



AlaFile E-Notice

01-CV-2026-903074.00

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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

THE GREATER BIRMINGHAM HUMANE SOCIETY, INC. V. CITY OF BIRMINGHAM - CI
01-CV-2026-903074.00

The following complaint was FILED on 7/10/2026 2:20:57 PM

Notice Date: 7/10/2026 2:20:57 PM

JACQUELINE ANDERSON SMITH
CIRCUIT COURT CLERK
JEFFERSON COUNTY, ALABAMA
716 RICHARD ARRINGTON, JR BLVD
BIRMINGHAM, AL, 35203

205-325-5355
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ELECTRONICALLY FILED

7/10/2026 2:20 PM

01-CV-2026-903074.00

CIRCUIT COURT OF

JEFFERSON COUNTY, ALABAMA

JACQUELINE ANDERSON SMITH, CLERK

Case:

01

Date of Filing:

07/10/2026

Judge Code:

State of Alabama
Unified Judicial System
Form ARCiv-93 Rev. 9/25

COVER SHEET
CIRCUIT COURT - CIVIL CASE
(Not For Domestic Relations Cases)

GENERAL INFORMATION

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
THE GREATER BIRMINGHAM HUMANE SOCIETY, INC. v. CITY OF BIRMINGHAM - CITY CLERK ET AL

First Plaintiff: ☒ Business ☐ Individual ☐ Government ☐ Other
First Defendant: ☐ Business ☐ Individual ☒ Government ☐ Other

NATURE OF SUIT: Select primary cause of action, by checking box (check only one) that best characterizes your action:

TORTS: PERSONAL INJURY

- ☐ WDEA - Wrongful Death
☐ TONG - Negligence: General
☐ TOMV - Negligence: Motor Vehicle
☐ TOWA - Wantonness
☐ TOPL - Product Liability/AEMLD
☐ TOMM - Malpractice-Medical
☐ TOLM - Malpractice-Legal
☐ TOOM - Malpractice-Other
☐ TBFM - Fraud/Bad Faith/Misrepresentation
☐ TOXX - Other: _____

TORTS: PERSONAL INJURY

- ☐ TOPE - Personal Property
☐ TORE - Real Property

OTHER CIVIL FILINGS

- ☐ ABAN - Abandoned Automobile
☐ ACCT - Account & Nonmortgage
☐ APAA - Administrative Agency Appeal
☐ ADPA - Administrative Procedure Act
☐ ANPS - Adults in Need of Protective Service

OTHER CIVIL FILINGS (cont'd)

- ☐ MSXX - Birth/Death Certificate Modification/Bond Forfeiture Appeal/Enforcement of Agency Subpoena/Petition to Preserve
☐ CVRT - Civil Rights
☐ COND - Condemnation/Eminent Domain/Right-of-Way
☐ CTMP - Contempt of Court
☐ CONT - Contract/Ejectment/Writ of Seizure
☐ TOCN - Conversion
☒ EQND - Equity Non-Damages Actions/Declaratory Judgment/Injunction Election Contest/Quiet Title/Sale For Division
☐ CVUD - Eviction Appeal/Unlawful Detainer
☐ FORJ - Foreign Judgment
☐ FORF - Fruits of Crime Forfeiture
☐ MSHC - Habeas Corpus/Extraordinary Writ/Mandamus/Prohibition
☐ PFAB - Protection From Abuse
☐ EPFA - Elder Protection From Abuse
☐ QTLB - Quiet Title Land Bank
☐ FELA - Railroad/Seaman (FELA)
☐ RPRO - Real Property
☐ WTEG - Will/Trust/Estate/Guardianship/Conservatorship
☐ COMP - Workers' Compensation
☐ CVXX - Miscellaneous Circuit Civil Case

ORIGIN: F ☒ **INITIAL FILING**
A ☐ **APPEAL FROM DISTRICT COURT**

P ☐ **APPEAL FROM PROBATE COURT**
O ☐ **OTHER**

HAS JURY TRIAL BEEN DEMANDED? ☒ YES ☐ NO

Note: Checking "Yes" does not constitute a demand for a jury trial. (See Rules 38 and 39, Ala.R.Civ.P, for procedure)

RELIEF REQUESTED: ☐ **MONETARY AWARD REQUESTED** ☒ **NO MONETARY AWARD REQUESTED**

ATTORNEY CODE:

CAS027

7/10/2026 2:20:56 PM

Date

/s/ BRIAN VERBON CASH

Signature of Attorney/Party filing this form

MEDIATION REQUESTED: ☐ YES ☒ NO ☐ UNDECIDED

Election to Proceed under the Alabama Rules for Expedited Civil Actions: ☐ YES ☐ NO

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
BIRMINGHAM DIVISION**

**THE GREATER BIRMINGHAM
HUMANE SOCIETY, INC.,**

Plaintiff,

v.

**CITY OF BIRMINGHAM, ALABAMA;
ALABAMA ADC HOLDINGS, LLC;
201 MILAN BIRMINGHAM, LLC;**

Defendants.

CIVIL ACTION NO.:

JURY TRIAL DEMANDED

COMPLAINT

COMES NOW the plaintiff, The Greater Birmingham Humane Society (“GBHS”), in the above-styled cause and does make this Complaint as follows:

PARTIES

1. The Greater Birmingham Humane Society, Inc. is an Alabama non-profit corporation (“GBHS”) established in 1883 which operates an animal adoption program, accepts animals that must be surrendered, provides animal care and control in Jefferson County, among other locations, conducts animal cruelty investigations, and offers education programs to the community, and is located in Jefferson County, Alabama.

2. The City of Birmingham (“City”) is a municipal corporation located in Jefferson County, Alabama.

3. Alabama ADC Holdings, LLC is a Delaware limited liability company (“Alabama ADC”), which is the owner of a portion of the property in the Oxmoor Valley neighborhood located in Jefferson County on which an “AI Factory” requiring a 600-Megawatt substation and switching station for operation (the “AI Factory”) is proposed to be constructed.

4. 201 Milan Birmingham, LLC is a Delaware limited liability company (“201 Milan” together with Alabama ADC, hereinafter the “Nebius Entities”), which is the owner of a portion of the property in the Oxmoor Valley neighborhood located in Jefferson County on which an AI Factory is proposed to be constructed.

5. Upon information and belief, the Nebius Entities are controlled by Nebius Group N.V., an Amsterdam headquartered company that split from Yandex N.V. a Russian technology business.

6. This Request is an action for declaratory judgment brought pursuant to the Alabama Declaratory Judgment Act, Alabama code §§ 6-6-220 through 6-6-232.

7. The Court has jurisdiction over this action under Alabama Code §§ 12-11-31 and 6-6-222.

8. An actual controversy has arisen and now exists between GBHS, on the one hand, and the City and Nebius Entities, on the other hand, regarding the legality of actions taken by the City and the Nebius Entities.

9. A judicial declaration is necessary and appropriate at this time so that the legal rights and obligations of the parties may be determined.

10. All of the named defendants are subject to the jurisdiction of the Circuit Court of Jefferson County, Alabama and venue is proper as to each of them in Jefferson County, Alabama.

SUMMARY OF THE CASE

11. The Nebius Entities have engaged in a months-long scheme, coordinated with the City of Birmingham, to abuse legal processes and manipulate timelines to fast-track a favored project without due process, regard for the law, or public welfare. GBHS prays this Honorable Court will make definitive rulings that:

- (a) The proposed AI Factory cannot proceed without special exceptions required for a substation and switching station under the City's zoning ordinance;
- (b) A memorandum of the City Attorney (the "City Attorney Memorandum") and decision of the City's Director of the Department of Planning, Engineering, and Permitting (the "Planning Director") allowing the Nebius Entities to proceed without the special exceptions represents an incorrect application of the law;
- (c) The City Attorney and Planning Director have no legal authority to overturn decisions rendered by the Board of Zoning Adjustment of the City of Birmingham (the "ZBA");
- (d) GBHS's appeal of the aforementioned acts was not heard by the City in violation of Alabama law;
- (e) The City Attorney Memo and decision of the Planning Director *de facto* rezoned the AI Factory property to an industrial use;
- (f) Under the rules of strict construction proposed in the City Attorney Memo the AI Factory would not be allowed under the City zoning ordinance before it was amended to allow for hyperscale data centers;
- (g) The Nebius Entities are not in compliance with the conceptual plans or development plan approved and administered by the Oxmoor Steering Committee;

- (h) The Nebius Entities never had “vested rights” and what they now claim as “vested rights” were manufactured by the Nebius Entities in coordination with the City;
- (i) The Court may examine the above issues by writ of certiorari as necessary and appropriate;
- (j) GBHS’s procedural due process rights under the Alabama Constitution have been violated by this scheme and require intervention by this Court; and
- (k) If any of the aforementioned legal questions in (a) through (h) are decided in favor of GBHS the City’s *ultra vires* acts will render all permits approved after those acts and upon those grounds void until lawfully corrected.

