



AlaFile E-Notice

38-CV-2023-900255.00

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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF HOUSTON COUNTY, ALABAMA

DAVID F. DEL VECCHIO ET AL V. BOARD OF COMMISSIONERS OF THE CITY OF DO
38-CV-2023-900255.00

The following complaint was FILED on 6/26/2023 11:36:31 AM

Notice Date: 6/26/2023 11:36:31 AM

CARLA H. WOODALL
CIRCUIT COURT CLERK
HOUSTON COUNTY, ALABAMA
P.O. DRAWER 6406
DOTHAN, AL, 36302

334-677-4859

COVER SHEET
CIRCUIT COURT - CIVIL CASE
(Not For Domestic Relations Cases)

Cas
38

Date of Filing:
06/26/2023

Judge Code:

GENERAL INFORMATION

IN THE CIRCUIT COURT OF HOUSTON COUNTY, ALABAMA

DAVID F. DEL VECCHIO ET AL v. BOARD OF COMMISSIONERS OF THE CITY OF DOTHAN, ALABAMA ET AL

First Plaintiff: ☐ Business ☒ Individual
☐ Government ☐ Other

First Defendant: ☐ Business ☐ Individual
☒ Government ☐ Other

NATURE OF SUIT: Select primary cause of action, by checking box (check only one) that best characterizes your action:

TORTS: PERSONAL INJURY

- ☐ WDEA - Wrongful Death
- ☐ TONG - Negligence: General
- ☐ TOMV - Negligence: Motor Vehicle
- ☐ TOWA - Wantonness
- ☐ TOPL - Product Liability/AEMLD
- ☐ TOMM - Malpractice-Medical
- ☐ TOLM - Malpractice-Legal
- ☐ TOOM - Malpractice-Other
- ☐ TBFM - Fraud/Bad Faith/Misrepresentation
- ☐ TOXX - Other:

TORTS: PERSONAL INJURY

- ☐ TOPE - Personal Property
- ☐ TORE - Real Property

OTHER CIVIL FILINGS

- ☐ ABAN - Abandoned Automobile
- ☐ ACCT - Account & Nonmortgage
- ☐ APAA - Administrative Agency Appeal
- ☐ ADPA - Administrative Procedure Act
- ☐ ANPS - Adults in Need of Protective Service

OTHER CIVIL FILINGS (cont'd)

- ☐ MSXX - Birth/Death Certificate Modification/Bond Forfeiture Appeal/Enforcement of Agency Subpoena/Petition to Preserve
- ☐ CVRT - Civil Rights
- ☐ COND - Condemnation/Eminent Domain/Right-of-Way
- ☐ CTMP - Contempt of Court
- ☐ CONT - Contract/Ejectment/Writ of Seizure
- ☐ TOCN - Conversion
- ☒ EQND - Equity Non-Damages Actions/Declaratory Judgment/Injunction Election Contest/Quiet Title/Sale For Division
- ☐ CVUD - Eviction Appeal/Unlawful Detainer
- ☐ FORJ - Foreign Judgment
- ☐ FORF - Fruits of Crime Forfeiture
- ☐ MSHC - Habeas Corpus/Extraordinary Writ/Mandamus/Prohibition
- ☐ PFAB - Protection From Abuse
- ☐ EPFA - Elder Protection From Abuse
- ☐ QTLB - Quiet Title Land Bank
- ☐ FELA - Railroad/Seaman (FELA)
- ☐ RPRO - Real Property
- ☐ WTEG - Will/Trust/Estate/Guardianship/Conservatorship
- ☐ COMP - Workers' Compensation
- ☐ CVXX - Miscellaneous Circuit Civil Case

ORIGIN: F ☒ INITIAL FILING

R ☐ REMANDED

**A ☐ APPEAL FROM
DISTRICT COURT**

**T ☐ TRANSFERRED FROM
OTHER CIRCUIT COURT**

O ☐ OTHER

HAS JURY TRIAL BEEN DEMANDED? ☐ YES ☒ NO

Note: Checking "Yes" does not constitute a demand for a jury trial. (See Rules 38 and 39, Ala.R.Civ.P., for procedure)

RELIEF REQUESTED: ☐ MONETARY AWARD REQUESTED ☒ NO MONETARY AWARD REQUESTED

ATTORNEY CODE:

LUD001

6/26/2023 11:36:27 AM

Date _____

/s/ DAVID ALAN LUDDER

Signature of Attorney/Party filing this form

MEDIATION REQUESTED: ☐ YES ☒ NO ☐ UNDECIDED

Election to Proceed under the Alabama Rules for Expedited Civil Actions: ☐ YES ☐ NO



IN THE CIRCUIT COURT OF HOUSTON COUNTY, ALABAMA

**DAVID F. DEL VECCHIO, PEGGY
R. DEL VECCHIO, MICHAEL DEL
VECCHIO, WILLIAM P. NOVACK,
TARA NOVACK, and ANTHONY
KEITH,**

Plaintiffs,

v.

Civil Action No.

