



IN THE CIRCUIT COURT OF LEE COUNTY, ALABAMA

STEVEN DIXON,

Plaintiff,

v.

CITY OF AUBURN, et al.

Defendants.

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CASE NO.: 43-CV-2021-900211.00

FIRST AMENDED COMPLAINT

COMES NOW Plaintiff Steven Dixon (“Dixon”), a Lee County, Alabama resident, and for his First Amended Complaint against Defendants City of Auburn (the “City”), Ron Anders (“Anders”), and Beth Witten (“Witten”) (collectively referred to as “Defendants”) states as follows:

JURISDICTION & VENUE

1. Plaintiff’s claims are solely brought pursuant to the laws and Constitution of the State of Alabama.

2. Venue is proper in Lee County because all Parties reside in Lee County, Alabama and all events giving rise to Dixon’s claims occurred in Lee County, Alabama.

PARTIES

3. Dixon is an adult resident of Lee County, Alabama and is over the age of 19 years old. Dixon resides in Auburn, Alabama.

4. The City is an Alabama municipal corporation.

5. Anders is an adult resident of Lee County, Alabama and is over the age of 19 years old. Anders currently serves as the City’s Mayor. Dixon’s claims for relief against Anders are against Anders in his official capacity.

6. Witten is an adult resident of Lee County, Alabama and is over the age of 19 years old. Witten serves as an Auburn City Council member serving Ward 3. Dixon's claims for relief against Witten are against Witten in her official capacity.

FACTS

7. Dixon incorporates and adopts all preceding paragraphs of this Amended Complaint, as if fully set out herein.

8. Dixon owns property located at 203 Green Street in Auburn, Alabama (the "Home"). Dixon utilizes the Home as his primary residence and family home.

9. The City of Auburn is charged with promulgating zoning ordinances affecting the citizens of Alabama.

10. On March 16, 2021, the Auburn City Council voted to enact Ordinance Number 3288 (the "Short-Term Rental Ban") banning the use of "Homestays" and "Short-Term Non-Primary Rentals" in every zoning district except for the following: Comprehensive Development District, Corridor Redevelopment District-Urban, -Suburban, -East and -West,¹ Medium Density Residential District, Neighborhood Redevelopment District, Redevelopment District, Rural District, Urban Core, College Edge Overlay District, and Urban Neighborhood-West, -East, and -South.

11. Dixon's Home is not within the approved zoning districts set out in the Short-Term Rental Ban.

12. The Short-Term Rental Ban arbitrarily and capriciously inhibits Dixon's use of his Home and his pursuit of lawful activity.

¹ According to the Statute, the Short-Term Rental Ban's application to Corridor Development District-West and the Neighborhood Redevelopment District are limited to "East of North Donahue Drive."

13. Prior to enactment of the Short-Term Rental Ban, neither the City nor the Auburn City Council enacted any laws or ordinances that prevented homeowners from leasing their property on a short-term basis. Therefore, any such rentals were permissible uses of the property. Prior to enactment, Auburn homeowners were free to use their property as they saw fit, including using it to earn income from renting on a short-term or long-term basis.

14. Dixon rents a portion of the Home on a short-term basis and has rented the Home on a short-term basis since 2018. Since beginning, Dixon has continually rented the Home on a short-term basis and has never abandoned this use.

15. As a result of Dixon's short-term rental of the Home, Dixon has received and continues to receive substantial income from the Home.

16. Dixon has several rental contracts upcoming that the Short-Term Rental Ban makes illegal. Dixon entered into contracts to rent the Home on a short-term basis prior to Defendants' Short-Term Rental Ban.

17. Dixon requested a business license in an attempt to comply with the Short-Term Rental Ban as a pre-existing, non-conforming use. Citing the Short-Term Rental Ban, the City denied this license despite its pre-existing lawful use.

18. On June 10, 2021, the City's attorney issued Dixon a letter setting out that the City would not permit Dixon to use his Home as he saw fit (see letter attached as Exhibit A). This letter sets out incorrect facts, but overall makes clear that any further attempts by Dixon to obtain a license or resolve this matter would be futile.

