

**IN THE CHANCERY COURT
FOR GREENE COUNTY, TENNESSEE**

BRADLEY K. LOWE,)	
RANDOLPH LOWE,)	
JUNIOR BELCHER et ux IVONNE BELCHER,)	
individually;)	
PUBLIC SPIRITED CITIZENS OF)	
GREENE COUNTY, a Tennessee general)	
partnership;)	
and)	
STATE OF TENNESSEE in the name of)	
Greene County District Attorney General)	
Berkley Bell and on relationship of)	
Bradley K. Lowe, Randolph Lowe,)	
Junior Belcher et ux Ivonne Belcher,)	
and Public Spirited Citizens)	
of Greene County,)	
)	
Plaintiffs,)	
v.)	No. <u>20110105</u>
)	Jury Demanded
)	
THE GREENE COUNTY PARTNERSHIP;)	
GREENE COUNTY REGIONAL PLANNING)	
COMMISSION;)	
GREENE COUNTY COMMISSION;)	
and,)	
GREENE COUNTY, TENNESSEE;)	
)	
Defendants)	

AMENDED AND RESTATED COMPLAINT

Plaintiffs-Relators amend and restate the Complaint and for their causes of action

say as follows:

Tenn. R. Civ. P. 9.01 Capacity To Sue

1. Plaintiff BRADLEY K. LOWE is a citizen and resident of Sevier County, Tennessee, is a property owner and taxpayer in Greene County, Tennessee whose property is nearby to the rezoned property at issue in this case and is a managing general partner of PUBLIC SPIRITED CITIZENS OF GREENE COUNTY..

2. Plaintiff RANDOLPH LOWE is a citizen and resident of Greene County, Tennessee, is a property owner in Greene County, Tennessee whose property is adjacent t the rezoned property at issue in this case and is a general partner of PUBLIC SPIRITED CITIZENS OF GREENE COUNTY.

3. Plaintiffs JUNIOR BELCHER et ux IVONNE BELCHER, are citizens and residents of Greene County, Tennessee, are property owners and taxpayers in Greene County Tennessee of property that is nearby to the rezoned property at issue in this case, and are general partners of PUBLIC SPIRITED CITIZENS OF GREENE COUNTY. As owners of property adjacent and nearby to the property rezoned, Plaintiffs have a special interest not shared by other citizens and residents of Greene County, Tennessee.

4. Plaintiffs-Relators are members of a partnership of politically associated persons know as PUBLIC SPIRITED CITIZENS OF GREENE COUNTY that share and have as their purposes:

A. To act pursuant to Article 1, Section 1 of the Tennessee Constitution to reform the government for the betterment of the people of that city;

B. To exercise the Tennessee Constitutional Article 1, Section 17 right to remedies in court for wrongs done by public Officials;

C. To submit grievances to the government;

D. To pursue *quo warranto* actions under the procedures of *Bennett v. Stutts*, 521 S.W.2d 575, 577 (Tenn., 1975) to rectify the wrongs of officials of public officials with *quo warranto* authority fail to act;

E. To act as politically associated persons to require public officials to conduct business in compliance with the law;¹

F. To hold public officials accountable on relationship to the State of Tennessee pursuant to T.C.A. §§ 29-35-101; 29-35-102 and 29-35-110;

G. To hold public officials accountable on relationship to the State of Tennessee pursuant to T.C.A. §§ 8-47-101 and 8-47-110;

H. To recover damages relating to declaratory judgments pursuant to T.C.A. § 29-14-103 and 29-14-110.²

5. As citizens, residents, taxpayers and property owners of land in Greene County, Tennessee, Tennessee, adjacent and nearby to the property rezoned, and as members of a group of politically associated persons know as PUBLIC SPIRITED CITIZENS OF GREENE COUNTY Plaintiffs are proper parties to bring this action individually and as Relators for the State of Tennessee.