**BOARD OF COMMISSIONERS OF
THE CITY OF DOTHAN, ALABAMA
and CITY OF DOTHAN, ALABAMA,**

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

NATURE OF ACTION

1. This is an action for declaratory and injunctive relief concerning the City of Dothan, Alabama's and Board of Commissioners of the City of Dothan, Alabama's failure to comply with statutory procedures required in advance of the Board's approval of the siting of a proposed solid waste management facility.

JURISDICTION AND VENUE

2. This action arises under Ala. Code 1975 §§ 6-6-226 and 6-6-230.

3. This Court has jurisdiction under Ala. Const. 2022 § 142(b), and Ala. Code 1975 §§ 6-6-222 and 12-11-31.

4. This Court is the appropriate venue for this action under Ala. Code 1975 § 6-3-7.

PARTIES

5. Defendant Board of Commissioners of the City of Dothan, Alabama is the elected governing and legislative body of the City of Dothan, Alabama. Code of Ordinances, City of Dothan, Alabama, Sec. 1-2. Pursuant to Ala. Code 1975 §§ 22-27-48 and 22-27-48.1 (2022 Cum. Supp.), the affected local governing body, in this case the Board of Commissioners of the City of Dothan, Alabama, must approve or disapprove the siting of any new solid waste management site and any modified existing solid waste management site within its geographic jurisdiction and must observe all applicable statutory requirements in doing so.

6. Defendant City of Dothan, Alabama, acting through its Public Works Department, prepared and submitted to the Board of Commissioners of the City of Dothan, Alabama an application for the siting of a proposed solid waste management facility in the City of Dothan.

7. Plaintiffs David F. Del Vecchio and Peggy R. Del Vecchio own and reside on property in the City of Dothan, Houston County. Their property

adjoins the southern boundary of the solid waste management facility proposed by the City of Dothan, Alabama.

8. Plaintiff Michael Del Vecchio owns and resides on property located in the City of Dothan, Houston County with his wife and three children. His property adjoins the southern boundary of the solid waste management facility proposed by the City of Dothan, Alabama.

9. Plaintiffs William P. Novack and Tara Novack own and reside on property located in the City of Dothan, Houston County. Their property is approximately 732 feet from the southern boundary of the solid waste management facility proposed by the City of Dothan, Alabama.

10. Plaintiff Anthony Keith resides on property located in the City of Dothan, Houston County with his wife and two children. His residence is approximately one-half mile from the solid waste management facility proposed by the City of Dothan, Alabama. Mr. Keith lives in the Burkett Subdivision, the population of which is nearly 100 percent Black.

STANDING ALLEGATIONS

11. Plaintiffs are concerned that the approval of the siting of a solid waste management facility proposed by the City of Dothan, Alabama by the Board of Commissioners of the City of Dothan, Alabama will result in its operation and the following adverse effects:

A. the emission of fugitive dust that will be carried by wind currents to their properties and will be deposited on vehicles, outdoor furniture, porches, houses, etc. which will require periodic cleaning; and that will diminish their use and enjoyment of their properties;

B. the emission of unpleasant odors that will be carried by wind currents to their properties and cause ill-effects such as headaches, nausea, loss of appetite and loss of sleep; that require that windows and doors remain closed; and that discourage outdoor activities such as gardening, barbeques, vehicle repairs, play, etc.; and that will diminish their use and enjoyment of their properties;

C. the attraction and breeding of vultures, flies, rats, racoons, coyotes, and other animals, reptiles, and insects that will transport disease organisms to their properties or pose other threats to life or property (including livestock) on their properties; and that will diminish their use and enjoyment of their properties;

D. disturbing noises from the operation of trucks, bulldozers, and other heavy machinery, including backup alarms and banging tailgates, that will diminish their use and enjoyment of their properties; and

E. a decline or suppression of the value of their properties.

12. These concerns are well-founded because plaintiffs have experienced these adverse effects at their properties from a similar solid waste management facility operated by the City of Dothan, Alabama.

13. The siting criteria for solid waste management facilities in Ala. Code 1975 § 22-27-48(c) (2022 Cum. Supp.) are designed to protect the adjacent property owners and the public from potential adverse impacts resulting from the siting of solid waste management facilities.

14. Plaintiffs cannot be certain that the siting of the proposed solid waste management facility will comply with the criteria in Ala. Code 1975 § 22-27-48(c) (2022 Cum. Supp.) because the application for approval of the siting of the facility was incomplete and the Board of Commissioners of the City of Dothan, Alabama did not comply with the procedural requirements in Ala. Code 1975 §§ 22-27-48 and/or 22-27-48.1 (2022 Cum. Supp.), including proper notice to adjacent property owners and the public.

15. Had adjacent property owners and members of the public been properly informed about the application and siting criteria at a meaningful time, additional comments at the June 12, 2023 public hearing may have resulted in the Board of Commissioners of the City of Dothan, Alabama receiving additional information that may warrant disapproval of the application.

