

CAUSE NO. 18-002883-CV-272

<b>AUSPRO ENTERPRISES, LP,</b>	§	<b>IN THE DISTRICT COURT</b>
<i>Petitioner,</i>	§	
	§	
<b>v.</b>	§	<b><u>272<sup>ND</sup></u> JUDICIAL DISTRICT</b>
	§	
<b>THE CITY OF BRYAN and THE CITY</b>	§	
<b>OF BRYAN ZONING BOARD OF</b>	§	
<b>ADJUSTMENT,</b>	§	
<i>Respondents.</i>	§	<b>BRAZOS COUNTY, TEXAS</b>

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**DEFENDANTS', THE CITY OF BRYAN AND THE CITY OF BRYAN ZONING BOARD OF ADJUSTMENT, ANSWER TO PLAINTIFF'S VERIFIED PETITION FOR WRIT OF CERTIORARI AND ORIGINAL PETITION FOR DECLARATORY JUDGMENT**

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TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Defendants, THE CITY OF BRYAN and THE CITY OF BRYAN ZONING BOARD OF ADJUSTMENT and files this its Answer to Plaintiff's, AUSPRO ENTERPRISES, LP, Verified Petition for Writ of Certiorari and Original Petition For Declaratory Judgment, and will respectfully show the court as follows:

**I.**  
**NOTICE OF APPEARANCE OF COUNSEL**

1. Counsel, RYAN S. HENRY, ARTIN T. DEROHANIAN, and MICHAEL S. MCCANN JR., of the Law Offices of Ryan Henry, PLLC, hereby enters an appearance on behalf of Defendants, THE CITY OF BRYAN (hereinafter, the "City") and THE CITY OF BRYAN ZONING BOARD OF ADJUSTMENT (hereinafter, the "ZBA") (City and ZBA may collectively be referred to as "City Defendants"). Ryan S. Henry will serve as lead attorney in charge for City Defendants for purposes of this litigation. We respectfully request that all documents relating to

this case be served upon RYAN S. HENRY, ARTIN T. DEROHANIAN, and MICHAEL S. MCCANN, JR. at the address below.

**II.**  
**GENERAL DENIAL**

2. City Defendants generally deny all material allegations contained in Plaintiff's Verified Petition for Writ of Certiorari and Original Petition for Declaratory Judgment and calls upon the Plaintiff to prove its allegations by a preponderance of the evidence as required by the laws of the State of Texas.

**III.**  
**NOTICE OF NON-CONTENTION**

3. The City Defendants agrees to collect all ZBA record information reviewed by the ZBA and provide to the court along with a return depicting various grounds supporting the ZBA decision to this honorable court. The City Defendants will provide the record and return by whatever reasonable deadline set by the court. However, given the holidays and availability of City staff and members during such time, the City Defendant's respectfully requests a minimum of fifteen (15) days from the court's order in order to submit such information to the court. Such disposes of the need for the court to issue a writ of certiorari.

**IV.**  
**DEFENSES**

4. City Defendants asserts it had legal reasons and justifications for the action taken by the Zoning Board of Adjustment, so the Plaintiff cannot establish the action was illegal.

5. City Defendants asserts that, since this is an appeal from a Zoning Board of Adjustment decision pursuant to Tex. Loc. Gov't Code §211.011, the proper standard for review is that the

action must be upheld as long as it was within the ZBA's legal authority to perform. The court is not to substitute its judgment for that of the ZBA but must simply review the action for legality.

6. Plaintiff failed to properly exhaust its administrative remedies, including its administrative prerequisites, in order to bring this suit, especially with regards to the declaratory judgment action brought against the City.

7. Plaintiff failed to comply with all conditions and requirements for bringing an action for judicial review of the ZBA's determination, including its jurisdictional prerequisites, in order to bring this suit.