¹ *Citizens for Legislative Choice v. Miller*, 144 F.3d 196 (6th.Cir. 1998); *Citizens for Legislative Choice v. Miller*, 993 F.Supp. 1041 (D.C.Mich.1998)

² *R & D Marina, Inc. v. Roane County* 44 S.W.3d 33 (Tenn.Ct.App.,2000)

Defendants

6. Defendant THE GREENE COUNTY PARTNERSHIP is a governmental entity within the meaning of T.C.A. § 8-44-102(b)(2) and may be served with process through its CEO and President, Tom Ferguson.

7. Defendant GREENE COUNTY REGIONAL PLANNING COMMISSION is an agency within the legislative branch of Defendant GREENE COUNTY, TENNESSEE, and may be served with process through its Chairman, Jimmy Carter.

8. Defendant GREENE COUNTY COMMISSION is the legislative body of Greene County Tennessee and may be served with process through its Mayor, Alan Broyles.

9. Defendant GREENE COUNTY, TENNESSEE is sued for the unlawful acts of its agents, including but not limited to the Greene County Regional Planning Commission; its Mayor, Alan Broyles; the County Commission and the Greene County Partnership and its CEO and President, Tom Ferguson.

Facts

US Nitrogen, LLC

10. Sometime prior to January 18, 2011 officials of Defendant GREENE COUNTY TENNESSEE in combination with Defendant GREENE COUNTY PARTNERSHIP entered into secret discussions with US Nitrogen, LLC to build a plant in Greene County Tennessee to manufacture products for explosives.

11. An agreement was made in secret between US Nitrogen, LLC, Defendant GREENE COUNTY PARTNERSHIP, Defendant GREENE COUNTY TENNESSEE

PARTNERSHIP; and officials of Defendant GREENE COUNTY TENNESSEE for Defendant GREENE COUNTY PARTNERSHIP to act as the public front for US Nitrogen, LLC to seek rezoning of approximately 400 acres of property in the area of Pottertown Road and West Andrew Johnson Highway without the public knowing of the plan of US Nitrogen, LLC to build a plant in that community to manufacture products relating to explosives.

12. On January 18, 2011, and in furtherance of said joint agreement, Defendant GREENE COUNTY PARTNERSHIP filed an application for the rezoning of the property that had no mention of the involvement of US Nitrogen, LLC or the proposed land use for building a munitions component manufacturing facility.

13. No public notice was provided by Defendant GREENE COUNTY PARTNERSHIP or GREENE COUNTY REGIONAL PLANNING COMMISSION of the proposed land use for the rezoning application was for US Nitrogen, LLC to build a plant to manufacture components for explosives.

14. At its meeting on February 8, 2011 Defendant GREENE COUNTY REGIONAL PLANNING COMMISSION denied Relator and Plaintiff Bradley Lowe request for information as to the intended use of the property if rezoned.

15. At its meeting on February 8, 2011 Defendants GREENE COUNTY REGIONAL PLANNING COMMISSION and Defendant GREENE COUNTY PARTNERSHIP did not disclose the purpose of the rezoning to be for US Nitrogen, LLC to build a plant to manufacture components for explosives.

16. At its meeting on February 8, 2011 Defendants GREENE COUNTY REGIONAL PLANNING COMMISSION voted to rezone said property.

17. Upon information and belief, Defendants GREENE COUNTY REGIONAL PLANNING COMMISSION did not create, approve or maintain minutes of the February 8, 2011 meeting as required by law.

The February 22, 2011 Commission Meeting

18. A valid action by Defendant GREENE COUNTY REGIONAL PLANNING COMMISSION was required for the rezoning to be presented to and acted on by Defendant GREENE COUNTY COMMISSION.

19. A public hearing before Defendant GREENE COUNTY COMMISSION on the rezoning was scheduled for February 22, 2011.

20. US Nitrogen, LLC plans for the use of the property being rezoned became public shortly prior to the February 22, 2011 Defendant GREENE COUNTY COMMISSION meeting.

