

**IN THE CHANCERY COURT OF HARRISON COUNTY, MISSISSIPPI  
SECOND JUDICIAL DISTRICT**

**BILOXI LODGING, LLC**

**PLAINTIFF/COUNTER-DEFENDANT**

**VS.**

**CAUSE NO. 24CH2:16-cv-00299**

**THE STATE OF MISSISSIPPI AND  
SECRETARY OF STATE DELBERT  
HOSEMANN, AS SECRETARY OF  
STATE AND AS LAND COMMISSIONER**

**DEFENDANTS/COUNTER-PLAINTIFFS**

**CITY OF BILOXI, MISSISSIPPI**

**APPLICANT FOR INTERVENTION**

**MOTION OF THE CITY OF BILOXI, MISSISSIPPI  
TO INTERVENE AS A PLAINTIFF**

COMES NOW, the City of Biloxi, Mississippi, a municipal corporation and political subdivision of the State of Mississippi, and moves to intervene as a plaintiff in this action to assert the causes of action set forth in its proposed complaint, a copy of the CITY OF BILOXI'S COMPLAINT being attached hereto as Exhibit "C" to this motion, on the following grounds:

1. The City should be permitted to intervene as a matter of right under *M.R.C.P.*, Rule 24 (a), because the city has an interest relating to the subject property and is so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest, and the City's interest cannot adequately be represented by existing parties.
2. Alternatively, the City should be permitted to intervene in the discretion of the Court under *M.R.C.P.*, Rule 24 (b), because the City's claims and defenses have questions of law and fact in common with the main action.
3. The City is entitled to collect ad valorem property taxes on the parcels of real property that are the subject of the main action. The State seeks, contrary to law

and facts, to change the boundaries of the subject parcels of property to eliminate all private ownership, which would cause material reductions in future tax collections.

4. The State of Mississippi, by previous actions related to the subject property, reduced, contrary to law and facts, the boundaries of the private property in the subject parcels, causing material reductions in tax collections, but the State failed to reimburse the City for their lost taxes as required by *Miss. Code 1972, § 29-15-9 (2)*, which states in part, "Any remaining funds derived from lease rentals shall be disbursed pro rata to the local taxing authorities for the replacement of lost ad valorem taxes, if any."
5. Peter Abide, as City Attorney, sent two letters to Ben Stone, Counsel for the Secretary of State, dated July 28, 2017 and August 11, 2017, inquiring whether the Secretary of State intends to replace lost ad valorem taxes that local authorities will lose if the Secretary of State prevails in the above-styled and numbered cause, but the City received no reply. True copies of these two letters are attached and made a part of this motion, as Exhibits "A" and "B", respectively.

Respectfully submitted this 7th day of September, 2017.

CITY OF BILOXI, Applicant for Intervention  
By: /s/ Gerald Blessey  
Gerald Blessey, MSB #3591

/s/ Peter C. Abide  
Peter Abide, MSB #1026  
*Attorneys for City of Biloxi*

PREPARED BY:

Peter C. Abide, MSB #1026  
City Attorney, City of Biloxi  
Currie Johnson & Myers, P.A.  
925 Tommy Munro Drive, Suite H  
Biloxi, MS 39532  
(228) 385-1010  
[pabide@curriejohnson.com](mailto:pabide@curriejohnson.com)

Gerald Blessey, MSB #3591  
Special Counsel for the City of Biloxi  
P. O. Box 4648  
Biloxi, MS 39535  
(228) 806-4755  
[blesseylaw@me.com](mailto:blesseylaw@me.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on this day I electronically filed the foregoing pleading or other paper with the Clerk of the Court using the MEC system which sent notification of such filing to all counsel of record who have appeared in this action.

THIS 7th day of September, 2017.

/s/ Gerald Blessey

CURRIE JOHNSON  
CURRIE JOHNSON & MYERS, P.A.

ATTORNEYS AT LAW

Peter C. Abide  
pabide@curriejohnson.com

925 Tommy Munro Drive  
Suite H  
Biloxi, Mississippi 39532  
Telephone: 228-385-1010  
Fax: 228-385-1011  
www.curriejohnson.com

JACKSON OFFICE:  
1044 River Oaks Drive  
Jackson, Mississippi 39232  
Telephone: 601-969-1010

July 28, 2017

Ben H. Stone, Esquire  
Balch & Bingham LLP  
1310 Twenty Fifth Avenue  
Gulfport, MS 39501-1931

RE: Biloxi Lodging, LLC v. State of Mississippi  
Cause No. 24CH2:16-CV-00299-SS

Dear Ben:

This letter is being sent on behalf of the City of Biloxi regarding the litigation referenced above ("the K&L Property"). The Secretary of State has filed a counterclaim claiming they are the owners of the K&L Property. According to the Amended Complaint filed on April 4, 2017 [Doc #20], Biloxi Lodging will seek reimbursement of the ad valorem taxes they have paid if the Secretary is successful in taking possession of the property. Presumably the City (along with the County and School District) would be required to refund such ad valorem taxes. If the Secretary is successful in taking possession, the City should not be penalized by having to refund taxes it previously collected for the K&L Property.