19. Subsequently, Auburn's City Manager claimed that the City is not currently issuing any business licenses for short-term rentals until certain amendments are passed related to the

Short-Term Rental Ban. None of the proposed amendments would allow Dixon to engage in short-term rental of his Home.

20. Dixon is subject to irreparable injury without this Court's intervention.

**COUNT I – IMPAIRMENT OF CONTRACTS
(All Defendants)**

21. Dixon reincorporates and adopts all preceding paragraphs of this Amended Complaint, as if fully set out herein.

22. Dixon possesses concrete and formed contracts with individuals to rent the Home on a short-term basis.

23. At the time Dixon entered into these contracts, Defendants did not place any restrictions on short-term rentals.

24. Dixon's entrance into the contracts to rent the Home was reasonable, since no law existed preventing or prohibiting Dixon's use of the Home.

25. Application of the Short-Term Rental Ban to Dixon will substantially impair the contracts, deprive Dixon of the benefit of those contracts, and render the contracts worthless.

26. Defendants are not acting for a legitimate public purpose. Defendants are not acting to remedy a general social or economic problem.

27. Defendants acted contrary to their duty to protect the City's public health, safety, morals, or general welfare.

28. Defendants' enactment of the Short-Term Rental Ban was not relationally related to a legitimate government interest or the City of Auburn's general police powers.

29. The Short-Term Rental Ban is not based on reasonable conditions and is not of the character appropriate for any public purpose.

30. Through their enactment of the Short-Term Rental Ban, Defendants substantially impaired the value of Dixon's contracts.

31. Therefore, the Defendants' actions violated Section 22 of the Alabama Constitution.

32. Dixon is at risk of imminent injury through Defendants' enforcement of the Short-Term Rental Ban.

WHEREFORE, premises considered, Dixon respectfully requests this Court to enjoin Defendants from enforcing the Short-Term Rental Ban as it substantially and unlawfully impairs valid contracts in violation of the Alabama Constitution.

**COUNT II – UNLAW TAKING WITHOUT JUST COMPENSATION
(All Defendants)**

33. Dixon reincorporates and adopts all preceding paragraphs of this Amended Complaint, as if fully set out herein.

34. Dixon lawfully rented the Home prior to enactment of the Short-Term Rental Ban.

35. Dixon's rental qualifies as a pre-existing, non-conforming use and, therefore, it is permitted by law.

36. Dixon's pre-existing lawful use of the Home for short-term rentals created a property interest in Dixon's favor.

37. Defendants' enforcement of the Short-Term Rental Ban against Dixon's home constitutes an unlawful taking of a vested property right.

38. Defendants' denial of Dixon's business license deprived Dixon of a concrete property right that existed prior to enactment of the Short-Term Rental Ban.

39. Defendants failed to compensate Dixon for this unlawful taking.

40. Defendants' conduct violated the Alabama Constitution by taking Dixon's property without just compensation.

WHEREFORE, premises considered, Dixon respectfully requests this Court to enjoin Defendants from enforcing the Short-Term Rental Ban as such enforcement would constitute an unlawful taking under the Alabama Constitution.

**COUNT III – INVASION OF PRIVACY
(All Defendants)**

41. Dixon incorporates and adopts all preceding paragraphs of this Amended Complaint, as if fully set out herein.

42. The Home is a sacred place protected by the Alabama Constitution.

43. Defendants' regulation of Dixon's Home—in both its use, character of use, and permitted guests on the property—constitutes an unlawful invasion of privacy in violation of Dixon's rights under the Alabama Constitution.

44. Defendants' regulation of conduct within Dixon's Home—that is legal and does not constitute a nuisance—unlawfully impedes on Dixon's right to privacy within his Home.

WHEREFORE, premises considered, Dixon respectfully requests this Court to enjoin Defendants from enforcing the Short-Term Rental Ban as it relates to Dixon and declare the Short-Term Rental Ban to be an unconstitutional infringement on Dixon's right to privacy.