21. On Friday, February 18, 2011 it was announced that the Governor of Tennessee would attend a reception in Greeneville, Tennessee immediately after the Commission meeting on February 22, 2011 to commend Greene County for recruiting the US Nitrogen, LLC plant.

22. Upon information and belief between Friday, February 18, 2011 and Sunday February 22, 2011 persons met with Greene County Commissioners in private pertaining to the rezoning issue that was on the meeting for February 22, 2011.

23. Defendant GREENE COUNTY COMMISSION on February 22, 2011 allowed US Nitrogen LLC to make public representations for the first time in support of the application for rezoning.

24. Relators and Plaintiffs aver that they were denied adequate notice or an opportunity to be heard in opposition to the rezoning at issue.

25. Relators and Plaintiffs stated objections to Defendant GREENE COUNTY COMMISSION.

26. Defendant GREENE COUNTY COMMISSION voted to approve the rezoning.

27. The State of Tennessee by Relators and Plaintiffs timely filed for review by certiorari the actions of February 8, 2011 and February 22, 2011 that are the subject of this Amended and Supplemental Complaint.

28. The allegations of the foregoing paragraphs are adopted and incorporated in the following causes of action as if fully restated therein.

FIRST CAUSE OF ACTION:
Certiorari and Supersedeas
February 8, 2011 Greene County Regional Planning Commission Meeting

29. Relators for the State of Tennessee pursuant to T.C.A. § 29-35-110 and Plaintiffs pursuant to T.C.A. § 27-9-101 et seq. move this Court for judicial review by certiorari of the February 8, 2011 meeting of the Defendant GREENE COUNTY REGIONAL PLANNING COMMISSION.

30. The State of Tennessee by Relators and Plaintiffs pursuant to T.C.A. § 27-9-102 petition for a writ of supersedeas from the February 8, 2011 meeting of the Defendant GREENE COUNTY REGIONAL PLANNING COMMISSION.

31. The State of Tennessee by Relators and Plaintiffs pursuant to T.C.A. § 27-9-109 move the Court grant a writ of certiorari to Defendant GREENE COUNTY REGIONAL

PLANNING COMMISSION for the record to be brought before the Court of the proceedings of its meeting on February 8, 2011 for judicial review by certiorari.

32. On information and belief, the GREENE COUNTY REGIONAL PLANNING COMMISSION was not lawfully constituted pursuant to State law and any action taken at a meeting on February 8, 2011 was void and/or voidable by this action.

33. On information and belief, members of the GREENE COUNTY REGIONAL PLANNING COMMISSION were not lawfully appointed and did not take oaths of office for such office as required by State law and any action taken by said persons at the meeting on February 8, 2011 was void and/or voidable by this action.

34. Plaintiffs request this Court find on judicial review by certiorari that the acts of Defendants described in this Complaint were unlawful, void and or voidable.

SECOND CAUSE OF ACTION:
Open Meetings Act Violations
February 8, 2011 Greene County Regional Planning Commission Meeting

35. Plaintiffs bring this claim pursuant to T.C.A. § 8-44-106 to enforce Tennessee's Open Meetings Act as to the February 8, 2011 Greene County Regional Planning Commission Meeting.

36. Defendant GREENE COUNTY PARTNERSHIP submitted an application to Defendant GREENE COUNTY REGIONAL PLANNING COMMISSION for rezoning of property on January 18, 2011 that is attached as Exhibit 1.

37. Defendant GREENE COUNTY PARTNERSHIP, in agreement with the Defendant GREENE COUNTY REGIONAL PLANNING COMMISSION, intentionally withheld information to deny the public notice of a plan by and among Greene County officials

to rezone property for the benefit of US Nitrogen LLC for that Company to build a plant for manufacture of explosive components.