16. The declaratory and injunctive relief requested from the Court herein will prevent the Board of Commissioners of the City of Dothan, Alabama from approving the siting of the City of Dothan's proposed solid waste management facility and thereby prevent the operation of the proposed solid waste management facility and the harms about which plaintiffs are concerned, at least until after the City of Dothan, Alabama submits a complete application to the Board and the Board meticulously complies with the applicable procedural requirements of Ala. Code 1975 §§ 22-27-48 and/or 22-27-48.1.

BACKGROUND ALLEGATIONS

17. On October 21, 2013, the Alabama Department of Environmental Management issued Solid Waste Disposal Facility Permit No. 35-06 (2013) to the City of Dothan to operate the City of Dothan Sanitary Landfill. The permitted area of this facility was 78 acres, including a 55-acre solid waste landfill unit (Cells L-1 through L-5) for the disposal of municipal solid waste and construction and demolition waste.

18. Solid Waste Disposal Facility Permit No. 35-06 (2013) had a scheduled expiration date of October 20, 2018.

19. On September 16, 2014, the Board of Commissioners of the City of Dothan, Alabama adopted Resolution No. 2014-246 in which the Board

“approved the proposed expansion of the facility boundary of the Dothan Landfill located at 1290 Burkett Road to approximately 536 acres.” The Resolution did not approve an application for a solid waste management facility to be submitted to the Alabama Department of Environmental Management.

20. On April 17, 2018, the City of Dothan submitted an application for renewal and modification of Solid Waste Disposal Facility Permit No. 35-06 (2013) to the Alabama Department of Environmental Management.

21. The April 17, 2018 application for renewal of Solid Waste Disposal Facility Permit No. 35-06 (2013) was filed with the Alabama Department of Environmental Management more than 180 days prior to the scheduled expiration date of Solid Waste Disposal Facility Permit No. 35-06 (2013). This timely filing extended the expiration date of Solid Waste Disposal Facility Permit No. 35-06 (2013) until the April 17, 2018 application for renewal was finally determined by the Alabama Department of Environmental Management. *See* Ala. Code 1975 § 41-22-19(b) (“When a licensee has made timely and sufficient application for the renewal of a license . . . the existing license does not expire until the application has been finally determined by the agency”) and ADEM Admin. Code r. 335-13-5-.02(4)

(applications for renewal shall be filed at least 180 days before the expiration date for existing permits).

22. The April 17, 2018 application for modification of Solid Waste Disposal Facility Permit No. 35-06 (2013) proposed to add 444.19 acres to the solid waste management facility boundary, including 20.6 acres for a new municipal solid waste landfill unit (Cells L-6 through L-8) and 15.0 acres for a new construction and demolition waste landfill unit.

23. On May 6, 2019, the Alabama Department of Environmental Management made a final determination on the City of Dothan's April 17, 2018 application for renewal and modification of Solid Waste Disposal Facility Permit No. 35-06 (2013). It issued Solid Waste Disposal Facility Permit No. 35-06 (2019) to the City of Dothan which renewed and modified Solid Waste Disposal Facility Permit No. 35-06 (2013) as requested by the City of Dothan.

24. On June 4, 2019, five of the plaintiffs named herein and two others filed a request for hearing with the Environmental Management Commission of the Alabama Department of Environmental Management under Ala. Code 1975 § 22-22A-7(c) to contest the issuance of Solid Waste Disposal Facility Permit No. 35-06 (2019).

25. On or before August 22, 2019, the City of Dothan commenced construction of the new 20.6-acre municipal solid waste landfill unit knowing that Solid Waste Disposal Facility Permit No. 35-06 (2019) was being contested before the Environmental Management Commission of the Alabama Department of Environmental Management and could be disapproved.

26. On June 12, 2020, the Environmental Management Commission of the Alabama Department of Environmental Management issued an order approving the issuance of Solid Waste Disposal Facility Permit No. 35-06 (2019) by the Alabama Department of Environmental Management.

27. On July 10, 2020, five of the plaintiffs named herein and one other appealed the June 12, 2020 decision of the Environmental Management Commission of the Alabama Department of Environmental Management approving Solid Waste Disposal Facility Permit 35-06 (2019) to the Montgomery County Circuit Court under Ala. Code 1975 § 22-22A-7(c)(6).

28. In August 2020, the City of Dothan commenced disposal of municipal solid waste in Cell L-6 of the new 20.6-acre municipal solid waste landfill unit knowing that the June 12, 2020 decision of the Environmental Management Commission of the Alabama Department of Environmental Management approving Solid Waste Disposal Facility Permit 35-06 (2019)

was under appeal before the Montgomery County Circuit Court and could be reversed.

29. On February 2, 2021, the Montgomery County Circuit Court affirmed the decision of the Environmental Management Commission of the Alabama Department of Environmental Management to approve Solid Waste Disposal Facility Permit No. 35-06 (2019). *Lewis v. Alabama Dep't of Env'tl. Mgmt*, No. CV-2020-900877.00 (Montgomery Cnty. Cir. Ct. Feb. 2, 2021) (Final Order).

30. On March 15, 2021, five of the plaintiffs named herein and one other appealed the Montgomery County Circuit Court's February 2, 2021 decision to the Alabama Court of Civil Appeals.

