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December 17, 2010

Mr. Mark Woodley  
ALABAMA SURFACE MINING COMMISSION  
P.O. Box 2390  
Jasper, AL 35502-2390

**RE: Beaird Mining & Minerals, Inc. / Cordova Clay Company, Inc.  
(permit with Gunner Reilly)**

Dear Mr. Woodley:

I understand a question has arisen with regard to the propriety of the zoning in connection with the application of Gunner Reilly for a permit to mine coal inside the city limits of Cordova, Alabama. Enclosed is a copy of an Order of the Court dated January 4, 2001 along with the most recent Zoning Ordinance of the City of Cordova pertinent to this matter. You will note that the Zoning Ordinance predates the Order of the Court and that the Order of the Court was designed specifically to deal with this particular amendment. The Court ruled that Cordova could not target that property and zone the mine out of existence. Since that date there have been no other zoning ordinances attempting to zone that property to keep anyone from mining. Pursuant to the Order of the Court we believe the Zoning Ordinance which is attached hereto is inapplicable to the property in question for the permit applicant.

If you have any questions, please do not hesitate to be in touch.

Very truly yours,

JACKSON, FIKES, HOOD & BRAKEFIELD

  
Edward R. Jackson

ERJ/aw

Enclosure

cc: Mr. Gail Beard  
P. O. Box 100  
Cordova, AL 35550

Mr. Leslie Stephens  
PERC ENGINEERING, INC.  
P.O. Box 1712  
Jasper, AL 35502-1712

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AN ORDINANCE AMENDING THE 1958 ZONING  
ORDINANCE OF THE CITY OF CORDOVA,  
ALABAMA, WHICH AMENDMENT PROHIBITS  
THE MINING BY THE STRIP METHOD  
OF MINING OF ANY COAL, CLAY OR  
OTHER PRODUCT AT ANY PLACE WITH-  
IN THE CORPORATE LIMITS OF THE CITY  
OF CORDOVA, ALABAMA

BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF CORDOVA,  
ALABAMA, as follows:

1. Section 14 of that certain ordinance of the City of Cordova, Alabama, known as the 1958 Zoning Ordinance of the City of Cordova which was subsequently amended on the 21<sup>st</sup> day of October, 1969 and entitled "Zoning Ordinance", be and is hereby amended to that SECTION 14. USES, shall read as follows:

SECTION 14. USES

In each district no other use other than the types specified as "permitted" or "permitted on appeal", shall be allowed. (see Article 7). Uses specified as "permitted" shall be permitted upon application to the building inspector. Uses specified as "permitted on appeal" are exceptions, and no permit shall be issued for such uses except with the written approval of the Board of Adjustment and subject to such conditions as said Board may require to preserve and protect the character of the district.

Any use or structure existing at the time of the enactment or of subsequent amendment to this ordinance, but not in conformity with its provisions, may be continued with the following limitations: Any use or structure which does not conform to the provisions of this ordinance shall not be:

- a. Changed to another non-conforming use.
- b. Re-established after discontinuance for one year.
- c. Extended except in conformity to this ordinance.
- d. Rebuilt after fire or damage exceeding its full value above the foundation for tax purposes.

Notwithstanding any of the foregoing language of this Section, and notwithstanding any of the language of Article 7, the mining of coal, clay or other produces by the strip method of mining is hereby prohibited in any district or place situated in the corporate limits of the City of Cordova.

ADOPTED by the Mayor and City Council of the City of Cordova, Alabama,  
this 28th day of December, 2000.

Shelby Drummond  
MAYOR, CITY OF CORDOVA, ALABAMA

ATTEST:

City Clerk Elaine Stover  
CITY CLERK

IN THE CIRCUIT COURT OF WALKER COUNTY, ALABAMA

CITY OF CORDOVA,

PLAINTIFF,

VS.

BEAIRD MINING AND MINERALS,  
and ALABAMA SURFACE MINING  
COMMISSION

DEFENDANTS.

