

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

68659

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. C. Nicholson, Jr., Judge

Case No. 2011-CP-10-2028

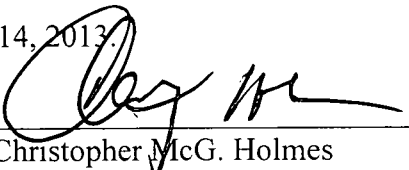
Joseph M. Bettelli, Jr. and Susan B. Bettelli.....Appellants,

v.

Town of Awendaw Board of Zoning Appeals and
Berkeley Electric Cooperative,.....Respondents.

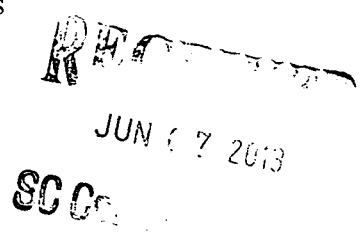
NOTICE OF APPEAL

Appellants Joseph M. Bettelli, Jr. and Susan B. Bettelli hereby appeal the Order of the Honorable J. C. Nicholson, Jr., Judge, dated April 3, 2013, filed April 9, 2013, and written notice of which was received by appellants on April 15, 2013. Appellants filed a Motion to Reconsider and to Alter or Amend on April 24, 2013, which was denied by the Court on May 8, 2013, and appellants received written notice of that denial on May 14, 2013.



Christopher McG. Holmes
222 W. Coleman Blvd.
Mt. Pleasant, SC 29464
(843) 388-2966
Attorney for Appellants

June 4, 2013


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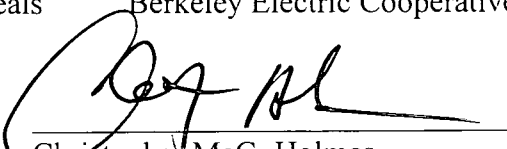
Town of Awendaw Board of Zoning Appeals and
Berkeley Electric Cooperative,.....Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on the 4th day of June, 2013, he served Appellants' **Notice of Appeal** via United States mail, first class, postage prepaid, on the following parties and counsel of record as listed below:

Dwayne M. Green, Esq.
602 Rutledge Avenue
Charleston, SC 29403
Attorney for Respondent
Town of Awendaw Board of Zoning Appeals

John B. Williams, Esq.
PO Box 1288
Moncks Corner, SC 29461
Attorney for Respondent
Berkeley Electric Cooperative



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June 4, 2013

Hon. Tanya A. Gee
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Bettelli v. Awendaw/Berkeley Electric;
Case No. 2011-CP-10-2028

Dear Ms. Gee:

Enclosed for filing please find Notice of Appeal on behalf of Joseph M. Bettelli, Jr. and Susan B. Bettelli in the above referenced matter. Also enclosed are the following:

- (1) Proof of Service of the notice of appeal on the respondents;
- (2) a copy of the Order which is to be challenged on appeal;
- (3) check in the amount of \$100.00 for the filing fee.

With kindest regards, I am

Sincerely,



Christopher McG. Holmes
222 W. Coleman Blvd.
Mt. Pleasant, SC 29464
(843) 388-2966
Attorney for Appellants

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Other Counsel of Record:

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Berkeley Electric Cooperative

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2011-CP-10-2028

Joseph M. Bettelli, Jr. and)
Susan B. Bettelli,)
)
Plaintiffs,)

vs.)

ORDER

Town of Awendaw Board of Zoning)
Appeals and Berkeley Electric)
Cooperative,)
)
Defendants.)

FILED
2013 APR -9 AM 9:52
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

This matter came before me originally on a hearing dated March 12, 2012. Attorney Chris McG.Holmes appeared on behalf of the Appellants, attorney Dwayne M. Green appeared on behalf of the Respondent Town of Awendaw. John Williams, Esquire also appeared on behalf of the Respondent Berkeley Electrical Cooperative.