31. Between March 15, 2021 and October 7, 2021, the City of Dothan, Alabama continued to dispose of municipal solid waste in Cell L-6 of the 20.6-acre new municipal solid waste landfill unit knowing that the February 2, 2021 decision of the Montgomery County Circuit Court was on appeal to the Alabama Court of Civil Appeals.

32. On October 8, 2021, the Alabama Court of Civil Appeals reversed and remanded the decision of the Circuit Court, holding that the Board of Commissioners of the City of Dothan, Alabama "did not discharge its duty to examine and approve the application submitted to ADEM for the modification

of the permit” as required by Ala. Code 1975 § 22-27-48 (2017 Cum. Supp.) and that the Environmental Management Commission “acted beyond its statutory authority in approving the modification of the permit, and the trial court erred in concluding otherwise.” *Lewis v. Alabama Dep’t of Env’tl. Mgmt.*, No. 2200431, 2021 Ala. Civ. App. LEXIS 108, 2021 WL 4695168 (Ala. Civ. App. Oct 8, 2021).

33. Between October 8, 2021 and March 30, 2022, the City of Dothan, Alabama continued to dispose of municipal solid waste in Cell L-6 of the 20.6-acre new municipal solid waste unit knowing that the Alabama Court of Civil Appeals had ruled that the Montgomery County Circuit Court’s February 2, 2021 decision affirming the Environmental Management Commission of the Alabama Department of Environmental Management’s approval of Solid Waste Disposal Facility Permit No. 35-06 (2019) had been reversed.

34. On March 31, 2022, the Circuit Court of Montgomery County issued an Order on Remand decreeing that its February 2, 2021 Final Order is vacated and that the Environmental Management Commission’s order dated June 12, 2020 “approving the Department’s modification of Solid Waste Disposal Facility Permit No. 35-06 issued on May 6, 2019 is hereby REVERSED.” *Lewis v. Alabama Dep’t of Env’tl. Mgmt.*, No. CV-2020-900877.00 (Montgomery Cnty. Cir. Ct. Mar. 31, 2022) (Order on Remand).

35. Following entry of the Montgomery County Circuit Court's Order on Remand, Solid Waste Facility Permit No. 35-06 (2019) remained in effect only to the extent that it renewed Solid Waste Disposal Facility Permit No. 35-06 (2013), *i.e.*, it authorized a permitted facility area of 78 acres and operation of the existing 55-acre solid waste landfill unit (Cells L-1 through L-5).

36. On April 1, 2022, the Alabama Department of Environmental Management notified the City of Dothan as follows:

On March 31, 2022, the Circuit Court of Montgomery County vacated its previous order and reversed the Order of the Alabama Environmental Management Commission approving the modification of the City of Dothan's Solid Waste Disposal Facility permit (No. 35-06). This ruling means that until the City obtains a permit for the new cells, the City may not dispose of solid waste in Cells L-6 – L-8 of the Municipal Solid Waste Landfill nor the Construction & Demolition Landfill. As of now, the City must follow the closure requirements for these areas as required by ADEM Admin. Code 335-13-4-30.

37. On April 1, 2022, the City of Dothan, Alabama ceased the disposal of municipal solid waste in Cell L-6 of the new 20.6-acre municipal solid waste landfill unit and commenced disposal of municipal solid waste at a landfill operated by a private entity outside the City of Dothan.

38. On April 13, 2022, Governor Kay Ivey signed into law Ala. Act No. 2022-338. The Act amended Ala. Code 1975 § 22-27-48 to require that affected local governing bodies approve or disapprove the siting of new or

modified existing solid waste management sites rather than approve or disapprove applications for new or modified permits to the Alabama Department of Environmental Management.

39. On March 31, 2023, Tommy Wright, Public Works Director for the City of Dothan, Alabama submitted a memorandum to the Board of Commissioners of the City of Dothan, Alabama including information “regarding the siting of a new solid waste management facility” required by Ala. Code 1975 § 22-27-48.1(c) (2022 Cum. Supp.) and attaching a draft Alabama Department of Environmental Management permit application form. The application form identifies a proposed facility size of 522.19 acres (including the 78-acre existing facility), a 53.6-acre existing municipal solid waste disposal area, a 4.0-acre existing (inactive) construction and demolition waste disposal area, a 20.5-acre new municipal solid waste disposal area, and a 14.1-acre new construction and demolition waste disposal area.

40. On April 4, 2023, the Board of Commissioners of the City of Dothan, Alabama adopted Resolution No. 2023-119 in which the Board resolved as follows:

Section 1. That the City of Dothan proceed with all steps necessary to carry out the proposed expansion to the facility boundary of the Dothan Landfill.

Section 2. That the City of Dothan is authorized to provide notice to adjacent property owners of the proposed action.

Section 3. That the City of Dothan is authorized to provide notice to the public of the public awareness meeting scheduled for May 8, 2023, at Andrew Belle Recreation Center.

Section 4. That the City of Dothan is authorized to provide notice to the public of the public hearing scheduled for June 12, 2023, at the Dothan Opera House.

Section 5. That the application fee required to be submitted to the City under Alabama Code § 22-27-48(d) for the proposed expansion to the facility boundary of the Dothan Landfill be waived.