FILED

JAN 04 2001

CIVIL ACTION NUMBER:

*Paul D. Hancock*  
CIRCUIT CLERK, WALKER COUNTY, AL CV-00-746

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ORDER

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This cause is before this Court on the original complaint of the City of Cordova, ("Cordova"), seeking an injunction against Beard Mining and Mineral Co., Inc., ("Beard"), to prohibit Beard from conducting surface mining activities inside the city limits of Cordova. Beard answered the complaint denying the material allegations and asserting affirmative defenses. The affirmative defenses were that the regulation of surface coal mining activities in Alabama had been preempted and/or superceded by adoption of the Alabama Surface Mining Control and Reclamation Act and that the ordinance of Cordova was void for vagueness and ambiguity, was arbitrary, capricious, unlawful, and unreasonable. Beard also asserted that the Alabama Surface Mining Commission, ("ASMC"), was an indispensable party to this action because of the enforcement actions taken by it against Beard pursuant to Cordova's zoning ordinance prohibiting mining inside the city limits of Cordova.

Beard included with its answer, a counterclaim for inverse condemnation, a claim for

violation of its civil rights for taking its property without due process of law, and a request for temporary injunctive relief enjoining the enforcement by Cordova of its ordinance.

The ASMC was added as an indispensable party because of the enforcement action taken by it against Beaird requiring Beaird to cease surface coal mining activities inside the city limits of Cordova for failure to have permission of Cordova for such mining activities.<sup>1</sup>

Beaird filed a request with the ASMC for temporary relief. The statute governing temporary relief in front of the ASMC allows the petitioner to go to the circuit court for that temporary relief if it is denied or not acted upon within five days, whichever ever occurs first. ASMC did not act upon Beaird's request for temporary relief and Beaird then amended its counterclaim to include a request for temporary relief against the ASMC enjoining them from any enforcement of their permit requirement that Beaird have permission of Cordova to conduct surface mining activities inside its city limits.

While there are other issues between Beaird and the ASMC, the Court will decide only the issue applicable to the zoning ordinance of Cordova and its effect on the permit requirements of the ASMC and Beaird. In connection with that narrow issue, the Court requested and received briefs by all parties based upon an agreed stipulation of facts.

The Court, after carefully considering the briefs of the parties and after reviewing the applicable law, is of the opinion that Cordova cannot prohibit the conducting of surface coal mining activities by Beaird within its city limits under the ordinance before the Court, for the following reasons:

1. The adoption of the Alabama Surface Mining Control and Reclamation Act

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<sup>1</sup>There were two other enforcement actions taken against Beaird which are not at issue in this matter.

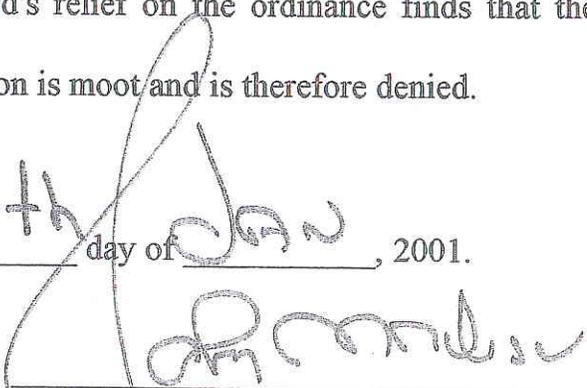
supercedes the 1969 amendment to the 1958 zoning ordinance of Cordova.<sup>2</sup>

2. Outright prohibition of an otherwise lawful activity is disfavored by the law.
3. Prohibition of surface mining activities is regulation as contemplated by the Alabama Surface Mining Control and Reclamation Act.

It is therefore the ORDER, JUDGMENT, and DECREE of this Court as follows:

1. The City of Cordova's ordinance is superceded by the Alabama Surface Mining Control and Reclamation Act.
2. The relief requested by Beaird as to the narrow issue of the enforcement of Cordova's zoning ordinance against it is granted, in that the City of Cordova shall not prohibit Beaird from mining within its city limits under its 1969 amendment to its 1958 zoning ordinance.
3. The injunctive relief requested by Cordova is denied.
4. The ASMC shall remove as a permit condition the requirement that Beaird obtain the permission of Cordova before conducting surface mining activities inside its city limits.
5. The Court having granted Beaird's relief on the ordinance finds that the counterclaim by Beaird for inverse condemnation is moot and is therefore denied.
6. Costs shall be taxed as paid.

DONE AND ORDERED this the 4th day of Jan, 2001.

  
Circuit Court Judge

<sup>2</sup>In this case the Court adopts the distinction between preemption and superceding as set forth in the brief of the ASMC.

CC:  
✓ S. Sullivan  
✓ E. Jackson