

CITY OF BATON ROUGE/  
PARISH OF EAST BATON ROUGE

NUMBER 610359 SEC. "D"

19<sup>TH</sup> JUDICIAL DISTRICT COURT

VERSUS

PARISH OF EAST BATON ROUGE

STEPHEN C. MYERS

STATE OF LOUISIANA

**REPLY MEMORANDUM IN RESPONSE TO THE CITY OF BATON ROUGE/PARISH  
OF EAST BATON ROUGE'S MEMORANDUM IN OPPOSITION TO STEPHEN C.  
MYERS'S MOTION FOR SUMMARY JUDGMENT**

MAY IT PLEASE THE COURT:

Defendant/Plaintiff-in-Reconvention, STEPHEN C. MYERS ("**MYERS**"), files this Reply Memorandum in Response to the Memorandum in Opposition of his Motion for Summary Judgment (the "**Opposition Memorandum**") filed by the Plaintiff/Defendant-in-Reconvention, the CITY OF BATON ROUGE/PARISH OF EAST BATON ROUGE ("**the CITY-PARISH**") in the above-referenced matter and respectfully responds to certain arguments raised by the CITY-PARISH in the Opposition Memorandum as follows:

**I. THIS ISSUE CAN BE DECIDED ON SUMMARY JUDGMENT BECAUSE THE MATERIAL FACTS COMPRISING MYERS'S CLAIMS ARE NOT IN DISPUTE.**

On page 2 of its Statement of Undisputed Facts, the CITY-PARISH indicates that "if defendant does not so stipulate [that the tenants are unrelated], then there is a genuine issue of material fact which vitiates defendant's right to a summary judgment." However, the parties do *not* need to agree that the tenants are unrelated in order for this Court to consider granting a summary judgment in this matter. Whether the tenants are relation by blood, marriage or adoption is *not* a disputed fact for the purpose of determining whether the zoning regulation at issue is unconstitutional. In his Memorandum in Support of Motion for Summary Judgment ("**Memorandum**"), MYERS has set forth a plethora of arguments showing that the zoning regulation is unconstitutional *even if* it were determined that the tenants residing in the property are not related by blood, marriage or adoption. Furthermore, MYERS has standing to question the constitutionality of the zoning regulation because the CITY-PARISH has prosecuted him in multiple cases arising out of several properties which the CITY-PARISH contends are in violation of the zoning regulation.

II. THE CITY-PARISH HAS MISINFORMED THE COURT AS TO WHETHER CERTAIN MATERIAL FACTS ARE IN DISPUTE AND HAS MADE OTHER MISREPRESENTATIONS TO THE COURT.

In paragraph 4 its Statements of Undisputed Facts, the CITY-PARISH indicates, "The property is presently and at the time this proceeding was filed, occupied by more than two people who are not related." On the first page of its Opposition Memorandum, the CITY-PARISH also claims that MYERS has admitted that "the property is occupied by more than two persons who are not related, in violation of the zoning ordinance." The CITY-PARISH cites paragraphs 7 and 11 of MYERS's affidavit attached to his Motion for Summary Judgment as its authority for its assertion that MYERS concedes that the tenants residing in his property are not related by blood, marriage, or adoption. However, the plain language of those two paragraphs in no way indicates that MYERS has acknowledged that the tenants are unrelated. In fact, the CITY-PARISH conveniently omits paragraphs 15 and 16 of the affidavit, in which MYERS states that the CITY-PARISH determined that the tenants were not related based on the fact that the tenants had different last names and owned vehicles containing license plates from different states and, more importantly, that the CITY-PARISH never confirmed that the cohabitants of MYERS's property were not related by blood, marriage or adoption before it issued violation letters to MYERS. The CITY-PARISH has also auspiciously omitted from its Opposition Memorandum the deposition testimony of MYERS, wherein he indicates that he has absolutely no knowledge as to the nature of the relationships among his tenants. See, page 10, lines 24 and 25 and page 11, line 7 from the transcript of the deposition of Stephen C. Myers, which pertinent pages are incorporated herein and attached hereto as **Exhibit "1"**.