41. On April 25, 2023, R. Daniel Wells, Professional Engineer and Chief Operating Officer of CDG, Inc., issued a memorandum with attachments identified as “Addendum No. 1” to the draft Alabama Department of Environmental Management permit application form. The memorandum and Addendum No. 1 modifies the April 2023 Major Modification Plans (drawings) and April 2023 Operations Manual for the proposed solid waste management facility to reflect that the proposed facility boundary is reduced in size from 522.19 acres to 506.67 acres.

42. On May 30, 2023, Governor Kay Ivey signed into law Ala. Act No. 2023-290. The Act amended Ala. Code 1975 § 22-27-48 to clarify that new solid waste management facilities include those which add acreage to the

solid waste management facility boundary in an amount greater than 50 percent of the facility's pre-existing boundary.

43. The acreage proposed to be added within the boundary of the solid waste management facility proposed by the City of Dothan, Alabama is greater than 50 percent of the acreage within the facility's pre-existing 78-acre boundary.

**COUNT I
CITY'S APPLICATION FAILED TO
ADDRESS ALL STATUTORY CRITERIA**

44. Plaintiffs incorporate by reference paragraphs 1 through 43 hereof.

45. Ala. Code 1975 § 22-27-48.1(c) (2022 Cum. Supp.) provides:

Any person or entity seeking approval from the governing body of a county or municipality for the siting of a new solid waste management facility shall also submit to the governing body as part of its application, the application fee required under subsection (d) of Section 22-27-48 and all of the following information:

(1) A written document addressing each of the criteria described in subsection (c) of Section 22-27-48.

46. Ala. Code 1975 § 22-27-48(c) (2022 Cum. Supp.) provides:

(c) In determining whether to recommend approval of the proposed issuance of or modification of a new or existing solid waste management site, the governing body shall consider each of the following criteria:

* * *

(4) ***Costs and availability of public services***, facilities and improvements required to support a proposed facility and ***protect public health, safety, and the environment***.

(5) The impact of a proposed facility on public safety and ***provisions made to minimize the impact on public health*** and safety.

(6) The social and economic impacts of a proposed facility on the affected community, ***including changes in property values, and social or community perception***.

(Emphasis added).

47. On March 31, 2023, Tommy Wright, Public Works Director for the City of Dothan, Alabama submitted a written document to the Board of Commissioners of the City of Dothan, Alabama as part of an application for approval of the siting of a proposed solid waste management facility which purports to address the criteria described in Ala. Code 1975 § 22-27-48(c) (2022 Cum. Supp.).

48. The March 31, 2023 written document submitted to the Board of Commissioners of the City of Dothan, Alabama did not include any discussion of the costs and availability of public services to protect public health, safety, and the environment from subsurface fires at the proposed solid waste management facility; the provisions made to minimize the impact of odors, disease vectors, fugitive dust emissions, and loud disturbing noises on the health of the public from operations at the proposed solid waste management

facility; changes in property values, and social or community perceptions of the proposed solid waste management facility in the affected community, including the Burkett Subdivision the population of which is nearly 100 percent Black.

49. The March 31, 2023 written document submitted to the Board of Commissioners of the City of Dothan, Alabama did not comply with Ala. Code 1975 § 22-27-48.1(c) (2022 Cum. Supp.) and did not address all the criteria in Ala. Code 1975 § 22-27-48(c) (2022 Cum. Supp.).

COUNT II
BOARD'S ACKNOWLEDGMENT OF
APPLICATION RECEIPT WAS PREMATURE

50. Plaintiffs incorporate by reference paragraphs 1 through 43 hereof.

51. Ala. Code 1975 § 22-27-48.1(d) (2022 Cum. Supp.) provides:

After an applicant has submitted a ***complete application, including the items required in subsection (c)***, to the governing body of a county or municipality in which the proposed facility is to be located, ***the local governing body shall formally receive the application*** at its next regularly scheduled meeting. At this time, the public comment period begins.

(Emphasis added).

52. Ala. Code 1975 § 22-27-48.1(d) (2022 Cum. Supp.) makes the submission of a complete application, including the items required in Ala.

Code 1975 § 22-27-48.1(c) (2022 Cum. Supp.), a condition precedent to the local governing body formally receiving an application for approval of the siting of a solid waste management facility.

53. Ala. Code 1975 § 22-27-48.1(c) (2022 Cum. Supp.) provides:

Any person or entity seeking approval from the governing body of a county or municipality for the siting of a new solid waste management facility shall also submit to the governing body as part of its application, the application fee required under subsection (d) of Section 22-27-48 and all of the following information:

(1) ***A written document addressing each of the criteria described in subsection (c) of Section 22-27-48.***

* * *

(Emphasis added).

54. Ala. Code 1975 § 22-27-48(c) (2022 Cum. Supp.) provides:

(c) In determining whether to recommend approval of the proposed issuance of or modification of a new or existing solid waste management site, the governing body shall consider each of the following criteria:

* * *

(4) ***Costs and availability of public services***, facilities and improvements required to support a proposed facility and ***protect public health, safety, and the environment.***

(5) The impact of a proposed facility on public safety and ***provisions made to minimize the impact on public health*** and safety.