FACTS APPLICABLE TO ALL COUNTS

12. Since May 2015, GBHS has been working to construct a new facility to update its current aging facility, consolidate multiple facility locations, and handle the increased capacity required to carry out its mission.

13. On June 27, 2017, the City and GBHS executed a written Project Agreement in which the City agreed to convey the Trinity Park property to GBHS at no cost. In early 2018, the City informed GBHS that it intended to sell the property to DC Blox for the construction of a data center, thereby repudiating its obligation to convey the property to GBHS under the Project Agreement.

14. In 2021, GBHS purchased a new site in the Oxmoor Corporate Park, making a substantial capital investment in a multi-building medical, educational, and community campus. One building, a large animal care and control facility owned by Jefferson County, has already been constructed and is about to begin operating. Two additional buildings are planned: (i) a spay/neuter and critical care veterinary hospital that will also serve as a clinical teaching site for fourth-year

veterinary students from schools throughout the Southeast, with outdoor surgical viewing areas for educational programming; and (ii) an adoption and placement center with foster and transport hubs, community training and event facilities, and multiple outdoor animal care and socialization areas. The campus also includes a significant outdoor plaza and hardscape, a patio, cat café, retail space, and walking trails designed to connect to Red Mountain Park. The campus is deliberately designed around public-facing, pedestrian-oriented, educational, and animal-welfare uses.

15. GBHS was attracted to the site based on the natural beauty of the location and its mixed corporate and residential character.

16. GBHS took assurance when purchasing and developing the site because the site was zoned MXD by the City, a zoning classification that established the Oxmoor Steering Committee to ensure that that conceptual plans, development plans and related guidelines to ensure harmonious development of the area are complied with. *See The Zoning Ordinance for the City of Birmingham, Alabama* (the “Zoning Ordinance”), Title 1, Chapter 4, Article V, Section 7, Subsection 4.

17. GBHS began in August 2019 by preparing drawings and plans for its \$67 million facility to be submitted to the Oxmoor Steering Committee and the City Planning Department for building permits, a process that took over 5 years.

18. In the summer of 2025, GBHS was raising funds for its proposed facility and construction was imminent.

19. In August 2025, 201 Milan was formed and in September qualified to do business in Alabama while Alabama ADC was formed and qualified to do business in Alabama in September 2025. The land in the Oxmoor Corporate Park where the Regions Bank Operations Center was located was then purchased by the Nebius Entities on September 30, 2025. The

Regions Operations Center housed bank processing functions, a centralized call center, executive and administrative offices, a training center, a fitness center, and an employee cafeteria.

20. On or about September 30, 2025, the Nebius Entities orchestrated an acquisition cascade through six separate statutory warranty deeds recorded in the Office of the Judge of Probate of Jefferson County, Alabama.

21. Upon information and belief, the Nebius Entities intend to construct the AI Factory in two phases. At full build out it will require 600 Megawatts of power, enough electrical power to power every residence in Jefferson County at peak demand for four hours, twice over, require 4 permanent diesel generators, 84 chillers, an electrical substation, and a switching station.

22. Upon information and belief, the scope of the AI Factory was presented to the City and evaluated sometime in November of 2025.

23. Upon information and belief, in December of 2025, the administration of the City proposed a temporary moratorium — a pause on accepting and approving new applications for data centers within the city — to allow City departments to review the City's zoning and land-use rules and consider amendments to the Zoning Ordinance addressing neighborhood compatibility and land-use impacts of those uses.

24. Upon information and belief, a draft of the proposed moratorium was presented to the City Council that did not exclude the proposed AI Factory and, if adopted, could have halted the project as early as January 13, 2026; however, adoption of the moratorium was delayed.

25. Upon information and belief, starting on January 7, 2026, the Nebius Entities raced in an attempt to get ahead of the moratorium and the amendment of the Zoning Ordinance and manufacture “vested rights”, causing various entities as agent for the owners to apply for permits for demolition of the Regions Operations Center, filing applications for future building permits for

which detailed plans were not yet ready, and filing with the City to seek ZBA approval of required special exceptions under the Zoning Ordinance for the substation and switching station.

26. On January 16, 2026, GBHS exercised its first right of refusal to purchase the last parcel in the Oxmoor Corporate Park adjacent to the property owned by the Nebius Entities.

27. On information and belief, the Nebius Entities began meeting with the Oxmoor Steering Committee and showing plans for the proposed AI Factory, seeking approval and representing to the City the appearance, noise emissions, sound buffering with trees and acoustic panels, and height of various structures. Although GBHS was an adjacent property owner, no notices of the public meetings of the Oxmoor Steering Committee were ever sent to GBHS by the City and GBHS was unable to participate in or comment at any of those meetings other than the final meeting on the morning of February 26, 2026, related to the switching station.

28. Upon information and belief, the City requested a sound study related to the AI Factory and the Nebius Entities supplied a study covering Phase I of the Development, 2 diesel generators and 28 chillers, but not including the potential effects from the larger Phase II of the development of the proposed AI Factory.

29. As word of the scope of the proposed AI Factory became public in January and February of 2026, GBHS's capital campaign to complete the remaining buildings was materially impaired by the proximity of the proposed AI Factory switching station, substation, and associated transmission infrastructure. Donors expressed concern about the long-term suitability of the site for the planned uses because animals hear at much higher frequencies than humans and the effects of constant noise the AI Factory will produce are completely unknown.

30. On the afternoon of February 26, 2026, the special exceptions applied for by the Nebius Entities were set for a public hearing with the ZBA.

31. Title 1, Chapter 4, Article III, Section 2(a) of the Zoning Ordinance is clear: “A special exception shall not be considered an entitlement and may be granted by the Board only after the applicant has demonstrated to the satisfaction of the board that all of the required review standards are met.”

32. In addition to review standards, “A special exception may be granted provided that the board finds that the use is so designed, located and proposed to be operated that the health, safety and welfare will be protected. The board may determine from its review that adequate public facilities are available to accommodate the proposed use, and that approval of the special exception or variance will not adversely affect other property in the area to the extent that it will impair the reasonable long-term use of those properties.” [Emphasis added.] *See* Title 1, Chapter 4, Article III, Section 2(C) of the Zoning Ordinance.

33. Finally, the ZBA has the authority to “...impose other reasonable conditions necessary to protect the public health, safety and welfare.” *See* Title 1, Chapter 4, Article III, Section 2(G) of the Zoning Ordinance.

34. The public, GBHS, and ZBA expressed significant concerns about the AI Factory. After hours of public comment, the ZBA formally voted to pose thirteen questions to Nebius Entities in connection with the special exceptions, and continued the case until March 26, 2026. The Thirteen Questions were:

(With regard to the Switching Station Case #2026-0006)

- i. What are the environmental impacts on the surrounding neighborhood?
- ii. What are the sound impacts of the switching station?
- iii. What is the water usage of the switching station?
- iv. What are the impacts on adjacent properties?
- v. What safety measures are in place for this site?
- vi. What are the locations of other substations in the area and size comparisons?
- vii. Can power transmission lines be underground?

(With regard to the Substation Case #2026-0007)

- viii. Can the company clarify noise levels?
- ix. Can the company clarify emission levels?
- x. Provide additional details needed on water supply line, where located and where discharge will occur?
- xi. Can underground power lines be used?
- xii. Moratorium update requested.
- xiii. What are the long-term impacts of the facility?

35. On March 3, 2026, the City Council of the City placed a moratorium on approval of new data centers in advance of amendments to the City Zoning Ordinance creating new legal conditions to ensure the safety of hyper-scale data centers, and other similar uses. The Mayor posed additional questions to the Nebius Entities at that City Council meeting.

36. In the moratorium the City Council made specific updated findings of fact bearing upon the matters in this Complaint:

[T]he City of Birmingham's Zoning Ordinance currently does not specifically define data centers but some have been allowed within certain commercial zoning classifications where their scale and operations are compatible with those districts... .

[T]he magnitude, design, and operational characteristics of these proposed hyperscale data centers suggest that these facilities function more similarly to industrial operations than to the office-oriented data processing center historically contemplated in commercial zoning classifications....

37. Upon information and belief, various applications of the Nebius Entities were accepted by the City under lower standards than generally applied to other similar permits to manufacture "vested rights" under what the City called a "phased approach". The City administration advised the City Council that the Nebius Entities, and one other, should be exempted from the moratorium, and they were.

38. On March 17, 2026, GBHS posed additional detailed technical questions to the Nebius Entities, including access to any noise studies prepared with respect to the AI Factory and the answers to the ZBA questions and Mayor's questions.