In addition, in paragraph 6 of its Statement of Undisputed Facts, the CITY-PARISH states that it has determined that the occupants of the property in question were not related and then cites paragraph 15 of MYERS's affidavit. Again, in a brazen attempt to misconstrue MYERS' words to strengthen its position, the CITY-PARISH has misled the Court by omitting pertinent portions of MYERS' statement. MYERS did not just make a statement that the CITY-PARISH has determined that the tenants are not related. Rather, MYERS indicates that the CITY-PARISH made a determination of the relationships between the tenants *based solely* on

the fact that on that the tenants had different last names and owned vehicles containing license plates from different states.

The CITY-PARISH's intent to misconstrue MYERS's affidavit is evidenced by the fact that the CITY-PARISH has included in its Statement of Undisputed Facts the following disclaimer:

It should be noted that while the City/Parish is of the opinion that it has correctly interpreted Mr. Myers' affidavit, exhibits, and memorandum to mean that he agrees the occupants of the residence are unrelated and in violation of the ordinance, it is possible that City/Parish has misinterpreted those documents.

While MYERS appreciates the CITY-PARISH's admission that it "may" have misinterpreted the documents submitted with MYERS's Motion for Summary Judgment, it is evident from the aforementioned omissions and misconstructions that the CITY-PARISH cannot *possibly* be of the opinion that it has correctly interpreted the documents filed by MYERS. MYERS's Memorandum in Support of his Motion for Summary Judgment is replete with language demonstrating that the CITY-PARISH never confirmed with certainty that the tenants were not related and instead relied on last names and license plates. Furthermore, as stated above, MYERS indicated during his deposition that he has "no idea" whether the tenants are related. *See*, Exhibit "1". Therefore, the CITY-PARISH's assertions (1) that MYERS has admitted that the tenants are not related and (2) that MYERS unconditionally agrees that the CITY-PARISH has made a determination that the tenants are not related, are wholly misleading.

Furthermore, although the CITY-PARISH on the first page of its Opposition Memorandum states that MYERS has alleged that the zoning regulation violates "virtually every provision of the State and Federal Constitutions," MYERS submits that he concisely and thoroughly discussed in his Memorandum *only* those constitutional provisions that are relevant to and infringed upon by the zoning regulation at issue.

**III. BASED ON THE PLAIN LANGUAGE OF THE ZONING REGULATION AT ISSUE, MYERS, AS THE OWNER OF THE PROPERTY, CANNOT BE IN VIOLATION OF THE ZONING REGULATION.**

The CITY-PARISH asserts on pages 2 and 3 of its Opposition Memorandum that MYERS, as the owner of the property in question, can be determined to be in violation of the zoning regulation. However, as explained on pages 8 and 9 of MYERS's Memorandum, the

definition of “family” contained in the zoning regulation is clear and unambiguous. Title 7, Chapter 2 of the Unified Development Code specifically defines “family” as “an individual or two (2) or more persons who are related by blood, marriage or legal adoption living together and occupying a single housekeeping unit with single culinary facilities; or not more than two (2) persons, or not more than four (4) persons (provided the owner lives on the premises) living together by joint agreement and occupying a single housekeeping unit with single culinary facilities on a nonprofit, cost-sharing basis.” Because the language of the definition of “family” found in the zoning regulation is unequivocal, the Court is required under La. C.C. art. 9 and La. R.S. § 1:4 to apply the definition as it is written, and the Court is not free to abandon a literal interpretation of the definition contained in the zoning regulation in order to pursue the legislative intent.

The definition of “family” does *not* automatically impose liability on the owner by virtue of his ownership of the property. Rather, it seems that the owner can violate the definition of “family” *only* if he also resides on the premises, under which circumstance he cannot allow more than three (3) other individuals to live on the property. The CITY-PARISH admits in paragraph 3 of its Statement of Undisputed Facts that MYERS is not, nor has he ever, occupied the Property. Therefore, as a matter of law, MYERS cannot be in violation of the Unified Development Code’s definition of “family.”