(6) The social and economic impacts of a proposed facility on the affected community, ***including changes in property values, and social or community perception.***

(Emphasis added).

55. On March 31, 2023, Tommy Wright, Public Works Director for the City of Dothan, Alabama submitted a written document to the Board of Commissioners of the City of Dothan, Alabama as part of an application for approval of the siting of a proposed solid waste management facility purporting to address the criteria described in Ala. Code 1975 § 22-27-48(c) (2022 Cum. Supp.).

56. The written document submitted to the Board of Commissioners of the City of Dothan, Alabama did not address of the costs and availability of public services to protect public health, safety, and the environment from subsurface fires at the proposed solid waste management facility; the provisions made to minimize the impact of odors, disease vectors, fugitive dust emissions, and loud disturbing noises on the health of the public from operations at the proposed solid waste management facility; changes in property values, and social or community perceptions of the proposed solid waste management facility in the affected community, including the Burkett Subdivision the population of which is nearly 100 percent Black.

57. The application submitted to the Board of Commissioners of the City of Dothan, Alabama was not a complete application.

58. On April 4, 2023, the Board of Commissioners of the City of Dothan, Alabama conducted a regularly scheduled meeting at which the Board formally acknowledged receipt of the application for approval of the siting of a proposed solid waste management facility submitted by Tommy Wright, Public Works Director for the City of Dothan, Alabama on March 31, 2023.

59. The Board of Commissioners of the City of Dothan, Alabama's April 4, 2023 formal acknowledgment of receipt of the application for approval of the siting of a proposed solid waste management facility did not comply with Ala. Code 1975 § 22-27-48.1(d) (2022 Cum. Supp.).

COUNT III BOARD FAILED TO PROVIDE LETTER NOTIFICATION TO ADJACENT PROPERTY OWNERS

60. Plaintiffs incorporate by reference paragraphs 1 through 43 hereof.

61. Ala. Code 1975 § 22-27-48.1(e)(1) (2022 Cum. Supp.) provides:

Not more than 10 days after the formal receipt of an application, ***the local governing body***, at the expense of the applicant, ***shall provide the following notice that an application for local approval of a new solid waste management facility has been received:***

a. Notice to each owner whose property is adjacent to a proposed site, sent by certified mail.

* * *

(Emphasis added).

62. On April 5, 2023, Tommy J. Wright, Public Works Director of the City of Dothan, provided notice by certified mail to certain adjacent property owners that an application for local approval of the siting of a proposed solid waste management facility had been submitted to the Board of Commissioners of the City of Dothan, Alabama.

63. The Board of Commissioners of the City of Dothan, Alabama did not provide notice by certified mail to adjacent property owners that an application for local approval of the siting of a proposed solid waste management facility had been received by the Board.

64. The notice mailed to adjacent property owners by Tommy J. Wright, Public Works Director of the City of Dothan, did not comply with Ala. Code 1975 § 22-27-48.1(e)(1) (2022 Cum. Supp.).

COUNT IV
LETTER NOTIFICATION TO ADJACENT PROPERTY
OWNERS FAILED TO DESCRIBE STATUTORY CRITERIA

65. Plaintiffs incorporate by reference paragraphs 1 through 43 hereof.

66. Ala. Code 1975 § 22-27-48.1(e)(1) (2022 Cum. Supp.) provides:

Not more than 10 days after the formal receipt of an application, ***the local governing body***, at the expense of the applicant, ***shall provide the following notice that an application for local approval of a new solid waste management facility has been received:***

a. Notice to each owner whose property is adjacent to a proposed site, sent by certified mail.

* * *

(Emphasis added).

67. Ala. Code 1975 § 22-27-48.1(e)(2) (2022 Cum. Supp.) provides:

Any printed notice by ***letter***, newspaper, or electronically on a website, shall contain at a minimum the following:

* * *

b. ***A description of the criteria the governing body will consider, as provided in subsection (c) of Section 22-27-48, in determining whether to approve or disapprove the site.***

* * *

(Emphasis added).

68. On April 5, 2023, Tommy J. Wright, Public Works Director of the City of Dothan, provided notice by certified mail to certain adjacent property owners that an application for local approval of the siting of a proposed solid waste management facility had been submitted to the Board of Commissioners of the City of Dothan, Alabama.

69. The April 5, 2023 notice letter provided to adjacent property owners by Tommy J. Wright, Public Works Director of the City of Dothan, did not contain a description of the criteria, as provided in Ala. Code 1975 § 22-27-48(c) (2022 Cum. Supp.), that the Board of Commissioners of the City of Dothan, Alabama will consider in determining whether to approve or disapprove the siting of a proposed solid waste management facility.

70. The April 5, 2023 notice letter provided to adjacent property owners did not comply with Ala. Code 1975 § 22-27-48.1(e)(2) (2022 Cum. Supp.).