**COUNT IV – DECLARATORY JUDGMENT
VIOLATION OF ALABAMA EQUAL PROTECTION
(All Defendants)**

45. Dixon reincorporates and adopts all preceding paragraphs of this Amended Complaint, as if fully set out herein.

46. The Short-Term Rental Ban violates the Alabama Constitution by treating like things differently, without a basis for doing so.

47. The Short-Term Rental Ban discriminates against short-term rentals and leases, without a just basis for doing so.

48. The Short-Term Rental Ban also discriminates against certain property owners, in favor of other property owners. This includes, for example, single neighborhoods wherein some homeowners may rent their property and others may not. Defendants' acts are arbitrary, capricious, unlawful, and have no conceivable or rational relationship to the health, safety, morals or general welfare of the citizens of the City of Auburn, Alabama. The actions have no legitimate government interest.

49. The Short-Term Rental Ban also discriminates against property owners' ability to use their property as they see fit, while providing favorable treatment to those that lease their properties on a long-term basis.

50. The Short-Term Rental Ban does not have a rational relationship to any legitimate government interest or to the City of Auburn's general police powers.

51. Furthermore, the Short-Term Rental Ban does nothing to advance the general welfare of the City of Auburn or its citizens. This is not fairly debatable.

WHEREFORE, premises considered, Dixon respectfully requests this Court to enter an order pursuant to Alabama Code § 6-6-223 that the Short-Term Rental Ban is unconstitutional, both on its face and as applied, due to Defendants' Equal Protection violation. Upon such a finding, Dixon respectfully requests this Court to enjoin Defendants from enforcing the Short-Term Rental Ban.

**COUNT V – DECLARATORY JUDGMENT
UNCONSTITUTIONAL RETROACTIVE LAW
(All Defendants)**

52. Dixon reincorporates and adopts all preceding paragraphs of this Amended Complaint, as if fully set out herein.

53. The Short-Term Rental Ban violates Dixon’s due process rights by creating an unconstitutional retroactive law.

54. The Short-Term Rental Ban is neither rational nor modest.

55. Dixon’s right to lease the Home as he saw fit vested prior to Defendants’ enactment of the Short-Term Rental Ban.

56. The Short-Term Rental Ban effectively destroys Dixon’s and other similarly situated homeowners’ ability to use their homes and properties as they see fit, a fundamental right under the Alabama Constitution.

WHEREFORE, premises considered, Dixon respectfully requests this Court to enter an order pursuant to Alabama Code § 6-6-223 that the Short-Term Rental Ban is unconstitutional, both on its face and as applied, due to Defendants’ violation of the Alabama Constitution’s prohibition against retroactive laws.

**COUNT VI – DECLARATORY JUDGMENT
UNCONSTITUTIONAL INVASION OF PRIVACY & VIOLATION OF ALABAMA EQUAL PROTECTION
(All Defendants)**

57. Dixon reincorporates and adopts all preceding paragraphs of this Amended Complaint, as if fully set out herein.

58. The City’s Zoning Regulations unconstitutionally regulate the use of “Single-Family” residential properties by narrowly defining “Family” and treating similarly situated citizen-families differently.

59. The City's definition of "Family" is as follows:

Two (2) or more persons residing in a single dwelling unit where all members are related by blood, marriage, adoption, or guardianship up to the second degree of consanguinity, plus one unrelated person in the Limited Development District, Neighborhood Conservation District, Development District Housing, Large Lot Residential District, Neighborhood Redevelopment District (west of North Donahue Drive), or the Corridor Redevelopment District – West (west of North Donahue Drive). For the purpose of this definition "consanguinity" means husbands and wives, brothers and sisters, parents and children, grandparents and grandchildren, uncles and aunts, nephews and nieces, and first cousins. In all other zoning districts where residential units are permitted the term "family" may include up to five (5) unrelated persons occupying a single dwelling unit.

