. Thomas interrupted him. Then the Mayor asked if he had anything else to say, he said no, as no one was listening anyway.

Ms. Arp also tried to explain the reason for her vote. She said a lot of people who trusted her to represent them were not here. "There were 400 people that voted in this last election and I don't see 400 people here, but they voted on us to make decisions on their behalf." Mr. Morton proclaimed, "[w]e knew how the vote was going tonight on both of them, because there's 1-2-3-." Ms. Arp answered, "[g]o door to door and ask people if they are in agreement to changing the whole face of Blue ridge for a select group of people." Mr. Morton and Ms. Arp argued. After some comments by the Mayor and Ms. Thomas, someone in the audience asked Ms. Arp what she saw as the downside of the project. Ms. Arp answered that "I'm just respectful of the residents and it's my understanding that they don't want it. As Ms. Arp tried to continue, Mr. Renneke interrupted her and shouted: "You don't like Steve Oyer. It's been written in the paper. It's a vendetta and you wouldn't vote yes no matter what the situation was. And shame on you, you should be an embarrassment to yourself...Because you are letting a personal vendetta get in the way!" The crowd got out of control and the Mayor shouted "Okay! We are moving to the next project.

As was previously pointed out by this Court, the Plaintiff has the burden of proving that there has been a waiver of the official immunity afforded a member of City Council when she has exercised her discretionary duties.

While the Court has considered all of the testimony at trial, the Court finds that Plaintiff has presented little unbiased testimony. The clear picture of this case is found in the recordings of the City Council Meetings where the real controversy is presented in stark reality. When Ms. Arp, Mr. Kendall and Mr. Pack were running for office, they ran with the same goal in mind. That goal was set forth in Ms. Arp's January 2014 email to the City Attorney. Ms. Arp, in particular, held the opinion that the Mayor and "other parts of the administration makes decisions that best suit them and their special interest groups, regardless of what the charter, ordinances or state laws may say." She explained that there would be "some battling" as to who has the power and authority in the administration. She avowed that the objective and goal of the majority of the administration was to "do what we were sworn in to do...which is faithfully perform the duties of the city and support and uphold the city charter as well as state laws."

Unfortunately for the citizens of the City of Blue Ridge, there is no question that Ms. Arp, the Mayor and Ms. Thomas have been at odds since the beginning of Ms. Arp's term; that they do not like one another and have different views about the future of the City and what is in the best interest of the citizens of Blue Ridge. They have been on different sides of many issues and have all acted in very unprofessional ways in expressing their differences.

The Court acknowledges the frustration of the downtown business leaders, as they have a different view of the growth of downtown Blue Ridge than Ms. Arp and the citizens Ms. Arp believes she represents. Those citizens, as expressed by her, Mr. Kendall and Mr. Pack, are the people who elected them who don't want to see the City of Blue Ridge change in the same way as the downtown business leaders and others want it to change.

Further, Ms. Arp has been consistent with her relentless quest to make sure the Mayor abides by what Ms. Arp perceives is the City Charter and the law. As the Mayor acknowledged, Ms. Arp has questioned her authority "constantly." The Mayor was not happy about this and her anger came out in the October 14, 2014 meeting and in other meetings. The Mayor also allowed Ms. Arp to be personally attacked by persons during several meetings.

Did Ms. Arp's behavior rise to the level of actual malice or an intent to do harm as is required by law to pierce her official immunity? The Court finds that it did not. As stated above, unless Plaintiff can prove with admissible evidence that Ms. Arp acted with actual malice or with actual intent to cause injury, she is entitled to be immune from suit under the doctrine of official immunity. Plaintiff has not proven that Ms. Arp acted with actual malice, that is a "deliberate intention to do wrong." *Adams v. Hazelwood*, 271 Ga. 414 (1999). Neither has Plaintiff carried its burden of showing that Ms. Arp's actions were illegal or done with the intent to cause harm to Plaintiff.