38. Defendant GREENE COUNTY REGIONAL PLANNING COMMISSION failed to provide adequate notice to the public as required by T.C.A. 8-44-103 of matters of significant public interest that would be deliberated and decided at its public meeting on February 8, 2011.³

39. Defendant GREENE COUNTY REGIONAL PLANNING COMMISSION failed to provide adequate notice to the public as required by T.C.A. 8-44-103 of matters of significant public interest material to the rezoning application at and during the February 8, 2011 meeting.

40. Defendant GREENE COUNTY REGIONAL PLANNING COMMISSION failed to record minutes of the February 8, 2011 meeting as required by T.C.A. § 8-44-104.

41. Pursuant to T.C.A. § 8-44-105 the rezoning voted on at the February 8, 2011 meeting of Defendant GREENE COUNTY REGIONAL PLANNING COMMISSION was void.

THIRD CAUSE OF ACTION:

Tenn. Const. Art. I, §§ 1, 2, 8, 19 and 23 Violations

42. Plaintiff State of Tennessee by Relators pursuant to T.C.A. § 29-35-110 bring this action pursuant to T.C.A. § 29-35-101 and 29-35-102.

³ *Neese v. Paris Special School District*, 813 S.W.2d 432 (Tenn. Ct. App. 1990).

43. The State of Tennessee avers that Defendant GREENE COUNTY PARTNERSHIP and Defendant GREENE COUNTY REGIONAL PLANNING COMMISSION agreed to consider and rezone property without disclosing information of the purpose of the rezoning.

44. The State of Tennessee by Relators and Plaintiff Bradley Lowe aver that Bradley Lowe requested Defendant GREENE COUNTY REGIONAL PLANNING COMMISSION disclose the purpose of the rezoning that was before it on February 8, 2011 and Defendant GREENE COUNTY REGIONAL PLANNING COMMISSION refused to disclose that information.

45. The State of Tennessee by Relators and Plaintiff Bradley Lowe charge that Defendant GREENE COUNTY REGIONAL PLANNING COMMISSION violated the constitutional rights of Plaintiffs, Relators, and the people of Greene County Tennessee guaranteed them pursuant to Tenn. Const. Art. 1, §§ 1, 2, 8, 19 and 23 to have access to information necessary to exercise those constitutional rights and to the open administration of their government.

46. The State of Tennessee by Relators and Plaintiffs sue for relief pursuant to T.C.A. § 29-35-113 that this Court hold any action taken by the Defendant GREENE COUNTY REGIONAL PLANNING COMMISSION at its February 8, 2011 meeting was unconstitutional and therefore was unlawful and void.

FOURTH CAUSE OF ACTION:
Certiorari and Supersedes
February 22, 2011 Meeting

47. Relators for the State of Tennessee pursuant to T.C.A. § 29-35-110 and Plaintiffs pursuant to T.C.A. § 27-9-101 et seq. move this Court for judicial review by certiorari of the February 22, 2011 meeting of the Defendant GREENE COUNTY COMMISSION.

48. The State of Tennessee by Relators and Plaintiffs pursuant to T.C.A. § 27-9-102 petition for a writ of supersedeas from the February 22, 2011 meeting of the Defendant GREENE COUNTY COMMISSION.

49. The State of Tennessee by Relators and Plaintiffs pursuant to T.C.A. § 27-9-109 moves the Court grant a writ of certiorari to Defendant GREENE COUNTY COMMISSION for the record to be brought before the Court of the proceedings of its meeting on February 8, 2011 for judicial review by certiorari.

50. Upon information and belief, representatives of US Nitron, LLC made materially false statements to Defendant GREENE COUNTY COMMISSION to induce the approval of the rezoning request that resulted in an unlawful, arbitrary and capricious decision by the Defendant GREENE COUNTY COMMISSION.

51. The action of Defendant GREENE COUNTY COMMISSION was unlawful because it was based on a void decision made by the GREENE COUNTY REGIONAL PLANNING COMMISSION on February 8, 2011.