This action is an appeal from a ruling of the Town of Awendaw Board of Zoning and Appeals. At issue is the density and placement of a vegetative buffer to be placed between the Appellants' property in Awendaw and a newly constructed service facility for the Berkeley Electrical Co-op. The Town of Awendaw granted an easement to the Respondent Berkeley Electric, allowing it a variance under S.C. Code Ann. 6-29-800 (A)(2). The variance reduced the buffer required under the Town's ordinance from twenty to five feet, but required that the buffer be comprised of more dense vegetation to allow maximum screening. The reduced buffer also allowed the Town to maintain an easement granted to it by Berkeley Electric, allowing it to place and service a water line which would extend to a well currently located on Berkeley Electric's

property. The pertinent Town of Awendaw ordinance had required twenty (20') feet of vegetative buffer between the Berkeley Electric and Bettellis property.

The Bettellis have alleged that the town's grant of the variance is a conflict of interest and appealed the Town's grant of the variance. They have also requested as a possible solution that Respondent Berkeley Electric construct a 7' wall at its own expense to screen its property from their own. At the last status conference in this matter, the Bettellis were directed to negotiate with the landscape architects for Respondent Berkeley Electric to see if a compromise could be reached as to the placement and type of vegetation which would serve as a buffer between the two properties. The parties have reported that they have reached an impasse and no compromise has been reached.

Based on the foregoing and after reviewing the facts and the records in this matter, I find as follows:

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No conflict of interest existed between the Town of Awendaw and Berkeley Electric Co-op when the variance in this matter was originally granted. A municipality has the right, duty and obligation to provide for the general welfare of its citizens and the safe installation and maintenance of a water line reasonably and rationally fits within this duty. If the town receives no financial or pecuniary benefit from the placement of the buffer in this case, I do not find that a conflict of interest existed when it granted the requested variance to the Berkeley Electric Co-op.

As to the variance granted by the town, the minutes reflected that the Board considered four factors in its analysis, pursuant to state law. A variance **may** be granted by the Board of Zoning Appeals if the Board makes the following findings:

1. there are extraordinary and exceptional conditions pertaining to the particular piece of property;
2. these conditions do not generally apply to other property in the vicinity;

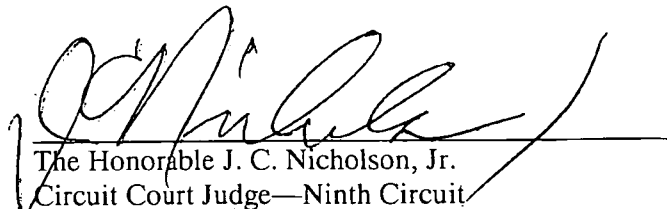
3. because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and;
4. the authorization of a variance will not be of substantial detriment to adjacent property or the public good, and the character of the district will not be harmed by granting of the variance.

Examining these factors, the BZA found that the proposed change from twenty to five feet of buffer had minimal impacts, due to the proposed use of more dense vegetation. The Board was within its discretion in finding that the Berkeley Electric property had exceptional conditions, those conditions did not apply to other properties in the area (particularly the existence of a water easement), and that the granting of an easement would be of benefit for the public good rather than harming it.

I further find that the approved buffer provides more screening for the Bettellis property based on the density and the proposed plant material to be utilized. Accordingly, I find that the Bettellis are not entitled as a matter of law to have a different or more expensive buffer erected at the expense of any other parties in this matter.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the appeal of the original Town of Awendaw BZA order in the matter be denied and that a vegetative buffer be planted and erected on the Berkeley Electrical Co-op property within the parameters directed by the Town of Awendaw Planning Department and within the type and variety as suggested by the Berkeley Electrical Co-op landscape architect so as to provide maximum density and screening between the Bettelli and Berkeley Electric property. Such vegetative buffer shall be in accordance with the Town of Awendaw planning guidelines and shall be erected at the Berkeley Electrical Co-op's sole expense.

IT IS SO ORDERED.


The Honorable J. C. Nicholson, Jr.
Circuit Court Judge—Ninth Circuit

4/3/13