This letter is to inquire as to whether or not the Secretary will reimburse the City (or return any funds to the City) that the City may be required to refund to Biloxi Lodging. I look forward to hearing back from you.

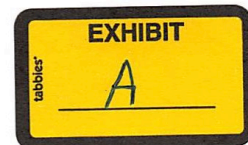
Sincerely,

CURRIE JOHNSON & MYERS, P.A.



Peter C. Abide

PCA/jma



CURRIE JOHNSON  
CURRIE JOHNSON & MYERS, P.A.

ATTORNEYS AT LAW

Peter C. Abide  
pabide@curriejohnson.com

925 Tommy Munro Drive  
Suite H  
Biloxi, Mississippi 39532  
Telephone: 228-385-1010  
Fax: 228-385-1011  
www.curriejohnson.com

JACKSON OFFICE:  
1044 River Oaks Drive  
Jackson, Mississippi 39232  
Telephone: 601-969-1010

August 11, 2017

Ben H. Stone, Esquire  
Balch & Bingham LLP  
1310 Twenty Fifth Avenue  
Gulfport, MS 39501-1931

RE: Biloxi Lodging, LLC v. State of Mississippi  
Cause No. 24CH2:16-CV-00299-SS

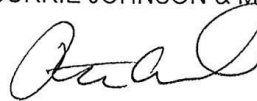
Dear Ben:

I am following up on my letter of July 28, 2017 (copy attached), concerning reimbursement of any lost ad valorem taxes related to the Biloxi Lodging lawsuit. Please favor us with a response by August 17.

I am copying the attorneys for other entities with a similar financial interest. Thank you for your attention to this matter.

Sincerely,

CURRIE JOHNSON & MYERS, P.A.



Peter C. Abide

PCA/jma  
Enclosure

cc: Tim Holleman, Esquire  
Henry Dick, Esquire  
Randi Mueller, Esquire



**EXHIBIT "C" TO MOTION TO INTERVENE**

**IN THE CHANCERY COURT OF HARRISON COUNTY, MISSISSIPPI  
SECOND JUDICIAL DISTRICT**

**BILOXI LODGING, LLC**

**PLAINTIFF/COUNTER-DEFENDANT**

**VS.**

**CAUSE NO. 24CH2:16-cv-00299**

**THE STATE OF MISSISSIPPI AND  
SECRETARY OF STATE DELBERT  
HOSEMANN, AS SECRETARY OF  
STATE AND AS LAND COMMISSIONER**

**DEFENDANTS/COUNTER-PLAINTIFFS**

**CITY OF BILOXI, MISSISSIPPI**

**APPLICANT FOR INTERVENTION**

**CITY OF BILOXI'S COMPLAINT**

COMES NOW the City of Biloxi, Mississippi, and files this its Complaint for declaratory judgment and other relief and in support thereof would show unto the court the following, to wit:

1. Plaintiff, City of Biloxi, Mississippi, is a Mississippi municipal corporation organized and existing as a political subdivision of the State of Mississippi and is a lawful taxing authority of the property that is the subject of the main action filed herein between Biloxi Lodging, LLC and the State of Mississippi and Secretary of State Delbert Hosemann, as Secretary of State and as Land Commissioner.

2. The State of Mississippi and the Secretary of State of the State of Mississippi, the Honorable Delbert Hosemann, may both be served with process through the office of the Attorney General of the state of Mississippi, the Honorable Jim Hood, at his office at 550 High Street Suite 1200 Jackson Mississippi 39201, or by electronic filing in the MEC filing system in this above-styled and numbered cause.

3. The City of Biloxi joins in, adopts by reference, and makes a part of this Complaint, as if fully stated herein, the averments of ¶¶ 1 through 19 (and all exhibits referenced therein) and the prayers for relief under Counts One (Declaratory Judgment) and Two (Estoppel) stated In Biloxi Lodging, LLC's Amended Complaint for Declaratory Judgment, as filed in the above-styled and numbered cause.

COUNT FOUR: PAYMENT OF LOST AD VALOREM TAXES

4. The allegations and averments set forth in the foregoing paragraphs 1-3 and all paragraphs and exhibits adopted therein by reference are incorporated by reference into this Count and made a part hereof.