39. A sound study dated March 20, 2026, along with the answers to GBHS' technical questions, answers to the ZBA questions, and answers to the Mayor's questions were delivered to counsel for GBHS the morning of March 26, 2026, hours before the ZBA hearing that was previously continued.

40. After hours of public comment and review of the Nebius Entities' answers to its questions, the ZBA continued to have significant concerns about the plans proposed by the Nebius Entities and voted to **deny** the special exception in case 2026-0006 (Switching Station) and deadlocked on a vote to deny the special exception in case 2026-0007 (Substation).

41. In an effort to break the deadlock, the ZBA made a motion to approve the substation with extensive conditions, including noise limits, and that motion received three votes. Approval by the ZBA requires 2/3 of the members present; with five members present, three votes were below the required threshold, and the second special exception was also **denied**. Before counsel to GBHS could inquire as to the vote, the meeting adjourned, but ZBA staff and the city attorney present indicated the matter would be reviewed and corrected if necessary.

42. Had the status of the vote not been corrected, GBHS as an aggrieved adjacent property owner only had fifteen days, until April 10, 2026, to notify the City of its intention to appeal the purported approval of the substation.

43. On April 9, 2026, the day before notice to the City had to be filed, the City Attorney released a memo (the "City Attorney Memo"), attached as **Exhibit A**, and that afternoon GBHS learned the special exceptions were denied but also learned that the Nebius Entities devised and

urged the City Attorney to accept a novel interpretation of the zoning ordinance whereby they did not need the special exceptions anyway. The City Attorney wrote:

Our office, in consultation with staff, has evaluated this issue and determined that these facilities, as proposed, do not fall within the Ordinance's definition of "utility substation," because they are not intended to serve individual neighborhoods. Accordingly, these facilities would not require a special exception from the Board under the current Ordinance. Therefore, these matters should not have been before the Zoning Board of Adjustments.

This determination may be subject to appeal in accordance with the provisions of the Zoning Ordinance. Board members should not discuss this issue outside of a properly noticed public hearing.

44. Upon information and belief, the City Attorney has no authority to issue a zoning interpretation, but the Planning Director acted in reliance on the memo to immediately begin issuing building permits to the Nebius Entities to manufacture "vested rights".

45. The City Attorney Memo does not merely offer legal guidance, in coordination with the Planning Director's decision to move forward with permits anyway, it stripped this ZBA, a quasi-judicial body established by Alabama statutes and the City Council, of jurisdiction over decisions it had already made, an impermissible collateral attack on ZBA decisions by a non-adjudicative officer acting outside any noticed proceeding and with no legal basis.

46. The Nebius Entities filed notice with the City before April 10, 2026, to appeal the denials of the special exceptions, but spent the next 31 days seeking permits, in coordination with the Planning Director, that the ZBA denials should have prevented them from obtaining.

47. The substituted language outlined in Section 7-1-3 of The General Code of the City of Birmingham, Alabama (the "GCC"), Section 103.3.1 sets forth the requirements for a plan review before a building permit is issued:

103.3.1 Plan Review. The Building and Fire Official shall examine or cause to be examined each application for a permit and the accompanying documents, consisting of drawings, specifications, computations and additional data, and shall ascertain by such examinations whether the construction indicated and described is in accordance with the requirements of this Code and all other pertinent laws or ordinances, such as Zoning and Soil Erosion and Sediment Control ordinances. The Building and Fire Official shall also examine or cause to be examined each set of drawings, specifications, computations and additional data of all components of fire protection systems, and the Building and Fire Official shall ascertain by such examinations whether the construction and/or installation of all components of the fire protection systems are in compliance with this Code and all other pertinent laws or ordinances.

48. Section 103.4.1 (Action on Application.) of the GCC substituted language in Section 7-1-3 further provides that, “If the Building Official and Fire Officials are satisfied that the work described in an application for permit and the drawings filed therewith conform with the requirements of this Code and other pertinent laws and ordinances, they shall issue a permit therefor to the applicant.”

49. The Alabama Supreme Court has been clear: “The intention of the zoning law as regards a use of nonconforming property is to restrict rather than extend it. The objective is the gradual elimination of the nonconforming use by obsolescence or destruction by fire or elements.” *Moore v. Pettus*, 71 So.2d 814 (Ala. 1954) (internal citation omitted). In issuing building permits before appeals are heard the City risks allowing a non-conforming use to be constructed, without a variance or special exception, in spite of the clear condemnation of non-conforming uses in the *Moore v. Pettus* line of cases.

50. On information and belief, with knowledge that the Nebius Entities filed notice to appeal the denials with the City and that GBHS had fifteen days, until April 24, 2026, to appeal the City Attorney Memo to the ZBA pursuant to Section 11-52-80(d)(1) of the *Code of Alabama 1975*, the City through the Planning Director, and at the urging of the Nebius Entities, relied on the City Attorney Memo to issue a building permit for the Phase I structure on April 15, 2026, to

construct a building that cannot function without the substation, and perhaps the switching station, both requiring the special exceptions. This action took place a full nine days before GBHS's appeal time would run out.

51. GBHS filed its appeals of the City Attorney Memo and issuance of a building permit for a non-conforming use on April 24, 2026.

52. While GBHS awaited a hearing date with the ZBA, the Nebius Entities and the City went further by approving the building permit for Phase II of the project on April 27, 2026, no doubt fearing City Council of the City might approve the proposed new zoning amendment publicly noticed for a hearing and potential vote at its April 28, 2026, meeting. Without that building permit, the Nebius Entities and the City knew that Phase II would have been required to comply with new conditions the City Council intended to put in place to protect the public from hyperscale data centers.

53. The four-month review for building permits allowing more than \$2 billion in construction for the Nebius Entities moved at lightning speed relative to the eighteen-month review for GBHS's \$67 million proposed construction.

54. On May 8, 2026, the City notified GBHS that in spite of the fact that the Director of Planning, Zoning and Permitting issued a building permit in reliance on the City Attorney Memo, and in direct conflict with the legislative directive in Section 11-52-80(d)(1) of the *Code of Alabama 1975*, the City Attorney Memo was not a decision of the Planning Director, could not be challenged, and no appeal would be docketed for GBHS.

55. On May 11, 2026, the Nebius Entities cut virtually every tree where the AI Factory and switching station are proposed to be constructed, in spite of the fact the Nebius Entities represented to the Oxmoor Steering Committee that certain old growth trees would be preserved

for buffers required by the Zoning Ordinance and the development plan approved by the Oxmoor Steering Committee.

56. That same day, apparently confident that the scheme they engaged in with the City to create a “legal” non-conforming use and manufacture claims of “vested rights” without a showing of good faith, due diligence in attempting to comply with the law, or insufficiency of evidence to prove that individual property rights of the public health, safety and welfare have not been adversely affected, in reality doing just the opposite, the Nebius Entities filed their appeal of the denial of the special exceptions with the Circuit Court of Jefferson County.

57. The plain language of Section 11-52-81(b) of the *Code of Alabama 1975* states that the filing of the appeal legally affirms both denials by the ZBA, but presumably the appeal would have allowed the Nebius Entities to try a case against the City, which would have acted as a strawman based on the City Attorney Memo, in an effort to cause a Court to convert the City Attorney Memo into a court order to shield the Nebius Entities and the City from the damage they had done in the 32 days they disregarded the ZBA denials.

58. To counter the City’s anticipated capitulation to the Nebius Entities, GBHS filed a Motion to Intervene as of right on May 13, 2026.

59. The Nebius Entities voluntarily dismissed the appeal of the denial of the special exceptions on May 27, 2026, again avoiding review or accountability and thwarting GBHS efforts to vindicate rights conferred by the ZBA and under Alabama law to protect against an AI Factory GBHS believes will adversely affect its property and impair the reasonable long term-term use of its property for an animal adoption center and hospital already approved by the City adjacent to the proposed AI Factory.

60. On May 29, 2026, the City, through its Industrial Development Board, approved up to \$3.2 billion in tax incentives for the Nebius Entities over thirty years pursuant to the State “Tax Incentive Reform Act of 1992.” *See* Section 40-9B-1 *et seq. Code of Alabama 1975.*

61. The legislative findings supporting the “Tax Incentive Reform Act of 1992” state “The Legislature recognizes the importance of industrial development to the well-being of the people of the state” [Emphasis added.] and the City Industrial Development Board in coordination with the Alabama Department of Revenue determined that that AI Factory rises to the industrial character for incentives under the act.

62. On June 9, 2026, the City Council of the City amended the Zoning Ordinance to authorize hyperscale data centers and impose conditions to protect the public.

63. On June 11, 2026, the Nebius Entities filed a revision to their plan for Phase II of the AI Factory. When the City notified the Nebius Entities that they would be required to comply with the new conditions in the amended Zoning Ordinance to protect the public to obtain the permit the Nebius Entities withdrew the application.