IV. **A FINDING THAT THE ZONING REGULATION IN QUESTION VIOLATES THE FEDERAL AND STATE CONSTITUTIONS DOES NOT REQUIRE AN OVERRULING OF THE VILLAGE OF BELLE TERRE DECISION.**

The CITY-PARISH on page 3 of its Opposition Memorandum next accuses MYERS of inviting the Court to “overrule countless federal and state jurisprudence and hold that residences cannot be limited to single families.” Such a representation of MYERS’s position is blatantly false. First, At no time during this litigation has MYERS ever stated that he is seeking a judgment from the Court declaring that certain areas within a municipality cannot be limited to single families. In fact, in his Memorandum, MYERS acknowledges that the United States Supreme Court’s decision in *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974), stands for the propositions that (1) a municipality can enact a definition of “family” without offending federal and state constitutional notions and (2) that zoning regulations limiting residential housing to

single families can further the government's goal of providing "quiet place[s]...where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for the people." See pages 21-22 of MYERS' Memorandum (quoting *Village of Belle Terre*, 416 U.S. at 9).

MYERS also notes that the CITY-PARISH is mistaken in its assertion that *Village of Belle Terre* disposed of all issues MYERS has raised in his Motion for Summary Judgment. MYERS contends that the zoning regulation in question should be declared unconstitutional *not* because a municipality does not have the authority to define the term "family" in its zoning regulation; rather, that definition must not offend the federal and state constitutions, or it is unenforceable. As set forth by MYERS in pages 22 and 23 of his Memorandum, the United States Supreme Court in *Moore v. City of East Cleveland*, 431 U.S. 494 (1977), which was decided three years after the Village of Belle Terre decision, indicated that it would not give municipalities unbridled discretion in determining the definition of "family" to be applied to zoning ordinances. While *Village of Belle Terre* allows a municipality to define the term "family" and apply it to its zoning ordinances, *Moore* requires that the municipality's definition of "family" must not violate the federal and state constitutions. Therefore, MYERS is NOT asking this court to overrule *Village of Belle Terre*; rather, MYERS is simply requesting that this Court consider the myriad of other cases which address this issue.

V. **EVEN IF THIS COURT WERE TO DETERMINE THAT THE ZONING REGULATION DOES NOT VIOLATE THE UNITED STATES CONSTITUTION, THIS COURT SHOULD RULE THAT THE ZONING REGULATION VIOLATES THE LOUISIANA CONSTITUTION.**

On page 4 of its Opposition Memorandum, the CITY-PARISH states that "the tests to determine whether a statute violates the Louisiana constitution are identical to the tests to determine violation of the federal constitution," and thus, "the effect of the decision in Belle Terre is that the ordinance does not violate the Louisiana constitution." The CITY-PARISH must have barely skimmed pages 39 through 47 of MYERS's Memorandum, wherein he discusses Justice William J. Brennan, Jr.'s observation that "more and more state courts are construing state constitutional counterparts of provisions of the Bill of Rights as guaranteeing citizens of their states even more protection than the federal provisions, even those identically phrased." William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90

Harv. L. Rev. 489 (1977). In fact, as explained in pages 41 through 47 of MYERS's Memorandum, the New Jersey Supreme Court determined that a similar definition of "family" within a zoning ordinance was unenforceable because it violated the state constitution *regardless* of whether it violated the United States Constitution. As stated on page 41 of MYERS's Memorandum, the Louisiana Supreme Court has noted, that "state judges have been encouraged not to apply Supreme Court decisions mechanically to state law issues, even when the state and federal constitutions are similarly or identically worded, but rather to use such decisions as guideposts and to use them 'only if they are found to be logically persuasive and well-reasoned, paying due regard to precedent and the policies underlying specific constitutional guarantees,'" *Price v. U-Haul Co. of Louisiana*, 98-1959 (La. 9/8/99), 745 So.2d 593, 598, citing *Brennan, supra*), and that the Court "cannot and should not allow [the United States Supreme Court's] decisions to replace our independent judgment in construing the constitution adopted by the people of Louisiana". *State v. Hernandez*, 410 So.2d 1381, 1385 (La.1982). (Emphasis added.) Therefore, the CITY-PARISH's assertion that the tests for determining whether a zoning ordinance violates the federal and states constitutions are identical is wholly without merit.

