

And The Defense Wins

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DRI member [Stacy L. Moon](#), shareholder at F&B Law Firm, P.C., and the team at **F&B Law Firm, P.C.**, in Huntsville, Alabama, won dismissal of an appeal of a summary judgment in a case involving municipal zoning, state constitutional, and inverse condemnation claims. The primary issue was the denial of a liquor license application by a liquor license review committee and whether the standards applied were arbitrary or capricious.

In *Brazelton Properties, Inc., v. City of Huntsville, Alabama*, Madison County Circuit Court 2014-CV-902150-DAM (Alabama Court of Civil Appeals No. 2160043), plaintiff alleged the City of Huntsville was essentially manipulating parking, lighting, and landscaping requirements to prevent it from obtaining a lounge retail liquor license (essentially, permitting the sale of alcohol, with entertainment, but not serving food). Plaintiff had been denied the requested liquor license because the building in question did not have sufficient parking for its calculated occupancy load under a recent municipal ordinance. The building had previously operated under a different class of license, which was permitted to expire, and for which a different parking ordinance applied. Plaintiff argued it had expanded the parking lot and had sufficient parking spaces to meet the new municipal code requirement. However, plaintiff had expanded the parking lot without obtaining a construction permit or submitting required plans regarding lighting and landscaping (ordinances which had also been updated). Therefore, the City could not consider those new parking spaces. In addition to the parking space issue, much of the surrounding community opposed the license application. The liquor license review committee heard testimony regarding vandalism, excessive noise, and the behavior of certain patrons when they became intoxicated. Additionally, the fire department expressed concerns regarding the road in the area being blocked by improperly parked cars, restricting their access to condominiums in the area. The liquor license review committee denied the application, and the City Council affirmed that decision. Plaintiff then filed suit in state court, alleging that the denial constituted inverse condemnation and denial of equal protection under the Constitution of the State of Alabama, and sought common-law certiorari review of the denial as being arbitrary and capricious. Plaintiff sought compensatory and punitive damages, as well as attorneys' fees. The circuit court granted summary judgment on all of plaintiff's claims, and plaintiff appealed.

While the appeal was pending, plaintiff made changes to the floor plan of the building, which reduced its calculated occupant load. As a result of that change, plaintiff had sufficient parking under the ordinance. Plaintiff applied for the same type of liquor license. The committee again heard community opposition, but the parking situation had been resolved. The committee granted the liquor license application. Members of the community appealed that decision, and the City Council affirmed the decision granting the liquor license.

The City filed a motion to dismiss the appeal as moot and argued substantively that the summary judgment was proper. BPI opposed dismissal, arguing it had claims for violation of its right to due process and was entitled to damages, including attorneys' fees. Based on the briefing, the Alabama Court of Civil Appeals determined that plaintiff did not have any claims that had not been made moot by the decision to grant the license, and dismissed the appeal. As a result, plaintiff both had to comply with the municipal ordinance and failed to recover any alleged damages.

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