64. Working together, the City and Nebius Entities have rendered the law and the ordinances of the City of Birmingham an illusion of due process, and as of this filing, GBHS has never been afforded an opportunity for substantive relief from the City, and the relief issued from the ZBA has been effectively abrogated.

COUNT I
DECLARATORY JUDGMENT/INJUNCTION
THE AI FACTORY REQUIRES SPECIAL EXCEPTIONS
FOR CONSTRUCTION

65. GBHS re-alleges and incorporates by reference each of the foregoing paragraphs as though fully set forth herein anew.

66. The following statement is made in the City Attorney Memo:

The Zoning Ordinance defines a “utility substation” in a manner that references facilities used for distribution of services to “individual neighborhoods.” The applicant has asserted that both the substation and switching station at issue are designed to serve a single user and are not intended for distribution to individual neighborhoods, the general public, or a broader service area.

67. The facts and law relied upon for the City Attorney Memo were provided by the Nebius Entities who stood to benefit financially from the decision, it is unremarkable that these facts and this law strain credulity.

68. The facts relied upon in the City Attorney Memo are belied by the representations of the Nebius Entities, and their representatives, at the ZBA hearing indicating the switching station would be part of the larger power distribution system and would enhance the ability to deliver power to the AI Factory **and** the surrounding neighborhood. Additionally, it was clear at the ZBA hearing that the switching station and the substation cannot operate without transmission lines that will be outside the AI Factory parcel and will impact the neighborhood as a whole, requiring easements that may not be on the Nebius Entities’ property but will be obtained from neighbors of their parcels.

69. There is no exclusion from a neighborhood as the term is commonly understood or legally set forth in the City of Birmingham ordinances. The Zoning Ordinance itself states that it “further establishes land use standards which are designed to protect the value and integrity of neighboring properties, enhance the general character and appearance of the community, reinforce the central business district, lessen congestion, provide adequate privacy, light, air, protect landowners from adverse impacts of adjoining development, and provide reasonable balance between efficient utilization of land and protection of public interest and environmental resources.” [Emphasis added.] See Title 1, Chapter 1, Article I Section 1(B) of the Zoning Ordinance.

70. Considering the “Rules of Construction” for the Zoning Ordinance, it is clear

“neighborhood” is not a technical word and should be construed according to the common and approved usage of the language. *See* Title 1, Chapter 1, Article I, Section 5(F) of the Zoning Ordinance. The “Webster’s II New College Dictionary”, which the Zoning Ordinance specifically references for words not defined therein, provides several definitions of neighborhood, but two are particularly relevant:

1. A distinct area with distinctive characteristics.
2. The people who live in a particular district or area.

71. You cannot choose to be outside a neighborhood. A neighborhood is a matter of geography, a distinct area, and the presence of neighbors.

72. This is particularly true in the City of Birmingham, where there are 99 neighborhoods established under the Citizen Participation Plan, each with clear geographic boundaries. The proposed AI Factory is located in the Sand Ridge (formerly Oxmoor) neighborhood.

73. It is well established that the Zoning Ordinance must be comprehensive in its scope and purpose and not in conflict with state law. *See Jefferson County v. Birmingham*, 55 So.2d 196 (Ala. 1951). Section 11-52-70 of the *Code of Alabama 1975* is explicit that the City of Birmingham “may provide the kind, character and use of structures and improvements that may be erected....” and Section 11-52-71 *Code of Alabama 1975* further refines the requirements of the Zoning Ordinance stating, “All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in any one district may differ from those in other districts [Emphasis added.]” Clearly, the Zoning Ordinance must regulate the kind, character, and use of structures in a uniform manner. The Alabama Supreme Court has been clear on this issue, quoting approvingly from “Bassett on Zoning”:

For any or all of said purposes the local legislative body may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this article, and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in any one district may differ from those in other districts.

Johnson v. Huntsville, 249 Ala. 36, 40 (Ala. 1947).

74. The City Attorney Memo and decisions of the Planning Director in relying on the memo are inconsistent with this long accepted legal framework and create an entirely new use, heretofore unknown, that is identical in kind, character, and use to every other substation or switching station regulated by the Zoning Ordinance but is distinguished only by its service to a single user. No neighbor observing the proposed facilities could differentiate these facilities from identical facilities elsewhere in MXD zoning or any other zoning. The Zoning Ordinance was authorized and has been drafted to regulate impacts to adjacent properties and neighborhoods in a uniform manner based upon the kind and character of structures, not based on whether a structure serves a single user.

75. As the City Attorney Memo and decisions based thereon run counter to the comprehensive and uniform application of the Zoning Ordinance, it creates the possibility of perverted outcomes that could not have possibly been intended by the City Council when the Zoning Ordinance was adopted. Under the reasoning of the City Attorney Memo, a resident living in D-2 (Residential) could decide to mine crypto for their personal use and install servers on their property. If the power demand exceeded what could be supplied in D-2, this crypto miner could in theory install a substation on his or her property, with the 20 foot setback and screening, if still required after the City Attorney Memo, with new transmission lines through the neighborhood and the ZBA would never have to review this and there would be no public hearing so long as the

substation was serving a single user.

76. The City Attorney Memo and the Planning Director's issuance of Building Permits without proper zoning represents the appropriation of powers vested in the Birmingham City Council through a highly technical reading of a commonly understood word and stands against the weight of the legal framework duly enacted by the City Council.

77. With respect to MXD zoning the intent of the City Council to require special exceptions is unambiguous. While Commercial Use Group 3 Commercial/Limited Manufacturing Use in MXD zoning allows for "Light Manufacturing Use", with significant conditions, this use would roughly equate to I-1 where utility substations are permitted as of right. Knowing this, the City Council in Title 1, Chapter 4, Article V, Section 7, Subsection 5(B)(5) of the Zoning Ordinance, in adopting MXD zoning required that "Public Utilities – (with adequate screening provisions)" would be special exception uses that require ZBA approval. A switching station and substation drawing upon the electrical distribution network of Alabama Power, even if constructed to serve the AI Factory only, would fall under the MXD definition of a public utility and the plain language of MXD zoning requires a special exception to construct a facility, even if the use in I-1 would not.

78. In addition, the City Council's extensive use of language to regulate utility substations in various contexts indicates that there was never an intent to create a special sub-class of unregulated utility substations serving a single user. Further, the Zoning Ordinance makes clear that "The requirements of this Ordinance shall be considered the minimum requirements for the promotion of the public health, safety and general welfare... . Where the Ordinance imposes greater restriction on property than that imposed by other resolutions, rules, regulations, easements, covenants or agreements, the provisions of the Ordinance shall govern." *See* Title 1,

Chapter 1, Article I, Section 2(B) of the Zoning Ordinance. It only makes sense that this provision applies to internal conflict related to the Zoning Ordinance; where a conflict exists, the most restrictive provisions of the Zoning Ordinance should be applied.

79. Outside of the definition interpreted in the City Attorney Memo the City Council has referenced utility substations in two sections of the Zoning Ordinance for the classification in the present case: (1) In Title 1, Chapter 2, Article II, Section 6, Table 1.02.201 Permitted Uses (Page 45) the table clearly states that a special exception is required for a utility substation in MXD and (2) In Title 1, Chapter 4, Article III, Section 11(A)-Uses Permitted by Special Exception, the Council again states that utility substations are allowed in MXD only by special exception. It again tests credulity that a member of the City Council would have intended that a substation, indistinguishable as to kind, character, or use by any reasonable observer whether it serves a single user or neighborhood, was not intended to require a special exception in MXD zoning.

80. Upon information and belief, the City never considered seeking an opinion from the Alabama Attorney General with respect to the City Attorney Memo, a common occurrence to ensure cities do not break the law.

81. Upon information and belief, the City never considered seeking an opinion from an outside independent law firm with respect to the City Attorney Memo.

82. Upon information and belief, the City never considered filing a Declaratory Judgement, as GBHS has been required to do, to get a firm answer to this legal question.

83. It seems seeking a definitive answer that could have enhanced confidence in the City and Nebius Entities in the eyes of the public was a non-starter if it slowed the lightning pace for approval of the AI Factory, could undermine the scheme to manufacture “vested rights”, or inhibit the Nebius Entities is creating law to suit their facts and needs.