**VI. THE CITY-PARISH HAS NOT DEMONSTRATED, NOR CAN IT DEMONSTRATE THAT ITS ENFORCEMENT OF THE ZONING REGULATION WILL NOT POTENTIALLY RESULT IN A PROPERTY OWNER VIOLATING THE FEDERAL FAIR HOUSING ACT.**

On pages 6 and 7 of its Opposition Memorandum, the CITY-PARISH seems to imply that MYERS cannot assert that the zoning regulation violates the Federal Fair Housing Act ("*the FHA*"), 42 U.S.C.A. § 3601-31 (2012), because MYERS has not alleged nor offered any evidence to show that he will be forced to violate the FHA if the zoning regulation is enforced. However, on pages 13 through 15 and page 28 of his Memorandum, MYERS explains how he may violate the FHA if he is required to determine the familial relationship among prospective tenants before deciding whether to rent to them. As set forth in the Memorandum, if MYERS, in an effort to comply with the zoning regulation, were to refuse to lease the Property to two (2) unrelated individuals, one or both of who were designated as having custody of a child, either by court order or by written permission, he could be accused of violating the FHA for refusing to rent the property to the prospective tenants on the basis of familial status. Similarly, if MYERS

were to refuse to lease the Property to two (2) unrelated individuals, one or both of who were acting as foster parents for a child, he could be accused of being in violation of the FHA. Therefore, if MYERS were forced to inquire as to the relationships between prospective tenants, he would place himself at risk of violating the FHA.

**VII. CONCLUSION**

For all the above reasons, MYERS respectfully requests that this Honorable Court grant his Motion for Summary Judgment and issue a judgment:

- 1) Dismissing the CITY-PARISH's Petition for Permanent Injunction, with prejudice, and at the CITY-PARISH's cost;
- 2) Declaring that the that the Unified Development Code ordinance which MYERS is accused of violating, to wit, Title 7, Chapter 8, Section 8.201, Appendix H, Permissible Uses of the City of Baton Rouge and Parish of East Baton Rouge, is unconstitutional on its face and as applied and contrary to federal and state law; and
- 3) Ordering the CITY-PARISH to pay all costs of these proceedings, and for all other just and equitable relief.

**RESPECTFULLY SUBMITTED,**

**SHOWS, CALI & WALSH, LLP.**

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E. Wade Shows (7637)  
John C. Walsh (24903)  
Grant J. Guillot (32484)  
SHOWS, CALI & WALSH, LLP  
628 St. Louis Street (70802)  
P. O. Drawer 4425  
Baton Rouge, LA 70821  
Telephone: (225) 346-1461  
Facsimile: (225) 346-1467

*Attorneys for Stephen C. Myers*

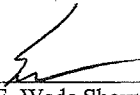
**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing has been served on the CITY OF BATON ROUGE / PARISH OF EAST BATON ROUGE and the OFFICE OF THE ATTORNEY GENERAL, STATE OF LOUISIANA, through their counsel of record listed below, by hand delivery, e-mail, facsimile transmission, and/or by depositing same in the United States Mail, properly addressed and postage prepaid, this 10<sup>th</sup> day of January, 2013:

Maimuna D. Magee  
222 St. Louis Street  
Baton Rouge, LA 70802  
[MMaGee@brgov.com](mailto:MMaGee@brgov.com)

*Attorney for the City of Baton Rouge /  
Parish of East Baton Rouge*

Attorney General James D. "Buddy" Caldwell  
Office of the Attorney General, State of Louisiana  
1885 North 3<sup>rd</sup> Street (70802)  
P.O. Box 94005  
Baton Rouge, LA 70804