Ms. Arp's actions may have been very unprofessional and may have shown ill will, but they were not intended to get back at Plaintiff or any of Plaintiff's members. The Mayor, Ms. Trimble, Mr. Oyer, Mr. Morton Ms. Thomas, Ms. Thompson, Mr. Martin, and the business associations formed by this group all took on the task of attacking Ms. Arp and her positions regarding the 2020 group, a DDA, parking and ultimately the proposed rezoning of the Plaintiff's property. Ms. Arp pushed back and argued with all of these people, not just Mr. Oyer, and in doing so was consistent in expressing and defending her philosophy. The Mayor and Ms. Thomas were part of the prior City administration that formed the 2020 group and they very strongly supported the formation of a DDA. Ms. Arp did not support the 2020 group or the formation of a DDA. The Mayor and Ms. Thomas also strongly supported Plaintiff's rezoning request. Ms. Arp did not support the rezoning request. These members of the City Administration are entitled to exercise their discretion in making decisions they think are best for the City of Blue Ridge and they don't always have to agree with one another. Ms. Arp's actions were no more biased than Ms. Thomas' or the Mayor's actions in defending their views and in their support of the 2020 group, the formation of a DDA, of Mr. Oyer or of Plaintiff's rezoning request. Ms. Arp's position regarding parking may have turned into a battle of wills, but it was more in response to the Mayor's position than to "get back" at Mr. Oyer. Ms. Arp perceived that the Mayor has singled out one of her friends (Ms. Thompson) to get limited parking outside of her business. Ms. Arp's position was that all of the

downtown parking should be limited in time or parking meters should be installed. A lot of City Council time was spent arguing a point of law regarding parking spaces.

The Court finds that Ms. Arp did not make any statement that she would never vote for any project in which Mr. Oyer was a part or that any project that involved Mr. Oyer would never be approved by City Council. The assertion that she made such statements, or any similar to those statements, comes out of rhetorical questions and angry declarations made during the February 10 and 24, 2015 Council meetings after the proposed rezoning was defeated. Given the heated and rapid exchange during the meetings, the Court finds that Ms. Arp did not endorse the statements by being silent. Additionally, other testimony that she made any such a statements is not considered credible by this Court.

As for the specific vote to deny the rezoning request, Ms. Arp acted in her official capacity as a City Council Member. In making this decision, she did not violate the law and her actions were objectively reasonable. Plaintiff did not prove that because of bias or ill will toward Mr. Oyer she was not capable of making an independent decision about this decision. Her vote was consistent with her belief that she was protecting residential areas and the citizens who live in downtown Blue Ridge from the encroachment of commercial development. She pointed out that she considered the recommendation of the Planning Commission, but that she did not agree with them. She reasoned that she followed the six standards required to be considered by The City of Blue Ridge Ordinance. She looked at the Staff Analysis of the zoning request and decided that it did not support the rezoning of the property.

Furthermore, she believed that a group of business people were trying to change the face of downtown Blue Ridge in ways that a majority of the residents did not support. During more than one meeting she expressed her frustration with what she called "a select group" and she asserted that she would take what they said into consideration, but the ultimate decision was up to City Council. She avowed that she was going to do things right according to state law and the Charter. She perceived that the people who had been there their whole lives and the people who actually lived in the city were not being represented by the group that attended Council Meetings every month. She expressed her position

regarding these matters right after being sworn in and in several of the contentious meetings that were held during the first year of her term. Her actions do not show an actual intent to do harm to Plaintiff.

Plaintiff argues that Ms. Arp should not have voted on the motion because she expressed an opinion in an email that "It is my opinion that it would not be wise decision to change any city ordinances to satisfy one individual, otherwise we would continually have to do the same for anyone with the same request. It would totally open up a can of worms". She further stated:

The idea of purchasing property and then trying to get it rezoned to satisfy your agenda is the wrong approach. It is my opinion that everything that is residential at this time should stay residential and everything that is commercial should stay commercial, basically the current zoning needs to stay as is throughout the city. This city is a small town and we need to be very careful to protect the small town feel as well as the lifelong residents of the city.