52. The State of Tennessee by Relators and Plaintiffs sue to have the decision of Defendant GREENE COUNTY COMMISSION on February 22, 2011 reversed and set aside as being unlawful, arbitrary and capricious.

FIFTH CAUSE OF ACTION:
Open Meetings Act Violations February 22, 2011

53. Plaintiffs sue Defendants pursuant to T.C.A. § 8-44-106(a) for violations of the Tennessee Open Meetings act prior to the February 22, 2011 Defendant GREENE COUNTY COMMISSION MEETING.

54. The Defendant GREENE COUNTY COMMISSION's consideration of the rezoning on February 22, 2011 was the product of and based on a void action of Defendant GREEN COUNTY REGIONAL PLANNING COMMISSION action on February 8, 2011 that made the February 22, 2011 consideration unlawful and void.

55. The Defendant GREENE COUNTY COMMISSION did not provide adequate public notice of the proposed land use for the rezoning application that would be considered at its February 22, 2011 meeting as required by T.C.A. § 8-44-103.

56. County Commissioners communicated directly among themselves and/or through intermediaries prior to the meeting of February 22, 2011 to deliberate toward and decide the rezoning application that was on the agenda for February 22, 2011 in violation of T.C.A. § 8-44-102.

57. *De facto* T.C.A. § 8-44-102(b)(2) Greene County governing bodies of Defendant GREENE COUNTY COMMISSION met to deliberate toward the rezoning application that was on the agenda for February 22, 2011 in violation of T.C.A. § 8-44-102.

58. Upon information and belief, the Defendant GREENE COUNTY COMMISSION did not comply with the requirements for minutes for its actions regarding use for the rezoning application as required by T.C.A. § 8-44-104.

59. Plaintiffs sue Defendant GREENE COUNTY COMMISSION for the foregoing violations of the Open Meetings Act for the actions taken at the February 22, 2011 meeting to be held to be void and of no effect as provided for by T.C.A. § 8-44-105.

Jury Demand

60. Plaintiffs demand a jury to try all issues pursuant to Tenn. R. Civ. P. 38, 58; T.C.A. § 21-1-103; and *Smith County Educ. Ass'n v. Anderson*, 676 S.W.2d 328 (Tenn., 1984).

Relief Requested

PREMISES CONSIDERED, the State of Tennessee by Relators and Plaintiffs pray:

1. That this Court declare that the rezoning identified as Receipt # 1650 is void and of no effect.
2. That this Court issue an injunction pursuant to T.C.A. § 8-44-106 enjoining Defendants from further violations of the Open Meetings Act.
3. That this Court cause the permanent injunction prayed for herein be spread upon the records of this Court and the parties be required to certify their compliance in accordance with the provisions of T.C.A. § 8-44-106(d).
4. That this Court find and decree each separate occurrence of meetings not held in accordance with the Act constitutes a separate violation.
5. That pursuant to T.C.A. § 27-9-101 et seq., and T.C.A. § 29-45-113 this Court Order and declare that the actions of February 8, 2011 of Defendant GREENE COUNTY REGIONAL PLANNING COMMISSION be reversed, overruled and held to be void.

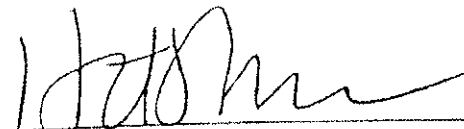

Herbert S. Moncier

Attorney for Plaintiffs

Herbert S. Moncier
Attorney at Law
Suite 775 Bank of America Center
550 Main Avenue
Knoxville, Tennessee 37902
(865) 546-7746
BPR # 1910

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 3rd day of October 2011 a true and correct copy of the foregoing was served by email on Roger A. Woolsey at entyyattyrwoolsey@earthlink.net.


Herbert S. Moncier

Attorney for Plaintiffs