WHEREFORE, premises considered, GBHS prays that this Court take jurisdiction of this Complaint and that upon consideration of this cause the Court will make and enter an order:

- (a) Declaring that the Nebius Entities must obtain the special exceptions required under the City zoning ordinance to construct the AI Factory;
- (b) Declaring that the Nebius Entities and City have unclean hands;
- (c) Declaring that the AI factory cannot be grandfathered and operate as a legal non-conforming use arising from permits issued *ultra vires*;
- (d) Pursuant to the common law writ of certiorari, and/or procedural due process rights, afford the GBHS the expedited legal review of issues raised in Count I denied by the legal machinations of the Nebius Entities and City;
- (e) Enjoining and ordering the City to enter stop-work orders or suspend permits obtained in *ultra vires*, until such time as the ZBA has granted the required special exceptions, the Oxmoor Steering Committee has reviewed and corrected violations of its approved plans, and the Nebius Entities comply with, or obtain a variance from, the amended Zoning Ordinance permitting hyperscale data centers;
- (f) Enjoining the Nebius Entities to suspend all construction activities until such time as the ZBA has granted the required special exceptions, the Oxmoor Steering Committee has reviewed and corrected the violations of its approved plans, and the Nebius Entities comply with, or obtain a variance from, the amended Zoning Ordinance permitting hyperscale data centers;
- (g) Awarding GBHS their costs of suit, expert witness fees, and reasonable attorneys' fees under the Public Benefit Doctrine or other lawful basis; and

- (h) Granting such other, further, and different relief, legal or equitable, to which Plaintiff may be justly entitled.

COUNT II
DECLARATORY JUDGMENT/INJUNCTION
OVERTURNING THE DECISION OF THE ZBA IS *ULTRA VIRES*

84. GBHS re-alleges and incorporates by reference each of the foregoing paragraphs as though fully set forth herein anew.

85. The City Attorney Memo implemented by decisions of the Planning Director illegally nullifies and renders meaningless formal decisions of the ZBA taken at properly noticed public hearings, without any of the procedural protections that Alabama law requires for the reversal of such decisions.

86. In ZBA Cases 2026-0007 and 2026-0006, the ZBA received applications, provided public notice, accepted evidence and public testimony, deliberated, and voted. Those were official acts of a quasi-judicial body.

87. Under the Zoning Ordinance, decisions of the ZBA may be reversed **only** through specified channels: (1) A rehearing based on a substantial change in facts or conditions on appeal to the ZBA on the proper record, or (2) judicial review in the Circuit Court. A memorandum from the City Attorney or a decision of the Planning Director are not a means to reverse a ZBA decision.

88. The Alabama Supreme Court has long required that zoning actions be taken “pursuant to, and in substantial conformity with, the enabling act.” *Chestnut v. Bd. Of Zoning Adjustment*, 208 So.2d 624 (Ala. 2016) (quoting *Ferraro v Board of Zoning Adjustment of Birmingham*, 970 So.2d 299 (Ala. Civ. App.2007)). The enabling act vests the power to hear and decide appeals, special exceptions, and variances in the ZBA, not in the City Attorney or Planning Director.

89. Permitting the reasoning of the City Attorney Memo to function as a *de facto* reversal of ZBA action bypasses the public hearing requirements, the two-thirds vote requirement of § 45-37A-56(b), the notice requirements of the Zoning Ordinance, and the right of aggrieved parties, including GBHS, to participate in a proper adjudicative process.

WHEREFORE, premises considered, GBHS prays that this Court take jurisdiction of this Complaint and that upon consideration of this cause the Court will make and enter an order:

- (a) Declaring that the City Attorney and Planning Director cannot void the prior lawful decision of the ZBA to deny the special exceptions by a mere memorandum or unwritten decision;
- (b) Declaring that the Nebius Entities and City have unclean hands;
- (c) Declaring that the AI factory cannot be grandfathered and operate as a legal non-conforming use arising from permits issued *ultra vires*;
- (d) Pursuant to the common law writ of certiorari, and/or procedural due process, afford the GBHS the expedited legal review of issues raised in Count II denied by the legal machinations of the Nebius Entities and City;
- (e) Enjoining and ordering the City to enter stop-work orders or suspend permits obtained *ultra vires*, until such time as the ZBA has granted the required special exceptions, the Oxmoor Steering Committee has reviewed and corrected the violations of its approved plans, and the Nebius Entities comply with, or obtain a variance from, the amended Zoning Ordinance permitting hyperscale data centers;
- (f) Enjoining the Nebius Entities to suspend all construction activities until such time as the ZBA has granted the required special exceptions, the Oxmoor Steering Committee has reviewed and corrected the violations of its approved plans, and the Nebius Entities

comply with, or obtain a variance from, the amended Zoning Ordinance permitting hyperscale data centers;

- (g) Awarding GBHS their costs of suit, expert witness fees, and reasonable attorneys' fees under the Public Benefit Doctrine or other lawful basis; and
- (h) Granting such other, further, and different relief, legal or equitable, to which Plaintiff may be justly entitled.

COUNT III
DECLARATORY JUDGMENT/INJUNCTION
DENIAL BY THE CITY OF GBHS'S APPEAL FOR ZBA REVIEW OF THE CITY
ATTORNEY MEMO AND PLANNING DIRECTOR'S DECISION VIOLATED
ALABAMA LAW

90. GBHS re-alleges and incorporates by reference each of the foregoing paragraphs as though fully set forth herein anew.

91. In reliance on Section 11-52-80 of the *Code of Alabama 1975* and Title 1, Article IV, Chapter 9, Section 2(a) of the Zoning Ordinance, GBHS filed an appeal with the City of the City Attorney Memo and the Planning Director's decision to implement the same issuance of a permit in reliance on the City Attorney Memo which was a decision of the Planning Director.

92. Section 11-52-80(d)(1) of the *Code of Alabama 1975* is clear as to the statutory powers of the ZBA:

To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this article or of any ordinance adopted pursuant thereto; [Emphasis added.]

93. The rules of the ZBA state that the ZBA may hear appeals from the decision of the Planning Director of the Department of Planning, Engineering and Permits.

94. GBHS timely submitted a letter to the Planning Department "advising of and indicating the reasons for appealing" a decision clearly evidenced by the issuance of a building

permit to the Nebius Entities based on the City Attorney Memo. *See* Title 1, Chapter 9, Section 5(A) of the Zoning Ordinance. In spite of this, the Planning Director ignored the command in the Zoning Code that in response to the “letter or other writing...The Director shall make his decision in writing in which he shall indicate the time in which an appeal to the Board shall be filed.” *Id.* The Planning Director simply made no decision in writing and the appeal was dismissed as not being a decision of the Planning Director but simply an appeal of a memo by the City Attorney (an administrative official) and with the first appeal rejected the appeal of the building permit issued without special exceptions was also rejected as tied to the first appeal. Title 1, Chapter 1, Article I Section 5(H) of the Zoning Code is clear that the word “‘shall’ is always mandatory and not discretionary”, except apparently in Section 5(A) for GBHS letters “advising of and indicating the reasons for appealing” decisions obviously made by the Planning Director. Again, where due process and the rights of the public were in conflict with the plans laid by the Nebius Entities, the City contorted due process like a pretzel to shield the Nebius Entities from accountability and the City Attorney Memo and Planning Director’s decisions from scrutiny.

95. Where an Alabama Statute conflicts with a local rule of a board or the Zoning Ordinance, then the law as written by the Legislature is supreme and could not be more clear in this case.

96. Additionally, as it is not uncommon for a city ZBA to hear and make a determination interpreting a zoning ordinance, why was the City not making the appeal considering neither the Planning Director nor City Attorney have the legal authority to overturn a lawful decision of the ZBA. The obvious answer is that the appeal would have slowed the Nebius Entities.

97. The answer is the same for why the City would not pursue a declaratory judgement in Circuit Court to answer what was obviously a contentious and important question, as the timeline shows not a minute could be spared in rushing the AI Factory through approvals ahead of the proposed amendment by the City Council.

98. The City Attorney and Planning Director both clearly fit the definition of an “administrative official” under Section 11-52-80(d)(1), and as GBHS has alleged in the Complaint where there is error in a “decision, or determination made by an administrative official in the enforcement of this article” the denial of an appeal was contrary to Alabama law.

WHEREFORE, premises considered, GBHS prays that this Court take jurisdiction of this Complaint and that upon consideration of this cause the Court will make and enter an order:

- (a) Declaring that the denial of the GBHS appeal to the ZBA was a violation of Alabama law;
- (b) Declaring that the Nebius Entities and City have unclean hands;
- (c) Declaring that the AI factory cannot be grandfathered and operate as a legal non-conforming use arising from permits issued *ultra vires*;
- (d) Pursuant to the common law writ of certiorari, and/or procedural due process, afford the GBHS the expedited legal review of issues raised in Count III denied by the legal machinations of the Nebius Entities and City;
- (e) Enjoining and ordering the City to enter stop-work orders or suspend permits obtained in *ultra vires*, until such time as the ZBA has granted the required special exceptions, the Oxmoor Steering Committee has reviewed and corrected the violations of its approved plans, and the Nebius Entities comply with, or obtain a variance from, the amended Zoning Ordinance permitting hyperscale data centers;

- (f) Enjoining the Nebius Entities to suspend all construction activities until such time as the ZBA has granted the required special exceptions, the Oxmoor Steering Committee has reviewed and corrected the violations of its approved plans, and the Nebius Entities comply with, or obtain a variance from, the amended Zoning Ordinance permitting hyperscale data centers;
- (g) Awarding GBHS their costs of suit, expert witness fees, and reasonable attorneys' fees under the Public Benefit Doctrine or other lawful basis; and
- (h) Granting such other, further, and different relief, legal or equitable, to which Plaintiff may be justly entitled.