5. The City of Biloxi is a lawful taxing authority with the power to levy ad valorem taxes on the subject parcels of property in this cause in their current and prior boundary descriptions. The Defendants/Counter-Plaintiffs, in previous boundary actions, diminished the taxable size of the subject parcels of property, thus diminishing the amount of taxes collectible on the fee simple upland (fastlands) private property that would have been subject to ad valorem taxes in those years. The Defendants/Counter-Plaintiffs did not replace the taxes lost by the City in those years. If the Defendants/Counter-Plaintiffs prevail in their Counterclaim, the subject parcels will be eliminated entirely from the tax rolls as fee simple upland (fastlands) private property that would have been subject to future ad valorem taxes.

6. The City requests the Court to order a money judgment against the Defendants/Counter-Plaintiffs to pay to the City of Biloxi from the Public Trust Tidelands Fund, pursuant to *Miss. Code of 1972*, §29-15-9 (2), within ten (10) days after the effective date of the final judgment or as soon thereafter as the Public Trust Tidelands

Fund has funds sufficient to pay the judgment, in a total amount to be determined by the Court, to replace the total sum of lost ad valorem taxes for each tax year after each of the boundary proceedings or actions of the State or the Secretary of State that were concluded prior to the filing of the Amended Complaint for Declaratory Judgment in the above-stated and numbered cause and that resulted in a reduction in the taxable square footage of all or part of the tax parcels on the fee simple private uplands (fastlands) of the subject property in this cause.

7. In the event the Court grants the relief requested by the State of Mississippi and the Secretary of State in their counterclaim in the current boundary proceeding (the above-styled and numbered cause), the City requests this Court to enter an order directing the Defendants/Counter-Plaintiffs to pay, no later than January 31<sup>st</sup> of each ad valorem tax year following the year of final judgment granting such relief or as soon after January 31<sup>st</sup> that the Public Trust Tidelands Fund has funds sufficient to pay, to the City of Biloxi, from the Public Trust Tidelands Fund, pursuant to *Miss. Code of 1972*, §29-15-9 (2), an amount each year equivalent to the lost taxes in each year, in order to replace lost ad valorem taxes for each tax year affected by a judgment in favor of the Defendants/Counter-Plaintiffs.

#### COUNT FIVE: ACCOUNTING

8. The allegations and averments set forth in paragraphs 1-7 and all paragraphs and exhibits adopted therein by reference are incorporated by reference into this Count and made a part hereof.

9. This Honorable Court should order the Secretary of State to make and produce an accounting of the following funds to this Court and the Plaintiffs:



- a. TIDELANDS LEASE RENTALS FROM SUBJECT PARCELS—i.e. all tidelands annual lease rental amounts in dollars per calendar year (tax year) that the State has collected from any current tenant and any prior tenant now or formerly holding a leasehold interest in lands within:
  - i. Current Boundaries of Disputed Parcels—i.e., within all or any part of the boundaries or alleged boundaries of the subject parcels currently in dispute in this cause, including lease rentals from
    - 1. all or any part of the upland portions of the parcels landward of the alleged boundary line between uplands and Public Trust Tidelands, and
    - 2. all or any part of the Public Trust Tidelands within the areas of the upland owner’s littoral rights seaward of the alleged boundary between uplands and Public Trust Tidelands; and
  - ii. Prior Boundaries of Disputed Parcels—i.e., within all or any part of the boundaries or alleged boundaries of all or part of the subject parcels in prior boundary proceedings involving all or any part of the parcels in dispute in the current cause, including lease rentals from
    - 1. all or any part of the upland portions of the parcels landward of the alleged boundary between uplands and Public Trust Tidelands, and
    - 2. all or any part of the Public Trust Tidelands within the areas of the upland owner’s littoral rights seaward of the alleged boundary between uplands and Public Trust Tidelands; and

- b. PUBLIC TRUST TIDELANDS FUND—i.e. an accounting by calendar (tax) year of the Public Trust Tidelands Fund since its inception, as created by *Miss. Code of 1972, § 29-15-9 (1)*, showing:
- i. the annual gross revenues of the fund, including, but not limited to, all tidelands lease rentals collected pursuant to *Miss. Code of 1972, § 29-1-107*;
  - ii. the annual administrative costs incurred by the Secretary of State that were deducted from the Public Trust Tidelands Fund under authority of *Miss. Code of 1972, § 29-15-9 (2)* or any other authority; and
  - iii. the annual amount, net of the Secretary of State's administrative costs, of funds that remained to be "disbursed pro rata to the local taxing authorities for the replacement of lost ad valorem taxes", as provided in *Miss. Code of 1972, § 29-15-9 (2)*.