60. Because of the City's definition of "Family" and the Defendants' enforcement of that definition, Dixon cannot use his own property as he sees fit.

61. This definition and the Defendants' application of it against Dixon unconstitutionally invades his right to privacy as the Alabama Constitution guarantees.

62. This definition and the Defendants' application of it against Dixon unconstitutionally deprives him of equal treatment under the law as the Alabama Constitution guarantees.

WHEREFORE, premises considered, Dixon respectfully requests this Court to enter an order pursuant to Alabama Code § 6-6-223 that the City's definition of "Family" is unconstitutional, both on its face and as applied, due to Defendants' violation of the Alabama Constitution's right to privacy and Equal Protection clause.

**COUNT VII – DECLARATORY JUDGMENT
PER SE UNCONSTITUTIONAL LAWS
(Defendant City of Auburn)**

63. Dixon reincorporates and adopts all preceding paragraphs of this Amended Complaint, as if fully set out herein.

64. The Auburn Municipal Code limits the Zoning Board of Adjustments ability to grant use variances.

65. The City's limit on the Zoning Board of Adjustments is *per se* unconstitutional, as an Alabama Appellant Court previously found in *Swann v. Board of Zoning Adjustment of Jefferson County, Alabama*, 459 So. 2d 896 (Ala. Civ. App. 1984).

WHEREFORE, premises considered, Dixon respectfully requests this Court to enter an order pursuant to Alabama Code § 6-6-223 that the City's ban on use variances is a *per se* unconstitutional limitation under the Alabama Constitution.

/s/ W. Allen Sheehan
W. Allen Sheehan (SHE096)
Blake Brookshire (BRO313)
Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on this the 3rd day of November, 2021, I have electronically filed the foregoing with the Clerk of the Court using the AlaCourt system, which will send notification to the following via email:

Randall Morgan, Esq.

Paul A. Clark, Esq.

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/s/ W. Allen Sheehan
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ATTORNEYS AT LAW

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EXHIBIT A

Patrick C. Davidson
Kelly Gallops Davidson
Jason A. Forbus

Arnold W. Umbach, Jr. (1942-2020)

Samantha Burt Copelan
Stephen L. Clay
Justin Clark

Email: Rick@DavidsonUmbach.com

June 10, 2021

Sent Via Certified Mail, First Class Mail and Electronic Mail

Mr. Randy Steven Dixon
203 Green Street
Auburn, AL 36830
Dixonrs85@gmail.com

RE: Short Term Rentals

Dear Mr. Dixon,

I am writing to you concerning your repeated attempts to obtain a license for the operation of a short-term rental in your home located at 203 Green Street. It has been brought to my attention that on or about May 25, 2021 you went to the City Planning Department to obtain a zoning certificate to operate a short-term rental from your home. As you are aware, the City's Short-Term Rental ordinance prohibits such activities in Neighborhood Conservation zones. As 203 Green Street is located in an NC-5 zone, the Planning Department correctly denied your request for a zoning certificate.

After being denied a zoning certificate by the Planning Department, you then went to the Revenue Office and attempted to obtain a Business License for a short-term rental at your home. You were informed by the Finance Department that you could not obtain a business license without first obtaining a zoning certificate.

In spite of staff in two departments making clear to you that you could not operate a short-term rental out of your home, you then proceeded to mail in an application for a residential rental business license. Because short-term rentals are not permitted in NC zones, you cannot obtain a zoning certificate and so your business license application is hereby denied.

It has been repeatedly made clear to you that the operation of a short-term rental out of your home is unlawful under the City's short-term rental regulations. Therefore, the City Manager will not be meeting with you or your attorney. If you, or your attorney, wish to have any further discussions on this subject you may have them with me. My contact information is above.

Sincerely,

A handwritten signature in blue ink, appearing to read 'PCD', with a long horizontal flourish extending to the right.

Patrick C. Davidson

cc: Megan McGowen Crouch, City Manager (via email)
Allison Edge, Finance Director (via email)
Katherine Robison, Acting Planning Director (via email)