8. City Defendants assert the defense of laches, estoppel and unclean hands.

9. City Defendants assert the statute of limitations bars this action.

10. City Defendants assert the Plaintiff improperly applies the two causes of action to both Defendants, when such is an improper application. Declaratory judgment actions cannot be brought against the ZBA and the City cannot be directly sued for the ZBA decision.

11. City Defendants assert the City's ordinances are presumed valid unless, and until, they are held invalid by a court of competent jurisdiction or the Plaintiff establishes the proper application of the law disposes of the presumption.

12. City Defendants assert the City had valid and substantial governmental interests in enacting its ordinances and such ordinances were appropriately tailored.

13. The City Defendants assert the use of a civil court of equity is not the proper forum to enjoin the criminal aspects of an ordinance.

14. The City Defendants assert severability clauses apply to its ordinances, so any invalid provisions do not affect the remainder of the ordinance or code of ordinances.

15. The City Defendants assert the Plaintiff lacks standing to challenge the City's ordinances as pled.

16. The City Defendants assert the sign is not the sole grounds for any denial of permits to occupy the building on the designated property.

17. The City Defendants assert the current problem with the Plaintiffs sign is structural in nature, not content based. Plaintiff also did not seek a permit for the sign prior to erecting it and the sign has not been inspected for safety or hazards.

18. City Defendants assert its entitlement to sovereign / governmental immunity including bar to bring suit challenging acts of a governmental unit or to control governmental functions unless an express waiver of immunity exists. This includes, but is limited to, its immunity from both suit and liability.

19. City Defendants assert they are immune from declaratory judgment claims to the extent the Plaintiff seeks a designation of rights as opposed to the invalidity of any ordinances.

20. City Defendants assert they are not liable for attorneys' fees.

21. City Defendants assert the Plaintiff failed to comply with Tex. Civ. Prac. & Rem. Code § 37.006(b) requiring service to the Attorney General of the State of Texas for maintaining a constitutional challenge to a municipal ordinance. A court is without jurisdiction to grant either declaratory or injunctive relief until such time as the Attorney General has been served and has been given an opportunity to enter an appearance and to be heard by the court. The failure to serve the Attorney General within a reasonable time dictates dismissal of a plaintiff's action.

22. The City Defendants asserts they are not liable for attorney's fees.

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**V.**  
**PRAYER**

WHEREFORE, PREMISES CONSIDERED, City Defendants pray that the court rule against the Plaintiff in this action and dismiss Plaintiff's claims, with prejudice, against all Defendants. City Defendants pray for such further relief, in law or in equity, to which they may show themselves justly entitled.

SIGNED this the 10<sup>th</sup> day of December, 2018.

Respectfully Submitted,

**THE LAW OFFICES OF RYAN HENRY, PLLC**

1380 Pantheon Way, Ste. 110

San Antonio, Texas 78232

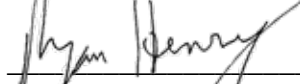
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**Ryan S. Henry**

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State Bar No. 24096551

***ATTORNEYS FOR DEFENDANTS,  
THE CITY OF BRYAN AND THE ZONING  
BOARD OF ADJUSTMENT FOR THE CITY OF  
BRYAN, TEXAS***

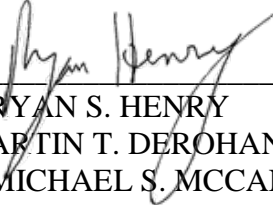
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served in accordance with Texas Rules of Civil Procedure to the person(s) listed below in the manner(s) listed below on this 10<sup>th</sup> day of December, 2018.

Meredith Parenti  
Parenti Law, PLLC  
7500 San Felipe, Suite 600  
Houston, Texas 77224

*Sent Via CMRR: 70180360000137134774  
& Via Email: meredith@parentilaw.com*

*Attorney for Plaintiff,  
AusPro Enterprises, LP*

  
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RYAN S. HENRY  
ARTIN T. DEROHANIAN  
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