This email was sent to Council members and the Mayor on September 2014 in response to a request by Ms. Kristy Petrillo to rezone residential property to a commercial classification. The policy expressed by Ms. Arp in this email is consistent with her overall philosophy about the future growth of downtown Blue Ridge. Just because a Council Member has preconceived notions concerning policy issues does not necessarily disqualify that person in absence of showing that she is not capable of judging a particular controversy fairly on the basis of its own merits. Public officials are entitled to personal opinions and to hold political views related to their office. Often the positions they take are the ones that get them elected to office. Again, Ms. Arp considered objectively reasonable and legal factors which supported her vote to deny Plaintiff's application.

On February 20, 2015, the Mayor signed and filed a "Veto" of the action of the City Council regarding Plaintiff's Application.

On February 23, 2015, Plaintiff filed with the Clerk of the City of Blue Ridge, a Constitutional Challenge to the existing zoning classification of its property.

The February 24, 2014 City Council Meeting

In her efforts to support Plaintiff's project, the Mayor defied the advice of the city attorney and called a special meeting with the purpose of convincing Council to revisit the request to rezone Plaintiff's property. This was another contentious meeting with Ms. Thomas and the Mayor both taking the position that the Mayor had the authority to veto Council's vote. Mr. Kendall, Mr. Herndon, Mr. Pack and Ms. Arp all took the position that the mayor did not have this authority. Early in this meeting, Mr. Kendall made a motion that the issue not be revisited. The Motion was seconded by Ms. Arp. Then Ms. Thomas insisted that the Mayor had already vetoed the decision, so "all she has to do now is have one supporting vote on her veto and then you guys can take her to court to determine otherwise." Ms. Arp read an email from the City Attorney. In that email the Attorney pointed out that on February 23, 2015, Plaintiff filed a constitutional challenge to the current zoning of its property and the denial of the rezoning application. It was the attorney's "extremely strong legal recommendation" that the Council not reopen or revisit the rezoning decision regarding the Ada Street, LLC property. He stated that such an action would expose the City to needless legal expense. He also gave the opinion that the "Mayor's ultra vires veto of the legislative decision of the City Council...is unauthorized under the City Charter" and was void. The Mayor argued that the City Attorney was incorrect and that a judge would just have to decide the issue. She continued to urge Council to reconsider the decision. The Mayor and Mr. Oyer expressed the opinion that Ms. Arp should not have voted on the decision because of a statement she made in an email regarding the rezoning application of Ms. Petrillo. Mr. Richard Calhoun, an attorney representing Ada Street LLC spoke and supported the Mayor's position that she could veto the vote. He urged Council to take another look at the project and approve it. A vehement discussion and argument between numerous people began about the rezoning issue. Many of the same arguments were made in favor of the project by the same people who appeared at the February 10, 2015 meeting and there were several new people speaking in favor of the project. Several people spoke against the project for the same reasons given during the February 10, 2015 meeting. Finally, the Mayor asserted that she could veto the vote and asked for a vote.

Ms. Thomas said "I support your veto and hope that it will come back before the council and let's look at it and vote again." The Mayor called for a vote and Ms. Thomas voted in favor of the veto. All other Council members took the position that the Mayor did not have the authority to veto the vote. Someone asked, what happens now and Mr. Oyer answered that it will be turned over to the attorneys and it will cost "1-2-3", a lot of money individually.

On March 12, 2015, Plaintiff filed this Appeal and Complaint in Equity.

This Court, in a previous order ruled that the Mayor's veto was not allowed under the Code and had no effect.

The Court has considered the Minutes and recordings of two other Meetings of City Council. These Meetings were conducted after Plaintiff filed another application to rezone its property. This application and how it has been handled by the City Council may be the subject of another Complaint filed by Plaintiff which has raised a constitutional challenge to the City's zoning laws. Ms. Arp's actions regarding that application does not change this Court's findings of fact and conclusions of law regarding this case.

CONCLUSION

For all of the reasons stated above, this Court finds that Defendant, Ms. Angela Arp is entitled to official immunity and that therefore, Counts II and V of Plaintiff's Complaint, as amended, and all prayers for relief under those counts are hereby DISMISSED.

SO ORDERED, this 11 day of October, 2016.



Martha C. Christian
Judge Fannin County Superior Court
By Assignment