COUNT IV
DECLARATORY JUDGMENT/INJUNCTION
THE CITY ATTORNEY MEMO *DE FACTO* REZONES THE PROPERTY OF THE
NEBIUS ENTITIES INDUSTRIAL AND IS *ULTRA VIRES*

99. GBHS re-alleges and incorporates by reference each of the foregoing paragraphs as though fully set forth herein anew.

100. Alabama Courts have clearly restricted the ability of the ZBA to adopt a variance that would change the zoning classification of property. *See McKay v. Strawbridge*, 656 So.2d 845 (Ala. Civ. App. 1995). The same holding should apply equally to the City Attorney and Planning Director.

101. The reasoning of the City Attorney Memo has the effect that utility substations serving a single user require no special exception and may be constructed as of right in any zoning district in the City, seemingly outside the ambit of the Zoning Ordinance, but a permitted use could not exist outside the Zoning Ordinance and a potential construction of the City Attorney Memo would be that the Nebius Project is now in a new zoning classification where utility substations are permitted as of right.

102. The only zoning classifications where utility substations are permitted as of right are I-1, I-2, I-3, and I-4. This is no surprise because it is industrial use that is most likely to require massive amounts of electricity, the related infrastructure, and most likely location where a utility substation to serve a single user would be constructed.

103. Upon information and belief, none of the previously approved “data centers” are the size of the AI Factory, require a switching station, or anywhere close to a 600 Megawatt substation.

104. The 600 Megawatt AI Factory even exceeds the minimum 30 Megawatts for a “hyperscale data center” under the City Council’s amendment to the Zoning Ordinance by 570 Megawatts.

105. By granting incentives through the Industrial Development Board of the City under the “Tax Incentive Reform Act of 1992” adopted for promotion of large scale industrial activities instead of through Section 94.01 of the Constitution of Alabama for commercial incentives, more in character with the Regions Operations Center, the City has further undermined the Planning Director’s decision, City Attorney Memo and revealed the rezoning from MXD to industrial use was not only the effect but perhaps the intent of the City Attorney Memo.

106. The City Attorney and Planning Director should not be allowed to rezone the property for the AI Factory to allow for desired industrial zoning characteristics while continuing to call the use MXD where special exceptions are required.

WHEREFORE, premises considered, GBHS prays that this Court take jurisdiction of this Complaint and that upon consideration of this cause the Court will make and enter an order:

- (a) Declaring that the Planning Director and City Attorney cannot rezone a MXD site to the character of an industrial site that is not required to obtain special exceptions;

- (b) Declaring that the Nebius Entities and City have unclean hands;
- (c) Declaring that the AI factory cannot be grandfathered and operate as a legal non-conforming use arising from permits issued *ultra vires*;
- (d) Pursuant to the common law writ of certiorari, and/or procedural due process, afford the GBHS the expedited legal review of issues raised in Count IV denied by the legal machinations of the Nebius Entities and City;
- (e) Enjoining and ordering the City to enter stop-work orders or suspend permits obtained *ultra vires* , until such time as the ZBA has granted the required special exceptions, the Oxmoor Steering Committee has reviewed and corrected the violations of its approved plans, and the Nebius Entities comply with, or obtain a variance from, the amended Zoning Ordinance permitting hyperscale data centers;
- (f) Enjoining the Nebius Entities to suspend all construction activities until such time as the ZBA has granted the required special exceptions, the Oxmoor Steering Committee has reviewed and corrected the violation of its approved plans, and the Nebius Entities comply with, or obtain a variance from, the amended Zoning Ordinance permitting hyperscale data centers;
- (g) Awarding GBHS their costs of suit, expert witness fees, and reasonable attorneys' fees under the Public Benefit Doctrine or other lawful basis; and
- (h) Granting such other, further, and different relief, legal or equitable, to which Plaintiff may be justly entitled.

COUNT V
DECLARATORY JUDGMENT/INJUNCTION
THE AI FACTORY IS NOT PERMITTED UNDER THE
PRIOR VERSION OF THE CITY ZONING ORDINANCE

107. GBHS re-alleges and incorporates by reference each of the foregoing paragraphs as though fully set forth herein.

108. If the Court accepts the strict construction of the definition of “Utility Substation” preferred by the City and Nebius Entities, then an equally strict construction must be applied to the Zoning Ordinance under which the Nebius Entities and City claim the proposed AI Factory is grandfathered under an ordinance where the phrase “data center” never appears.

109. “Banks” and their attendant facilities were defined in the former Zoning Ordinance clearly enabling the operation of the Regions Operations Center.

110. Even assuming the authority of the Planning Director to categorize an unlisted use “according to the most comparable land use classification,” an assertion that the Regions Operations Center and the hyperscale AI Factory, only now defined and authorized by the City Council by amendment, are both “data centers” and, therefore, comparable is like saying a tornado and a hurricane are comparable because they are “wind related weather events.” *See* Title 1, Chapter 2, Article II, Section 3 of the Zoning Ordinance. The scope, scale, and industrial character of the AI Factory to the former operations center are not comparable at all.

111. As to strict construction, the Nebius Entities and City cannot have it both ways, ignoring or invoking the rule as it may advance their desires.

WHEREFORE, premises considered, GBHS prays that this Court take jurisdiction of this Complaint and that upon consideration of this cause the Court will make and enter an order:

- (a) Declaring that the zoning ordinance of the City of Birmingham did not allow property to be used for hyperscale data centers like the AI Factory until it was amended and that

the version of the ordinance under which the Nebius Entities and the City claim the AI Factory is grandfathered did not permit the use;

- (b) Declaring that the Nebius Entities and City have unclean hands;
- (c) Declaring that the AI factory cannot be grandfathered and operate as a legal non-conforming use arising from permits issued *ultra vires*;
- (d) Pursuant to the common law writ of certiorari, and/or procedural due process rights, afford the GBHS the expedited legal review of issues raised in Count V denied by the legal machinations of the Nebius Entities and City;
- (e) Enjoining and ordering the City to enter stop-work orders or suspend permits obtained in *ultra vires*, until such time as the ZBA has granted the required special exceptions, the Oxmoor Steering Committee has reviewed and corrected the violations of its approved plans, and the Nebius Entities comply with, or obtain a variance from, the amended Zoning Ordinance permitting hyperscale data centers;
- (f) Enjoining the Nebius Entities to suspend all construction activities until such time as the ZBA has granted the required special exceptions, the Oxmoor Steering Committee has reviewed and corrected the violations of its approved plans, and the Nebius Entities comply with, or obtain a variance from, the amended Zoning Ordinance permitting hyperscale data centers;
- (g) Awarding GBHS their costs of suit, expert witness fees, and reasonable attorneys' fees under the Public Benefit Doctrine or other lawful basis; and
- (h) Granting such other, further, and different relief, legal or equitable, to which Plaintiff may be justly entitled.

COUNT VI
DECLARATORY JUDGMENT/INJUNCTION
THE NEBIUS ENTITIES ARE FAILING TO COMPLY WITH MXD ZONING, THE
MXD CONCEPTUAL PLAN, AND PLANS APPROVED BY THE OXMOOR
STEERING COMMITTEE

112. GBHS re-alleges and incorporates by reference each of the foregoing paragraphs as though fully set forth herein anew.

113. The Zoning Ordinance requires the Oxmoor Steering Committee to review conceptual plans for projects to be constructed in MXD.

114. Those plans include, but are not limited to, the following set forth in the Zoning Ordinance, Title 1, Chapter 4, Article V, Section 7, Subsection 4:

Approximate height of all buildings;
 Approximate location of all utilities; and
 Buffer and screening provisions....

115. The Zoning Ordinance states that, “the word ‘building’ shall include the word ‘structure’, and the word ‘shall’ is mandatory and not optional.” Title 1, Chapter 1, Article III, Section 1.

116. The Zoning Ordinance states that a “structure” is, “Anything constructed or erected, the use of which requires a location on the ground, or attached to something having a location on the ground....” Title 1, Chapter 1, Article III, Section 1.

117. Upon information and belief, the AI Factory’s manufactured “vested rights” and approval as a grandfathered continued use in the same classification as the Regions Operations Center would classify the parcel where the AI Factory is located as MXD, Section 2 (C-2) uses.

118. The height restriction for “Buildings” in MXD zoning is 75 Feet.

119. Upon information and belief, the structures for high tension wires, the switching station, and perhaps the substation will exceed 75 feet and rise to an actual height of 95 to 110 feet.