**COUNT V
NEWSPAPER NOTIFICATION TO PUBLIC
FAILED TO DESCRIBE STATUTORY CRITERIA**

71. Plaintiffs incorporate by reference paragraphs 1 through 43 hereof.

72. Ala. Code 1975 § 22-27-48.1(e)(1) (2022 Cum. Supp.) provides:

Not more than 10 days after the formal receipt of an application, ***the local governing body***, at the expense of the applicant, ***shall provide the following notice that an application for local approval of a new solid waste management facility has been received:***

* * *

b. Notice to the general public provided by all of the following means:

1. Publishing a notice in a ***newspaper*** having general circulation, if one exists, within the affected community one day per week for a two-week period.

* * *

(Emphasis added).

73. Ala. Code 1975 § 22-27-48.1(e)(2) (2022 Cum. Supp.) provides:

Any printed notice by letter, ***newspaper***, or electronically on a website, shall contain at a minimum the following:

* * *

b. A description of the criteria the governing body will consider, as provided in subsection (c) of Section 22-27-48, in determining whether to approve or disapprove the site.

* * *

(Emphasis added).

74. On April 7, 2023, a notice that an application for local approval of the siting of a proposed solid waste management facility had been submitted to the Board of Commissioners of the City of Dothan was printed in the *Dothan Eagle*.

75. The notice printed in the *Dothan Eagle* on April 7, 2023 did not contain a description of the criteria, as provided in Ala. Code 1975 § 22-27-48(c) (2022 Cum. Supp.), that the Board of Commissioners of the City of

Dothan, Alabama will consider in determining whether to approve or disapprove the siting of a proposed solid waste management facility.

76. The notice printed in the *Dothan Eagle* did not comply with the requirements of Ala. Code 1975 § 22-27-48.1(e)(2) (2022 Cum. Supp.).

**COUNT VI
WEBSITE NOTIFICATION TO PUBLIC
FAILED TO DESCRIBE STATUTORY CRITERIA**

77. Plaintiffs incorporate by reference paragraphs 1 through 43 hereof.

78. Ala. Code 1975 § 22-27-48.1(e)(1) (2022 Cum. Supp.) provides:

Not more than 10 days after the formal receipt of an application, ***the local governing body***, at the expense of the applicant, ***shall provide the following notice that an application for local approval of a new solid waste management facility has been received:***

* * *

b. Notice to the general public provided by all of the following means:

* * *

3. Displaying a notice on the local governing body's ***website***, if available.

(Emphasis added).

79. Ala. Code 1975 § 22-27-48.1(e)(2) (2022 Cum. Supp.) provides:

Any printed notice by letter, newspaper, or electronically on a ***website***, shall contain at a minimum the following:

* * *

b. A description of the criteria the governing body will consider, as provided in subsection (c) of Section 22-27-48, in determining whether to approve or disapprove the site.

* * *

(Emphasis added).

80. On or about April 7, 2023, and subsequent days thereafter, a notice that an application for approval of the siting of a proposed solid waste management facility had been submitted to the Board of Commissioners of the City of Dothan, Alabama was published on the City of Dothan, Alabama's website.

81. The notice published on the City of Dothan, Alabama's website did not contain a description of the criteria, as provided in Ala. Code 1975 § 22-27-48(c) (2022 Cum. Supp.), that the governing body will consider in determining whether to approve or disapprove the siting of a proposed solid waste management facility.

82. The notice published on the City of Dothan's website did not comply with the requirements of Ala. Code 1975 § 22-27-48.1(e)(2) (2022 Cum. Supp.).

COUNT VII
BOARD FAILED TO APPROVE TIME AND
LOCATION OF PUBLIC AWARENESS SESSION

83. Plaintiffs incorporate by reference paragraphs 1 through 43 hereof.

84. Ala. Code 1975 § 22-27-48.1(f)(1) (2022 Cum. Supp.) provides:

Not more than 45 days after the local governing body formally receives an application, the applicant shall conduct a public awareness session in the county or municipality in which the proposed facility is to be located, during which the applicant shall provide general information on the design and operation of the proposed facility and address questions and concerns voiced by members of the affected community. ***The time, date, and location of the public awareness session must be approved by the local governing body.*** * * *

(Emphasis added).

85. On April 4, 2023, the Board of Commissioners of the City of Dothan, Alabama adopted Resolution No. 2023-119 wherein the Board approved a date for the public awareness session – May 8, 2023.

86. Resolution No. 2023-119 did not approve a time and location for the public awareness session.

87. The Board of Commissioners of the City of Dothan, Alabama did not approve a time and location for the public awareness session.

88. The Board of Commissioners of the City of Dothan, Alabama's approval of the scheduling of the May 8, 2023 public awareness session did

not comply with the requirements of Ala. Code 1975 § 22-27-48.1(f)(1) (2022 Cum. Supp.).

**COUNT VIII
NOTICE OF PUBLIC HEARING FAILED
TO DESCRIBE STATUTORY CRITERIA**

89. Plaintiffs incorporate by reference paragraphs 1 through 43 hereof.

90. Ala. Code 1975 § 22-27-48.1(g) (2022 Cum. Supp.) provides:

Not more than 45 days after the date of the public awareness session, the local governing body shall hold at least one public hearing. ***Notice of the time and place of any public hearing*** shall be given by publication in at least one ***newspaper*** of general circulation within the affected community at least 30 days, but not more than 45 days, prior to the proposed date of the hearing. ***Content of the notice shall be consistent with the notice requirements in subsection (e).*** * * *

(Emphasis added).