  
\_\_\_\_\_  
E. Wade Shows

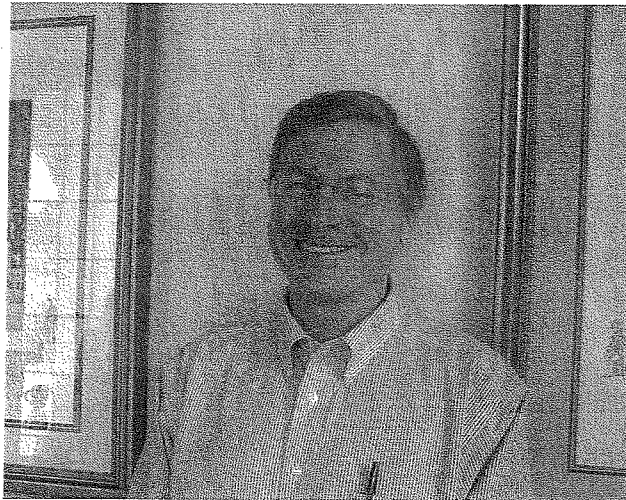


NINETEENTH JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA

\*\*\*\*\*  
CITY OF BATON ROUGE/  
PARISH OF EAST BATON ROUGE  
VS.  
STEPHEN C. MYERS  
\*\*\*\*\*

NO. 610,359

SECTION 21



**DEPOSITION OF STEPHEN C. MYERS**  
TAKEN ON WEDNESDAY, JUNE 20, 2012  
AT THE LAW OFFICES OF SHOWS, CALI AND WALSH  
628 ST. LOUIS STREET, BATON ROUGE, LOUISIANA

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1 Okay.

2 **BY MS. MAGEE:**

3 **Q. And as of now, the new lease you have,**

4 **you don't know how many people are residing there?**

5 **You don't know how many people are on that lease,**

6 **correct?**

7 A. No, I wouldn't say that's correct.

8 **Q. Okay. Do you know how many people are**

9 **residing on the property?**

10 A. That, I don't know.

11 **Q. Do you know how many people leased the**

12 **property?**

13 A. Yes.

14 **Q. How many?**

15 A. I think it was four.

16 **Q. And do you know their names?**

17 A. No, not off the top of my head.

18 **MR. GUILLOT:**

19 Again, I just want to

20 object. I'll allow you to answer, but I just want

21 to object on the basis that whoever may be living

22 there right now is not the object of the complaint

23 that was received in March of 2012.

24 **BY MS. MAGEE:**

25 **Q. Do you know the relation between the**

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1 previous question, he said, I think there are

2 four --

3 **MR. GUILLOT:**

4 He said -- okay.

5 **THE WITNESS:**

6 I said there were four on

7 the lease.

8 **MR. GUILLOT:**

9 On the lease, but not --

10 you don't know if there's four residing there.

11 Okay. It's fine. Go ahead.

12 **BY MS. MAGEE:**

13 **Q. I'm just wondering. Each of those four**

14 **pay rent?**

15 A. They just lease the property, so --

16 **Q. And how much is it leased for?**

17 A. My recollection is about 2000, maybe

18 2100 a month.

19 **Q. I may have asked you this. How long is**

20 **the lease for? What is the term of the lease?**

21 A. I said I didn't remember, but typically

22 I have year leases with options.

23 **Q. You don't live at 1977 Cherrydale, do**

24 **you?**

25 A. No.

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1 **four people that you're leasing to, are they**

2 **related, are they individuals --**

3 **MR. GUILLOT:**

4 I'm going to object to that

5 on the grounds that it calls for speculation. Go

6 ahead and answer that, if you need to.

7 A. I'll answer. I have no idea.

8 **BY MS. MAGEE:**

9 **Q. That's fine. The people who are**

10 **renting right now, I assume they pay rent to you?**

11 A. Yes.

12 **Q. They do? Each of the four individuals**

13 **pay rent individually, or is it one person paying?**

14 **MR. GUILLOT:**

15 I'm going to object to

16 that. I think your question just stated each of

17 the four individuals.

18 **MS. MAGEE:**

19 Uh-huh.

20 **MR. GUILLOT:**

21 I don't believe my client

22 has stated that there's four people living there at

23 this time.

24 **MS. MAGEE:**

25 I thought he did. From the

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1 **Q. Do you know how many kitchen areas are**

2 **in that property?**

3 A. Yes.

4 **Q. How many?**

5 A. Do you count a barbecue pit?

6 **Q. Outside?**

7 A. Yes.

8 **Q. No, I'm not counting a barbecue pit**

9 **outside.**

10 A. Then one.

11 **Q. And this question goes back to the**

12 **lease. Did all four sign the lease or did just one**

13 **person sign the lease, actually sign it?**

14 A. Probably all four. I don't remember.

15 Sometimes -- I have a lot of property.

16 (Discussion off the record.)

17 **BY MS. MAGEE:**

18 **Q. In March, the people who were on the**

19 **lease in March, how many people were on that lease**

20 **in March? I'm not sure if I asked you that**

21 **question.**

22 **MR. GUILLOT:**

23 You can answer.

24 **BY MS. MAGEE:**

25 **Q. Do you know? In March, at the time the**