120. Upon information and belief, the Nebius Entities represented to the Oxmoor Steering Committee that these structures would not exceed 60 feet.

121. Upon information and belief, the Oxmoor Steering Committee required in the Development Plan that certain old growth trees on the parcel where the AI Factory and Switching Station are being constructed would be preserved, yet many of those trees have now been cut down in violation of the plan.

122. Failure to conform with the approved conceptual plan or development plan, or misrepresentations to the Oxmoor Steering Committee, are grounds for stop-work orders from the City until the matters are corrected.

123. Additionally, when GBHS intended to clear trees on the site for its proposed project, it was informed that the area is habitat to endangered bats and that clearing of trees between March 31 to October 15 of any given year is prohibited.

124. To the extent that the development plan reviewed by the Oxmoor Steering Committee failed to take into account tree clearing and endangered species it is in conflict with the conceptual plan required by the Zoning Ordinance, which conceptual plan explicitly covers “large tree stands, water features, significant scenic areas or identified endangered species habitat,” the AI Factory should not be granted an exemption to these requirements.

125. If the development plan approved by the Oxmoor Steering Committee has not been complied with, these defects must be corrected before work can proceed.

WHEREFORE, premises considered, GBHS prays that this Court take jurisdiction of this Complaint and that upon consideration of this cause the Court will make and enter an order:

- (a) Declaring that cutting down virtually every old growth tree that the Oxmoor Steering Committee approved as buffers on the proposed site of the AI Factory under the

- development plan, the violation of laws to protect endangered species, and structures in violation of height restrictions, violates the Zoning Ordinance and approval received from the Oxmoor Steering Committee;
- (b) Declaring that the Nebius Entities and City have unclean hands;
 - (c) Declaring that the AI factory cannot be grandfathered and operate as a legal non-conforming use arising from permits issued *ultra vires*;
 - (d) Pursuant to the common law writ of certiorari, and/or procedural due process rights, afford the GBHS the expedited legal review of issues raised in Count VI denied by the legal machinations of the Nebius Entities and City;
 - (e) Enjoining and ordering the City to enter stop-work orders or suspend permits obtained in *ultra vires*, until such time as the ZBA has granted the required special exceptions, the Oxmoor Steering Committee has reviewed and corrected the violations of its approved plans, and the Nebius Entities comply with, or obtain a variance from, the amended Zoning Ordinance permitting hyperscale data centers;
 - (f) Enjoining the Nebius Entities to suspend all construction activities until such time as the ZBA has granted the required special exceptions, the Oxmoor Steering Committee has reviewed and corrected the violations of its approved plans, and the Nebius Entities comply with, or obtain a variance from, the amended Zoning Ordinance permitting hyperscale data centers;
 - (g) Awarding GBHS their costs of suit, expert witness fees, and reasonable attorneys' fees under the Public Benefit Doctrine or other lawful basis; and
 - (h) Granting such other, further, and different relief, legal or equitable, to which Plaintiff may be justly entitled.

COUNT VII
DECLARATORY JUDGMENT/INJUNCTION
THE NEBIUS ENTITIES LACK THE ELEMENTS FOR “VESTED RIGHTS”

126. GBHS re-alleges and incorporates by reference each of the foregoing paragraphs as though fully set forth herein anew.

127. The Nebius Entities and the administration of the City have made every effort in an attempt to get ahead of the moratorium and the amendment of the zoning ordinance and manufacture “vested rights.” Alabama appellate courts have discussed but not granted “vested rights”; but in other states, Pennsylvania for example, where “vested rights” have been fully adopted the elements are generally: (1) good faith; (2) due diligence in attempting to comply with the law; (3) the expenditure of substantial, unrecoverable funds; (4) the expiration without appeal of the period during which an appeal could have been taken from the issuance of a permit; and (5) insufficiency of evidence to prove that individual property rights or the public health, safety and welfare have been adversely affected by the use of a permit. See *Ferguson Township v. Zoning Board of Ferguson Township*, 475 A2d 910 (Pa. Commw Ct. 1984).

128. The Alabama Supreme Court discussed the doctrine in a case finding no “vested rights” and the court indicated that it balanced the rights of the property owner to protect their investment against the “reasonable necessity for protecting and promoting the health, safety, morals, and general welfare of the public....” *Grayson v. City of Birmingham*, 173 So.2d 67, 72 (Ala. 1963).

129. Far from undertaking the balancing test or looking at factors used in cases where “vested rights” have been fully adopted, the City undertook no analysis and simply assumed “vested rights” in favor of the Nebius Entities without any weighing of the necessity to protect and promote the health, safety, and general welfare of the public, the same factors that are core police

powers of the City and the legislative functions of the City Council to adopt ordinances and resolutions “to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of the inhabitants of the municipality....” *See* Section 11-45-1 *Code of Alabama 1975*.

130. Filing a lawsuit on May 11, 2026, to try a case against the City in an effort to transform the City Attorney Memo into a court order intended to shield the Nebius Entities from the damage they did in the 32 days they disregarded the ZBA denials is the definition of a lack of good faith and absence of due diligence in attempting to comply with the law. The fact that the case was hastily withdrawn at the first sign of genuine opposition reinforces that point.

131. The desire to use the City Attorney Memo to get around the law was the object and plan of the City and Nebius Entities from the day the City Attorney Memo was released.

132. Additionally, the City and Nebius Entities have coordinated all of their efforts to ensure that no administrative body, including the ZBA, will hear further evidence to prove that individual property rights, in this case GBHS’s, or the public health, safety and welfare, would be adversely affected by the AI Factory.

133. Considering that the review standards of the ZBA, per Title 1, Chapter 4, Article III, Section 2(c) of the Zoning Ordinance, are that “A special exception may be granted provided that the board finds that the use is so designed, located and proposed to be operated that the health, safety and welfare will be protected. The board may determine from its review that adequate public facilities are available to accommodate the proposed use, and that approval of the special exception or variance will not adversely affect other property in the area to the extent that it will impair the reasonable long-term use of those properties....”, it stands to reason that the ZBA denial was also a finding that individual property rights or the public health, safety and welfare would

have been adversely affected if the special exceptions had been issued.

134. While the City abdicated any role in balancing harms as set forth in the *Grayson* case and exercising its legislative police powers, the ZBA did that job and was ignored while the scheme to issue building permits without proper zoning proceeded unabated.

WHEREFORE, premises considered, GBHS prays that this Court take jurisdiction of this Complaint and that upon consideration of this cause the Court will make and enter an order:

- (a) Declaring that the Nebius Entities have no “vested rights” and that the Nebius Entities fail to meet the elements of “vested rights” in jurisdictions recognizing the doctrine or under the limited analysis of *Grayson v. City of Birmingham*;
- (b) Declaring that the Nebius Entities and City have unclean hands;
- (c) Declaring that the AI factory cannot be grandfathered and operate as a legal non-conforming use arising from permits issued *ultra vires*;
- (d) Pursuant to the common law writ of certiorari, and/or procedural due process rights, afford the GBHS the expedited legal review of issues raised in Count VII denied by the legal machinations of the Nebius Entities and City;
- (e) Enjoining and ordering the City to enter stop-work orders or suspend permits obtained in *ultra vires*, until such time as the ZBA has granted the required special exceptions, the Oxmoor Steering Committee has reviewed and corrected the violations of its approved plans, and the Nebius Entities comply with, or obtain a variance from, the amended Zoning Ordinance permitting hyperscale data centers;
- (f) Enjoining the Nebius Entities to suspend all construction activities until such time as the ZBA has granted the required special exceptions, the Oxmoor Steering Committee has reviewed and corrected the violations of its approved plans, and the Nebius Entities

comply with, or obtain a variance from, the amended Zoning Ordinance permitting hyperscale data centers;

- (g) Awarding GBHS their costs of suit, expert witness fees, and reasonable attorneys' fees under the Public Benefit Doctrine or other lawful basis; and
- (h) Granting such other, further, and different relief, legal or equitable, to which Plaintiff may be justly entitled.

COUNT VIII COMMON LAW WRIT OF CERTIORARI

135. GBHS re-alleges and incorporates by reference each of the foregoing paragraphs as though fully set forth herein anew.

136. This Court has jurisdiction over this petition for common law writ of certiorari pursuant to Ala. Const. 1901 Recompiled (2022) Sec. 142 ("The circuit court shall exercise general jurisdiction in all cases except as may otherwise be provided by law"); and Ala. Code § 12-17-26 ("Circuit judges have the following authority and duties: (1) To grant ... writs of certiorari ... ;).

137. On common-law certiorari review, the Circuit Court's scope of review includes determining if the decisions and actions of the City, are supported by legal evidence and if the law was correctly applied to the facts. In addition, the Court is responsible for reviewing the record to ensure that the fundamental rights of the parties, including the right to due process, has not been violated. *Franks v. Jordan*, 55 So.3d 1218, 1220-21 (Ala. Civ. App. 2010). *Accord, Fox v. City of Huntsville*, 9 So.3d 1229, 1232 (Ala. 2008).