10. This accounting is necessary in order for the Court and the parties to determine the amount of funds on hand in the Public Trust Tidelands Fund in each calendar (tax) year, net of the Secretary of State's administrative costs, that would have been, and will be, available to disburse pro rata to the local taxing authorities for the replacement of lost ad valorem taxes, as provided in *Miss. Code of 1972, § 29-15-9 (2)*.

Wherefore, premises considered, the City of Biloxi prays that this Honorable Court receive and file its Complaint, that process will issue to the State of Mississippi and the Secretary of state, Delbert Hosemann, as Secretary of State and as Land

Commissioner, and that this Court will immediately enter an order requiring the Secretary of State to make and produce forthwith to this Court and to the plaintiffs a detailed accounting as more fully defined in the above-numbered paragraph 9 of this Complaint; further, the City of Biloxi prays, upon a hearing of this cause, that the Court will enter final judgment:

1. Declaring and determining the boundary between the Public Trust Tidelands property and the property of Biloxi Lodging, LLC, to be the line established on the Final Map of Public Trust Tidelands as reflected on the Brown, Mitchell & Alexander, Inc., survey; or
2. Alternatively, adjudicating that the Defendants are estopped from claiming title to any portion of Biloxi Lodging, LLC's property as Public Trust Tidelands beyond the northern boundary of the tidelands or submerged lands described in the Biloxi Casino Tidelands Lease dated May 27, 1993 drafted by the State of Mississippi and the Secretary of State, and further adjudicating that the Biloxi Casio Tidelands Lease was entered into with the upland owner in accordance with his littoral (riparian) rights as defined in *Miss. Code of 1972*, § 45-19-9, as amended, and the Secretary of State's regulations requiring an applicant for a tidelands lease to own or control the uplands; and
3. Ordering a money judgment against the Defendants/Counter-Plaintiffs to pay to the City of Biloxi from the Public Trust Tidelands Fund, pursuant to *Miss. Code of 1972*, §29-15-9 (2), within ten (10) days after the effective date of the final judgment or as soon thereafter as the Public Trust Tidelands Fund has funds sufficient to pay the judgment, in a total amount to be determined by the Court, to

replace the total sum of lost ad valorem taxes for each tax year after each of the boundary proceedings or actions of the State or the Secretary of State that were concluded prior to the filing of the Amended Complaint for Declaratory Judgment in the above-stated and numbered cause and that resulted in a reduction in the taxable square footage of all or part of the tax parcels on the fee simple private uplands (fastlands) of the subject property in this cause; and

4. Ordering, in the event the Court grants the relief requested by the State of Mississippi and the Secretary of State in their counterclaim in the current boundary proceeding (the above-styled and numbered cause), the City requests this Court to enter an order directing the Defendants/Counter-Plaintiffs to pay, no later than January 31<sup>st</sup> of each ad valorem tax year following the year of final judgment granting such relief or as soon after January 31<sup>st</sup> that the Public Trust Tidelands Fund has funds sufficient to pay to the City of Biloxi, from the Public Trust Tidelands Fund, pursuant to *Miss. Code of 1972*, §29-15-9 (2), an amount each year equivalent to the lost taxes in each year.
5. The City prays for such other, further and general relief to which it may be entitled in law or equity.

\_\_\_\_\_Signature Page Follows\_\_\_\_\_

Respectfully submitted this \_\_\_th day of \_\_\_\_\_, 2017.

CITY OF BILOXI, Plaintiff

By: /s/ Gerald Blessey  
Gerald Blessey, MSB #3591

/s/ Peter Abide  
Peter Abide, MSB #1026  
*Attorneys for City of Biloxi*

PREPARED BY:

Peter C. Abide, MSB #1026  
City Attorney, City of Biloxi  
Currie Johnson & Myers, P.A.  
925 Tommy Munro Drive, Suite H  
Biloxi, MS 39532  
(228) 385-1010  
[pabide@curriejohnson.com](mailto:pabide@curriejohnson.com)

Gerald Blessey, MSB #3591  
Special Counsel for the City of Biloxi  
P. O. Box 4648  
Biloxi, MS 39535  
(228) 806-4755  
[blesseylaw@me.com](mailto:blesseylaw@me.com)

#### **CERTIFICATE OF SERVICE**

I hereby certify that on this day I electronically filed the foregoing Complaint with the Clerk of the Court using the MEC system which sent notification of such filing to all counsel of record who have appeared in this action.

THIS \_\_\_\_ day of \_\_\_\_\_, 2017.

/s/ Gerald Blessey  
Gerald Blessey