91. Ala. Code 1975 § 22-27-48.1(e)(2) (2022 Cum. Supp.) provides:

Any printed notice by letter, ***newspaper***, or electronically on a website, shall contain at a minimum the following:

* * *

b. ***A description of the criteria the governing body will consider, as provided in subsection (c) of Section 22-27-48, in determining whether to approve or disapprove the site.***

* * *

(Emphasis added).

92. On May 10, 2023, a notice of the time and place of a public hearing was printed in the *Dothan Eagle*.

93. The May 10, 2023 notice did not include a description of the criteria the governing body will consider, as provided in Ala. Code 1975 § 22-27-48(c) (2022 Cum. Supp.), in determining whether to approve or disapprove the siting of a proposed solid waste management facility.

94. The May 10, 2023 notice published in the *Dothan Eagle* did not comply with the requirements of Ala. Code 1975 § 22-27-48.1(g) (2022 Cum. Supp.).

COUNT IX BOARD DID NOT HOLD PUBLIC HEARING

95. Plaintiffs incorporate by reference paragraphs 1 through 43 hereof.

96. Ala. Code 1975 § 22-27-48.1(g) (2022 Cum. Supp.) provides:

Not more than 45 days after the date of the public awareness session, the local governing body shall hold at least one public hearing. * * *

(Emphasis added).

97. The Board of Commissioners of the City of Dothan, Alabama shall act on all matters as a body in regular or regular adjourned meetings. Code of Ordinances, City of Dothan, Alabama, Sec. 2-38. The Mayor shall take the

chair at the hour appointed for the commission to meet, and shall immediately call the members to order. Code of Ordinances, City of Dothan, Alabama, Sec. 2-71.

98. On June 12, 2023, Tommy J. Wright, Director of the City of Dothan Public Works Department, Bart Barefoot, Assistant Director of the City of Dothan Public Works Department, Steven Burgess, Manager of the Environmental Services Division of the City of Dothan Public Works Department, and R. Daniel Wells, Professional Engineer and Chief Operating Officer of CDG, Inc., held a public hearing on the application for the siting of a proposed solid waste management facility.

99. Two members of the Board of Commissioners of the City of Dothan, Alabama were present in the audience at the June 12, 2023 public hearing – John Ferguson representing District 4, and David Crutchfield representing District 6. All other commissioners – Kevin Dorsey representing District 1, Aristotle Kirkland representing District 2, Bradley Bedwell representing District 3, and Gantt Pierce representing District 5 – were absent from the hearing. In addition, Mark Saliba, Mayor of the City of Dothan, was absent from the hearing.

100. The Board of Commissioners of the City of Dothan, Alabama did not hold the June 12, 2023 public hearing.

101. The June 12, 2023 public hearing was not held in compliance with Ala. Code 1975 § 22-27-48.1(g) (2022 Cum. Supp.).

COUNT X
GROUND FOR PERMANENT INJUNCTIVE RELIEF

102. Plaintiffs incorporate by reference paragraphs 1 through 101 hereof.

103. The non-compliance with Ala. Code 1975 § 22-27-48.1 (2022 Cum. Supp.) by the City of Dothan, Alabama and Board of Commissioners of the City of Dothan, Alabama as described in Counts I through IX hereof creates a substantial threat of irreparable injury to the plaintiffs if the requested injunctive relief is not granted. The threat of irreparable injury is described in paragraphs 11 and 12 hereof.

104. The threatened injury to the plaintiffs described in paragraphs 11 and 12 hereof outweighs the harm that the requested injunctive relief may cause to the defendants.

105. Granting the requested injunctive relief will not disserve the public interest. Indeed, the requested injunctive relief will serve the public interest declared by the Legislature in Ala. Code 1975 § 22-27-48.1 (2022 Cum. Supp.).

DEMAND FOR RELIEF

Wherefore, plaintiffs demand the following relief:

A. A declaratory judgment that the application submitted to the Board of Commissioners of the City of Dothan, Alabama for approval of the siting of the solid waste management facility proposed by the City of Dothan, Alabama was not complete as alleged in Count I hereof.

B. A declaratory judgment that the Board of Commissioners of the City of Dothan, Alabama did not comply with the notice and public hearing requirements of Ala. Code 1975 § 22-27-48.1 (2022 Cum. Supp.) as alleged in Counts II through IX hereof.

C. A permanent injunction prohibiting the Board of Commissioners of the City of Dothan, Alabama from approving the siting of the solid waste disposal facility proposed by the City of Dothan, Alabama without first complying with the notice and public hearing requirements of Ala. Code 1975 § 22-27-48.1 (2022 Cum. Supp.).

D. Any other relief to which plaintiffs may be entitled.

Respectfully submitted,

s/ David A. Ludder

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