138. GBHS asserts that numerous acts of the City, set forth in Counts I through VII are a violation of applicable Alabama law or an erroneous application or interpretation of

Alabama law.

WHEREFORE, premises considered, GBHS prays that this Court take jurisdiction of this Complaint and that upon consideration of this cause the Court will make and enter an order:

- (a) Pursuant to the common law writ of certiorari, afford the GBHS the expedited legal review of issues raised in Counts I through VII denied by the legal machinations of the Nebius Entities and City;
- (b) Enjoining and ordering the City based upon writ of certiorari for any of Counts I through VII to enter stop-work orders or suspend permits obtained *ultra vires* until such time as the ZBA has granted the required special exceptions, the Oxmoor Steering Committee has reviewed and corrected the violations of its approved plans, and the Nebius Entities comply with, or obtain a variance from, the amended Zoning Ordinance permitting hyperscale data centers;
- (c) Awarding GBHS their costs of suit, expert witness fees, and reasonable attorneys' fees under the Public Benefit Doctrine or other lawful basis; and
- (d) Granting such other, further, and different relief, legal or equitable, to which Plaintiffs may be justly entitled.

COUNT IX
INJUNCTIVE RELIEF FOR PROCEDURAL DUE PROCESS VIOLATIONS

139. GBHS re-alleges and incorporates by reference each of the foregoing paragraphs as though fully set forth herein anew.

140. Procedural due process involves a three-step inquiry. First, did GBHS have a constitutionally protected property interest? Second, did the government deprive GBHS of that interest? Third, did the government employ constitutionally adequate procedures prior to the deprivation? *See Ellis v. City of Montgomery*, 460 F.Supp.2d 1301, 1304 (M.D. Ala. 2006).

141. GBHS has a constitutionally protected property interest in the use and enjoyment of its property.

142. GBHS notified the City and the ZBA, with the ZBA agreeing, that the proposed use of the property where the AI Factory is to be constructed could deprive GBHS of the planned use of its property because of noise that may interfere with its operations and be harmful to animals and humans.

143. The City was on notice that GBHS would likely appeal the City Attorney Memo because the Memo states in the second to last paragraph that an appeal was likely.

144. To preserve the right to appeal the City Attorney Memo and preserve the denials of the special exceptions, the City should not have taken actions on permits conditioned on proper zoning during the time for an appeal of the City Attorney Memo or denied GBHS a hearing before the ZBA on the City Attorney Memo as implemented by decisions of the Planning Director.

145. While it was obvious GBHS sought to avail itself of administrative remedies related to decisions of the Planning Director based on the City Attorney Memo, the City has twisted the procedure under the Zoning Ordinance into such incomprehensible double speak that the process is futile and bears little resemblance to the statutory command the legislature created in Section 11-52-80(c)(1) *Code of Alabama 1975*.

146. GBHS asserts that numerous acts of the City, set forth in Counts I through VII, are a violation of GBHS's Alabama's constitutional procedural due process rights.

WHEREFORE, premises considered, GBHS prays that this Court take jurisdiction of this Complaint and that upon consideration of this cause the Court will make and enter an order:

- (a) Pursuant to procedural due process, afford the GBHS the expedited legal review of issues raised in Counts I through VII denied by the legal machinations of the Nebius Entities and City;
- (b) Enjoining and ordering the City based upon any of Counts I through VII to enter stop-work orders or suspend permits obtained *ultra vires* until such time as the ZBA has granted the required special exceptions, the Oxmoor Steering Committee has reviewed and corrected the violations of its approved plans, and the Nebius Entities comply with, or obtain a variance from, the amended Zoning Ordinance permitting hyperscale data centers;
- (c) Awarding GBHS their costs of suit, expert witness fees, and reasonable attorneys' fees under the Public Benefit Doctrine or other lawful basis; and
- (d) Granting such other, further, and different relief, legal or equitable, to which Plaintiffs may be justly entitled.

Respectfully submitted,

/s/ Brian V. Cash

BRIAN V. CASH (CAS027)

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JURY DEMAND

GBHS demands a trial by struck jury on all issues so triable.

/s/ Brian V. Cash

Of Counsel



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CIRCUIT COURT OF
JEFFERSON COUNTY, ALABAMA
JACQUELINE ANDERSON SMITH, CLERK

EXHIBIT A



INTEROFFICE MEMORANDUM

City of Birmingham
Office of the City Attorney
205-254-2369

MEMORANDUM

TO: Zoning Board of Adjustment Members
FROM: Nicole King, City Attorney *N.K.*
DATE: April 9, 2026
RE: Clarification of Prior ZBA Actions

Purpose

The purpose of this memorandum is to clarify the Board's prior votes on Case No. ZBA2026-00007 and the related switching station request, Case No. ZBA2026-00006, to ensure that the official record accurately reflects the Board's actions under its Rules of Procedure and applicable law. This memorandum also advises the Board of a related interpretive issue affecting both cases.

Summary of Prior Action

At its March 26, 2026, meeting, the Board considered a Special Exception request for a power substation to be located at 201 Milan Parkway, Case No. ZBA2026-00007. The final motion to approve the application with conditions received a vote of three in favor, one opposed, and one abstention. The outcome was announced at the meeting as approved.

During the same meeting, the Board also considered a related switching station request, Case No. ZBA2026-00006. A motion to deny that application received four votes in favor of denial, zero opposed, and one abstention, resulting in denial of the application.

Applicable Voting Requirement

Section VII(h) of the Rules of Procedure of the Zoning Board of Adjustment provides: "The concurring vote of two-thirds (2/3) of the Board members present shall be necessary to decide in favor of the applicant on any matter concerning a variance, special exception or modification."

This requirement reflects the voting standard set forth in the local act governing Birmingham's Zoning Board of Adjustment, codified at Ala. Code § 45-37A-56(b).

With five members present, at least four affirmative votes were required to decide in favor of the applicant on a special exception request.

Clarification of Outcome

In Case No. ZBA2026-00007, the motion to approve the substation did not achieve the required two-thirds vote of the members present. With five members present, a minimum of four affirmative votes was required. The motion received three votes in favor, one opposed, and one abstention, and therefore failed to meet the required threshold for approval.

The effect of an abstention depends on the legal context in which it occurs. While an abstention is not itself a vote for or against a motion, it may prevent a motion from achieving the required number of affirmative votes where the governing rule or law requires approval by a stated fraction of the members present. Here, both the ZBA Enabling Statute and the Board's Rules of Procedure require a concurring vote of two-thirds of the members present. As a practical matter, when such a threshold applies, an abstention has the same effect as a negative vote because it reduces the number of affirmative votes available to satisfy the required threshold. This is consistent with the general parliamentary principle reflected in Robert's Rules of Order.

Accordingly, in Case No. ZBA2026-00007, the motion to approve did not pass, and the statement at the meeting that the application had been approved was in error. The application for the substation is therefore considered denied.

The Board's action in Case No. ZBA2026-00006, which resulted in a vote of four in favor of denial, zero opposed, and one abstention, stands as a denial.

Abstention Consideration

Although abstentions are permissible, abstaining members are counted among those present and may affect whether the Board is able to meet required voting thresholds. When no conflict of interest exists, participation in the vote helps ensure that the Board can reach a clear and final action under its Rules of Procedure.

If a member has a conflict of interest, that member should recuse himself or herself from the matter entirely and should not participate in discussion or voting on the matter. In general, a conflict of interest exists where the Board member, a family member, or a business with which the member is associated has a financial interest in the matter.

Prevailing Issue

After the vote was taken, the Board should be aware of an issue raised by the applicant in Case No. ZBA2026-00007 that affects whether a special exception is required for both the substation and the switching station.

The Zoning Ordinance defines a "utility substation" in a manner that references facilities used for distribution of services to "individual neighborhoods." The applicant has asserted that both the substation and switching station at issue are designed to serve a single user and are not intended for distribution to individual neighborhoods, the general public, or a broader service area.

Our office, in consultation with staff, has evaluated this issue and determined that these facilities, as proposed, do not fall within the Ordinance's definition of a "utility substation," because they are not intended to serve individual neighborhoods. Accordingly, these facilities would not require a special exception from the Board under the current Ordinance. Therefore, these matters should not have been before the Zoning Board of Adjustments.

This determination may be subject to appeal in accordance with the provisions of the Zoning Ordinance. Board members should not discuss this issue outside of a properly noticed public meeting.

Next Steps

Staff will update the official record to reflect the Board's actions consistent with the applicable voting requirements and will provide clarification to interested parties as appropriate. Any further permitting or administrative review will be handled in accordance with the applicable provisions of the Zoning Ordinance.